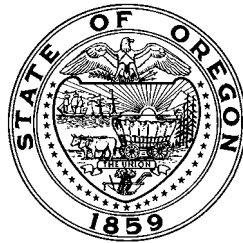


# OREGON BULLETIN

Supplements the 2004 *Oregon Administrative Rules Compilation*

**Volume 43, No. 1**  
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For November 17, 2003–December 15, 2003



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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

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

## How to Cite

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

## Understanding an Administrative Rule's "History"

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

## Locating the Most Recent Version of an Administrative Rule

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

## Locating Administrative Rules Unit Publications

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

## 2003-2004 Oregon Bulletin Publication Schedule

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

### Submission Deadline — Publishing Date

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

## Reminder for Agency Rules Coordinators

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

## Publication Authority

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. EO 03-16

### WORKFORCE DEVELOPMENT

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

Revitalizing and invigorating the Oregon economy is a high priority. To facilitate economic recovery and to keep Oregon's industries productive and competitive for Oregonians, we must ensure that a skilled workforce is available to existing businesses. Further, Oregonians require access to education and training that will keep them prepared for the jobs of the future.

The availability of skilled labor is a key factor in business location, retention and expansion. Responsive workforce education and development to match the specific skill sets required by businesses is crucial to the state's economic development and to manage major technological and structural changes in the economy.

Oregon must create a coherent and responsive workforce development strategy that is linked to economic development efforts. The state needs to better analyze and enhance the return on our investments in workforce programs meant to allow workers to compete for newly created jobs or jobs requiring enhanced skills to increase productivity and wages, and to reduce the need for public assistance. This workforce development strategy must ensure that public and private sector investments are leveraged for the greatest impact and that training programs are responsive to the needs of business, industry, and the workers.

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

1. There is established within the Department of Community Colleges and Workforce Development (CCWD) an Employer Workforce Training Account ("Account"), funded from the State of Oregon's allocation of Workforce Investment Act funds that are identified as the statewide setaside funds under section 128(a)(1) and section 133(a)(1-2) of the Workforce Investment Act of 1998 (P.L. 105-220).

1.1 The Oregon Workforce Investment Board (OWIB) shall use funds in the Account to:

1.1.1 Create and retain living wage jobs in Oregon;

1.1.2 Build a highly skilled workforce, especially in knowledge-based industries; and

1.1.3 Enhance the global competitiveness of Oregon businesses based on the skill of their workforce.

1.2 OWIB shall allocate the Account as follows:

1.2.1 For the first year ending June 30, 2004, 65% of the Account shall be sent to state workforce regions and 35% shall be reserved at the state level; and

1.2.2 For each subsequent year ending June 30, allocation shall be determined after annual review of prior performance of the goals.

2. The OWIB shall:

2.1 Identify all workforce development funds from federal, state, local and private sources and maximize coordination of resources used;

2.2 Encourage participation from private employers and labor organizations and make available state resources, financial and otherwise, to ensure public and private cooperation in training Oregon's workforce;

2.3 Provide a consistent statewide approach to workforce development and ensure that the State of Oregon is able to respond to requests from employers and the workforce;

2.4 Match workforce development resources with identified key industry sectors and coordinate with other economic development initiatives undertaken by public and private partners in Oregon;

2.5 Coordinate with Local and Regional Workforce Investment Boards and other workforce, education and economic development entities to execute the actions under this Executive Order;

2.6 Establish eligibility criteria for grants and set performance measures for grantees;

2.7 Develop a process to create and recognize interagency Workforce Response Teams in each of the state's workforce regions;

2.8 Establish a formula for distributing moneys in the Account to the fifteen workforce regions and to state level training projects;

2.9 Approve statewide workforce training projects to be funded through the Account;

2.10 Explore additional sources of funding for the Account; and

2.11 Establish a link to representation from the Oregon Economic and Community Development Commission.

3. All state agencies directly or indirectly associated with workforce development programs and policies shall take actions to promote coordination of resources and programs to achieve the goals established in this Executive Order, including:

3.1 The CCWD shall:

3.1.1 Develop and adopt rules to administer the Account;

3.1.2 Disburse monies and monitor dispersals under the Account;

3.1.3 Assist the Governor's staff working on the strategy implementation;

3.1.4 Facilitate participation of community colleges with the regional Workforce Response Teams;

3.1.5 Facilitate participation of Local and Regional Workforce Investment Boards.

3.1.6 Facilitate participation of Title 1B providers with the regional Workforce Response Teams; and

3.1.7 Participate in the Governor's Workforce Policy Cabinet.

3.2 The Employment Department shall:

3.2.1 Provide project development and implement a new website to serve as a common source for workforce training and economic development information;

3.2.2 Provide labor market and industry data and analysis to guide decisions by the Office of the Governor, the Oregon Workforce Investment Board, and local and regional workforce boards and Workforce Response Teams;

3.2.3 Provide staff to participate in the regional Workforce Response Teams; and

3.2.4 Participate in the Governor's Workforce Policy Cabinet.

3.3 The Oregon Economic and Community Development Department shall:

## EXECUTIVE ORDERS

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3.3.1 Determine significant business and industry clusters that will contribute to the stability and growth of the state or regional economy on an annual basis;

3.3.2 Provide industry data and analysis to guide decisions by the Office of the Governor, the Oregon Workforce Investment Board, and Local and Regional Workforce Investment Boards and Workforce Response Teams;

3.3.3 Enhance and leverage the Department's Strategic Reserve Fund resources with the Account;

3.3.4 Provide staff to participate in the regional Workforce Response Teams; and

3.3.5 Participate in the Governor's Workforce Policy Cabinet.

3.4 The Department of Human Services shall:

3.4.1 Identify appropriate pilot projects or ways to leverage the Department's programs and resources with the Account;

3.4.2 Communicate and support this workforce strategy on a local level with field staff; and

3.4.3 Participate in the Governor's Workforce Policy Cabinet.

3.5 The Oregon University System shall:

3.5.1 Assist with determining industry cluster workforce needs in an advisory role to the Oregon Workforce Investment Board;

3.5.2 Provide policy advice on how to coordinate use of the Account with higher education objectives;

3.5.3 Facilitate participation of universities with regional Workforce Response Teams; and

3.5.4 Participate in the Governor's Workforce Policy Cabinet.

3.6 The Department of Education shall:

3.6.1 Provide policy advice on how to link the Account to educational objectives; and

3.6.2 Participate in the Governor's Workforce Policy Cabinet.

3.7 To the extent permitted by law, State agency workforce partners are directed to share information about client needs within the Workforce Response Teams as part of their responsibilities in delivering comprehensive services to the business community.

4. I further order and direct the Oregon Workforce Investment Board to report to the Office of the Governor about the execution of this Executive Order, the outcomes of efforts to coordinate workforce and economic development activities and expenditures from the Account. This report shall be made by December 31st of even number years just prior to the beginning of each biennial legislative session. This report shall be submitted for the duration of this Executive Order.

Done at Salem, Oregon this 18th day of November 2003

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## OTHER NOTICES

### PROPOSED APPROVAL OF SOIL CLEANUP AT THE PORT OF PORTLAND MAINTENANCE FACILITY PORTLAND INTERNATIONAL AIRPORT PORTLAND, OREGON

**COMMENTS DUE:** February 2, 2004

**PROJECT LOCATION:** 7111 NE Alderwood Road, Portland, Oregon.

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes a No Further Action (NFA) determination.

**HIGHLIGHTS:** The Port of Portland Maintenance Facility is located at Portland International Airport (PDX). In 1997 and 2000 unused motor oil was released to surrounding soil from a distribution line. A total volume of about 120 gallons was released. Approximately 9 tons of soil was removed following the first release, and 30 tons of soil was removed following the release in 2000, which encompassed part of the previous removal area. Soil sampling showed that residual concentrations up to 19,100 milligrams per kilogram (mg/kg) remain at the site, but that the contamination is localized in soil below 3 feet in depth, within about a 100 square foot area. Groundwater monitoring of six wells showed minimal impact to groundwater quality. Based on the depth and limited extent of the soil contamination, and lack of significant groundwater impacts, DEQ has determined that the site does not present a risk to human health or the environment, and is proposing to issue a No Further Action (NFA) determination for the cleanup.

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

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

### PROPOSED APPROVAL OF SELECTED REMEDY AT MAR COM NORTH PARCEL IN PORTLAND, OREGON

**COMMENTS DUE:** February 6, 2004

**PROJECT LOCATION:** 8970 North Bradford Street, Portland, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on the approval of a proposed remedy on the north parcel of the Mar Com Ship Repair Facility in Portland, Oregon.

**HIGHLIGHTS:** The Mar Com Ship Repair Facility is located along the Willamette River and has been the site of ship building and repair operations since the early 1900s. Mar Com investigated environmental conditions on the uplands portion of the north parcel at its facility between 2000 and 2003. Soil and groundwater conditions are unremarkable on the site, but spent sandblast grit was deposited on the site over the years and presents an unacceptable risk. DEQ recommends that the grit be removed and properly disposed as a final remedy on the north parcel. The investigation of the south parcel is ongoing. A Source Control Decision Memorandum, summarizing the basis for DEQ's proposal, is available for public review beginning January 1, 2004.

**HOW TO COMMENT:** To schedule an appointment at DEQ, contact Deborah Curtiss at 503-229-6361. The DEQ project manager is Alicia C. Voss (503-229-5011). Written comments should be sent to the project manager at DEQ, Northwest Region, 2020 SW 4th

Avenue, Suite 400, Portland, OR 97201 by February 6, 2004. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with membership of 10 or more.

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

### PROPOSED NO FURTHER ACTION AND REMOVAL OF THE SITE FROM THE CONFIRMED RELEASE LIST AND INVENTORY OF HAZARDOUS SUBSTANCE SITES THE KYLE PROPERTY SITE FOREST GROVE, OREGON

**COMMENTS DUE:** February 2, 2004

**PROJECT LOCATION:** 16th and B Street, Forest Grove, Oregon  
**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) proposes a No Further Action (NFA) determination and delisting of the site from the Confirmed Release List (CRL) and Inventory of Hazardous Substance Sites (Inventory).

**HIGHLIGHTS:** The Kyle site covers approximately 3 acres and was formerly occupied by a brick manufacturing plant that operated from about 1933 to 1978. Gales Creek, which provides habitat for federally listed endangered steelhead, forms the southern and western site boundary. A site investigation in 2000 found relatively high levels of total petroleum hydrocarbons (TPH) up to 37,700 parts per million (ppm) in soil at the site. DEQ subsequently placed the site on the CRL and Inventory.

In 2002 the property owner entered DEQ's Voluntary Cleanup Program to further characterize the nature and extent of contamination. The site investigation conducted under DEQ oversight included soil sampling to assess potential source areas at the site and monitoring well installation and sampling. The investigation showed that previously detected contamination was localized and occurred at depths where contact was unlikely except by excavation workers. Groundwater sampling indicated that contaminated groundwater was limited in extent, and was not migrating appreciably or impacting Gales Creek.

Residual concentrations in soil and groundwater are below applicable DEQ generic risk-based screening concentrations for occupational exposure, indicating environmental conditions are protective for future site use as industrial or commercial property. Because the site does not present a risk to human health or the environment, DEQ is proposing to issue a No Further Action (NFA) determination for the site, and to remove the site from the CRL and Inventory.

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

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

### PROPOSED NO FURTHER ACTION FOR LISTER RANCH AST, PAULINA, OR

**COMMENTS DUE:** January 31, 2004

**PROJECT LOCATION:** Lister Rd., Paulina, OR

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a no further action decision regarding investigation

## OTHER NOTICES

and cleanup activities at the above referenced site based on approval of a removal action and on-site remediation of soils. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** The subject property is an operating ranch in eastern Crook County. Diesel fuel releases from an above ground storage tank (AST) were documented in a DEQ complaint inspection at the site in 1996. GI Ranch Corporation completed a removal action, investigation, and on-site remediation of soil under a Voluntary Cleanup Agreement. The tank was dismantled and removed from the site. Approximately 240 cubic yards of contaminated soil was excavated and the majority of the soil was placed in a bermed area near the excavation site. Concentrations of the hazardous constituents associated with diesel (poly aromatic hydrocarbons, PAHs) remaining at depth in the excavation are below screening levels. Water samples of the nearby ranch well did not detect any diesel or PAHs. The excavated soil was landfarmed for several seasons in attempts to naturally degrade the residual diesel in the soil. Samples collected during the summer of 2003 showed levels of diesel within the acceptable range for the applicable exposure pathways. No PAHs were detected in the treated soil. Based on these results, DEQ recommends a no further action determination be made for the diesel release and the landfarmed soil. DEQ recommends that the soil be bermed to minimize surface erosion and seeded with a native grass seed.

**COMMENT:** The staff report recommending the 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 January 31, 2004 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

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

### NOTICE OF NO FURTHER ACTION FORMER NORPAC PLANT #4

**PROJECT LOCATION:** 4752 Liberty Road South, Salem, Oregon.

**FINAL DECISION:** Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) issues this notice of no further cleanup action required at the former Norpac Plant #4 site.

**HIGHLIGHTS:** Between 1936 and February 1990, the site was used for fruit and vegetable processing. Environmental investigations conducted from 1990 through 1994 indicated potential releases of petroleum products, caustics, polychlorinated biphenyls (PCBs), and pesticides in the soil at the site. In the summer of 1991, Norpac removed approximately 250 cubic yards of contaminated soil. In September 1993, a supplemental removal of approximately 600 cubic yards of petroleum contaminated soil was performed. The soil was appropriately treated on-site and/or disposed of offsite. In mid-1994, Norpac submitted an environmental assessment and remediation summary document to DEQ that addressed several areas of concern at the site. In November 1994, DEQ issued a no further action letter for a 10,000-gallon above ground diesel storage tank, and a closure letter for the diesel tank and transformer areas where PCB contaminated soil was cleaned up. The project was put on hold by the property owner in October 1994. In November 2003, Skyline Ford requested DEQ's assistance in reviewing the file and DEQ assessed the environmental investigation data for five remaining areas of concern at the site. DEQ has concluded that, given current site conditions and future use of the property, no additional investigation or removals are required at the site unless new or previously undisclosed information becomes available justifying further investigation. DEQ issued the no further action letter for the site in December 2003.

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

### PUBLIC COMMENT PERIOD EXTENDED PROPOSED FINAL CLEANUP ACTIONS OREGON STATE PENITENTIARY (OSP) SITE SALEM, OREGON

**COMMENTS DUE:** January 20, 2004

**PROJECT LOCATION:** Oregon State Penitentiary (OSP) Site  
2605 State Street, Salem, Oregon

**BACKGROUND:** DEQ is proposing the final cleanup actions for the Oregon State Penitentiary (OSP) facility located at 2605 State Street in Salem. The Department of Corrections (DOC) has been conducting environmental investigation and cleanup activities under DEQ oversight since 1989. Solvents that leaked from a dry cleaner facility inside the prison contaminated groundwater beneath the prison. Dry cleaning solvent, known as tetrachlorethene or PCE, was first found in water supply wells at the prison in 1989. DOC began investigating the extent of contamination and found that groundwater contamination extends from inside the prison towards Walker Park and into the nearby residential neighborhood.

In January 2000, DOC installed a cleanup system that treats contaminated groundwater. The system was designed to prevent further movement of contaminated groundwater away from the prison, and remove contaminants from the groundwater. This cleanup system has proven to be effective at stopping movement of contaminant groundwater into the neighborhoods and reducing solvent concentrations in groundwater.

Recently, DOC completed a Feasibility Study to assess long term alternatives for addressing the remaining contamination at the Site. Some groundwater at OSP and in the neighborhood contains concentrations of solvents that could pose future risk if groundwater were used for domestic water supply. However, OSP and residents in the neighborhood currently use city water and the groundwater poses no risk to the neighborhood.

DEQ's proposed remedial cleanup actions are outlined in a Remedial Action Recommendation Staff Report. This Staff Report will be available for public review and comment for a 30 day period. The original comment period began on November 10, 2003. The public comment period has been extended through January 20, 2004. The components of the recommended cleanup actions are summarized below.

**PROPOSED ACTIONS:** DEQ is proposing several actions at the OSP Site that will protect workers, inmates, and adjacent property owners from solvents at the Site. These measures would include: 1) continue operating the groundwater cleanup system, 2) groundwater monitoring to confirm that contamination levels are continuing to decline towards the cleanup goal, 3) periodically review of groundwater use in the adjacent off-site neighborhoods to confirm the assumption that off-site groundwater is not being used in the future, and 4) development of contingency plans.

**HOW TO COMMENT:** The Staff Report will be available at DEQ's Salem and Eugene offices, and at the Salem Public Library. There will also be a copy available on DEQ's web site at (<http://www.deq.state.or.us/wmc/cleanup/cuospfact.htm>). Written comments must be received by January 20, 2004. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401. Questions may also be directed to Mary Camarata at that address or by calling her at 1-800-844-8467 ext 259. The TTY number for the hearing impaired is 541-687-5603.

**THE NEXT STEP:** DEQ will consider all public comments on the proposed remedial action prior to selecting the final remedial actions in a Record of Decision (ROD). A public meeting will be held to receive verbal comments on the proposed cleanup action if there is significant interest in the project.

# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

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**Board of Architect Examiners**  
**Chapter 806**

**Stat. Auth.:** ORS 671.125; Other Auth.: SB 934, 2003  
**Stats. Implemented:** OTS 671.050, 671.065, 671.808 & 671.085  
**Proposed Adoptions:** 806-010-0037  
**Proposed Amendments:** 806-010-0035, 806-010-0060  
**Last Date for Comment:** 1-30-04, 4:30 p.m.

**Summary:** This rule amendment simplifies the requirements for reinstatement to active status by those who have remained in an inactive status for over five years. This amendment also reduces the fees associated with reinstatement for this same group. In addition, the passage of SB934 during the 2003 Legislative Assembly session made housekeeping changes to the Board's laws which are reflected in these rule changes, including the use of two new titles as part of those housekeeping changes.

**Rules Coordinator:** Carol Halford  
**Address:** Oregon Board of Architect Examiners, 750 Front St. NE, Suite 260, Salem, OR 97301  
**Telephone:** (503) 763-0662

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**Board of Examiners for Speech Pathology and Audiology**  
**Chapter 335**

Date:	Time:	Location:
1-30-04	10-11 a.m.	Room 445 Portland State Office Bldg. 800 NE Oregon St. Portland, OR

**Hearing Officer:** Joanna Burk  
**Stat. Auth.:** ORS 681.205, 681.340, 681.360, 681.370, 681.375, 681.420(5) & 681.460  
**Stats. Implemented:** ORS 681.250(1), 681.320, 681.340, 681.360, 681.370, 681.375 & 681.460  
**Proposed Amendments:** 335-005-0025, 335-070-0030, 335-070-0060, 335-095-0020, 335-095-0030  
**Last Date for Comment:** 1-27-04

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

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

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

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

**Rules Coordinator:** Brenda Felber  
**Address:** Board of Examiners for Speech-Language Pathology and Audiology, 800 NE Oregon St. - Suite 407, Portland, OR 97232-2162  
**Telephone:** (503) 731-4050

.....  
**Board of Examiners of Nursing Home Administrators**  
**Chapter 853**

**Stat. Auth.:** ORS 678.820  
**Stats. Implemented:** ORS 678.730(1)(a), 678.820(1) & 678.820(8)  
**Proposed Amendments:** 853-010-0060  
**Last Date for Comment:** 1-22-04

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

**Rules Coordinator:** Janet Bartel  
**Address:** Board of Examiners of Nursing Home Administrators, 800 NE Oregon - Suite 407, Portland, OR 97232  
**Telephone:** (503) 731-4046

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

**Stat. Auth.:** ORS 685.125  
**Stats. Implemented:** ORS 685.110  
**Proposed Amendments:** 850-010-0130  
**Last Date for Comment:** 1-28-04

**Summary:** 850-010-0130 Each licensee of the Board shall notify the Board in writing within 30 days of any change of residence address, practice location, and mailing address.

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

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**Board of Nursing**  
**Chapter 851**

Date:	Time:	Location:
2-12-04	9 a.m.	800 NE Oregon St. Room 120-C Portland, OR

**Hearing Officer:** Marguerite Gutierrez, Board President  
**Stat. Auth.:** ORS 678.385  
**Stats. Implemented:** ORS 678.375 & 678.385  
**Proposed Amendments:** 851-047-0000, 851-047-0010, 851-047-0020, 851-047-030, 851-047-040  
**Last Date for Comment:** 2-6-04, 4 p.m.

**Summary:** These amendments are proposed as a result of periodic rule review of Division 47 (Standards for Registered Nurse Delegation of Nursing Care Tasks to Unlicensed Persons). The conceptual changes include removal of the term "assignment" when referring to basic tasks of care, inclusion of the terms used in statute



# NOTICES OF PROPOSED RULEMAKING

related to noninjectable medications and nursing care, specifically "initial direction", "procedural guidance" and "periodic inspection", and extending the upper limit for periodic review of the caregiver's skills from 120-days to 180-days.

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

**Rules Coordinator:** KC Cotton

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

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

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Date:	Time:	Location:
2-12-04	9 a.m.	800 NE Oregon St. Room 120-C Portland, OR

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

**Stat. Auth.:** ORS 678.385

**Stats. Implemented:** ORS 678.375 & 678.385

**Proposed Amendments:** 851-050-0131

**Last Date for Comment:** 2-12-04, 9 a.m.

**Summary:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the November and December 2003, and January 2004 updates to Drug Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.

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

**Rules Coordinator:** KC Cotton

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

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

\*\*\*\*\*

Date:	Time:	Location:
2-12-04	9 a.m.	800 NE Oregon St. Room 120-C Portland, OR

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

**Stat. Auth.:** ORS 678.150 & 678.410

**Stats. Implemented:** ORS 678.410

**Proposed Amendments:** 851-002-0040

**Last Date for Comment:** 2-12-04, 9 a.m.

**Summary:** These rules cover the Nursing Assistant Schedule of Fees.

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

**Rules Coordinator:** KC Cotton

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

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

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Date:	Time:	Location:
2-12-04	9 a.m.	800 NE Oregon St. Room 120-C Portland, OR

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

**Stat. Auth.:** ORS 678.150 & 678.440

**Stats. Implemented:** ORS 678.440

**Proposed Amendments:** 851-062-0010, 851-062-0070

**Last Date for Comment:** 2-12-04, 9 a.m.

**Summary:** These rules cover the standards for certification of Nursing Assistants and Medication Aides.

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

**Rules Coordinator:** KC Cotton

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

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

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## Board of Optometry Chapter 852

Date:	Time:	Location:
2-17-04	1:30 p.m.	Morrow Crane Bldg. Second Floor Conf. Rm. Salem, OR

**Hearing Officer:** John Reslock, O.D.

**Stat. Auth.:** ORS 683 & 182

**Stats. Implemented:** ORS 683.010(2), 683.030(3), 683.335 & 182.466

**Proposed Amendments:** Rules in 852-001, 852-020

**Last Date for Comment:** 2-27-04

**Summary:** 852-001-0001 - Clarifies requirements for notification of proposed rule changes.

852-001-0002 - Deletes language describing optometric prescriptions. This language is now expanded in 852-020-0030.

852-020-0030 - Establishes rules for optometric prescription content and release.

852-020-0031 - Sets guidelines for delegation of optometric procedures.

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

**Rules Coordinator:** David W. Plunkett

**Address:** Board of Optometry, 3218 Pringle Rd. SE - Suite 270, Salem, OR 97302-6306

**Telephone:** (503) 373-7721, ext. 21

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## Columbia River Gorge Commission Chapter 350

Date:	Time:	Location:
2-10-04	9 a.m.	Columbia Gorge Discovery Center 5000 Discovery Drive The Dalles, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 196.150; Other Auth.: 16 USC § 544i

**Stats. Implemented:** ORS 196.150

**Proposed Adoptions:** 350-120-0015, 350-120-0025, 350-120-0050

**Proposed Amendments:** 350-120-0010, 350-120-0020, 350-120-0030, 350-120-0040

**Last Date for Comment:** 2-9-04

**Summary:** This rule proposes an expedited certification process for certain types of economic grants and loans awarded by the Oregon and Washington investment boards. The Columbia River Gorge National Scenic Area Act requires the Gorge Commission to certify such grants and loans as consistent with the purposes of the Scenic Area Act, the management plan, and land use ordinances adopted pursuant to the Act. The proposed rule allows the Executive Director of the Gorge Commission to certify these grants and loans rather than the full Gorge Commission. This could save up to several weeks for applicants.

The Commission is especially interested in public comment concerning whether public input should be required prior to the Executive Director certifying the grant or loan, and if so, then how that should occur within the time proposed.

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

**Rules Coordinator:** Nancy A. Andring

**Address:** Columbia River Gorge Commission, #1 Town & Country Square, P.O. Box 730, White Salmon, WA 98672

**Telephone:** (509) 493-3323

# NOTICES OF PROPOSED RULEMAKING

## Construction Contractors Board Chapter 812

**Date:** 1-27-04  
**Time:** 10-11 a.m.  
**Location:** West Salem Roth's IGA  
Santiam Room

**Hearing Officer:** Jim Fairchild

**Stat. Auth.:** ORS 183.30 - 183.500, 670.310, 701.235, 701.280 & 701.992

**Stats. Implemented:** ORS 670.600, 701.055, 701.075, 701.102, 701.105, 701.125, 701.135 & 701.280

**Proposed Amendments:** 812-002-0380, 812-003-0000, 812-003-0015

**Last Date for Comment:** 1-27-04, 11 a.m.

**Summary:** OAR 812-002-0380 is amended to more accurately define the type of liability insurance required by ORS 701.105.

OAR 812-003-0000 is amended to require notice to consumers if licensed contractors are insured by policies that have non-standard exclusions.

OAR 812-003-0015 is amended to define the type of insurance providers authorized by the agency to provide liability insurance to contractors to meet the requirements of ORS 701.105 and to clarify the type of insurance coverage.

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

**Rules Coordinator:** Cathy Heine

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

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

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## Department of Agriculture Chapter 603

Date:	Time:	Location:
1-28-04	7 p.m.	Chetco Community Public Libr. 405 Alder St. Brookings, OR 97415
1-29-04	1:30 p.m.	Gold Beach City Hall 29592 Ellensburg Ave. Gold Beach, OR 97444
1-29-04	7 p.m.	Langlois Fire Hall 94322 1st St. Langlois, OR 97450

**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:** 603-095-3500, 603-095-3520, 603-095-3540, 603-095-3560

**Last Date for Comment:** 2-17-04

**Summary:** The rules effectuate the implementation of the Curry County 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

**Telephone:** (503) 986-4619

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Date:	Time:	Location:
2-4-04	3 p.m.	Sherman Co. Courthouse 500 Court St. Moro, OR 97039
2-4-04	7 p.m.	Gilliam Co. Courthouse 2215 Oregon St. Condon, OR 97823

**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:** 603-095-2900, 603-095-2920, 603-095-2940, 603-095-2960

**Last Date for Comment:** 2-17-04

**Summary:** The rules effectuate the implementation of the Lower John Day 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

**Telephone:** (503) 986-4619

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**Stat. Auth.:** ORS 561.190 & 619

**Stats. Implemented:** ORS 619

**Proposed Amendments:** 603-013-0600, 603-013-0602, 603-013-0604, 603-013-0616

**Last Date for Comment:** 1-31-04

**Summary:** OAR Chapter 603, Division 13, applies to pet or animal food slaughtering or processing establishments, the labeling of pet or animal food, animal disposal businesses, and the transportation of dead animals. The amendments proposed for OAR 603-013-0600, OAR 603-013-0602, and 603-013-0616, would correct a typographical error and update the statutory references in three rules within the division that apply to pet or animal food slaughtering or processing establishments. The amendments proposed for OAR 603-013-0604 would require pet or animal food slaughtering or processing establishments to meet the same construction and maintenance standards that are applied to food establishments.

**Rules Coordinator:** Sherry Kudna

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

**Telephone:** (503) 986-4619

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**Stat. Auth.:** ORS 561.190 & 603.085

**Stats. Implemented:**

**Proposed Repeals:** 603-016-0471, 603-016-0476, 603-016-0481, 603-016-0486, 603-016-0491, 603-016-0496, 603-016-0500, 603-016-0505, 603-016-0510

**Last Date for Comment:** 1-31-04

**Summary:** OAR Chapter 603, Division 16, applies to disease control in turkeys, to the inspection, grading, and labeling of turkeys, and to the grading of turkey slaughtering establishments. OAR 603-016-0471 through 603-016-0510 apply only to the inspection, grading, and labeling of turkeys, and to the grading of turkey slaughtering establishments. The proposed rulemaking action would repeal OAR 603-016-0471 through OAR 603-016-0510.

**Rules Coordinator:** Sherry Kudna

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

**Telephone:** (503) 986-4619

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## Department of Community Colleges and Workforce Development Chapter 589

**Stat. Auth.:** ORS 341.626; Other Auth.: Legislative Special Session

**Stats. Implemented:**

**Proposed Amendments:** 589-002-0100

**Last Date for Comment:** 2-20-04

**Summary:** The amendment adjusts the components factored into the formula for distributing Community College support funds. The revised formula provides that each of the 17 community college districts receives a base allocation; that each district, as appropriate, received equity in their funding allocation; and that each district receives an amount of funding per student. The formula is building on a policy framework that considers State interests, local decision-making and accountability.

# NOTICES OF PROPOSED RULEMAKING

**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

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

Date:	Time:	Location:
1-20-04	10 a.m.	1535 Edgewater NW Salem, OR 97304

**Hearing Officer:** Richard Baumann  
**Stat. Auth.:** ORS 447.030 & 670.410; Other Auth.: OL 2003, Ch. 75

**Stats. Implemented:** ORS 447.030 & 670.410  
**Proposed Adoptions:** 918-030-0100, 918-030-0900  
**Last Date for Comment:** 1-22-04, 5 p.m.

**Summary:** Adopts rules establishing a process that allows contractors and business holders to renew licenses on one form, pay one fee and have one renewal date.

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

**Rules Coordinator:** Louann P. Rahmig  
**Address:** Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309  
**Telephone:** (503) 373-7438

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

**Stat. Auth.:** ORS 731.244 & 743.769  
**Stats. Implemented:** ORS 743.766-743.769  
**Proposed Amendments:** 836-053-0430  
**Last Date for Comment:** 2-2-04

**Summary:** This rulemaking proposes to delete provisions of a rule that have implemented the Insurance Division's interpretation of ORS 743.769. The rule requires that when a carrier has accepted an individual for individual health insurance coverage, the carrier must allow the individual to choose any individual health benefit plan from among the individual plans offered by the carrier. The provisions to be deleted are obsolete because of 2003 legislation (Section 1, Chapter 590 Oregon Laws 2003 (Enrolled House Bill 3431, 2003 Regular Session)). This legislation amended ORS 743.769 specifically to authorize a carrier that has accepted an individual for coverage under an individual health benefit plan to limit the individual plans in which the individual may enroll.

Copies of this rule can be accessed on our website at [www.oregoninsurance.org](http://www.oregoninsurance.org). If you do not have Internet access, you can obtain a paper copy of the rule text by contacting Sue Munson at 503-947-7272.

**Rules Coordinator:** Sue Munson  
**Address:** Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE - Suite 440-1, Salem, OR 97301  
**Telephone:** (503) 947-7272

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

Date:	Time:	Location:
1-22-04	2 p.m.	Rm. 260 (2nd Flr.) Labor & Industries Bldg. 350 Winter St. NE Salem, OR

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

**Stats. Implemented:** ORS 656; ch. 86, OL 2003 (HB 2305); §9, ch. 170, OL 2003 (SB 233); ch. 429, OL 2003 (SB 285); ch. 760, OL 2003 (SB 914); §2, ch. 756, OL 2003 (SB620); §3, ch. 811, OL 2003 (HB 3669)

**Proposed Adoptions:** 436-001-0300, 436-030-0023  
**Proposed Amendments:** Rules in 436-001, 009, 010, 030, 060 & 120

**Proposed Repeals:** 436-001-0025, 436-001-0025, 436-001-0045, 436-001-0055, 436-001-0065, 436-001-0090, 436-001-105, 436-001-120, 436-001-0135, 436-001-0140, 436-001-0171, 436-001-0175, 436-001-0191, 436-001-0195, 436-001-0205, 436-001-0231, 436-001-0255, 436-001-0285, 436-001-0295, 436-010-0350, 436-030-0581, 436-060-0210, 436-120-0920

**Proposed Ren. & Amends:** 436-030-0045 to 466-060-0018

**Last Date for Comment:** 1-27-04, 5 p.m.

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

- Senate Bill 233 changed the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. Related proposed rule changes affect OAR 436-010, 436-030, and 436-120.

- Senate Bill 285 allows an insurer or self-insured employer to contest its Notice of Closure if it disagrees with the findings used to rate impairment, and OAR 436-030 has been revised accordingly.

- Senate Bill 620 requires payment of fees to workers' attorneys when a claimant prevails at the administrative level in certain medical and vocational disputes or when the attorney is instrumental in obtaining a settlement. This fee provision affects OAR 436-001, 436-009, 436-010, and 436-120.

- Senate Bill 914 eliminates the requirement for insurers and self-insured employers to report disabling claims to the director within 21 days of the employer's knowledge of the claim, and the director proposes to amend OAR 436-060 to require reporting within 14 days after acceptance or denial of the claim. Senate Bill 914 also clarified the statute regarding the department's obligation both to administer and pay supplemental disability benefits if the insurer or self-insured employer chooses to have the department do so, and related amendments are proposed to OAR 436-060.

- House Bill 2305 addresses how medical records may be released, consistent with the federal Health Insurance Portability and Accountability Act, and related changes are proposed to OAR 436-010 and 436-060.

- House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. Amendments are proposed to OAR 436-009, 436-010, 436-030, 436-060, and 436-120 to reflect this change. This bill was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee.

**In addition, these proposed rules:**

**436-001:**

- Update the rulemaking notice rule.
- Update the contested case rules to establish consistency with the Attorney General's Model Rules of Procedure applicable to hearings before the Office of Administrative Hearings, OAR 137-003. Because the model rules control, duplicative or inconsistent rules are proposed to be repealed. Remaining supplementary rules are updated. Significant changes include filing of hearing requests; delegation of authority to the ALJ; clarifications regarding scope of review; admissibility of reproductions of originals; attorney fee matrix to implement SB 620 (2003); and a new process for alternative dispute resolution.

**436-009:**

- Adopt updated medical fee schedules.
- Incorporate data reporting requirements currently published in Bulletin 220.

## NOTICES OF PROPOSED RULEMAKING

- Add Group number nine to the fee schedule of Medicare ambulatory service center groups.
- Require insurers and self-insured employers to keep track of dates of receipt of medical bills.
- Provide that if a provider's usual and customary fee is excessive compared to similar providers, the director may determine a reasonable fee based on the usual and customary fee of similar providers.
- Increase the dollar amount of each conversion factor by 2.33%, based on the annual increase in the physicians' component of the consumer price index.
- Require electronic billings to include a "zz" modifier.
- Modify the definitions of first and second level physical capacity evaluations and of work capacity evaluation.
- Provide that pharmacy fees shall be paid at 85% of the Average Wholesale Price (AWP) — a reduction from 95% in the current rules — with a \$10 dispensing fee — an increase from \$6.70 in the current rules.
- Provide that a brand name drug that has a generic equivalent will be reimbursed at the lesser of 85% of the AWP for the brand name or 85% of the average AWP for a generically equivalent drug, plus dispensing fee, unless the prescribing medical provider writes "Do not substitute" or similar phrase on the prescription.
- Provide that reimbursement for Oxycontin, Vioxx, Celebrex and Neurontin is limited to an initial 5-day supply unless the prescriber writes a clinical justification for the drug.

### 436-010:

- Provide that a dispute may be resolved by agreement between the parties, and that the director may then issue a letter of agreement in lieu of an administrative order.
- Allow reimbursement to medical service providers such as physical therapists even if a physician fails to sign the required treatment plan within 30 days of starting treatment.
- Require that, except in an emergency, drugs and medicine for oral consumption supplied by a physician's office are compensable for a maximum supply of 10 days.
- Require insurers to forward requested medical information to new attending physicians or authorized nurse practitioners within 14 days of a request.
- Require that the insurer forward a copy of the insurer medical examination report to the attending physician or authorized nurse practitioner within 72 hours of the insurer's receipt of the report.
- Require that the insurer notify the attending physician or authorized nurse practitioner, if known, and the MCO, if any, when it denies or partially denies a previously accepted claim.
- Delete the provision that allows an insurer or the director to request an examination to determine the extent of impairment.

### 436-030:

- Prescribe the conditions under which a Notice of Closure may be corrected or rescinded by the insurer or self-insured employer.
- Move rule 0045, "Disabling/Nondisabling Reporting Requirements and Change in Status Determinations" to OAR 436-060.
- Clarify criteria for determination and periodic review of permanent total disability; define "withdrawn from the workforce"; require that preexisting disability be included in redetermination of permanent total disability status.
- Reorganize procedural requirements for reconsideration of the notice of closure.
- Require that medical arbiter panel requests be received within ten working days of the start of the reconsideration.
- Prescribe the conditions for submission of surveillance videotapes.
- Provide for a medical arbiter deselection process; if the claim qualifies for the process, each party may eliminate one physician from the list of arbiters provided by the director.
- Repeal the rule prescribing how the director issues penalty orders.

### 436-060:

- Revise the requirements and limitations for release of medical information by the insurer.
- Adopt rule 0018, "Nondisabling/Disabling Reclassification (amended and renumbered from 436-030-0045); Requires the insurer to reclassify a non-disabling claim to disabling within 14 days of receiving information that any condition already accepted meets the disabling criteria in rule 0018; simplifies related notification requirements.
- Require that if permanent partial disability is paid monthly, it be paid at 4.35 times the weekly temporary disability rate.
- Require the insurer to send a lump-sum application (for payment of a permanent partial disability award) to the worker or his or her attorney within five business days of a request.
- Clarify actions required if the worker cooperates after the insurer has requested suspension of benefits or if the worker documents that the failure to cooperate was reasonable.
- Require that notices of claim acceptance be copied to the worker's representative and attending physician.
- Require a claim denial notice to include one of three specific statements if the denial was based in whole or in part on an insurer medical examination.
- Require that if the insurer receives medical bills after claim denial, it send a copy of the denial to the medical provider and explain the status of the denial.
- Require the insurer to pay for a worker requested medical examination that the worker fails to attend, but not for a subsequent examination unless the worker failed to attend the first exam for reasons beyond the worker's control.
- Require that if claim responsibility is at issue, insurers share claim information without charge.
- Provide time frames for monetary adjustments among insurers.
- Provide for civil penalties if an insurer intentionally or repeatedly fails to give notice as required by ORS 656.331 and OAR 436-060-0015.

### 436-120:

- Require the insurer to notify the worker in writing, within 14 days of a request for vocational assistance when the insurer is not required to determine eligibility.
- Refer vocational professionals to the *Oregon Wage Information (OWI)* publication in lieu of the *Oregon Automated Reporting System (OARS) Job Order Wage Report*, both published by the Oregon Employment Department. The OARS publication will no longer provide job/wage data effective 4/1/04. When using the OWI wage information data, the presumed standard shall be the 10th percentile unless there is sufficient evidence that a higher or lower wage is more appropriate.
- Eliminate the requirement that vocational counselors sign statements that their eligibility determinations were based on substantial handicap assessments.
- Specify the conditions under which training may be terminated for failure to attend.
- State additional circumstances that require vocational eligibility to be redetermined.
- Provide that for workers found to have an exceptional disability or exceptional loss of earning capacity, certain fee schedule spending limits are increased by 30%.
- Increase the direct worker purchase training category fee schedule maximum by 10% due to state-wide tuition increases.
- Provide that to conduct only labor market research and/or job development does not require certification when conducted under the supervision of a certified vocational rehabilitation counselor.

**Request for public comment:** The agency requests public comment on whether other options should be considered for achieving the rules' substantive goals while reducing the negative economic impact of the rules on business.

**Address questions to:** Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us  
Proposed rules are available on the Workers' Compensation Divi-

# NOTICES OF PROPOSED RULEMAKING

sion's Web site: <http://www.cbs.state.or.us/external/wcd/policy/rules/rules.html#proprules> or from WCD Publications at 503-947-7627 or fax 503-947-7630.

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

**Rules Coordinator:** Fred Bruyns

**Address:** Department of Consumer and Business Services, Workers' Compensation Division, 350 Winter St. NE, Salem, OR 97301-3879  
**Telephone:** (503) 947-7717

\*\*\*\*\*  
**Department of Environmental Quality**  
**Chapter 340**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-9-04	10:30 a.m.	DEQ 811 SW Sixth Ave. Room 3A Portland, OR
2-9-04	7 p.m.	Columbia Gorge Community College Room 2-384 The Dalles, OR
2-23-04	7 p.m.	Department of Forestry 5003 3rd St. Tillamook, OR
3-9-04	7 p.m.	Pendleton City Hall Council Chambers 501 Emigant St. Pendleton, OR

**Hearing Officer:** Michael W. Grainey

**Stat. Auth.:** ORS 467

**Stats. Implemented:** ORS 467

**Proposed Adoptions:** 340-035-0110

**Proposed Amendments:** 340-035-0035

**Last Date for Comment:** 3-12-04

**Summary:** Under an agreement with the Oregon Department of Environmental Quality (DEQ), the Oregon Department of Energy is conducting this proceeding to amend the Noise Control Regulations in OAR Chapter 340, Division 35. The purpose of the rulemaking is to address the application of the Noise Control Regulations to wind energy facilities. Additionally, DEQ has observed that this rulemaking presents an opportunity to include a rule provision that informs the public of the status of DEQ's Noise Program, which was terminated in 1991.

The proposed rules are a preliminary draft. The Department of Energy welcomes comments on the proposed rules and other suggestions for making the Noise Control Regulations as they apply to wind energy facilities more effective.

Comments may be provided in writing or orally at any of the public hearings. Additional hearings or workshops may be held if the hearing officer determines they would be useful. Comments may also be submitted in writing via mail, fax or e-mail at any time on or before the comment deadline of March 12, 2004. Written comments may be mailed to Kathy Stutafford, Oregon Department of Energy, 625 Marion Street NE, Salem, Oregon 97301. Comments may be faxed to John White at 503-373-4128, or e-mailed to: [noise.comments@state.or.us](mailto:noise.comments@state.or.us)

For further information, contact Kathy Stutafford, Oregon Department of Energy, 503-378-4128, or toll-free in Oregon at 800-221-8035, or by e-mail ([noise.comments@state.or.us](mailto:noise.comments@state.or.us)).

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

**Rules Coordinator:** Rachel Sakata

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-26-04	6:30 p.m.	State Office Bldg. 700 SE Emigrant 1st Flr. Conf. Rm. 130 Pendleton, OR 97801
1-27-04	6:30 p.m.	DEQ 2146 NE 4th Bend, OR 97701
1-28-04	2 p.m.	DEQ 811 SW 6th Ave. Rm. 3 A/B Portland, OR 97204
1-28-04	6:30 p.m.	DEQ 750 Front St. NE Ste. 120 Salem, OR 97301
1-29-04	6:30 p.m.	Community Justice Ctr. 1101 W. Main St. Medford, OR 97501

**Hearing Officer:** Anne Price or Jane Hickman

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

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

**Proposed Adoptions:** 340-012-0058, 340-012-0072, 340-012-0079, 340-012-0097, 340-012-0130, 340-012-0145, 340-012-0150, 340-012-0160, 340-012-0162

**Proposed Amendments:** 340-012-0026, 340-012-0030, 340-012-0041, 340-012-0045, 340-012-0050, 340-012-0055, 340-012-0060, 340-012-0065, 340-012-0066, 340-012-0067, 340-012-0068, 340-012-0073, 340-012-0081, 340-012-0082, 340-012-0083, 340-012-0250

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

**Proposed Ren. & Amends:** 340-012-0040 to 340-012-0038, 340-012-0071 to 340-012-0100, 340-012-0072 to 340-012-0105, 340-012-0090 to 340-012-0135, 340-012-0042 to 340-012-0140, 340-012-0049 to 340-012-0155, 340-012-0048 to 340-012-0165, 340-012-0047 to 340-012-0170

**Last Date for Comment:** 1-30-04, 5 p.m

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

- Clarifying the differences between informal, pre-enforcement and formal enforcement procedures.
- Including more individual violation classifications which historically have been classified under the general, "default" classification.
- Adjusting violation classifications in all programs which may increase or decrease the civil penalty calculated for those violations.
- Modifying the penalty matrices, including increasing the values of the \$10,000 penalty matrix, adding a new intermediate penalty matrix to start at \$6,000, increase the values for the \$2,500 matrix, decreasing the values for the \$1,000 matrix and eliminating the \$500 penalty matrix. The matrices have also been modified so that small business and other smaller permitted sources, in most cases, fall into a lower penalty matrix.
- Modifying the magnitude determination process (e.g., pre-determined, selected and general).
- Modifying the notice of noncompliance process to allow for a two-tiered notification (e.g., Warning Letters and Pre-Enforcement Notices).

# NOTICES OF PROPOSED RULEMAKING

• Amending a rule from the tanks program (OAR 340-150-0250) regarding the expedited enforcement process to provide that all Class II violations related to underground storage tanks are assigned a field penalty amount of \$50 rather than assigning some violations a penalty of \$75.

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

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

**Rules Coordinator:** Rachel Sakata

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

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

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## Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
2-6-04	8 a.m.	Expo Center 2060 N Marine Dr. Portland, OR 97217

**Hearing Officer:** Fish and Wildlife Commission

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

**Stats. Implemented:** ORS 496.138, 496.146, 496.162 & 498.172(2)

**Proposed Amendments:** Rules in 635-050

**Last Date for Comment:** 2-6-04

**Summary:** As required by ORS 498.172(2), amend rules to define "regular basis" trap check requirements for predatory animals. This will include definitions of different trap types. Housekeeping and technical corrections to the rules 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

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Date:	Time:	Location:
2-5-04	10 a.m.	Museum of the Oregon Territory 211 Tumwater Dr. Oregon City, OR

**Hearing Officer:** Steven D. King

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

**Stats. Implemented:** 496.162, 506.129 & 507.030

**Proposed Adoptions:** Rules in 635-023, 041 & 042

**Proposed Amendments:** Rules in 635-023, 041 & 042

**Proposed Repeals:** Rules in 635-023, 041 & 042

**Last Date for Comment:** 2-5-04

**Summary:** The Columbia River Compact Agencies of Oregon and Washington will meet jointly to consider amendment of rules related to 1) commercial fishing in the Columbia River below Bonneville Dam and select areas; 2) treaty Indian commercial, subsistence and ceremonial fishing in the Columbia River above Bonneville Dam; and 3) sport fishing in the mainstem Columbia River. 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

Date:	Time:	Location:
2-6-04	8 a.m.	Sportsmen Show Portland Expo Center 2060 Marine Dr. Portland, OR 97217

**Hearing Officer:** Fish and Wildlife Commission

**Stat. Auth.:** ORS 496.138, 496.146, 496.162, 506.119, 506.129, 508.530 & 508.535

**Stats. Implemented:** ORS 506.129, 508.025, 508.040 & 508.550

**Proposed Adoptions:** 635-005-0048

**Proposed Amendments:** 635-006-0210

**Proposed Repeals:** 635-005-0048(T), 635-006-0210(T)

**Last Date for Comment:** 2-6-03

**Summary:** These rules permanently adopt and amend regulations temporarily in effect which require all commercial fishermen to report primary catch areas of Dungeness crab and include Dungeness crab catch location details, as required, on the Fish Receiving Ticket, at time of landing. 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

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

Date:	Time:	Location:
1-23-04	10 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005; Other Auth.: Title IV-E Waiver Terms and Conditions

**Stats. Implemented:** ORS 418.005, Title IV-E, Title IV-B & PL 103-432

**Proposed Adoptions:** 413-070-0982

**Proposed Amendments:** 413-070-0900 - 413-070-0981

**Last Date for Comment:** 1-31-04

**Summary:** These Guardianship Assistance rules are being changed because Guardianship payment reductions effective February 1, 2003 were restored beginning November 1, 2003. The Department was initially authorized in July, 1999 by the Department of Health and Human Services (HHS), Administration for Children and Families, to operate a Guardianship Assistance demonstration project for three years. HHS has provided verbal approval of their granting an extension of the Guardianship project for an additional five years. Policy changes reflect that extension and the removal of all references to the Guardianship project ending in September, 2003. These rule changes also include the addition of an entitlement for guardians, recipients and applicants to request a fair hearing concerning disputes that may arise in the administration of the subsidized guardianship program. These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

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Date:	Time:	Location:
1-23-04	9 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

# NOTICES OF PROPOSED RULEMAKING

**Stat. Auth.:** ORS 418.005; Other Auth.: Title IV-E of the Social Security Act

**Stats. Implemented:** ORS 418.005

**Proposed Amendments:** 413-100-0000 - 413-100-0360

**Last Date for Comment:** 1-31-04

**Summary:** These Title IV-E eligibility rules were changed due to a recent opinion of the Ninth Circuit Court. This opinion enables states under the Ninth Circuit Court to base financial eligibility for a child living with a relative, at the time court action was initiated that resulted in the removal of the child from the home, by linking the child's Aid to Families and Dependent Children (AFDC) eligibility to the home of the relative.

States under the Ninth Circuit Court have determined that this ruling also allows a child to be AFDC linked to any relative home in which the child resided within 6 months of the eligibility month (month that court action was initiated that results in the removal of the child from the home or the month in which the voluntary custody or placement agreement is signed) if the child cannot be AFDC linked to the parent or relative home they are currently residing with or removed from. If a child is AFDC linked to a relative home it will allow us to look at the child as a household of one and will almost assure that the child will meet AFDC linkage requirement of the Title IV-E program.

This interpretation allows us to re-examine and determine the eligibility of children in Oregon for Title IV-E eligibility when the child was denied Title IV-E due to no AFDC linkage in the eligibility month.

These Title IV-E and General Assistance rules will also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

\*\*\*\*\*

Date:	Time:	Location:
1-23-04	9:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 418.005

**Proposed Amendments:** 413-050-0600 - 413-050-0670

**Last Date for Comment:** 1-31-04

**Summary:** These Targeted Case Management rules are being changed to reflect the changes in department and/or agency names due to the legislative approval of the integration of all Human Resource agencies. These rules will also be changed to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

\*\*\*\*\*

Date:	Time:	Location:
1-23-04	8:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 190.304(4), 109.307, 109.309, 109.316, 109.425-109.507 & 419.295

**Proposed Amendments:** 413-120-0100 - 413-120-0115

**Last Date for Comment:** 1-31-04

**Summary:** These Adoption Assistance rules are being changed to provide clarification on documents required to finalize an adoption, to update the name of the Department and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

\*\*\*\*\*

Date:	Time:	Location:
1-23-04	8:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** OTS 109.307, 109.350 & 419B.529

**Proposed Amendments:** 413-120-0142 - 413-120-0175

**Last Date for Comment:** 1-31-04

**Summary:** These Adoption Assistance rules are being updated and cite the documents required by the Department to send to the attorney for filing with the court for the adoption decree to be issued when an adoption petition has not been filed. These rules are also being changed to update Department terminology and correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

\*\*\*\*\*

Date:	Time:	Location:
1-23-04	8:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005 & 418.340; Other Auth.: HB 5030, 2003

**Stats. Implemented:** ORS 418.330-418.340

**Proposed Adoptions:** 413-130-0127

**Proposed Amendments:** 413-130-0000 - 413-130-0130

**Proposed Repeals:** 413-130-0125(T), 413-130-0127(T)

**Last Date for Comment:** 1-31-04

**Summary:** This Adoption Assistance rule (413-130-0127) is being adopted because HB 5030 authorized the Department to restore or partially restore reductions to Adoption Assistance (as well as other benefit programs) that were made by HB 5100 (2002) in February 2003. OAR 413-130-0125 is being changed to provide clarification to 413-130-0127. Rules in this section may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

\*\*\*\*\*

Date:	Time:	Location:
1-23-04	10:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005

**Stats. Implemented:** ORS 418.470

**Proposed Amendments:** 413-090-0000 - 413-090-0050

**Last Date for Comment:** 1-31-04

# NOTICES OF PROPOSED RULEMAKING

**Summary:** The Maintenance and Payment Treatment rules regarding foster care rates has been changed to update the rate structure and implementation date due to 2003 legislative actions. These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

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Date:	Time:	Location:
1-23-04	10:30 a.m.	Rm. 257 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 418.005; Other Auth.: State Plan #88-4 Attachment 3-1-A, pages 9b, 9c, 9d and 9e; Title IV-E, (ACYF CB-PIQ-97-01)

**Stats. Implemented:** ORS 418.005, Title IV-E & Title XIX

**Proposed Amendments:** 413-090-0100 - 413-090-0220

**Last Date for Comment:** 1-31-04

**Summary:** These Special Rate/Personal Care Payments rules are being changed to update the rate structure and implementation date due to 2003 legislative actions. These rules may also be changed to reflect new Department terminology and to correct formatting and punctuation.

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

**Rules Coordinator:** Annette Tesch

**Address:** Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E48, Salem, OR 97301

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

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

Date:	Time:	Location:
1-14-04	11 a.m.-1:30 p.m.	Rm. 352 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-120-1160, 410-120-1200, 410-120-1280, 410-120-1340, 410-120-1360, 410-120-1520, 410-120-1540, 410-120-1570

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The General Rules program Administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. Rules 410-120-1160, 410-120-1200, 410-120-1280, 410-120-1340, 410-120-1520, 410-120-1570 will be amended to clarify length of time for provider appeal, add benefit packages to the billing section and to clarify that "medically appropriate" also includes dentally appropriate. Rules 410-120-1360, 410-120-1520 and 410-120-1540 are being amended to clarify and broaden audit authority from just OMAP to the Department of Human Services.

*\*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

Date:	Time:	Location:
1-14-04	11 a.m.-1:30 p.m.	Rm. 352 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-121-xxxx

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rule 410-121-xxxx will be adopted to establish polypharmacy profiling to allow for the limitation of prescription drugs for specific clients receiving over 15 unique drugs in a six-month period.

*\*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

.....

Date:	Time:	Location:
1-14-04	11 a.m.-1:30 p.m.	Rm. 352 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-133-0090

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The School-Based Health Services (SBHS) program administrative rules govern the Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. Rule 410-133-0090, temporarily amended December 15, 2003, will be permanently amended to describe billing and payment for the SBHS cost-sharing program. This rule requires the state share from the public school medical provider to be public fund based on the Federal Medical Assistance Percentage (FMAP). This is the Notice to permanently amend rule 410-133-0090.

*\*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

.....

Date:	Time:	Location:
1-14-04	11 a.m.-1:30 p.m.	Rm. 352 500 Summer St. NE Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0040

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. Rule 410-121-0040, temporarily amended December 2003, will be permanently amended to change the prior authorization requirement for non-PMPDP proton pump inhibitors (PPI) from the initial prescription to after eight weeks of acute anti-ulcer therapy. This will require the same therapeutic PA for all PPI products as previously established. This is the Notice to permanently amend rule 410-121-0040.

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



# NOTICES OF PROPOSED RULEMAKING

**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

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**Date:** 1-14-04      **Time:** 11 a.m.-1:30 p.m.      **Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-122-0040  
**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DME) program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. 410-122-0040 is being amended to centralize prior/payment authorizations of durable medical equipment, prosthetics, orthotics and supplies. Miscellaneous medical services that are currently authorized by branch offices will be authorized by OMAP's Medical Unit. Services currently authorized by the Medically Fragile Children's Unit will continue to be authorized by that unit. Prior/payment authorization for clients in the FFS (fee-for-service) Medical Case Management Program will continue to be authorized by OMAP's Medical Case Management contractor.  
*\*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

.....  
**Date:** 1-14-04      **Time:** 11 a.m.-1:30 p.m.      **Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-125-0080, 410-125-0225, 410-125-0410, 410-125-2000  
**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Hospital Services Administrative rules govern the Office of Medical Assistance Programs (OMAP) payments for services rendered to clients. OAR 410-125-0225 (renumbered from AFS rule in 1990) is being repealed because the rule has no relevance to the Hospital Program; a list of client programs can be obtained from other sources. The proposed revisions of OAR 410-125-0080, 410-125-0410, and 410-125-2000 are for clarification of rule intent.  
*\*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

.....  
**Date:** 1-14-04      **Time:** 11 a.m.-1:30 p.m.      **Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-129-0100, 410-129-0200, 410-129-0260

**Last Date for Comment:** 1-14-04, 5 p.m.  
**Summary:** The Speech-Language, Pathology, Audiology and Hearing Aids services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. Rule 410-129-0100 will be amended to require Speech pathologists to bill Medicare first if client has both Medicare and Medicaid; Rule 410-129-0200 will be amended to delete obsolete Speech generating device (SGD) codes and adds new codes for SGD; and, Rule 410-129-0260 will be amended to clarify when an audiogram is required.

*\*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

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**Date:** 1-15-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** Rm. 137B  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-130-0000, 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0255, 410-130-0585, 410-130-0587, 410-130-0680, 410-130-0700  
**Last Date for Comment:** 1-15-04, 5 p.m.

**Summary:** The Medical Surgical Rule program administrative rules govern the Office of Medical Assistance Programs (OMAP) payment for services provided to clients. The following Rules are amended for technical changes to clarify policy: Rule 410-130-0000, 410-130-0180, 410-130-0200, 410-130-0220, 410-130-0240, 410-130-0255, 410-130-0585, 410-130-0587, 410-130-0680, and 410-130-0700.  
*\*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

.....  
**Date:** 1-14-04      **Time:** 10:30 a.m.-12 p.m.      **Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson  
**Stat. Auth.:** ORS 409.010 & 409.110  
**Stats. Implemented:** ORS 414.065  
**Proposed Amendments:** 410-131-0280  
**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Physical and Occupational Therapy Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. OAR 410-131-0280 is being amended to add CPT code 97755 to list of covered services, and delete part of rule that states code 97110 is not covered on the same date as code 97530.  
*\*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

# NOTICES OF PROPOSED RULEMAKING

**Date:** 1-14-04  
**Time:** 11 a.m.-1:30 p.m.  
**Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-148-0000, 410-148-0020, 410-148-0080, 410-148-0120, 410-148-0260, 410-148-0280, 410-148-0300

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Home Enteral/Parenteral Nutrition and IV Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. Rules 410-148-0000, 410-148-0020, 410-148-0080, 410-148-0120, 410-148-0260 and 410-148-0300 are being revised to clarify rule language, update code changes with limitations, and take care of general housekeeping corrections.

*\*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

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**Date:** 1-14-04  
**Time:** 11 a.m.-1:30 p.m.  
**Location:** Rm. 352  
500 Summer St. NE  
Salem, OR

**Hearing Officer:** Darlene Nelson

**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0000, 410-121-0060, 410-121-0061, 410-121-0100, 410-121-0135, 410-121-0140, 410-121-0143, 410-121-0144, 410-121-0145, 410-121-0146, 410-121-0147, 410-121-0148, 410-121-0150, 410-121-0155, 410-121-0157, 410-121-0160, 410-121-0185, 410-121-0190, 410-121-0200, 410-121-0420, 410-121-0580, 410-121-0625

**Proposed Repeals:** 410-121-0154, 410-121-0180

**Last Date for Comment:** 1-14-04, 5 p.m.

**Summary:** The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs payments for services rendered to clients. 410-121-0140 will be amended to move rule language from definitions to rules 410-121-0145, 410-121-0148 and 410-121-0155. Rules 410-121-0154 and 410-121-0180 will be repealed and text moved to rule 410-121-0155. The remainder of the rules filed will be amended to make necessary housekeeping corrections.

*\*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

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**Date:** 1-20-04  
**Time:** 1:30 p.m.  
**Location:** DSO Office  
3420 Cherry Ave NE  
Salem, OR

**Date:** 1-21-04  
**Time:** 1:30 p.m.  
**Location:** Parks & Recreation  
225 SE Avery St.  
Newport, OR

**Date:** 1-23-04  
**Time:** 10 a.m.  
**Location:** Dept. of Aging  
133 SE 2nd  
Hillsboro, OR

**Hearing Officer:** Kelly Myrick-Duckett

**Stat. Auth.:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)

**Stats. Implemented:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)

**Proposed Adoptions:** 410-007-0200, 410-007-0210, 410-007-0220, 410-007-0230, 410-007-0240, 410-007-0250, 410-007-0260, 410-007-0270, 410-007-0280, 410-007-0290, 410-007-0300, 410-007-0310, 410-007-0320, 410-007-0330, 410-007-0340, 410-007-0350, 410-007-0360, 410-007-0370, 410-007-0380

**Proposed Repeals:** 410-007-0000, 410-007-0010, 410-007-0020, 410-007-0030, 410-007-0040, 410-007-0050, 410-007-0060, 410-007-0070, 410-007-0080

**Last Date for Comment:** 1-30-04

**Summary:** The repeal of these existing rules and adoption of new rules help to integrate and standardize criminal record and background check processes through much of the Department of Human Services. The rules define who is subject to the background check and defines the process. The rules establish a common set of potentially disqualifying crimes and the criteria that must be employed to determine fitness or suitability. The rules establish a standardized appeal process.

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

**Rules Coordinator:** Patricia F. Bougher

**Address:** Department of Human Services, 500 Summer St. NE, E-22, Salem, OR 97301

**Telephone:** (503) 945-5844

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**Stat. Auth.:** ORS 409

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0320

**Last Date for Comment:** 1-21-04

**Summary:** The Pharmaceutical Rules govern the Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0320, Oregon Maximum Allowable Cost (OMAC) lists generated monthly and each list indicates the amount, per product, that OMAP will reimburse to providers for products provided to OMAP clients during that particular month. Rule 410-121-0320 is revised to include, by reference, all monthly First Health Service's OMAC listings received by OMAP for the time period of January 1, 2004 through and including December 1, 2004. Current OMAC lists are available on OMAP's website.

**Rules Coordinator:** Darlene Nelson

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

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

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**Stat. Auth.:** ORS 409.010 & 409.110

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0300

**Last Date for Comment:** 1-21-04, 5 p.m.

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0300 is being amended to update the CMS Federal Upper Limits for Drug Payments listing. This filing is to update Transmittal #37, with Title XIX State Agency Letter Number 03-06, changes to the list are effective for services rendered on or after November 2, 2003, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

**Rules Coordinator:** Darlene Nelson

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

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

# NOTICES OF PROPOSED RULEMAKING

**Department of Human Services,  
Mental Health and Developmental Disability Services  
Chapter 309**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-20-04	1:30 p.m.	DSO Office 3420 Cherry Ave NE Salem, OR
1-21-04	1:30 p.m.	Parks & Recreation 225 SE Avery St. Newport, OR
1-23-04	10 a.m.	Dept. of Aging 133 SE 2nd Hillsboro, OR

**Hearing Officer:** Kelly Myrick-Duckett  
**Stat. Auth.:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Stats. Implemented:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Proposed Repeals:** 309-018-0100, 309-018-0110, 309-018-0120, 309-018-0130, 309-018-0140, 309-018-0150, 309-018-0160, 309-018-0170, 309-018-0180, 309-018-0190  
**Last Date for Comment:** 1-30-04

**Summary:** The repeal of these existing rules and adoption of new rules help to integrate and standardize criminal record and background check processes through much of the Department of Human Services. The rules define who is subject to the background check and defines the process. The rules establish a common set of potentially disqualifying crimes and the criteria that must be employed to determine fitness or suitability. The rules establish a standardized appeal process.

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

**Rules Coordinator:** Patricia F. Bougher  
**Address:** Department of Human Services, 500 Summer St. NE, E-22, Salem, OR 97301  
**Telephone:** (503) 945-5844

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-22-04	1:30 p.m.	800 NE Oregon St. Rm. 918 Portland, OR 97232

**Hearing Officer:** Jana Fussell  
**Stat. Auth.:** ORS 441 & 442  
**Stats. Implemented:** ORS 441 & 442  
**Proposed Amendments:** 333-675-0000 - 333-675-0040  
**Proposed Ren. & Amends:** 333-675-0010 to 333-675-0050  
**Last Date for Comment:** 1-22-04, 5 p.m.  
**Summary:** Existing rules will be amended to reflect an updated guideline of the construction plans submittal and review process for health care or residential care occupancies. Amendments include more specific requirements for functional program outlines, fire and life safety plan submittals, project design conferences, and construction document submittals. Because of constant changes to health industry programs and technology, the above additional information is not currently being identified on the plan submissions or current rule requirements.

*\*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) 731-4000, ext. 822

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**Stat. Auth.:** ORS 442.807  
**Stats. Implemented:** ORS 442.800-442.807

**Proposed Amendments:** 333-505-0007  
**Last Date for Comment:** 1-22-04

**Summary:** Amend the rule that adopts the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application in order to incorporate changes recommended by the Advisory Committee on Physician Credentialing Information (ACPCI) in the Office for Oregon Health Policy and Research. The ACPCI has met according to enrolled HB 2144 and statute to review and update the Oregon Practitioner Credentialing and Recredentialing Application forms, which were originally approved by the Advisory Committee on November 14, 2000. The applications are adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 to 442.807. The Director of the Department of Consumer and Business Services and the Director of the Department of Human Services are required to adopt identical rules in a timely manner to carry out the recommendations of the ACPCI.

The Oregon Practitioner Credentialing Application with the recommended changes incorporated is available for review through the Office for Oregon Health Policy and Research website at <http://www.ohpr.state.or.us/advisory/CredentialMemu.htm>. The Oregon Practitioner Recredentialing Application with the recommended changes incorporated is available for review through the Office for Oregon Health Policy and Research website at <http://www.ohpr.state.or.us/advisory/RecredentialMenu.htm>. Applications are also available upon request; please call 503-731-4000, ext. 822.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Portland, OR 97232  
**Telephone:** (503) 731-4000, ext. 822

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**Stat. Auth.:** ORS 441 & 442  
**Stats. Implemented:** ORS 441 & 442  
**Proposed Adoptions:** 333-535-0061  
**Proposed Repeals:** 333-535-0060  
**Last Date for Comment:** 1-21-04

**Summary:** OAR 333-535-0060 would be repealed and replaced by OAR 333-535-0061. The adopted rule contains updates and revisions to comply with recommended national guidelines. Included are new requirements for a written "Patient and Staff Safety Assessment" which will address security and safety needs and solutions. A new rule section for safety features and security and safety devices is also included. Many revisions from the suspended rule are adopted including specific provisions affecting special psychiatric population groups such as children and adolescents, forensics and patients with dementia.

These rules are the same as rules already filed with the Secretary of State on September 27, 2002. There was a technical deficiency with the first filing as the required filing with Legislative Counsel was not timely.

**Rules Coordinator:** Christina Hartman  
**Address:** Department of Human Services, Public Health, 800 NE Oregon St., Portland, OR 97232  
**Telephone:** (503) 731-4000, ext. 822

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-20-04	1:30 p.m.	DSO Office 3420 Cherry Ave NE Salem, OR
1-21-04	1:30 p.m.	Parks & Recreation 225 SE Avery St. Newport, OR
1-23-04	10 a.m.	Dept. of Aging 133 SE 2nd Hillsboro, OR

# NOTICES OF PROPOSED RULEMAKING

**Hearing Officer:** Kelly Myrick-Duckett  
**Stat. Auth.:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Stats. Implemented:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Proposed Repeals:** 461-165-0400  
**Last Date for Comment:** 1-30-04

**Summary:** The repeal of these existing rules and adoption of new rules help to integrate and standardize criminal record and background check processes through much of the Department of Human Services. The rules define who is subject to the background check and defines the process. The rules establish a common set of potentially disqualifying crimes and the criteria that must be employed to determine fitness or suitability. The rules establish a standardized appeal process.

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

**Rules Coordinator:** Patricia F. Bougher  
**Address:** Department of Human Services, 500 Summer St. NE, E-22, Salem, OR 97301  
**Telephone:** (503) 945-5844

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-22-04	1 p.m.	500 Summer St. NE Room 137D Salem, OR

**Hearing Officer:** Sonya Plummer  
**Stat. Auth.:** ORS 409.050, 410.070 & 443.835  
**Stats. Implemented:** ORS 443.400 & 443.415  
**Proposed Amendments:** 411-055-0000, 411-055-0003  
**Last Date for Comment:** 1-23-04

**Summary:** The Residential Care Facilities rules are being proposed for permanent amendment effective February 1, 2004. Rule 411-055-0003 is being revised to extend the period for the moratorium on licensing of Residential Care Facilities from June 30, 2003 to June 30, 2005. This rule is also being amended to extend licensing eligibility to facilities that meet specified criteria in the rule. Rule 411-055-0000 is being revised to update definitions relating to these changes.

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-22-04	3 p.m.	500 Summer St. NE Room 137D Salem, OR

**Hearing Officer:** Sonya Plummer  
**Stat. Auth.:** ORS 409.050, 410.070 & 443.835  
**Stats. Implemented:** ORS 443.400 & 443.415  
**Proposed Amendments:** 411-056-0005, 411-056-0007  
**Last Date for Comment:** 1-23-04

**Summary:** The Assisted Living Facilities rules are being proposed for permanent amendment effective February 1, 2004. Rule 411-056-0007 is being revised to extend the period for moratorium on licensing of Assisted Living Facilities from June 30, 2003 to June 30, 2005. This rule is also being amended to extend licensing eligibility to facilities that meet specified criteria in the rule. Rule 411-056-0005 is being revised to update definitions relating to these changes.

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

**Rules Coordinator:** Sonya Plummer

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-20-04	9 a.m.	500 Summer St. NE Room 137D Salem, OR

**Hearing Officer:** Sonya Plummer  
**Stat. Auth.:** ORS 409.050, 410.070 & 443  
**Stats. Implemented:** ORS 443.400, 443.410 - 443.430 & 443.450  
**Proposed Amendments:** Rules in 411-055  
**Last Date for Comment:** 2-23-04

**Summary:** The Residential Care Facilities, Chapter 411, Division 055, are being proposed for permanent amendment effective March 1, 2004. These rulemaking actions are being taken to: (a) clarify refund policy for facility closures and evictions; (b) include specific training topics under direct care staff qualifications; (c) remove redundant rule language under classification requirements; (d) align assessment and service planning, physical environment requirements for new construction, facility services and administrative management section with some of the assisted living standards; (e) clarify infection control procedures; (f) require staff to be up and awake when residents are housed in more than one building; (g) require a minimum of two scheduled staff whenever a resident requires the assistance of two persons; (h) require that an initial assessment and service plan be completed prior to admission; (i) specify criteria for 30 days written notice and circumstances for emergency treatment; (j) adopt the assisted living Bill of Rights under residents' rights; (k) prohibit restraint use and specify the procedures to utilize supportive devices; and (l) update definitions.

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

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-20-04	1:30 p.m.	DSO Office 3420 Cherry Ave NE Salem, OR
1-21-04	1:30 p.m.	Parks & Recreation 225 SE Avery St. Newport, OR
1-23-04	10 a.m.	Dept. of Aging 133 SE 2nd Hillsboro, OR

**Hearing Officer:** Kelly Myrick-Duckett  
**Stat. Auth.:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Stats. Implemented:** ORS 181.537, 409.010, 409.050, 410.020(3)(d), 418.016, 418.640, 411.022, 411.055, 443.730 & 443.735(3)  
**Proposed Repeals:** 411-009-0000, 411-009-0005, 411-009-0015, 411-009-0021, 411-009-0040, 411-009-0050, 411-009-0060, 411-009-0070, 411-009-0080, 411-009-0090, 411-009-0100, 411-009-0110  
**Last Date for Comment:** 1-30-04

**Summary:** The repeal of these existing rules and adoption of new rules help to integrate and standardize criminal record and background check processes through much of the Department of Human Services. The rules define who is subject to the background check and defines the process. The rules establish a common set of potentially disqualifying crimes and the criteria that must be employed to determine fitness or suitability. The rules establish a standardized appeal process.

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

**Rules Coordinator:** Patricia F. Bougher

# NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Human Services, 500 Summer St. NE, E-22, Salem, OR 97301  
**Telephone:** (503) 945-5844

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

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-20-04	3 p.m.	Human Service Bldg. Room 252 500 Summer St. NE Salem, OR

**Hearing Officer:** Robert Trachtenberg  
**Stat. Auth.:** ORS 344.530 & 344.590; Other Auth.: 29 USC 722(c), 34 CFR 361.13(c)(iii) & 34 CFR 361.57

**Stats. Implemented:** ORS 344.530, 344.550 & 344.590

**Proposed Adoptions:** 582-020-0005, 582-020-0015, 582-020-0125

**Proposed Amendments:** 582-020-0010, 582-020-0020, 582-020-0030, 582-020-0040, 582-020-0050, 582-020-0060, 582-020-0070, 582-020-0080, 582-020-0090, 582-020-0100, 582-020-0110, 582-020-0120

**Last Date for Comment:** 1-22-04

**Summary:** Clarifies purposes of conflict resolution rules. Updates rules to reflect changes in federal regulations, including mediation option requirements. Provides procedural incentives and protections for clients seeking mediation. Extends timeline between request and hearing for Impartial Fair Hearing from 45 days to 60 days. Adds Formal Administrative Review for decisions of Impartial Fair Hearings Officers and sets out applicable procedures. Requires that mediators be listed on the Oregon State Agency Mediator Roster of the State of Oregon Department of Justice.

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

**Rules Coordinator:** Robert Trachtenberg

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

**Telephone:** (503) 945-6734

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
2-3-04	10 a.m.	ODOT Conf. Room 63055 N. Hwy. 97 Bend, OR
2-5-04	3 p.m.	Holiday Inn Express Conf. Room 375 West Harvard Blvd. Roseburg, OR
2-10-04	10:30 a.m.	Integrated Services Bldg. Classroom 153 1607 Gekeler Lane La Grande, OR
2-12-04	1:30 p.m.	OVRs Conf. Room 4744 N Interstate Ave. Portland, OR
2-20-04	3 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 361.48, 34 CFR 361.53 & 34 CFR 361.54

**Stats. Implemented:** ORS 344.550

**Proposed Amendments:** 582-070-0010, 582-070-0030

**Last Date for Comment:** 2-23-04

**Summary:** Amends regulations on client financial participation and institutes an annual financial needs test. Identifies purposes of the client financial contribution policy. Identifies clients exempt from the mandatory contributions. Identifies services exempt from mandatory client financial contributions. Establishes the amount of mandatory annual client financial contributions in relation to family size and

income, including the income levels under which no contribution is required. Defines family income and other terms used in the policy. Establishes contribution levels for clients whose family members choose not to share financial information. Establishes criteria for an extenuating circumstances exception to the policy. Describes when client payments are not covered by the policy. Allows voluntary, unenforceable client payments. Clarifies rules applicable to student financial aid and comparable services and benefits consistent with current federal regulations.

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

**Rules Coordinator:** Robert Trachtenberg

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

**Telephone:** (503) 945-6734

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**Department of Justice  
Chapter 137**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
1-22-04	9 a.m.	Room 350 State Capitol Bldg. Salem, OR

**Hearing Officer:** Philip Schradle

**Stat. Auth.:** OL 2003, Ch. 789

**Stats. Implemented:** OL 2003, Ch. 789

**Proposed Adoptions:** 137-084-0001, 137-084-0005, 137-084-0010, 137-084-0020, 137-084-0030

**Last Date for Comment:** 1-22-04

**Summary:** The proposed rulemaking establishes procedures and rates for payment for medical services provided to victims of sexual assault from the Sexual Assault Victims' Emergency Medical Response Fund.

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

**Rules Coordinator:** Carol Riches

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

**Telephone:** (503) 378-6313

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**Department of Transportation,  
Motor Carrier Transportation Division  
Chapter 740**

**Stat. Auth.:** ORS 823.011, 825.252 & 825.258

**Stats. Implemented:** ORS 469.470 & 825.258

**Proposed Amendments:** 740-110-0080, 740-110-0090

**Last Date for Comment:** 2-6-04

**Summary:** These rules establish requirements for inspection and notification for certain motor carrier radioactive material shipments. Current rules require ODOT to inspect every shipment, vehicle and driver transporting certain radioactive materials prior to allowing the shipment on Oregon highways. Amendments are needed to provide the Department discretion in determining when a commercial vehicle, driver or shipment should be inspected. For example, it is not reasonable to require an inspection if the same shipment, vehicle and driver has been found defect-free by an authorized inspection in another jurisdiction shortly before the vehicle's entry into Oregon. Amendments are now needed to manage an impending increase in the number of such shipments through Oregon resulting from a US Department of Energy (DOE) project. Most shipments originate at the DOE Hanford Site in Washington and have been inspected prior to their departure. The proposed amendments will not limit the Department's authority to inspect any vehicle or shipment.

Text of proposed and recently adopted ODOT rules can be found at [web site http://www.odot.state.or.us/rules/](http://www.odot.state.or.us/rules/).

**Rules Coordinator:** Brenda Trump

**Address:** Department of Transportation, Motor Carrier Transportation Division, 1905 Lana Ave. NE, Salem, OR 97314

**Telephone:** (503) 945-5278

# NOTICES OF PROPOSED RULEMAKING

## Health Licensing Office Chapter 331

**Date:** 1-16-04  
**Time:** 9 a.m.  
**Location:** 700 Summer St.  
Suite 320  
Salem, OR 97302

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676 & OL 2003, Ch. 547; Other Auth.: ORS 183

**Stats. Implemented:** ORS 676 & OL 2003, Ch. 547

**Proposed Adoptions:** 331-001-0000, 331-001-0010, 331-001-0020, 331-010-0000, 331-010-0010, 331-010-0020, 331-010-0030, 331-010-0040, 331-020-0000, 331-020-0010, 331-020-0020, 331-020-0030, 331-020-0040, 331-020-0050, 331-020-0060, 331-020-0070, 331-030-0000, 331-030-0010, 331-030-0020, 331-030-0030

**Last Date for Comment:** 1-16-04

**Summary:** The Health Licensing Office was established as a consumer protection agency in 1999, reorganizing oversight and centralizing service for 15 health and related professions. HB 2325 completed the consolidation process, improving consistency in the Agency's statutes and the statutes of the various programs under the agency's administration.

Consolidation of statutory provisions parallel the process of establishing agency administrative rules — removing from individual program rules uniform provisions for enforcement activities, administrative functions and licensing standards. The distinct function of the agency, in correlation to administration of the programs, is established, while preserving the authority and role of the individual boards and councils in setting or approving (1) training and education requirements, (2) competency examinations, (3) practice standards, (4) a code of conduct and (5) advising the agency in matters relating to discipline and rulemaking for the specific field of practice administered by the agency.

Agency rules implement the provisions resulting from 1999, 2001 and 2003 legislation. The Health Licensing Office agency rules address the following:

**Division 01 - Procedural requirements:** Notice of Proposed Rulemaking, Model Rules of Procedure, and Applicability of Agency Rules.

**Division 10 - General administration:** Definitions, fee, refund of payments, charges for copies and documents and notification requirements.

**Division 20 - Regulatory Operations:** Contested Case Procedure, Rules and Orders, Judicial Review, Requiring Answers to Charges as Part of Notices to Parties in Contested Cases, Hearing Requests and Answers, Inquiry, Civil Penalty Considerations and Discipline.

**Division 30 - Certification, Licensure and Registration Requirements:** Application Requirements, Procedure for Issuing and Renewing Certificates, Licenses and Registrations, Authorization to Practice, Duplicates and Sanctions.

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

**Rules Coordinator:** Patricia C. Allbritton

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

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

## Land Conservation and Development Department Chapter 660

**Date:** 1-29-04  
**Time:** 9 a.m.  
**Location:** Hearing Room  
635 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 183.335 & 197.040; Other Auth.: ORS 183.335(1)(d), 183.335(15) & 183.335(5)

**Stats. Implemented:** ORS 183 & 197.040

**Proposed Amendments:** 660-001-0000

**Last Date for Comment:** 1-29-04

**Summary:** The proposed amendments will incorporate past and recent changes to the statutory requirements for rulemaking under the Oregon Administrative Procedures Act (ORS Chapter 183) and incorporate the specific statutory authorization for the adoption of temporary rules in ORS 183.335(5)

The Commission may also consider adoption of other amendments to this rule that relate to the topic of this proposed rule based on testimony and comments received during the public comment period, and may also adopt any minor clarifications or technical corrections to the rule that may be proposed during the public comment period.

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

**Rules Coordinator:** Shelia Preston

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

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

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**Date:** 1-29-03  
**Time:** 9 a.m.  
**Location:** Hearing Room  
635 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040, 183.335(7), 195.120, 215.459, OL Ch. 800 & OL Ch. 793; Other Auth.: OL Ch. 800, § 17(2) (HB 2011) & OL Ch. 793 (SB 920)

**Stats. Implemented:** ORS 184.618, 195.025, 195.120, 195.125, 197.015, 197.040, 197.230, 197.245, 197.295-197.314, 197.475-197.480, 197.610-197.625, 197.628-197.646, 197.712, 197.717, 197.732, 215.755(3), 390.322, OL Ch. 800, § 17(2) (HB 2011) & OL Ch. 793 (SB 920)

**Proposed Adoptions:** Rules in 660-018

**Proposed Amendments:** 660-002-0010, 660-003-0025, 660-016-0005, 660-016-0010, 660-006-0025, 660-008-0000, 660-008-0005, 660-012-0055, 660-012-0070, 660-017-0000, 660-020-0060, 660-020-0065, 660-023-0090, 660-023-0140, 660-023-0190, 660-030-0005, 660-034-0000, 660-034-0040, 660-037-0030, Rules in 660-004, 660-013, 660-025

**Last Date for Comment:** 1-29-04

**Summary:** The Land Conservation and Development Commission is proposing minor and technical "housekeeping" amendments to several administrative rules. The proposed rule amendments will conform existing rules to current statutes or other laws, clarify ambiguous or ungrammatical wording, and correct citation errors to other rules or statutes, and will adopt rules establishing timelines required by OR Laws Chapter 800, Section 17(2).

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

**Rules Coordinator:** Shelia Preston

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

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

\*\*\*\*\*

**Date:** 1-29-04  
**Time:** 9 a.m.  
**Location:** Hearing Room  
635 Capitol St. NE  
Salem, OR 97301

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 197.040(1) & 197.175(1); Other Auth.: 1000 Friends of Oregon v. LCDC (Curry County), 301 Or 447, 724 P2d 268 (1986) & 1000 Friends of Oregon v. Wasco County Court, 299 Or 244, 703 P2d 207 (1985)

**Stats. Implemented:** ORS 197.175 & 197.757

**Proposed Amendments:** Rules in 660-014

**Proposed Ren. & Amends:** 660-001-0300 to 660-014-0045, 660-001-0315 to 660-014-0065

**Last Date for Comment:** 1-29-04

# NOTICES OF PROPOSED RULEMAKING

**Summary:** The proposed amendments will delete or amend rules in OAR 660, Division 014, in order to make this Division consistent with the Oregon Supreme Court decision in *1000 Friends of Oregon v. Wasco County Court*, 299 Or 244, 703 P2d 207 (1985). The proposed amendments will also modify the title of Division 014 to indicate that some of the rules in the division, as amended, also apply to planing and zoning of rural land with respect to urban uses regardless of whether the land is subject to a proposed incorporation, based on the Oregon Supreme Court decision in *1000 Friends of Oregon v. LCDC (Curry County)*, 301 Or 447, 724 P2d 268 (1986). Finally, OAR 660, Division 014, will be amended to add new rules regarding annexation of lands. The new rules to be added are currently under OAR 660, Division 001. Specifically, OAR 660-001-0300 thru 660-001-315 will be repealed and then added to Division 014, renumbered as OAR 660-014-0045 and 660-014-0065.

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

**Rules Coordinator:** Shelia Preston

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

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

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Date:	Time:	Location:
1-29-04	9 a.m.	Hearing Room 635 Capitol St. NE Salem, OR 97301
3-11-04	9 a.m.	Hearing Room TBA Hood River, OR

**Hearing Officer:** LCDC

**Stat. Auth.:** ORS 197.040; Other Auth.: OL 2003, Ch. 247

**Stats. Implemented:** ORS 197 & 215

**Proposed Amendments:** Rules in 660-033

**Last Date for Comment:** 3-11-04

**Summary:** The proposed amendments will incorporate the 2003 Legislative amendments to ORS Chapter 215 into the Land Conservation and Development Commission's (LDCD's) Goal 3 rules regarding Agricultural Lands (OAR Chapter 660, Division 033), authorize limited accessory food service facilities on golf courses separate from the clubhouse, distinguish between the farm use activities considered the "preparation" of a farm product raised on a farm vs. those activities considered to be "processing" and other amendments to clarify and correct errors in the existing rules.

The Commission may also consider other amendments to this Division based on testimony and comments received during the public comment period and may also adopt any other minor clarifications or technical corrections to this Division that may be proposed during the public comment period.

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

**Rules Coordinator:** Shelia Preston

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

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

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## Landscape Contractors Board Chapter 808

Date:	Time:	Location:
1-16-04	11 a.m.	Landscape Contractors Board 235 Union St. NE Salem, OR

**Hearing Officer:** Carl Cory

**Stat. Auth.:** ORS 670 & 671; Other Auth.: HB 2783, 2003

**Stats. Implemented:** ORS 25.278

**Proposed Adoptions:** 808-003-0112

**Last Date for Comment:** 1-21-04

**Summary:** Oregon and federal law require licensing agencies to collect Social Security numbers from individual licensees for purposes of child support enforcement. This rule also allows the agency to

accept a written statement from an individual who has not been issued a social security number.

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

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301

**Telephone:** (503) 986-6570

\*\*\*\*\*

Date:	Time:	Location:
1-16-04	11:15 a.m.	Landscape Contractors Board 235 Union St. NE Salem, OR

**Hearing Officer:** Carl Cory

**Stat. Auth.:** ORS 670 & 671; Other Auth.: SB 919, 2003

**Stats. Implemented:** ORS 671.540

**Proposed Amendments:** 808-002-0200, 808-002-0500

**Last Date for Comment:** 1-21-04

**Summary:** This rule amendment defines "Casual, Minor or Inconsequential" work and "Landscaping work" as used in SB 919.

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

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301

**Telephone:** (503) 986-6570

\*\*\*\*\*

Date:	Time:	Location:
1-16-04	11:30 a.m.	Landscape Contractors Board 235 Union St. NE Salem, OR

**Hearing Officer:** Carl Cory

**Stat. Auth.:** ORS 670 & 671; Other Auth.: SB 919, 2003

**Stats. Implemented:** ORS 671.540

**Proposed Adoptions:** 808-002-0210, 808-002-0298, 808-002-0890

**Proposed Amendments:** 808-002-0100, 808-002-0220, 808-002-0620, 808-002-0665, 808-002-0880, 808-002-0920, 808-003-0010, 808-003-0015, 808-003-0018, 808-003-0030, 808-003-0035, 808-003-0040, 808-003-0045, 808-003-0050, 808-003-0055, 808-003-0060, 808-003-0065, 808-003-0070, 808-003-0080, 808-003-0081, 808-003-0085, 808-003-0125, 808-003-0130, 808-004-0320, 808-004-0400, 808-005-0020, 808-0049-0020

**Proposed Repeals:** 808-002-0448

**Last Date for Comment:** 1-21-04

**Summary:** 808-002-0210 Adopt definition of "Claimant"

808-002-0298 Adopt definition of "Decorative Vegetation"

808-002-0890 Adopt definition of "Warranty Work"

808-002-0100 Correct statutory cite

808-002-0220 Correct statutory cite

808-002-0620 Amend definition of "Maintenance" to include the application of fertilizer

808-002-0665 Deletes reference to "registrant" and replace with "licensed landscaping business"

808-002-0880 Deletes planting of sod and seed for "architectural horticulture"

808-002-0920 Amends definition of work period to include date construction begins and statutory cites

808-003-0010 Amends definition of "Advertising" to state what is included as advertising

808-003-0015 Clarifies application fee and exam fee

808-003-0018 Clarifies licensed contractor employed by the business must hold phase of license the business offers and contractor must supervise work and attend all on-site meetings

808-003-0030 Clarifies when an application expires for applicants who fail to complete the license process

808-003-0035 Modifies references to incorrect licensing regarding tree service. ORS 671 does not give the Landscape Contractor's

# NOTICES OF PROPOSED RULEMAKING

License the authority to remove trees, prune trees or remove limbs or stumps.

808-003-0040 Corrects references to backflow prevention devices; and must have signed LIBDI agreement with the Board prior to 4/30/1996 instead of 4/30/1995

808-003-0045 Corrects references to one exam with several sections and adds ability to install backflow prevention devices to holders of a General license if LIBDI section of the exam is passed

808-003-0050 Deletes requirement to submit W-4 forms and address requirement to submit current pay stub for proof of employment, adds supervisory responsibilities

808-003-0055 Clarifies applicant to show picture ID and the exam to be closed book

808-003-0060 Housekeeping

808-003-0065 Changes "scoring" to "exam results"

808-003-0070 Housekeeping

808-003-0080 Corrects references to one exam with several sections

808-003-0081 Changes "scores" to "results"

808-003-0085 Housekeeping

808-003-0125 Corrects statutory cite; housekeeping

808-003-0130 Clarifies exam fees are per sitting

808-004-0320 Clarifies that damages are awarded only for material delivered within the period of time the business was licensed; allows agency to process claim that would be dismissed if the previously filed claim was withdrawn prior to the on-site meeting, closed allowing subsequent filing, but does not extend the time limitations for filing a claim of one year.

808-004-0400 Clarifies process of determining jurisdiction and how to process claim if jurisdiction determined or not

808-005-0020 Deletes the amount a penalty may be reduced to

808-0049-0020 Replaces "new" with "amended" declaration of damages form

808-002-0448 Repeal definition of Hearing Officer

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

**Rules Coordinator:** Kim Gladwill-Rowley

**Address:** Landscape Contractors Board, 235 Union St. NE, Salem, OR 97301

**Telephone:** (503) 986-6570

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## Oregon Department of Education Chapter 581

Date:	Time:	Location:
1-20-04	3 p.m.	Public Service Bldg. 255 Capitol St. NE Room 251-A Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051 & OL 2003, Ch. 715

**Stats. Implemented:** OL 2003, Ch. 715, § 40 & 41

**Proposed Repeals:** 581-023-0103

**Last Date for Comment:** 1-20-04

**Summary:** Senate Bill 550 abolishes the Out-of-State Disabilities Placement Education Fund and repeals ORS 327.047 and 327.051 effect January 1, 2004. The repeal of OAR 581-023-0103 that is proposed here would eliminate the administrative rule implementing the program.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail [randy.harnisch@state.or.us](mailto: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](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

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

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

Date:	Time:	Location:
1-20-04	3 p.m.	Public Service Bldg. 255 Capitol St. NE Room 251-A Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 326.051 & OL 2003, Ch. 715, § 3

**Stats. Implemented:** OL 2003, Ch. 715

**Proposed Adoptions:** 581-023-0104

**Last Date for Comment:** 1-20-04

**Summary:** The proposed rule would implement the requirements of SB 550. This legislation requires the Department of Education to develop a process to distribute funds to school districts for certain high cost special education students.

If you have a question regarding this rule, please contact Randy Harnisch at (503) 378-3600, ext. 2350 or e-mail [randy.harnisch@state.or.us](mailto: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](mailto:debby.ryan@state.or.us)  
*\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Debby Ryan

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

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

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## Oregon Economic and Community Development Department Chapter 123

**Stat. Auth.:** ORS 285A.075(5) & 285A.110(1); Other Auth.: OL 2003, Ch. 167

**Stats. Implemented:** ORS 285B.050-285B.098 & 285B. 153

**Proposed Amendments:** 123-017-0007, 123-017-0020, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0037

**Last Date for Comment:** 2-27-04

**Summary:** The rule modification reflect the amendments to the Oregon Business Development Fund made in SB 215 by the 2003 Oregon Legislature and some housekeeping amendments. The major amendments are:

- Eliminate the set aside for loans under \$50,000.
- Provide a preference for loans in distressed areas of the state.
- Eliminate the requirement that applicants obtain a resolution of support from the local city or county.
- Eliminate projects in distressed areas from the calculation of the 20 percent of the Fund county limit.
- Eliminate the preferential interest rate for loans to emerging small businesses in distressed areas.
- Extend the maximum loan term to 25 years.
- Allow the Director, in addition to the Finance Committee, to make reasonable extensions of time for loan repayments or to make reasonable modifications to loan terms.

**Rules Coordinator:** Steven Santos

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

**Telephone:** (503) 986-0102

\*\*\*\*\*

**Stat. Auth.:** ORS 285A.075(5), 285A.110(1) & 329.930(2)

**Stats. Implemented:** ORS 329.930

**Proposed Adoptions:** 123-068-0015, 123-068-0105, 123-068-0205, 123-068-0305

**Last Date for Comment:** 2-27-04

**Summary:** This rulemaking temporarily adopts administrative rules based on ones recently repealed as part of an overall updating of ORS Ch. 123 (EDD 4-2003, f. & cert. ef. 3-26-03). There remains, however, a residual statutory/fiscal basis to continue the program in question, for which similar rules must be restored immediately. The "Industrial Modernization Program" is for the purpose of operating an Industrial Extension Service, by which funds may be awarded to entities that will assist small to medium-sized manufactures with



# NOTICES OF PROPOSED RULEMAKING

accessing and incorporating technological, organizational and workforce improvements to foster Oregon competitiveness.

**Rules Coordinator:** Steven Santos

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

**Telephone:** (503) 986-0102

.....  
**Oregon Liquor Control Commission  
Chapter 845**

Date:	Time:	Location:
1-14-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.730(1) & 471.730(5)

**Stats. Implemented:** ORS 471.030, 471.430, 471.040, 471.115, 471.360, 471.410, 471.412 & 471.730(1)

**Proposed Amendments:** 845-006-0430

**Last Date for Comment:** 1-28-04

**Summary:** This rule sets minimum standards to help licensees manage large public events, ensuring that minors and visibly intoxicated persons do not get or consume alcohol.

The Commission has received a request from the Mt. Angel Oktoberfest to modify section (5) of the rule to allow a six ounce serving of wine. The rule currently allows for a four ounce serving of wine.

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

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

.....  

Date:	Time:	Location:
2-25-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.730(1) & 471.730(5)

**Stats. Implemented:** ORS 471.302 & 471.297

**Proposed Amendments:** 845-005-0445

**Last Date for Comment:** 3-10-04

**Summary:** This rule describes the temporary authority to operate. 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. The Commission will add rule language specifying conditions under which extensions of a temporary authority will be granted.

The statutory change becomes effective January 1, 2004. The Commission has adopted a temporary rule (effective January 1, 2004 - June 29, 2004) while it proceeds with permanent rulemaking.

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

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

.....  

Date:	Time:	Location:
3-11-04	10 a.m.-12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

**Hearing Officer:** Katie Hilton

**Stat. Auth.:** ORS 471, 471.030, 471.040, 471.730(1) & 471.730(5)

**Stats. Implemented:** ORS 471.175

**Proposed Amendments:** 845-008-0045

**Last Date for Comment:** 3-25-04

**Summary:** This rule lays out operating requirements for private clubs which hold Full On-Premises Sales licenses. Current rule lan-

guage treats auxiliary members of the private club as guests, and requires them to sign in as guests. We have received a request from representatives of Private and Fraternal Organizations to change the rule requirement so that auxiliary members (usually wives of members) do not have to sign in as guests.

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

**Rules Coordinator:** Katie Hilton

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

**Telephone:** (503) 872-5004

.....  
**Oregon Student Assistance Commission  
Chapter 575**

Date:	Time:	Location:
2-6-04	11 a.m.	1500 Valley River Dr. Suite 100 Eugene, OR 97401

**Hearing Officer:** Brian Clem, Chair

**Stat. Auth.:** ORS 348 & 378

**Stats. Implemented:** ORS 348.180 - 348.260

**Proposed Amendments:** Rules in 575-030, 575-031

**Last Date for Comment:** 2-6-04

**Summary:** The statutory language relating to an eligible institution in the Oregon Opportunity Grant program was changed by the Legislature in 1999. ORS 348.180(2)(d) defines eligible institution as an "Oregon-based generally accredited, not-for-profit institution of higher education." Previously, the operative statutory language regarding an eligible institution was that it must be "located in the state." No definition is provided in statute regarding "Oregon-based", and the Attorney General has rules that this term is an "inexact" statutory term, and that the Commission has the discretion to define the term. Several out-of-state schools, which are accredited in Oregon, have asked the Commission to amend the current definition to allow their participation in the Opportunity Grant program. The adoption of the proposed amendments would allow otherwise needy Oregon students, who attend institutions approved by the Office of Degree Authorization, to participate in the program. This change would also bring the definition of an eligible institution in line with used in the Former Foster Youth Scholarship program, another General-Fund-ed program.

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

**Rules Coordinator:** Susan Taylor

**Address:** Oregon Student Assistance Commission, 1500 Valley River Dr. #100, Eugene, OR 97401

**Telephone:** (541) 687-7443

.....  
**Oregon Student Assistance Commission,  
Office of Degree Authorization  
Chapter 583**

Date:	Time:	Location:
2-6-03	10:30 a.m.	1500 Valley River Dr. Suite 100 Eugene, OR 97401

**Hearing Officer:** Brian Clem, Chair

**Stat. Auth.:** ORS 348.603

**Stats. Implemented:** ORS 348.603

**Proposed Amendments:** Rules in 583-040

**Last Date for Comment:** 2-6-04

**Summary:** Proposed revisions to shorten and simplify the adverse impact program approval process used by the Office of Degree Authorization.

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

**Rules Coordinator:** Susan Taylor

# NOTICES OF PROPOSED RULEMAKING

**Address:** Student Assistance Commission, Office of Degree Authorization, 1500 Valley River Dr. #100, Eugene, OR 97401  
**Telephone:** (541) 687-7443

1-28-04 4 p.m. OSU Extension Service  
Conference Rm.  
2204 Fourth St.  
Tillamook, OR

.....  
**Oregon University System**  
**Chapter 580**

**Date:** 1-23-04 **Time:** 12-6 p.m. **Location:** Walnut Room  
Erb Memorial Union  
13th Ave. at University St.  
U of O  
Eugene, OR 97403

**Hearing Officer:** Rebecca Bordreaux

**Stat. Auth.:** ORS 351.070

**Stats. Implemented:** ORS 351.070

**Proposed Adoptions:** 580-020-0006

**Last Date for Comment:** 2-1-04

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

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

**Rules Coordinator:** Marcia M. Stuart

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

**Telephone:** (541) 346-5795

**Hearing Officer:** Melissa Leoni, Rick Craiger

**Stat. Auth.:** ORS 541.396

**Stats. Implemented:** OTS 541.368, 541.370(1)(e), 541.384 & 541.388

**Proposed Amendments:** Rules in 695-020

**Last Date for Comment:** 2-4-04, 5 p.m.

**Summary:** The Oregon Watershed Enhancement Board is seeking public comment on proposed changes to the administrative rules for watershed council support grant awards. The Board's proposed rules address, in part: (1) eligibility criteria, (2) watershed council support grant application requirements, (3) the criteria used to evaluate watershed council support grant applications, and (4) the process used to evaluate watershed council support grant applications, and make funding recommendations. Public comment will be accepted on the proposed rules from January 16, 2004 through 5 p.m. on February 4, 2004.

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

**Rules Coordinator:** Maribeth Mattson

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301-1290

**Telephone:** (503) 986-0202

.....  
**Public Utility Commission**  
**Chapter 860**

**Date:** 1-22-04 **Time:** 9 a.m. **Location:** Public Utility Commission  
Main Hearing Rm.  
550 Capitol St. NE  
Salem, OR

**Hearing Officer:** Christina Smith

**Stat. Auth.:** ORS 183, 756, 757, 758, OL 2003, Ch. 082 & OL 2003, Ch. 202

**Stats. Implemented:** ORS 183.090, 756.040, 756.105, 757.061, 757.250, 757.355, 757.490, 757.495, 758.300 - 758.320, OL 2003, Ch. 082 & OL 2003, Ch. 202

**Proposed Adoptions:** 860-036-0370, 860-036-0380, 860-036-0412, 860-036-0420, 860-036-0739, 860-036-0757, 860-037-0308, 860-037-0309, 860-037-0407, 860-037-0547, 860-037-0570

**Proposed Amendments:** 860-036-0010, 860-036-0030, 860-036-0120, 860-036-0900, 860-036-0905, 860-036-0910, 860-036-0915

**Proposed Repeals:** 860-036-0330

**Last Date for Comment:** 1-22-04

**Summary:** The 2003 Legislature passed HB 2226 and HB 2227 which become effective January 1, 2004. The bills require the following revisions to Divisions 036 and 037 rules:

1) Simplify the definition of a public utility by deleting the 300-customer threshold criteria for qualifying as a public utility.

2) Require a water utility that comes under PUC regulation for providing inadequate or discriminatory service, or for any other reason, to be subject to permanent regulation.

3) Allow water companies to request to be rate regulated.

4) Allow members of an association to petition for rate regulation of an association.

5) Allow Construction Work in Progress (CWIP) into rates for water/wastewater company capital improvements.

6) Authorize PUC to assess civil penalties on water/wastewater companies for noncompliance with Oregon statutes, Oregon administrative rules, and Commission orders.

7) Make application for Service Territory Voluntary.

8) Authorize PUC to use up to \$5000 of gross revenue fees per biennium to make emergency repairs for water/wastewater utilities when the public health or safety are at risk and the owner is unable or unwilling to make the repairs.

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**Oregon Watershed Enhancement Board**  
**Chapter 695**

**Date:** 1-27-04 **Time:** 4 p.m. **Location:** State Land Board Rm.  
775 Summer St. NE  
Suite 360  
Salem, OR

**Hearing Officer:** Roger Wood & Allison Hensey

**Stat. Auth.:** ORS 541.396

**Stats. Implemented:** ORS 541.396

**Proposed Amendments:** Rules in 695-001, 695-020, 695-025, 695-030

**Last Date for Comment:** 2-4-04

**Summary:** Revision of OWEB's administrative rules to correct any inconsistencies, and to provide a new framework for the adoption of funding priorities to be adopted by the OWEB Board in the future. Public comment will be accepted on the proposed rules from January 21, 2004 through 5 p.m. on February 4, 2004.

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

**Rules Coordinator:** Maribeth Mattson

**Address:** Oregon Watershed Enhancement Board, 775 Summer St. NE, Suite 360, Salem, OR 97301-1290

**Telephone:** (503) 986-0202

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**Date:** 1-21-04 **Time:** 6 p.m. **Location:** Community Bank  
Savage & 6th St.  
Grants Pass, OR

1-26-04 10 a.m. USDA Service Ctr.  
625 SE Salmon Ave.  
Suite 7  
Redmond, OR

1-27-04 10 a.m. City Hall Community Rm.  
501 Emigrant Ave.  
Pendleton, OR

1-28-04 10 a.m. State Lands Board Rm.  
775 Summer St. NE  
Salem, OR

# NOTICES OF PROPOSED RULEMAKING

In addition, new rules on Allocation of Costs by Water and Wastewater Utilities are needed to affirm the Commission's Transfer Pricing Policy for Affiliated Transactions (Allocation of Costs) for water and wastewater utilities. The rules state how transactions between water and wastewater utilities and their non-regulated affiliates are to be accounted for and recorded in financial records.

OAR 860-036-0030(c) should be updated to bring the standard service connection charge more in line with today's costs.

Also, housekeeping changes are needed in Chapter 860, Division 036 to make rules clearer in order to lessen the likelihood of misinterpretation.

860-036-0330 will be repealed because it is no longer necessary. *\*Auxiliary aids for persons with disabilities are available upon advance request.*

**Rules Coordinator:** Lauri Salsbury

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

**Telephone:** (503) 378-4372

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**Stat. Auth.:** ORS 758.305(2)

**Stats. Implemented:** ORS 756.040, 757.035, 757.225 & 758.305

**Proposed Amendments:** 860-036-0080

**Last Date for Comment:** 1-22-04

**Summary:** The Commission's rules narrowly prescribe the circumstances under which a water utility may refuse to serve a customer. The rules do not specify that a water utility may refuse to provide service if it is prohibited from doing so, by law. The Commission's rules may place a water utility in an untenable position and may adversely affect its ability to serve its customers. This proposed rule would allow a water utility to refuse to provide service, if it is prohibited by law from providing the service.

**Rules Coordinator:** Lauri Salsbury

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

**Telephone:** (503) 378-4372

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## Secretary of State, Elections Division Chapter 165

Date:	Time:	Location:
1-30-04	9-9:30 a.m.	900 Court St. NE Salem, OR Room 257

**Hearing Officer:** Fred Neal

**Stat. Auth.:** ORS 246.150

**Stats. Implemented:** ORS 260.232 & 260.995

**Proposed Amendments:** 165-013-0010

**Last Date for Comment:** 1-30-04

**Summary:** 165-013-0010 This rule amendment is proposed to remove from the penalty matrix the penalty for violating ORS 260.159. If a committee is required to file electronically, and fails to file a report electronically, the report will be considered late, and the committee will be penalized under ORS 260.232 and the 2004 *Campaign Finance Manual*. The civil penalty in the matrix is being removed so committees will not be twice penalized for a failure to file electronically.

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

**Rules Coordinator:** Brenda Bayes

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

**Telephone:** (503) 986-1518

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## Veterinary Medical Examining Board Chapter 875

**Stat. Auth.:** ORS 686.210

**Stats. Implemented:** ORS 686.045 & 686.065

**Proposed Amendments:** 875-010-0030

**Last Date for Comment:** 1-28-04

**Summary:** OAR 875-010-0030(b) is amended to retain authority in the Board to approve foreign graduate equivalency programs.

OAR 875-010-0030(c) is repealed. The amendment was made at a time when ECFVG Program candidates were required to wait up to as much as two years to sit for the CPE. The program has improved site availability and frequency of testing opportunities; therefore it is no longer necessary to provide an exception to requirements for ECFVG applicants.

**Rules Coordinator:** Lori V. Makinen

**Address:** Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232

**Telephone:** (503) 731-4051

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**Stat. Auth.:** ORS 686.210

**Stats. Implemented:** ORS 686.045 & 686.065

**Proposed Amendments:** 875-010-0070

**Last Date for Comment:** 2-15-04

**Summary:** OAR 875-010-0070(5) is amended to allow the Board to modify or add qualifying examinations for applicants.

**Rules Coordinator:** Lori V. Makinen

**Address:** Veterinary Medical Examining Board, 800 NE Oregon St., Suite 407, Portland, OR 97232

**Telephone:** (503) 731-4051

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## Water Resources Department Chapter 690

Date:	Time:	Location:
1-27-04	12-1 p.m. & 6-7 p.m.	Conference Rm. 124 Oreg. Dept. of Water Resources 725 Summer St. NE, Suite A Salem, OR 97301

**Hearing Officer:** Cory Engel or Dwight French

**Stat. Auth.:** ORS 536.027

**Stats. Implemented:** SB 82, 2003 & HB 2268, 2003

**Proposed Amendments:** 690-310-0040, 690-310-0060, 690-310-0150, 690-310-0160, 690-310-0180, 690-310-0220, 690-340-0030

**Proposed Repeals:** 690-003-0000, 690-003-0010, 690-003-0020, 690-011-0220, 690-026-0005, 690-026-0010, 690-026-0015, 690-026-0020, 690-026-0025, 690-026-0030

**Last Date for Comment:** 2-10-04

**Summary:** The Water Resources Department is proposing to repeal rules that are outdated due to statutory changes or are no longer necessary. The Department is also proposing to amend a number of rules in order to implement statutes adopted by the 2003 Legislature.

Proposed Rule Repeals:

**OAR Chapter 690, Division 003** - These rules address processing procedures and timelines. The statutory basis for the rules ORS 182.815 (Oregon Laws 1982 Special Session) was repealed by the Legislature in 1999 (ORS 285a.380). In addition, the substantive portions of the rules have been superseded by statutes regarding processing timeframes for new water right applications (Senate Bill 674, 1995 Oregon Laws) and review procedures and processes for all applications (Senate Bill 957, 2001 Oregon Laws).

**OAR Chapter 690, Division 011** - In March of 1996, the Water Resources Commission repealed or renumbered OAR Chapter 690, Division 11 in order to implement the changes brought about by Senate Bill 674, adopted by the 1995 Legislature. The only rule remaining in Division 11 is 690-011-0220, requiring water right application maps to be filed by a Certified Water Rights Examiner. However, with the passage of Senate Bill 674 in 1995, there no longer is a statutory basis for this requirement. In addition, 690-011-0220 is in conflict with the Commission's rules regarding water right application maps which do not require such maps to be filed by Certified Water Rights Examiners.

**OAR Chapter 690, Division 026** - Prior to 1991, Oregon law provided a process for spring water users to apply for a "certificate of

## NOTICES OF PROPOSED RULEMAKING

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registration.” The statutory basis for the spring registration process was repealed by the 1991 Legislature (Senate Bill 202, 1991 Oregon Laws) therefore the rules in OAR Chapter 690, Division 3 are no longer applicable.

Proposed Rule Amendments:

**OAR Chapter 690, Division 310** - Several rules under Division 310 are proposed for amendment in order to implement Senate Bill 82 (2003 Oregon Laws) regarding requirements for easements on state-owned lands and House Bill 2268 (2003 Oregon Laws) regarding statutory fees.

**OAR Chapter 690, Division 340 - OAR 690-340-0030** regarding water use under limited license is proposed for amendment in order to adjust the examination and recording fee required commensurate with similar application fees.

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

**Rules Coordinator:** Adam Sussman

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

**Telephone:** (503) 986-0877

# ADMINISTRATIVE RULES

## Appraiser Certification and Licensure Board Chapter 161

**Adm. Order No.:** ACLB 6-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 11-24-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 161-006-0160, 161-015-0030, 161-020-0045, 161-020-0055, 161-020-0140, 161-025-0050, 161-050-0040, 161-050-0050

**Subject:** Permanent changes to Oregon Administrative Rules 161, Division 6, regarding complaints and investigations; Division 15, regarding submission of application; division 20, regarding criteria for approval of course as qualifying and/or continuing education, and distance education, correspondence and video remote courses; Division 25, regarding records and appraisal report retention requirements; and Division 50, regarding notification of change in e-mail address, and reciprocal agreements with other states.

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

### 161-006-0160

#### Complaints and Investigations

(1) All complaints shall be in writing and submitted to the Board's office.

(2) Any person may file a complaint.

(3) A member of the Board or the Administrator may also initiate a complaint or request an investigation.

(4) The Board will accept anonymous complaints.

(5) The Board will take no action on frivolous complaints. The Board will evaluate the content of each complaint. Factors such as, but not limited to, the following may cause a complaint to be classified as "frivolous":

(a) A complaint alleging that the appraised value is too high or too low that does not include supporting documentation to substantiate the allegation;

(b) A complaint that appears to be filed to gain a competitive advantage over or in retaliation against another appraiser; or

(c) A complaint filed by a person with a history of filing complaints that have no merit.

(6) A Notice of Complaint, together with a true copy of the complaint as submitted to the Board's office, including all supporting documentation, shall be promptly sent by certified mail, return receipt requested, to the last known address of the person against whom the complaint is filed. The Notice of Complaint shall require:

(a) The production of true copies of records within a specific time period to which no extension will be granted; and

(b) A written response to the allegations set forth in the complaint within a specified time period.

(A) A respondent may request an extension to file a response to a notice of complaint. An extension of up to 30 days will be approved provided that the extension request:

(i) Substantiates that good cause exists to grant such an extension and that circumstances beyond the reasonable control of the respondent prevent a response within 30 days;

(ii) Is submitted to the Board Administrator in writing on or before the response due date; and

(iii) Does not ask for an extension of time in excess of 30 days.

(B) The Administrator may grant one additional extension of no more than 30 days only upon showing of good cause.

(7) The Administrator shall ensure that each complaint is investigated to determine if violations of ORS Chapter 674 and/or OAR Chapter 161 have occurred. The investigation may include all inquiries deemed appropriate to ensure that each complaint is processed in accordance with ORS Chapter 183.

Stat. Auth.: ORS 674.170, 674.305 & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1993(Temp), f. & cert. ef. 3-3-93; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03

### 161-015-0030

#### Submission of Application

(1) Each application must be accompanied by a non-refundable application fee.

(2) An application that is not properly completed, does not contain all the required information, or is not accompanied by the required fee will be deferred as provided in OAR 161-015-0040. An application will be considered incomplete if the check for payment of the required fees is dishonored;

(3) The application will be reviewed to determine whether the applicant has sufficient education and experience and is otherwise qualified to sit for the examination;

(4) Upon application approval, the applicant is notified that they are approved to sit for the examination. Upon successful completion of the examination, the Board will notify the appraiser and within one year of the notification, the applicant must submit the ACLB Certificate or License Request form with the appropriate licensing/certification and national registry fees, requesting that their license/certificate be issued. The Administrator issues the certificate or license to the applicant. The appraiser's name is submitted to the FFIEC Appraisal Subcommittee for inclusion on the Federal Registry.

(5) No fee, or part of any fee, paid by any applicant for application will be refunded.

(6) Upon issuance of a license or certificate, consistent with the scope of practice as provided in OAR 161-025-0000, 161-025-0005 and 161-025-0010, the appraiser is authorized to conduct real estate appraisal activity between the date of the issuance of the license or certificate, and the renewal date of the license or certificate, unless sooner revoked or suspended. No more than one license or certificate shall be issued and outstanding to, or in favor of, any appraiser at one time.

(7) An applicant who is not a resident of the State of Oregon must submit with the application, an irrevocable consent to service form appointing the Administrator of the Board as agent for service of process as provided in these rules, if, in an action against the applicant in a court of this state arising out of the applicant's activities as a licensed or certified appraiser, the plaintiff cannot, in the exercise of due diligence, effect personal service upon the applicant.

(8) An applicant must be a citizen of the United States or have the legal authority to work in the United States.

(9) An applicant who has been licensed or certified in other states must have successfully passed an examination approved by the AQB and the Appraisal Subcommittee or they will be required to take the approved Board examination. The examination must be at a level consistent with the appraiser category applied for in the State of Oregon. The examination results must be sent directly from the testing service to the Board office.

(10) Each appraiser assistant registration application must be accompanied by a non-refundable application fee. An applicant for registration shall:

(a) Submit complete application pursuant to OAR 161-015-0010 with the required documentation and fee;

(b) Complete the mandatory 15-hour Appraisal Foundation's National USPAP Course, or its equivalent, within two (2) years preceding the date of application;

(c) Complete no less than 60 hours of other qualifying education as set forth in OAR 161-020-0110 within five (5) years preceding the date of application. The five (5) year requirement does not apply to licensed or certified appraisers registering as appraiser assistants to upgrade their license;

(d) The application will be reviewed to determine whether the applicant meets the requirements for appraiser assistant registration;

(e) Upon approval and issuance of registration, the appraiser assistant is authorized to assist in performing real estate appraisal activity pursuant to OAR 161-025-0030 between the date of issuance and expiration of the registration, unless sooner suspended, revoked, or expired.

(11) Applicants for licensure, certification, or registration must have either a letter of good standing or license history submitted directly to the Board office from each state in which he or she has ever been licensed, certified, or registered as an appraiser or appraiser assistant, or the Board may obtain a National Registry Appraiser License History report. Applicants must be in good standing in all states in which they are licensed, certified, or registered or the application will be denied.

(12) An applicant may submit a written request to withdraw their application at any time prior to an official action being taken by the board.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 4-1991(Temp), f. & cert. ef. 8-29-91; ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 2-1999, f. & cert. ef. 4-20-99; ACLB 1-2000, f. & cert. ef. 2-29-00; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03

# ADMINISTRATIVE RULES

## 161-020-0045

### Criteria for Approval of Course as Qualifying Education

In order to be approved as qualifying education, the course shall be found to satisfy all the criteria described in this rule:

(1) Current Classroom Offering — The course shall be a current offering of the course owner/affiliated entity that is generally presented by traditional classroom methods. Courses presented by correspondence, videotape or remote television are eligible for approval only as provided in OAR 161-020-0140.

(2) Course Length and Content — The course shall be a real estate appraisal course that provides a minimum of 15 classroom hours of instruction (including examination time when applicable) and must comply with the "Qualifying Education Course Content Guidelines" in these rules.

(3) Course Description — The course materials or syllabus must include a course description which clearly describes the content of the course.

(4) Summary Outline — The course materials or syllabus shall include a summary outline of major topics and the number of classroom hours devoted to each major topic.

(5) Learning Objectives — The course materials or syllabus shall include specific learning objectives which:

(a) Are appropriate for a qualifying education course;

(b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;

(c) Are consistent with the course description;

(d) Are consistent with the textbook and/or other instructional materials; and

(e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Work Assignments — The course materials or syllabus shall provide for in-class work assignments and/or out-of-class work/reading assignments, if necessary, to accomplish the stated learning objectives.

(7) Instructional Materials — Instructional materials to be used by students in the course shall:

(a) Cover the subject matter in sufficient depth to achieve the stated course learning objectives;

(b) Provide appropriately balanced coverage of the subject matter in view of the stated course learning objectives;

(c) Reflect current knowledge and practice;

(d) Contain no significant errors;

(e) Reflect correct grammatical usage and spelling;

(f) Effectively communicate and explain the information presented;

(g) Be suitable in layout and format; and

(h) Be suitably bound/packaged and be produced in a quality manner.

(8) Examination(s) — Course examinations shall consist of either a series of examinations or a comprehensive final examination or both. The course examination(s) shall comply with the following criteria:

(a) The examination(s) contains a sufficient number of questions to adequately test the subject matter covered in the course;

(b) The amount of time devoted to the examination(s) is appropriate for the course;

(c) The examination questions, individually and collectively, test at a difficulty level appropriate to measure student achievement of the stated course learning objectives;

(d) The subject matter tested by examination questions is adequately addressed in the course instructional materials;

(e) The examination questions are written in a clear and unambiguous manner; and

(f) The examination questions are accurate and the intended correct answer is clearly the best answer choice.

(9) Prerequisites — The course owner/affiliated entity must have established appropriate prerequisites for any course other than an introductory course on Basic Real Estate Appraisal Principles and Practices or a course on Appraisal Standards and Ethics.

(10) Instructor Qualifications — The course owner/affiliated entity shall keep records documenting that their instructors meet the Board qualifications as follows:

(a) A baccalaureate degree in any field and three years of experience directly related to the subject matter to be taught; or

(b) a masters degree in any field and two years of experience directly related to the subject matter to be taught; or

(c) A baccalaureate degree in a field that is directly related to the subject matter to be taught and one year of experience directly related to the subject matter to be taught; or

(d) An associate degree in a field that is directly related to the subject matter to be taught and three years of experience directly related to the subject matter to be taught; or

(e) A masters or higher degree in a field that is directly related to the subject matter to be taught; or

(f) Five years of real estate appraisal teaching experience directly related to the subject matter to be taught; or

(g) Seven years of real estate appraisal experience directly related to the subject matter to be taught.

(h) For those instructing the Appraisal Foundation's National USPAP Course:

(A) At least one instructor must be a certified residential or certified general appraiser and;

(B) The instructor must be an AQB certified USPAP instructor. For those instructing a course equivalent to the Appraisal Foundation's National USPAP Course: At least one instructor must be a certified residential or certified general appraiser.

(11) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

(a) Stipulate the percentage of attendance required by the student;

(b) Include, on the attendance records form, the instructor(s) name and the criteria under which they qualified;

(c) Provide that non-members of the course provider's association or organization may apply for the course without membership in the association;

(d) Provide for retention of attendance records for a minimum of five years.

(12) Course Scheduling Policy — The course owner/affiliated entity shall have an established policy on course scheduling that provides a maximum of eight (8) classroom hours of instruction in any given day and appropriate breaks during each class session.

(13) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of signed course completion certificates to attendees which shall include information regarding the number of classroom hours, and whether there was successful passage of the course examination.

(14) Audit Policy — The course owner/affiliated entity shall permit the Administrator, or the Administrator's representative, to audit the course and course material, at no cost to the Administrator or the Administrator's representative, in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review records appropriate to selected course offerings.

Stat. Auth.: ORS 674.305(8) & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 2-1991(Temp), f. & cert. ef. 7-1-91; ACLB 3-1991(Temp), f. & cert. ef. 8-29-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 2-1993(Temp), f. & cert. ef. 4-28-93; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-020-0010 & 161-020-0040; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-2000; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03

## 161-020-0055

### Criteria for Approval of Course as Continuing Education

In order to be approved as continuing education, the course must satisfy all criteria described in this rule.

(1) Current Classroom Offering — The course shall be a current offering of the course owner/affiliated entity that is presented by traditional classroom methods. Courses presented by correspondence, videotape or remote television are eligible for approval only as provided in OAR 161-020-0140.

(2) Course Length and Content — The course shall involve a minimum of two classroom hours with the "Continuing Education Course Content Guidelines" in these rules.

(3) Course Description — The course materials or syllabus shall include a course description which clearly describes the content of the course.

(4) Summary Outline — If more than one major topic is to be covered in the course, the course materials or syllabus shall include a summary outline of major topics to be covered and the number of classroom hours devoted to each major topic.

(5) Learning Objectives — The course materials or syllabus shall include specific learning objectives which:

(a) Are appropriate for a continuing education course;

(b) Clearly state the specific knowledge and/or skills students are expected to acquire by completing the course;

(c) Are consistent with the course description;

(d) Are consistent with the instructional materials; and

(e) Are reasonably achievable within the number of classroom hours allotted for the course.

(6) Instructional Materials — Instructional materials for students shall be provided unless the applicant demonstrates to the satisfaction of the

# ADMINISTRATIVE RULES

Administrator that such materials are not needed to accomplish the stated course learning objectives. Any such instructional materials shall:

- (a) Be appropriate in view of the stated course learning objectives;
- (b) Reflect current knowledge and practice;
- (c) Contain no significant errors;
- (d) Reflect correct grammatical usage and spelling;
- (e) Effectively communicate and explain the information presented;
- (f) Be suitable in layout and format; and
- (g) Be suitably bound or packaged, and be produced in a quality manner.

(7) Instructor Qualification — Course provider shall keep written records documenting that their instructors meet the Board qualifications as set forth below:

- (a) Three years of experience directly related to the subject matter to be taught; or
- (b) A baccalaureate or higher degree in a field directly related to the subject matter to be taught; or
- (c) Three years of experience teaching the subject matter to be taught; or
- (d) A combination of education and experience equivalent to (a), (b) or (c) of this section

(e) For those instructing the Appraisal Foundation's National USPAP Course, and/or the seven-hour Appraisal Foundation's National USPAP Update Course:

- (A) At least one instructor must be a certified residential or certified general appraiser and;
  - (B) The instructor must be an AQB certified USPAP instructor.
- (f) For those instructing courses equivalent to either the Appraisal Foundation's National USPAP Course or the seven-hour Appraisal Foundation's National USPAP Update course: At least one instructor must be a certified residential or certified general appraiser.

(8) Attendance Policy — The course owner/affiliated entity shall have a written attendance policy that requires student attendance to be verified. Policy must:

- (a) Stipulate as to a percentage of attendance required by the student;
- (b) Include on the attendance records form the Instructor(s) name and the criteria under which they qualified;
- (c) Provide that non-members of the association or organization may apply for the course without membership in the association;
- (d) Provide for retention of attendance records for a minimum of five years.

(9) Course Scheduling Policy — If the course involves more than eight classroom hours, the course owner/affiliated entity shall have an established policy on course scheduling that provides for a maximum of eight (8) classroom hours of instruction in any given day and for appropriate breaks during each class session.

(10) Course Completion Certificate Policy — The course owner/affiliated entity shall have an established policy assuring prompt issuance of course completion certificates to attendees which should include information regarding the number of classroom hours, and whether there was successful passage of the course examination (if applicable).

(11) Audit Policy — The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to audit the course and course materials at no cost to the Administrator or the Administrator's representative in order to evaluate the instruction. The course owner/affiliated entity shall permit the Administrator or the Administrator's representative to review their records appropriate to selected course offerings.

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

Stats. Implemented: ORS 674.310

Hist.: ACLB 8-1991(Temp), f. & cert. ef. 12-31-91; ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 3-1992(Temp), f. & cert. ef. 11-25-92; ACLB 4-1992(Temp), f. & cert. ef. 12-2-92; ACLB 1-1994, f. & cert. ef. 2-1-94; Renumbered from 161-020-0020 and 161-020-0060; ACLB 3-1999, f. 9-23-99, cert. ef. 1-1-00; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 2-2003, f. & cert. ef. 1-27-03; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03

## 161-020-0140

### Distance Education Courses (On-line/Compact Disc (CD)), Correspondence Courses and Video Remote TV Educational Offerings

In order to be approved, the course must satisfy all criteria described in this rule and meet current requirements as defined by OAR 161-020-0110 and 161-020-0120.

(1) Distance education courses offered on-line via the internet must be pre-approved by both the Appraiser Qualifications Board and the International Distance Education Certification Center (IDECC), with the exception of courses offered by a community college or university. In addition:

(a) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, the individual must successfully pass a written final examination.

(2) Distance education courses offered via CD:

(a) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, the individual must successfully pass a written final examination.

(3) Correspondence courses:

(a) The course is presented by an accredited college or university which also offers correspondence programs in other disciplines or has received the American Council on Education's Programs on Non-collegiate Sponsored Instruction (PONSI) approval for college credit;

(b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university; and

(c) The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(4) Video and remote TV educational offerings are acceptable to meet the education classroom hour requirements provided each offering is approved by the Administrator and meets the following conditions:

(a) The offering is presented by an accredited college or university which offers similar programs in other disciplines. The course length must be equivalent to a minimum of 15 classroom hours for qualifying education and 2 hours for continuing education.

(b) For qualifying education courses, a written final examination is administered at a location and by an official approved by the college or university. An examination is not necessary for continuing education credit.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ALCB 2-2002, f. & cert. ef. 5-30-02; ACLB 4-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03; ACLB 6-2003, f. & cert. ef. 11-24-03

## 161-025-0050

### Records and Appraisal Report Retention Requirements

(1) Every state certified appraiser and every state licensed appraiser shall maintain and have custody of records of all real estate appraisal activity conducted by the appraiser or make appropriate work file retention and/or retrieval arrangements with the party having custody of such records. Such records shall be maintained by the appraiser for a period of not less than five years after the date of completion of the appraisal to which the record pertains.

(2) Such records shall at all times be open for inspection by the Board or its duly authorized representatives.

(3) A chronological log of all real estate appraisal activity must be provided by each individual state certified appraiser or state licensed appraiser upon request by the Administrator.

Stat. Auth.: ORS 674.150, 674.305(8) & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1992(Temp), f. & cert. ef. 1-23-92; ACLB 2-1992, f. & cert. ef. 4-30-92; ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03

## 161-050-0040

### Address Change

It is the responsibility of each license or certificate holder, registered appraiser assistant or appraiser applicant to notify the Board of a change of mailing address and/or a change in their e-mail address. Change of address notification must be made in writing, within ten business days from the change of address.

Stat. Auth.: ORS 674.305 & 674.310

Stats. Implemented: ORS 674.310

Hist.: ACLB 1-1994, f. & cert. ef. 2-1-94; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 6-2003, f. & cert. ef. 11-24-03

## 161-050-0050

### Reciprocity

(1) The Administrator of the Board shall enter into reciprocal agreements with other states in accordance with the following procedures:

(a) The Administrator shall determine that the standards, qualifications and examinations for the certifying or licensing of real estate appraisers in the other states are substantially similar to those in Oregon;

(b) The Administrator shall obtain the approval of the Board before entering into the agreement.

(2) Reciprocal agreements shall provide that the two states may issue licenses or certificates without examination, to licensees or certificate holders of the other state, upon payment of a mutually agreed upon fee, proof of current license or certificate and a certified letter of good standing from the other state.

# ADMINISTRATIVE RULES

(3) A reciprocal licensee or certificate holder shall comply with all statutes and rules governing licensed and certified appraisers in Oregon. Each reciprocal licensee or certificate holder shall immediately notify the Administrator of any disciplinary action taken in any other state in which the person holds a license of certificate.

(4) The Administrator may terminate a reciprocal agreement, with approval of the Board, if the administrator finds that the other state:

(a) Is not assisting the Administrator in enforcement activity for the protection of Oregon consumers;

(b) Fails or refuses on two or more occasions to assist the Administrator in enforcement activity for the protection of Oregon consumers;

(c) Is not maintaining and enforcing standards, qualifications, and examinations substantially similar to those of this state.

(5) Upon termination of a reciprocal agreement with another state, the Administrator may deny the issuance of a reciprocal license or certificate, or revoke a current reciprocal license or certificate from that state. Applicants, licensees and certificate holders from that state must then apply for a license or certificate in the same manner as other Oregon applicants.

(6) Reciprocal licenses and certificates are issued at the same level of licensing or certification as in the applicant's state.

(7) For purposes of this rule, "substantially similar" means that the other state's minimum standards qualifications for appraisal experience and education, and examinations meet the standards established by the Board as set forth in OAR 161, Division 10.

(8) Applications for reciprocal licensing or certification shall be processed in accordance with the written reciprocal agreement between the Board and the applicant's resident state.

Stat. Auth.: ORS 183.341, ORS 674.305 & ORS 674.310

Stats. Implemented: ORS 674

Hist.: ACLB 3-1994, f. & cert. ef. 5-2-94; ACLB 1-1998, f. 6-24-98, cert. ef. 7-1-98; ACLB 1-2002, f. & cert. ef. 2-26-02; ACLB 3-2003, f. & cert. ef. 5-1-03; ACLB 6-2003, f. & cert. ef. 11-24-03

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**Board of Chiropractic Examiners**  
**Chapter 811**

**Adm. Order No.:** BCE 2-2003

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 811-010-0085, 811-010-0095, 811-015-0010, 811-035-0005, 811-035-0015

**Subject:** 811-010-0085 Makes changes to the new DC licensee initial licensing process. Changes from annual fee schedule to birth month renewal schedule.

811-010-0095 Modifies reference to the Oregon Chiropractic Practice and Utilization Guidelines (OCPUG) in the Peer Review section.

811-015-0010 Modifies and changes Excessive Treatment section to Clinical Justification. Defines minimum requirements for examinations.

811-035-0005 Defines new informed consent requirements. Addresses patient right to continuity of care, and reasonable notice in the event of termination of care. Reference to OCPUG utilization standards is moved to the Clinical Justification section.

811-035-0015 Makes changes necessary to clarify that licensee may not engage in a romantic relationship with a current patient.

**Rules Coordinator:** Dave McTeague—(503) 378-5816, ext. 23

## **811-010-0085**

### **Application and Examination of Applicants**

(1) Applicants shall be examined according to ORS 684.050 or 684.052.

(2) The Board shall issue a Candidate's Guide, which contains all necessary examination information. The Guide shall be mailed to each applicant, along with other examination information for a fee of \$10.

(3) Fee and application deadlines are as follows:

(a) Application and \$150 fee for chiropractic exams must be postmarked no later than 30 days prior to the first exam day.

(b) Request for retake of any section of the exam must be submitted in writing with a \$100 reexamination fee postmarked no later than 30 days prior to the first exam day.

(c) Supporting documentation must be postmarked no later than 30 days prior to the first exam day.

(d) Deadlines may be waived by the Board for good cause.

(e) A complete set of fingerprints obtained from any state or local law enforcement agency, or from any other agency approved by the Board. Applicants shall use forms prescribed by the Board. This subsection may be temporarily suspended by the Board upon a finding of insufficient agency resources.

(4) Documents to be submitted prior to approval to take the Oregon Specifics Examinations:

(a) A completed, official application including a recent photograph and fingerprints;

(b) Evidence of the applicant's good moral character on the letterhead stationary of a Chiropractic physician;

(c) Original transcripts of grades from all colleges attended showing successful completion of at least two years of liberal arts and sciences study in an accredited college; and

(d) A transcript certified by the registrar, from an approved chiropractic college, including transcripts of coursework as required by OAR 811-020-0006 (minimum Educational Requirements for physiotherapy and minor surgery/proctology). A transcript of grades is necessary from each chiropractic college attended.

(e) An official transcript of passing grades from the National Board of Chiropractic Examiners on Part I, II and III and physiotherapy.

(5) Documents and fee to be submitted prior to licensure include:

(a) \$100 initial license fee.

(b) A diploma or other evidence of graduation certified by the registrar from an approved Chiropractic college.

(c) An official transcript of passing grades from the National Board of Chiropractic Examiners Part IV.

(6) All applicants must take and pass the Oregon Specifics Examination consisting of written examination in ethics and jurisprudence, obstetrics and gynecology, minor surgery and proctology, unless they have previously taken and passed these tests within the last five years from the date of application as received by the Board.

(7) Oregon Specifics Examination Grades:

(a) The Board shall determine the passing scores. Each section of the examination shall be graded separately using the Angoff Method, a criterion referenced model. Passing scores may fluctuate between sections and between examinations. All examinations are designed to test minimal competency to protect the public health and safety.

(b) Examination grades will be released within seven working days following approval.

(8) Regrades: any request for regrade must be submitted in writing to the Board no later than 45 days after the date of the examination. A regrade involves a manual tally of points earned for the specific examination requested.

(9) An applicant failing to achieve a passing grade, as determined by the Board for each examination section, may make application to the Board for a re-examination in the failed sections.

(10) An applicant must take at least one of the failed section(s) within 13 months following the date when the applicant took the entire examination. If the applicant fails to re-test on at least one failed section within 13 months of the last examination, the file shall become inactive and the applicant must re-apply and take the entire examination.

(11) An applicant attempting to give aid or accepting aid from another while examinations are in progress shall fail the examination and will not be allowed to take the examination for a period of five (5) years.

(12) Refunds:

(a) The application fee is non-refundable; and

(b) The retake fee can be refunded until 10 days prior to the test date.

(13) The Board may reject applications for good cause, including evidence of unprofessional behavior.

(14) Effective June 1, 2001 applicants who have completed all requirements for licensure, including passage of all required examinations, must submit the initial license fee to obtain license within one year from the date they completed all the requirements or at the next license renewal, whichever is greater. Effective June 1, 2005 if applicant obtains the initial license within three months prior to the first day of the licensee's birth month, the initial license may be valid for a maximum of 16 months. At that time, the licensee will be required to meet the requirements as outlined in administrative rule 811-010-0086 sections (2) or (6) and 811-015-0025 section (6).

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.050 & 684.052

Hist.: 2CE 3, f. 10-9-59; 2CE 7, f. 7-9-68; 2CE 9, f. 10-16-70; 2CE 1-1978, f. 6-16-78, ef. 7-1-78; 2CE 2-1985, f. 11-13-85, ef. 12-1-85; CE 1-1993, f. 3-1-93, cert. ef. 4-1-93; CE 6-1993(Temp), f. 9-29-93, cert. ef. 11-3-93; CE 1-1994, f. & cert. ef. 7-26-94; CE 4-1995, f. & cert. ef. 12-6-95; CE 2-1997, f. & cert. ef. 7-29-97; CE 3-1997(Temp), f. & cert. ef. 9-25-97; CE 4-1997, f. & cert. ef. 11-3-97; BCE 3-2000, cert. ef. 8-23-00; BCE 1-2001, f. 1-31-01, cert. ef. 2-1-01; BCE 2-2002, f. & cert. ef. 5-29-02; BCE 2-2003, f. & cert. ef. 12-11-03



# ADMINISTRATIVE RULES

## 811-010-0095

### Peer Review

(1) The Board of Chiropractic Examiners shall appoint and form committees for Peer Review in accordance with ORS 684.185.

(2) Definitions:

(a) "Peer Review" means the evaluation of the efficacy and appropriateness of health care and services provided to a patient based on those standards of care, skill and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances by Oregon chiropractors;

(b) The Board's Practice and Utilization Guidelines (NMS) as published in 1991, may be used as a guide to assist the Board and Peer Review Committee.

(c) "Peer Review Committee" means a committee of seven Chiropractic physicians, licensed under ORS Chapter 684, who qualify under ORS 684.185(2). Each Peer Review Committee may include two observation members appointed by the Board. Four members present at any meeting shall constitute a quorum, and allow the Peer Review Committee to carry out its business.

(3) Peer Review will occur upon submission of a request for review by a patient, the patient's representative, insurer or health care provider, made in writing to the Board and submitted with sufficient information so that the board would find the case to be appropriate for a Peer Review investigation. Such information would include, where available, chart notes and written reports of the physician, bills, invoices, and insurance claim forms, statements of witnesses and complainants, and any previous correspondence between the physician and any other relevant person.

(4) The Peer Review Committee may request an informal interview with any person, including the physician being reviewed and, when appropriate, may request the opinion of other health care providers for reviews involving a particular area of practice.

(5) Any member of the Peer Review Committee shall withdraw from any investigation which concerns a close personal and/or professional involvement or association with the physician under review, patient, patient's representative, or insurer; lack of impartiality; or if the member is in professional competition in the community with the reviewed doctor. The doctor being reviewed may protest being reviewed by a specific Peer Review member and may be accompanied by legal counsel.

(6) Peer Review Committee shall consider all information submitted to it by the Board. The Committee shall also consider any written and/or oral comments made by the physician being reviewed, and the involved patient. The committee shall meet, complete the review, and submit a written report to the Board. This report should be adopted by a majority of the committee members at the Peer Review Committee meeting, or by circulating draft reports to the members for their written approval. The report shall include a brief statement of the facts of the case, any violation of rules or statutes pertaining to the practice of Chiropractic and/or any deviation from accepted standards, along with any additional comments which might assist the board in taking appropriate action.

(7) The members of the Peer Review Committee shall be paid mileage and per diem at the state rate while performing official functions.

Stat. Auth.: ORS 684.185

Stats. Implemented: ORS 684.185

Hist.: 2CE 1-1980, f. 1-16-80, ef. 2-1-80; CE 1-1988, f. & cert. ef. 5-17-88; CE 1-1991, f. & cert. ef. 10-21-91; CE 4-1997, f. & cert. ef. 11-3-97; BCE 2-2003, f. & cert. ef. 12-11-03

## 811-015-0010

### Clinical Justification

(1) Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures.

(2) Accepted standards mean skills and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances.

(3) All initial examinations and subsequent re-examinations performed by a chiropractor to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis. Some combination of the following PARTS exam constitutes a functional chiropractic analysis:

P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;

A Asymmetry of sectional or segmental components identified by static palpation;

R The decrease or loss of specific movements (active, passive, and accessory);

T Tone, texture, and temperature change in specific soft tissues identified through palpation;

S Use of special tests or procedures.

(4) Chiropractic physicians shall treat their patients as often as necessary to insure favorable progress. Treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines — NMS Volume I, Chapter 5, may be considered over-utilization and contrary to

accepted standards. Chiropractic physicians treating in excess of the Practices and Utilization Guidelines bear the burden of proof to show that the treatment is not over-utilization. Over-utilization and under-utilization is considered unprofessional.

(5) A copy of independent examination reports shall be made available, upon request, to the patient, the patient's attorney or the treating doctor.

Stat. Auth.: ORS 684

Stats Implemented: ORS 684.155

Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 1-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03

## 811-035-0005

### Duties and Obligations of Chiropractic Physicians to Their Patients

(1) The health and welfare of the patient shall always be the first priority of Chiropractic physicians and expectation of remuneration shall not affect the quality of service to the patient.

(2) Chiropractic physicians shall inform the patient of the diagnosis, plan of management, and prognosis in order to obtain a fully informed consent of the patient during the early course of treatment. The patient has the right to informed consent regarding procedures, risks and alternatives, and answers to questions with respect to treatment, in terms that they can be reasonably expected to understand. In order to obtain the informed consent of a patient, the chiropractic physician shall explain the following:

(a) In general terms the procedure or treatment to be undertaken;

(b) That there may be alternative procedures or methods of treatment, if any; and

(c) That there are risks, if any, to the procedure or treatment

(3) Chiropractic physicians have the right to select their cases and patients. The patient has the right to continuity of care once the doctor has agreed to treat the patient. The chiropractor may terminate the patient-doctor relationship only when the patient has been given reasonable notice. It is permissible for the doctor to terminate the patient-doctor relationship when the patient fails to cooperate.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.150

Hist.: 2CE 1-1979, f. 1-17-79, ef. 2-1-79; 2CE 4-1983, f. 9-28-83, ef. 10-15-83; 2CE 1-1984, f. 7-16-84, ef. 8-1-84; CE 2-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03

## 811-035-0015

### Unprofessional Conduct in the Chiropractic Profession

Unprofessional conduct means any unethical, deceptive, or deleterious conduct or practice harmful to the public; any departure from, or failure to conform to, the minimal standards of acceptable chiropractic practice; or a willful or careless disregard for the health, welfare or safety of patients, in any of which cases proof of actual injury need not be established. Unprofessional conduct shall include, but not be limited to, the following acts of a Chiropractic physician:

(1)(a) Engaging in any conduct or verbal behavior with or towards a patient that may reasonably be interpreted as sexual, seductive, sexually demeaning or romantic (also see ORS 684.100).

(b) A licensee shall not engage in sexual relations or have a romantic relationship with a current patient unless a consensual sexual relationship or a romantic relationship existed between them before the commencement of the doctor-patient relationship.

(c) "Sexual relations" means:

(A) Sexual intercourse; or

(B) Any touching of sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the licensee for the purpose of arousing or gratifying the sexual desire of either licensee or patient.

(d) In determining whether a patient is a current patient, the Board may consider the length of time of the doctor-patient contact, evidence of termination of the doctor-patient relationship, the nature of the doctor-patient relationship, and any other relevant information.

(e) A patient's consent to, initiation of or participation in sexual behavior or involvement with a licensee does not change the nature of the conduct nor lift the prohibition.

(2) Charging fees for unnecessary services;

(3) Failing to teach and/or directly supervise persons to whom chiropractic services have been delegated;

(4) Practicing outside the scope of the practice of chiropractic in Oregon;

(5) Charging a patient for services not rendered;

(6) Intentionally causing physical or emotional injury to a patient;

(7) Directly or indirectly engaging in threatening, dishonest, or misleading fee collection techniques;

(8) Soliciting or borrowing money from patients;

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(9) Possessing, obtaining, attempting to obtain, furnishing, or prescribing controlled drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs; illegally using or dispensing controlled drugs;

(10) Aiding, abetting, or assisting an individual to violate any law, rule or regulation intended to guide the conduct of Chiropractic physicians or other health care providers; or

(11) Violating the rights of privacy or confidentiality of the patient unless required by law to disclose such information;

(12) Perpetrating fraud upon patients or third party payors, relating to the practice of chiropractic;

(13) Using any controlled or illegal substance or intoxicating liquor to the extent that such use impacts the ability to safely conduct the practice of chiropractic;

(14) Practicing chiropractic without a current Oregon license;

(15) Allowing another person to use one's chiropractic license for any purpose;

(16) Resorting to fraud, misrepresentation, or deceit in applying for or taking the licensure exam or obtaining a license or renewal thereof;

(17) Impersonating any applicant or acting as a proxy for the applicant in any chiropractic licensure examination;

(18) Disclosing the contents of the licensure examination or soliciting, accepting, or compiling information regarding the contents of the examination before, during, or after its administration;

(19) Failing to provide the Board with any documents requested by the Board;

(20) Failing to fully cooperate with the Board during the course of an investigation, including but not limited to, waiver of confidentiality privileges, except attorney-client privilege;

(21) Failing to comply with State and Federal laws regarding child and elderly abuse, and communicable diseases;

(22) Claiming any academic degree not actually conferred or awarded;

(23) Disobeying a final order of the Board; and

(24) Splitting fees or giving or receiving a commission in the referral of patients for services.

Stat. Auth.: ORS 684

Stats. Implemented: ORS 684.155

Hist.: CE 6-1995, f. & cert. ef. 12-19-95; CE 2-1996(Temp), f. & cert. ef. 5-31-96; CE 3-1996, f. & cert. ef. 9-26-96; BCE 1-1999, f. & cert. ef. 4-7-99; BCE 2-2000, f. & cert. ef. 5-4-00; BCE 2-2003, f. & cert. ef. 12-11-03

## Board of Clinical Social Workers Chapter 877

**Adm. Order No.:** BCSW 2-2003

**Filed with Sec. of State:** 11-21-2003

**Certified to be Effective:** 12-1-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 877-020-0020

**Subject:** Division 20 identifies the fee schedule for certification and licensing. This amendment restores the fees from the 1997-99 biennium which were legislatively reduced at that time. The Legislature has now restored the fees, effective July 1, 2003.

**Rules Coordinator:** Jon F. Langenwalter—(503) 378-5735

### 877-020-0020

#### Fees for Associate Certification and Licensing

The Board shall collect the following fees for application, certification, licensing, annual renewal of certificates and licenses, and delinquent renewal fees. Applicants for licensing shall pay a fee for the written examination to the organization that administers the examination.

(1) The application fee for certificates and licenses shall be \$100.

(2) The fee for initial certification as a Clinical Social Work Associate shall be \$50. The fee for annual renewal of the Associate certificate shall be \$55.

(3) The fee for initial licensing as a Licensed Clinical Social Worker shall be \$65. The fee for annual renewal of a license shall be \$75.

(4) The Board shall impose a delinquent renewal fee of \$25 for certificates and licenses renewed after January 1, but before February 1. Renewal of certificates and licenses received after February 1 are subject to an additional delinquent fee of \$25. However, the Board shall not treat a certificate or license as lapsed unless it is not renewed by March 31. All fees under ORS 675.510 through 675.600 are non-refundable.

Stat. Auth.: ORS 675.510 - 675.600, 675.990

Stats. Implemented: ORS 675.571

Hist.: BCSW 1-1982, f. & ef. 1-29-82; BCSW 1-1986, f. & ef. 7-7-86; BCSW 1-1988, f. & cert. ef. 11-15-88; BCSW 2-1990, f. & cert. ef. 7-13-90; BCSW 2-1993, f. & cert. ef. 10-13-93; BCSW 1-1995, f. 6-26-95, cert. ef. 7-1-95; BCSW 2-1999(Temp), f. & cert. ef. 7-1-99

thru 11-1-99; BCSW 3-1999, f. & cert. ef. 10-13-99; BCSW 1-2003(Temp), f. 5-15-03, cert. ef. 7-1-03 thru 12-28-03; BCSW 2-2003, f. 11-21-03, cert. ef. 12-1-03

## Board of Medical Examiners Chapter 847

**Adm. Order No.:** BME 17-2003

**Filed with Sec. of State:** 12-8-2003

**Certified to be Effective:** 12-8-03

**Notice Publication Date:** 8-1-03

**Rules Amended:** 847-008-0050

**Subject:** The adopted rules change the current process of backdating to the beginning of the biennium the effective date a license is reinstated or reactivated. The new process will show the effective date of reinstatement or reactivation being the date the renewal form or Affidavit of Reactivation and all fees were received in the Board office and processed.

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

### 847-008-0050

#### Reinstatement of License Lapsed Due to Non-Renewal

(1) A licensee of the Board whose license or certification has lapsed through failure to renew registration may reinstate by paying a late registration fee, paying renewal fees for a maximum of two biennial registration periods during which the license or certification was lapsed, completing and submitting the required forms, and meeting any other requirements defined by Oregon law. The license or certification will be reinstated, effective the date the renewal was processed.

(2) The license of a licensee of the Board shall expire if it is not reinstated within two biennia from the date the license lapsed due to failure to renew registration. A licensee who wishes to be relicensed after their license has expired must apply as a new applicant and submit the license application form and fee, and satisfactorily complete the application process. The applicant must meet all current licensing requirements before being considered for relicensure.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.172

Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 11-1990, f. & cert. ef. 11-15-90; ME 12-1993(Temp), f. & cert. ef. 10-27-93; ME 2-1994, f. & cert. ef. 1-24-94; BME 1-2002, f. & cert. ef. 1-28-02; BME 17-2003, f. & cert. ef. 12-8-03

## Board of Naturopathic Examiners Chapter 850

**Adm. Order No.:** BNE 5-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 850-010-0225, 850-010-0226

**Subject:** This amends the above rules to include aminoglycosides and fluoroquinolone.

**Rules Coordinator:** Anne Walsh—(503) 731-4045

### 850-010-0225

#### Naturopathic Formulary Compendium

Pursuant to ORS 685.145, the following list of products is approved by the Naturopathic Physicians' Formulary Council established by the 65th Oregon Legislature. Products marked with an asterisk (\*) may be purchased or otherwise obtained by Naturopathic Physicians in any dosage form for appropriate use, but may not be prescribed. All non-asterisked products are restricted to nonparenteral dosage forms and may be prescribed. Injectable vitamins and minerals may be prescribed. Combination products containing only active ingredients listed in the Formulary may be prescribed. Combination products containing any active ingredient(s), except non-legend drugs, not listed in the Formulary may not be prescribed. Combination products containing active ingredients, which are not listed, may not be obtained or prescribed. The Formulary List includes:

(1) Acarbose;

(2) Acetic Acid;

(3) Acetylcysteine;

(4) Acitretin;

(5) Acyclovir;

(6) Adapalene;

(7) Adenosine Monophosphate;

(8) Albuterol Sulfate;

(9) Alendronate;

## ADMINISTRATIVE RULES

- (10) Alprostadil;
- (11) Amino Acids;
- (12) Aminoglycosides;
- (13) Aminophylline;
- (14) Aminosalicyclic Acid;
- (15) Ammonium Chloride;
- (16) Ammonium lactate lotion 12%;
- (17) Amoxicillin;
- (18) Amoxicillin & Clavulanate;
- (19) Amphotericin B;
- (20) Ampicillin;
- (21) Ampicillin & Sulbactam;
- (22) Anthralin;
- (23) Atorvastatin;
- (24) Atropine;
- (25) Atropine Sulfate;
- (26) Auranofin;
- (27) Azelaic Acid;
- (28) Azithromycin;
- (29) Bacampicillin;
- (30) Bacitracin;
- (31) Becaplermin;
- (32) Belladonna;
- (33) Benzodiazepines;
- (34) Benzoic Acid;
- (35) Benzonatate;
- (36) Betaine;
- (37) Betamethasone;
- (38) Bethanechol Chloride;
- (39) Bichloroacetic Acid\*;
- (40) Bimatoprost Ophthalmic Solution 0.03%;
- (41) Bromocriptine;
- (42) Budesonide;
- (43) Butorphanol;
- (44) Calcipotriene;
- (45) Calcitonin;
- (46) Calcitriol;
- (47) Carbamide Peroxide;
- (48) Carbol-Fuchsin;
- (49) Cefaclor;
- (50) Cefdinir;
- (51) Cefibuten;
- (52) Cefadroxil;
- (53) Cefditoren;
- (54) Cefixime;
- (55) Cefonicid Sodium;
- (56) Cefpodoxime Proxetil;
- (57) Cefprozil;
- (58) Cefibuten;
- (59) Cefuroxime;
- (60) Celecoxib;
- (61) Cellulose Sodium Phosphate;
- (62) Cenestin;
- (63) Cephalexin;
- (64) Cephradine;
- (65) Chirocaine\*;
- (66) Chloramphenicol;
- (67) Citrate Salts;
- (68) Clarithromycin;
- (69) Clindamycin;
- (70) Clioquinol;
- (71) Clostridium botulinum toxin (ab);
- (72) Cloxacillin;
- (73) Codeine;
- (74) Colchicine;
- (75) Colistimethate;
- (76) Collagenase;
- (77) Condylox;
- (78) Cortisone;
- (79) Coumadin;
- (80) Cromolyn Sodium;
- (81) Cyanocobalamin;
- (82) Cycloserine;
- (83) Danazol;
- (84) Demeclocycline Hydrochloride;
- (85) Desmopressin;
- (86) Desoxyribonuclease;
- (87) Dexamethasone;
- (88) Dextran;
- (89) Dextromethorphan;
- (90) Dextrose;
- (91) Dextrothyroxine;
- (92) Dicloxacillin;
- (93) Dihydroergotamine Migranal;
- (94) Didanosine;
- (95) Digitalis;
- (96) Digitoxin;
- (97) Digoxin;
- (98) Dinoprostone;
- (99) Diphylline;
- (100) Dirithromycin;
- (101) Doxercalciferol;
- (102) Doxycycline;
- (103) Dronabinol;
- (104) Dyclonine;
- (105) EDTA (Board approved certification required before chelation is allowed);
- (106) Electrolyte Solutions;
- (107) Ephedrine;
- (108) Epinephrine\*;
- (109) Epinephrine (auto-inject);
- (110) Ergoloid Mesylates;
- (111) Ergonovine Maleate;
- (112) Ergotamine;
- (113) Erythromycins;
- (114) Estradiol;
- (115) Estriol;
- (116) Estrogen-Progestin Combinations;
- (117) Estrogens, Conjugated;
- (118) Estrogen, Esterified;
- (119) Estrone;
- (120) Estropipate;
- (121) Ethyl Chloride;
- (122) Famciclovir;
- (123) Fibrinolytic;
- (124) Flavoxate;
- (125) Fluconazole;
- (126) Fludrocortisone Acetate;
- (127) Flunisolide;
- (128) Fluorides;
- (129) Fluoroquinolones;
- (130) Fluorouracil;
- (131) Fluticasone propionate;
- (132) Fluvastatin;
- (133) Gabapentin;
- (134) Galantamine H. Br.;
- (135) Ganciclovir;
- (136) Gentamicin;
- (137) Gentian Violet;
- (138) Griseofulvin;
- (139) Guaifenesin;
- (140) Hexachlorophene;
- (141) Homatropine Hydrobromide\*;
- (142) Hyaluronic Acid;
- (143) Hydrocodone;
- (144) Hydrocortisone;
- (145) Hydrogen Peroxide;
- (146) Hydromorphone;
- (147) Hydroquinone;
- (148) Hydroxypolyethoxydodecane\*;
- (149) Hyoscyamine;
- (150) Imiquimod Cream (5%);
- (151) Immune Globulins\*;
- (152) Insulin;
- (153) Interferon Alpha b w/Ribavirin;
- (154) Iodine;
- (155) Iodoquinol;
- (156) Iron Preparations;
- (157) Isosorbide Dinitrate;
- (158) Isotretinoin;
- (159) Kanamycin Sulfate;
- (160) Lactulose;
- (161) Lamivudine;
- (162) Leucovorin Calcium;
- (163) Levalbuteral;
- (164) Levodopa;

# ADMINISTRATIVE RULES

- (165) Levonorgestrel;  
(166) Levothyroxine;  
(167) Lincomycin;  
(168) Lindane;  
(169) Liothyronine;  
(170) Liotrix;  
(171) Lithium;  
(172) Lovastatin;  
(173) Mebendazole;  
(174) Meclizine;  
(175) Medroxyprogesterone;  
(176) Medrysone;  
(177) Megestrol Acetate;  
(178) Mercury, Ammoniated;  
(179) Mesalamine;  
(180) Metformin;  
(181) Methoxsalen;  
(182) Methscopolamine;  
(183) Methylegonovine;  
(184) Methylprednisolone;  
(185) Methyltestosterone;  
(186) Methysergide;  
(187) Metronidazole;  
(188) Miglitol;  
(189) Minerals (Oral & Injectable);  
(190) Minocycline;  
(191) Misoprostol;  
(192) Monobenzene;  
(193) Morphine;  
(194) Mupirocin;  
(195) Nafarelin acetate;  
(196) Natamycin;  
(197) Nicotine;  
(198) Nitroglycerin;  
(199) Novobiocin;  
(200) Nystatin;  
(201) Opium;  
(202) Over the Counter (OTC) substances, not to exceed their current  
OTC dose or dosage forms;  
(203) Oxacillin;  
(204) Oxamniquine;  
(205) Oxaprozin;  
(206) Oxtriphylline;  
(207) Oxycodone;  
(208) Oxygen;  
(209) Oxymorphone;  
(210) Oxytetracycline;  
(211) Oxytocin\*;  
(212) Pancrelipase;  
(213) Papain;  
(214) Papavarine;  
(215) Paramethasone;  
(216) Paregoric;  
(217) Penciclovir;  
(218) Penicillamine;  
(219) Penicillin;  
(220) Pentosan;  
(221) Pentoxifylline;  
(222) Pergolide;  
(223) Permethrin;  
(224) Phenazopyridine;  
(225) Physostigmine;  
(226) Pilocarpine;  
(227) Pimecrolimus Cream 1%;  
(228) Podophyllum Resin;  
(229) Polymyxin B Sulfate;  
(230) Polysaccharide-Iron Complex;  
(231) Potassium Iodide;  
(232) Potassium Supplements;  
(233) Pramoxine;  
(234) Pravastatin;  
(235) Prednisolone;  
(236) Prednisone;  
(237) Progesterone;  
(238) Progestins;  
(239) Prostaglandins;  
(240) Pyrazinamide;  
(241) Pyrethrins;  
(242) Quinidine;  
(243) Quinine Sulfate;  
(244) Rauwolfia Alkaloids;  
(245) Rho(D) Immune Globulins\*;  
(246) Rifabutin;  
(247) Rifampin;  
(248) Salicylamide;  
(249) Salicylate Salts;  
(250) Salicylic Acid;  
(251) Salsalate;  
(252) Scopolamine;  
(253) Selenium Sulfide;  
(254) Silver Nitrate;  
(255) Simvastatin;  
(256) Sodium Polystyrene Sulfonate;  
(257) Sodium Thiosulfate;  
(258) Spironolactone;  
(259) Stavudine;  
(260) Spectinomycin;  
(261) Sucralfate;  
(262) Tazarotene topical gel;  
(263) Tacrolimus;  
(264) Topical steroids;  
(265) Troleandomycin;  
(266) Testosterone;  
(267) Tetracycline;  
(268) Theophylline;  
(269) Thlabendazole;  
(270) Thyroid;  
(271) Thyroxine;  
(272) Tibolone;  
(273) Tobramycin;  
(274) Tretinoin;  
(275) Triamcinolone;  
(276) Triamterene;  
(277) Trichloroacetic Acid\*;  
(278) Trioxsalen;  
(279) Triptans;  
(280) Troleandomycin;  
(281) Undecylenic Acid;  
(282) Urea;  
(283) Urised;  
(284) Ursodiol;  
(285) Valacyclovir;  
(286) Vancomycin;  
(287) Vidarabine;  
(288) Vitamins (Oral & Injectable);  
(289) Yohimbine;  
(290) Zalcitabine;  
(291) Zidovudine;  
(292) Local Anesthetics:  
(a) Benzocaine\*;  
(b) Bupivacaine\*;  
(c) Chloroprocaine\*;  
(d) Dyclonine\*;  
(e) Etidocaine\*;  
(f) Lidocaine\*;  
(g) Lidocaine (non-injectable dosage form);  
(h) Mepivocaine\*;  
(i) Prilocaine\*;  
(j) Procaine\*;  
(k) Tetracaine\*.  
(293) Vaccines:  
(a) BCG\*;  
(b) Cholera\*;  
(c) Diphtheria\*;  
(d) DPT\*;  
(e) Haemophilus b Conjugate\*;  
(f) Hepatitis A Virus\*;  
(g) Hepatitis B\*;  
(h) Influenza Virus\*;  
(i) Japanese Encephalitis Virus\*;  
(j) Measles Virus\*;  
(k) Mumps Virus\*;  
(l) Pertussis\*;  
(m) Plague\*;  
(n) Pneumococcal\*;  
(o) Poliovirus Inactivated\*;

# ADMINISTRATIVE RULES

- (p) Poliovirus-Live Oral\*;
- (q) Rabies\*;
- (r) Rubella\*;
- (s) Smallpox\*;
- (t) Tetanus IG\*;
- (u) Tetanus Toxoid\*;
- (v) Typhoid\*;
- (w) Varicella\*;
- (x) Yellow Fever\*.

## (294) SkinTests:

- (a) Diphtheria\*;
- (b) Mumps\*;
- (c) Tuberculin\*.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03

## 850-010-0226

### Naturopathic Formulary Compendium by Classification

Classifications of the formulary compendium, which can be prescribed in any dosage or any dosage form. Products marked with an asterisk (\*) may be purchased or otherwise obtained by Naturopathic Physicians in any dosage form for appropriate use, but may not be prescribed. Products marked with a double asterisk (\*\*) can only be purchased or otherwise obtained by a Naturopathic physician for office use of epithelial infections.

#### (1) Amino Acids

##### (2) Aminoglycosides

##### (3) Analgesics (An)

##### (a) Aminosalicilyc Acid;

##### (b) Auranofin;

##### (c) Bromocriptine;

##### (d) Celecoxib;

##### (e) Colchicine;

##### (f) Colistimethate;

##### (g) Dihydroergotamine Migranal;

##### (h) Ergoloid Mesylates;

##### (i) Ergonovine Maleate;

##### (j) Ergotamine;

##### (k) Hyaluronic Acid;

##### (l) Methylergonovine;

##### (m) Methysergide;

##### (n) Opioids:

##### (A) Butorphanol;

##### (B) Codeine;

##### (C) Dextromethorphan;

##### (D) Hydrocodone;

##### (E) Hydromorphone;

##### (F) Morphine;

##### (G) Opium;

##### (H) Oxycodone;

##### (I) Oxymorphone;

##### (J) Paregoric;

##### (o) Oxaprozin;

##### (p) Salsalate;

##### (q) Triptans;

#### (4) Antibiotics (At)

##### (a) Amphotericin B;

##### (b) Anti-Parasitic:

##### (A) Fluconazole;

##### (B) Mebendazole;

##### (C) Metronidazole;

##### (D) Thlabendazole;

##### (c) Antivirals:

##### (A) Acyclovir;

##### (B) Didanosine;

##### (C) Famciclovir;

##### (D) Ganciclovir;

##### (E) Interferon alpha 2b;

##### (F) Lamivudine;

##### (G) Stavudine;

##### (H) Valacyclovir;

##### (I) Vidarabine;

##### (J) Zalcitabine;

##### (K) Zidovudine;

##### (d) Bacitracin;

##### (e) Carbamide Peroxide;

##### (f) Cephalosporins:

##### (A) Cefaclor;

##### (B) Cefdinir;

##### (C) Cefibuten;

##### (D) Cefadroxil;

##### (E) Cefditoren;

##### (F) Cefixime;

##### (G) Cefonicid Sodium;

##### (H) Cefpodoxime Proxetil;

##### (I) Cefprozil;

##### (J) Cefibuten;

##### (K) Cefuroxime;

##### (L) Cephalexin;

##### (M) Cephradine;

##### (g) Chloramphenicol;

##### (h) Clindamycin;

##### (i) Cycloserine;

##### (j) Gentamicin;

##### (k) Griseofulvin;

##### (l) Imiquimod Cream (5%);

##### (m) Macrolides:

##### (A) Azithromycin;

##### (B) Clarithromycin;

##### (C) Dirithromycin;

##### (D) Erythromycins;

##### (E) Kanamycin Sulfate;

##### (F) Lincomycin;

##### (G) Novobiocin;

##### (H) Spectinomycin;

##### (I) Troleandomycin;

##### (J) Vancomycin;

##### (n) Natamycin;

##### (o) Nystatin;

##### (p) Penciclovir;

##### (q) Penicillins:

##### (A) Amoxicillin;

##### (B) Amoxicillin and Clavulanate;

##### (C) Ampicillin;

##### (D) Ampicillin and Sulbactam;

##### (E) Bacampicillin;

##### (F) Cloxacillin;

##### (G) Dicloxacillin;

##### (H) Oxacillin;

##### (I) Penicillamine;

##### (J) Penicillin;

##### (r) Polymyxin B Sulfate;

##### (s) Rifabutin;

##### (t) Rifampin;

##### (u) Tetracyclines:

##### (A) Demeclocycline Hydrochloride;

##### (B) Doxycycline;

##### (C) Minocycline;

##### (D) Oxyteracycline;

##### (E) Tetracycline;

##### (v) Tobramycin;

##### (5) Anticholinergics

##### (a) Atropine;

##### (b) Atropine Sulfate;

##### (c) Belladonna;

##### (d) Homatropine Hydrobromide\*;

##### (e) Hyoscyamine;

##### (f) Methscopolamine;

##### (g) Physostigmine;

##### (h) Pilocarpine;

##### (i) Scopolamine;

##### (6) Benzodiazepines

##### (7) Blood (B)

##### (a) Coumadin;

##### (b) Dextran;

##### (c) Dextrose;

##### (d) Immune Globulins\*;

##### (e) Rho(D) Immune Globulins\*;

##### (8) Cardiovascular (Cv)

##### (a) Digitalis;

##### (b) Digitoxin;

##### (c) Digoxin;

##### (d) HMG CoA Reductase Inhibitors;

# ADMINISTRATIVE RULES

- (A) Antorvastatin;
- (B) Fluvastatin;
- (C) Lovastatin;
- (D) Pravastatin;
- (E) Simvastatin;
- (e) Nitrates:
  - (A) Isosorbide Dinitrate;
  - (B) Nitroglycerin;
  - (f) Papavarine;
  - (g) Quinidine;
  - (h) Rauwolfia Alkaloids;
  - (i) Spironolactone;
  - (j) Triamterene;
- (8) Enzymes
  - (a) Collagenase;
  - (b) Desoxyribonuclease;
  - (c) Fibrinolysin;
  - (d) Pancrelipase;
- (9) Fluoroquinolones
- (10) Gastrointestinal
  - (a) Citrate Salts;
  - (b) Lactulose;
  - (c) Sucralfate;
- (11) Genito-urinary (GU)
  - (a) Bethanechol Chloride
  - (b) Cellulose Sodium Phosphate;
  - (c) Flavoxate;
  - (d) Pentosan;
  - (e) Phenazopyridine;
  - (f) Urised;
- (12) Hormones (Ho)
  - (a) Betamethasone;
  - (b) Budesonide;
  - (c) Calcitonin;
  - (d) Cenestin;
  - (e) Cortisone;
  - (f) Danazol;
  - (g) Desmopressin;
  - (h) Dexamethasone;
  - (i) Dextrothyroxine;
  - (j) Dinoprostone;
  - (k) Estradiol;
  - (l) Estriol;
  - (m) Estrogen-Progestin Combinations;
  - (n) Estrogens, Conjugated;
  - (o) Estrogen, Esterified;
  - (p) Estrone;
  - (q) Estropipate;
  - (r) Fludrocortisone Acetate;
  - (s) Flunisolide;
  - (t) Fluticasone Propionate;
  - (u) Hydrocortisone;
  - (v) Insulin;
  - (w) Levonorgestrel;
  - (x) Levothyroxine;
  - (y) Liothyronine;
  - (z) Liotrix;
  - (aa) Medroxyprogesterone;
  - (bb) Medrysone;
  - (cc) Megestrol Acetate;
  - (dd) Methylprednisolone;
  - (ee) Methyltestosterone;
  - (ff) Nafarelin acetate;
  - (gg) Oxytocin\*;
  - (hh) Prednisolone;
  - (ii) Prednisone;
  - (jj) Progesterone;
  - (kk) Progestins;
  - (ll) Prostaglandins:
    - (A) Alprostadiol;
    - (B) Misoprost[a]ol;
  - (mm) Testosterone;
  - (nn) Thyroid;
  - (oo) Thyroxine;
  - (pp) Tibolone;
  - (qq) Triamcinolone;
- (13) Hypoglycemics (Hy)
  - (a) Acarbose;
  - (b) Metformin;
- (c) Miglitol;
- (14) Local anesthetics (L)
  - (a) Benzocaine\*;
  - (b) Betaine;
  - (c) Bupivacaine\*;
  - (d) Chirocaine\*;
  - (e) Chloroprocaine\*;
  - (f) Dyclonine\*;
  - (g) Ethyl Chloride;
  - (h) Etidocaine\*;
  - (i) Hydroxypolyetho-xydodecane\*;
  - (j) Lidocaine\*;
  - (k) Lidocaine(non-injectable dosage form);
  - (l) Mepivocaine\*;
  - (m) Pramoxine;
  - (n) Prilocaine\*;
  - (o) Procaine\*;
  - (p) Tetracaine\*;
- (15) Minerals (M)
  - (a) Ammonium Chloride;
  - (b) Calcitriol;
  - (c) Electrolyte Solutions;
  - (d) Fluorides;
  - (e) Iodine;
  - (f) Iron Preparations;
  - (g) Lithium;
  - (h) Mercury, Ammoniated;
  - (i) Minerals (Oral & Injectable);
  - (j) Polysaccharide-Iron Complex;
  - (k) Potassium Iodide;
  - (l) Potassium Supplements;
  - (m) Silver Nitrate;
- (16) Skin Care (S)
  - (a) Acitretin;
  - (b) Adapalene;
  - (c) Ammonium lactate lotion 12%;
  - (d) Anthralin;
  - (e) Azelaic Acid;
  - (f) Becaplermin;
  - (g) Benzoic Acid;
  - (h) Calcipotriene;
  - (i) Carbol-Fuchsin;
  - (j) Clioquinol;
  - (k) Condylox;
  - (l) Fluorouracil;
  - (m) Gentian Violet;
  - (n) Hexachlorophene;
  - (o) Hydroquinone;
  - (p) Isotretinoin;
  - (q) Lindane;
  - (r) Methoxsalen;
  - (s) Mupirocin;
  - (t) Permethrin;
  - (u) Pimecrolimus Cream 1%;
  - (v) Podophyllum Resin;
  - (w) Pyrazinamide;
  - (x) Pyrethrins;
  - (y) Salicylate Salts;
  - (z) Salicylic Acid;
  - (aa) Selenium Sulfide;
  - (bb) Sodium Thiosulfate;
  - (cc) Tacrolimus;
  - (dd) Tazarotene topical gel;
  - (ee) Topical steroids;
  - (ff) Tretinoin;
  - (gg) Trichloroacetic Acid\*;
  - (hh) Trioxsalen;
  - (ii) Undecylenic Acid;
  - (jj) Urea;
- (17) Skin Tests
  - (a) Diphtheria\*;
  - (b) Mumps\*;
  - (c) Tuberculin\*;
- (18) Sympathomimetics
  - (a) Ephedrine;
  - (b) Epinephrine\*;
  - (c) Epinephrine (auto-inject);

# ADMINISTRATIVE RULES

## Board of Nursing Chapter 851

### (19) Upper Respiratory Tract (URT)

- (a) Acetylcysteine;
- (b) Albuterol Sulfate;
- (c) Aminophylline;
- (d) Benzonate;
- (e) Cromolyn Sodium;
- (f) Guaifenesin;
- (g) Levalbuteral;
- (h) Xanthines:
  - (A) Diphylline;
  - (B) Oxtriphylline;
  - (C) Pentoxifylline;
  - (D) Theophylline;
- (20) Vaccines
  - (a) BCG\*;
  - (b) Cholera\*;
  - (c) Diphtheria\*;
  - (d) DPT\*;
  - (e) Haemophilus b Conjugate\*;
  - (f) Hepatitis A Virus\*;
  - (g) Hepatitis B\*;
  - (h) Influenza Virus\*;
  - (i) Japanese Encephalitis Virus\*;
  - (j) Measles Virus\*;
  - (k) Mumps Virus\*;
  - (l) Pertussis\*;
  - (m) Plague\*;
  - (n) Pneumococcal\*;
  - (o) Poliovirus - Inactivated\*;
  - (p) Poliovirus - Live Oral\*;
  - (q) Rabies\*;
  - (r) Rubella\*;
  - (s) Smallpox\*;
  - (t) Tetanus IG\*;
  - (u) Tetanus Toxoid\*;
  - (v) Typhoid\*;
  - (w) Varicella\*;
  - (x) Yellow Fever\*;
- (21) Vitamins
  - (a) Cyanocobalamin;
  - (b) Doxercalciferol;
  - (c) Leucovorin Calcium;
  - (d) Vitamins (Oral & Injectable);
- (22) Misc.
  - (a) Acetic Acid;
  - (b) Adenosine Monophosphate;
  - (c) Alendronate;
  - (d) Bichloroacetic Acid;
  - (e) Bimatoprost Ophthalmic Solution (0.03%);
  - (f) Clostridium botulinum toxin (ab);
  - (g) Dronabinol;
  - (h) EDTA (Board approved certification required before chelation is

allowed);

- (i) Gabapentin;
  - (j) Galntamine H. Br.;
  - (k) Hydrogen Peroxide;
  - (l) Iodoquinol;
  - (m) Levodopa;
  - (n) Meclizine;
  - (o) Mesalamine;
  - (p) Monobenzone;
  - (q) Nicotine;
  - (r) Over the Counter (OTC) substances, not to exceed their current
- OTC dose or dosage form;
- (s) Oxamniquine;
  - (t) Oxygen;
  - (u) Papain;
  - (v) Paramethasone;
  - (w) Pergolide;
  - (x) Quinine Sulfate;
  - (y) Salicylamide;
  - (z) Sodium Polystyrene Sulfonate;

(aa) Ursodiol;

(bb) Yohimbine

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.145

Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03

**Adm. Order No.:** BN 11-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 851-021-0010

**Subject:** These rules cover the standards for the approval of educational programs in nursing preparing candidates for licensure as practical or registered nurses.

These amendments propose language that would enable the Board to receive and consider a proposal form consortia of qualified institutions and would set additional requirements that consortia would meet for developmental approval.

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

### 851-021-0010

#### Approval of Nursing Education Programs

(1) Application and Developmental Approval:

(a) An institution or consortium of accredited institutions wishing to establish a new program in nursing shall make application to the Board at least 15 months in advance of expected opening date;

(b) The application shall include a statement of intent and a feasibility study with at least the following information:

(A) Evidence of accreditation of the institution, or of all member institutions in a consortium, by the Northwest Association of Schools and Colleges; or another appropriate U.S. Department of Education approved accrediting agency;

(B) Studies documenting the statewide need for the program. The study should also specifically address the need for the program in relation to the nursing needs of the geographical area to be served;

(C) Purpose, size and type of program;

(D) Administration and organizational plan delineating lines of authority and decision-making;

(E) Availability of and ability to recruit and retain qualified faculty members;

(F) Projected number of faculty positions;

(G) Description of available physical facilities and description of proposed facilities with dates of availability;

(H) Availability of adequate practice sites for the program;

(I) Availability of adequate educational facilities, services, and resources for the program;

(J) Evidence of financial resources adequate for planning, implementation and continuation of the program, including proposed operating costs;

(K) Anticipated student enrollment and proposed date of enrollment;

(L) Tentative time schedule for planning and initiating the program;

(M) Current institution and program catalog(s).

(N) For consortium applicants, any charters, contracts and other documents that show:

(i) relationships among member institutions;

(ii) member institution commitment to the consortium and the proposed nursing program; and

(iii) mechanisms within the consortium for attainment and maintenance of Board standards for nursing education programs.

(c) The applicant shall respond to the Board's request(s) for additional information;

(d) A site visit may be conducted by a representative(s) of the Board;

(e) The Board, after timely review and consideration of the information contained in the application and any supplementary information, shall either approve or deny the application and notify the applicant, including rationale for the decision;

(f) If developmental approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;

(g) If the applicant does not submit an application for initial approval within 12 months after the date designated for initiating the program in the approved plan, the developmental approval shall expire.

(2) Initial Approval:

(a) Initial approval status may be applied for when the following conditions have been met:

(A) Application as described in OAR 851-021-0010(1) has received Board approval;

(B) Evidence of approval for the new program has been obtained from the appropriate agencies or bodies that review and approve new programs for public and private educational institutions.

# ADMINISTRATIVE RULES

(i) An institution shall provide one copy of the report that was submitted to each agency and a copy of the letter(s) indicating that approval for the program has been granted;

(ii) A consortium shall provide documentation that each member institution has approved the program, as well as documentation of agency approval as above.

(C) A qualified nurse administrator has been appointed and provided with necessary administrative supports a minimum of nine months prior to the beginning of courses;

(D) There are sufficient qualified faculty and administrative support services to initiate the program a minimum of six months prior to the beginning of the courses;

(E) A tentative written proposed program plan, including curriculum developed in accordance with the Standards for Approval, has been submitted a minimum of three months prior to the offering of the first course to nursing students.

(F) There is evidence of readiness for admission of students in educational and clinical facilities and policies for admission and progression.

(b) Following Board receipt and review of the information required in OAR 851-021-0010(2)(a), the Board may grant or deny initial approval;

(c) Initial approval must be received by a program prior to the admission of the first class of nursing students;

(d) If initial approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply;

(e) Interim visits and/or progress reports may be requested by the Board at any time during the initial approval phase and/or following initial approval as deemed necessary by the Board.

(f) If the institution or consortium does not admit a class within 12 months after the date designated for initiating the program in the initial approval application, the initial approval shall expire.

(3) Approval:

(a) Eligibility for approval occurs after the graduation of the first class of students;

(b) Within six months following graduation of the first class, the program shall submit a self-study report of compliance with the Standards for Approval and a survey visit shall be made for consideration of approval of the program;

(c) The decision of the Board to grant or deny approval shall be based upon review of a self-evaluation report submitted by the program addressing compliance with Board standards, of the success rate of graduates on the national licensure examination, and of a survey report by a representative(s) of the Board;

(d) If approval is denied, the applicant may request a hearing before the Board and the provisions of the Administrative Procedures Act shall apply.

Stat. Auth.: ORS 678.150, 678.340 & 678.360

Stats. Implemented: ORS 678.150 & 678.360

Hist.: NER 30, f. & ef. 1-27-76; NER 37, f. & ef. 7-18-77; NB 3-1988, f. & cert. ef. 7-5-88; NB 1-1990, f. & cert. ef. 4-2-90; Renumbered from 851-020-0021; NB 4-1996, f. & cert. ef. 9-3-96; BN 1-2001, f. & cert. ef. 2-21-01; BN 7-2003, f. & cert. ef. 7-7-03; BN 11-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** BN 12-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:** 8-1-03

**Rules Amended:** 851-031-0010

**Subject:** These rules cover the standards for licensure of registered nurses and licensed practical nurses.

The current rules of the board permit NCLEX candidates to take the NCLEX examination four times per year, but not more than once in any 90-day period. The NCSBN Board of Directors has recently approved an Examination Committee recommendation to reduce the minimum interval of days between repeat NCLEX examination administrations from 90-days to 45-days. With this new policy from NCSBN, candidates could be permitted to take the NCLEX examination eight times per year, but not more than once in a 45-day period, if jurisdiction allows their candidates to do so. The reduction of days between exams for repeat testers is now possible because of the increase of items in the item pool and the technology that is available from the new testing vendor.

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

## 851-031-0010

### Licensure by Examination

(1) Eligibility for Licensure by Examination:

(a) An applicant for registered nurse or practical nurse licensure by examination shall meet all standards for eligibility as established in OAR 851-031-0006; and

(b) Graduates of United States schools shall be allowed to take the licensing examination prior to receipt of an official transcript provided that the school has verified, in writing, completion of all requirements for graduation or program completion. An official transcript shall be on file with the Board before the license is issued.

(2) Authorization of Graduating Students to Schedule the Licensure Examination:

(a) The sole purpose of this rule is to allow students to schedule the national licensure examination before graduation or program completion, thereby permitting the student to take said examination any time after graduation.

(b) A student in a Board approved registered nurse or practical nurse education program may be approved for eligibility to test prior to graduation or program completion if the student has met the following conditions:

(A) The examination application and fee is on file with the testing service authorized to administer the examination; and

(B) The licensure application and fee is on file with the Oregon State Board of Nursing; and

(C) An official letter documenting that the student has substantially completed all requirements for graduation from the nursing education program is submitted by the dean or director of the nursing education program, no earlier than six weeks prior to the students' graduation date.

(c) A student granted such approval may schedule the examination but shall not take the examination until after the date of graduation or program completion.

(d) Board approval of the student's eligibility to test does not mean the student has met all the qualifications for licensure. Regardless of the examination results, the license will not be issued until all eligibility standards and requirements have been met.

(3) Limits on Eligibility for Licensure by Examination:

(a) Applicants for licensure by examination who have been previously licensed in another state or country shall be permitted to test no more than three years following application and shall meet the practice and/or reentry requirements as stated in Board rules. For applicants for licensure by examination who have been previously licensed in another state or country re-entry requirements shall be determined from the date the applicant passes the examination.

(b) Applicants for initial licensure by examination (not previously licensed in another state or country) shall be permitted to test no more than three years following graduation or program completion.

(c) An applicant who fails to pass the examination in three years shall not be eligible to reapply for licensure by examination, except that the applicant may subsequently enroll and successfully complete an approved program of nursing in order to be eligible to reapply for licensure by examination.

(4) Requirements and Procedures — Application for Licensure by Examination:

(a) An applicant for registered nurse or practical nurse licensure by examination shall meet all requirements as established in OAR 851-031-0006;

(b) The examination registration and fee shall be filed with the testing service authorized to administer the examination; and

(c) The licensure application and fee shall be filed with the Oregon State Board of Nursing.

(d) A completed application which establishes eligibility for examination shall be valid for the three years of eligibility as described in 851-031-0010(3).

(5) Results of Examination:

(a) Results of the examination shall be reported to the applicant at the applicant's address of record on file.

(b) An applicant who passes the examination shall be granted a license to practice nursing in Oregon provided all other requirements for licensure have been met.

(c) An applicant who fails the licensing examination shall not be licensed or be authorized to practice nursing in Oregon.

(d) Reexamination following one or more failure(s):

(A) An applicant for reexamination shall file the required application and fee with the Board before being eligible to take the examination.

(B) The examination registration and fee shall be filed with the testing service under contract with the National Council of State Boards of Nursing (NCSBN) to develop and administer NCLEX.



# ADMINISTRATIVE RULES

(C) An applicant will be permitted to test no sooner than the 46th day following the previous test date.

Stat. Auth.: ORS 678.150

Stats. Implemented: ORS 678.040, 678.050, 678.150

Hist.: NER 25, f. 9-22-75, ef. 10-10-75; NER 3-1978, f. & ef. 6-30-78; NER 15-1980, f. & ef. 3-3-80; NER 5-1981, f. & ef. 11-24-81; NER 4-1983, f. & ef. 12-1-83; NB 5-1987, f. & ef. 7-1-87; NB 1-1994, f. & cert. ef. 4-1-94; Renumbered from 851-020-0156; NB 4-1997, f. 3-6-97, cert. ef. 5-1-97; BN 10-1998, f. & cert. ef. 8-7-98; BN 14-1999, f. & cert. ef. 12-1-99; BN 7-2000, f. & cert. ef. 7-3-00; BN 5-2001(Temp), f. & cert. ef. 4-3-01 thru 9-25-01; BN 14-2001, f. & cert. ef. 10-16-01; BN 1-2003, f. & cert. ef. 3-6-03; BN 9-2003, f. & cert. ef. 10-2-03; BN 12-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** BN 13-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 851-050-0131

**Subject:** The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. The amendments add the September and October 2003 updates to Drug Facts and Comparisons to the formulary.

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

## 851-050-0131

### Formulary for Nurse Practitioners with Prescriptive Authority

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

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

(b) "Formulary" means a specific list of drugs determined by the Board. The formulary for nurse practitioners with prescriptive authority shall be all the drugs in the Drug Facts and Comparisons dated September and October 2003 with the exception of certain drugs and drug groups which are listed below.

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

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

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

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

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

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

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

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

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

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

(a) All over the counter drugs;

(b) Appliances and devices.

(5) Nurse practitioners are authorized to prescribe the following drugs as listed in Drug Facts and Comparisons dated September and October 2003:

(a) Nutrients and Nutritional Agents — all drugs;

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

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

(A) I 131;

(B) Gallium Nitrate; and

(C) Mifepristone (Mifeprex).

(d) Cardiovasculars — all drugs except:

(A) Cardioplegic Solution;

(B) Fenoldopam Mesylate (Corlopam);

(C) Dofetilide (Tikosyn); and

(D) Bosentan (Tracleer);

(e) Renal and Genitourinary Agents — all drugs;

(f) Respiratory Agents — all drugs;

(g) Central Nervous System Agents:

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

(i) Tincture of opium;

(ii) Codeine;

(iii) Hydromorphone;

(iv) Morphine;

(v) Oxycodone, Oxymorphone;

(vi) Topical Cocaine Extracts and Compounds;

(vii) Fentanyl;

(viii) Meperidine;

(ix) Amphetamines;

(x) Methylphenidate;

(xi) Pentobarbital;

(xii) Secobarbital; and

(xiii) Methadone Hydrochloride (in accordance with 851-045-0015(2)(n) and 851-050-0170).

(B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and

(C) Chymopapain is excluded.

(h) Gastrointestinal Agents — all drugs except: Monoctanoin;

(i) Anti-infectives, Systemic — all drugs;

(j) Biological and Immunologic Agents - all drugs except Basiliximab (Simulex);

(k) Dermatological Agents — all drugs except Psoralens;

(l) Ophthalmic and Otic Agents — all drugs except:

(A) Punctal plugs;

(B) Collagen Implants;

(C) Indocyanine Green;

(D) Hydroxypropal (Methyl) Cellulose;

(E) Polydimethylsiloxane;

(F) Fomivirsen Sodium (Vitravene);

(G) Verteporfin;

(H) Levobetaxolol HCL (Betaxon);

(I) Travoprost (Travatan);

(J) Bimatoprost (Lumigan); and

(K) Unoprostone Isopropyl (Rescula).

(m) Antineoplastic Agents — all drugs except:

(A) NCI Investigational Agents;

(B) Samarium Sm53;

(C) Denileukin Diftitox (Ontak);

(D) BCG, Intravesical (Pacis);

(E) Arsenic Trioxide (Trisenox).

(F) Ibritumomab Tiuxetan (Zevalin)

(G) Tositumomab and Iodine 131 I-Tositumomab (Bexxar)

(n) Diagnostic Aids:

(A) All drugs except Arbutamine (GenESA);

(B) Thyrotropin Alfa (Thyrogen)

(C) Miscellaneous Radiopaque agents — no drugs from this category except:

(i) Iopamidol;

(ii) Iohexol; and

(iii) Ioxilan (Oxilan).

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

Stat. Auth.: ORS 678.375 & 678.385

Stats. Implemented: ORS 678.385

Hist.: NB 11-1993(Temp), f. 10-26-93, cert. ef. 11-4-93; NB 2-1994, f. & cert. ef. 4-15-94; NB 7-1994, f. & cert. ef. 9-28-94; NB 3-1995, f. & cert. ef. 4-12-95; NB 6-1995(Temp), f. & cert. ef. 6-15-95; NB 8-1995, f. & cert. ef. 6-29-95; NB 11-1995, f. & cert. ef. 10-9-95; NB 1-1996, f. & cert. ef. 2-29-96; NB 3-1996, f. & cert. ef. 6-11-96; NB 8-1996, f. & cert. ef. 10-30-96; NB 10-1996, f. & cert. ef. 12-2-96; NB 5-1997, f. & cert. ef. 3-6-97; NB 7-1997, f. & cert. ef. 5-13-97; NB 8-1997, f. & cert. ef. 7-1-97; NB 13-1997, f. & cert. ef. 9-29-97; NB 14-1997, f. & cert. ef. 12-11-97; NB 4-1998, f. & cert. ef. 3-13-98; NB 5-1998, f. & cert. ef. 5-11-98; NB 8-1998, f. & cert. ef. 7-16-98; NB 12-1998, f. & cert. ef. 9-22-98; NB 13-1998, f. & cert. ef. 12-1-98; NB 1-1999, f. & cert. ef. 3-4-99; NB 3-1999, f. & cert. ef. 5-4-99; NB 5-1999, f. & cert. ef. 7-1-99; NB 9-1999, f. & cert. ef. 10-20-99; NB 13-1999, f. & cert. ef. 12-1-99; NB 3-2000, f. & cert. ef. 2-25-00; NB 5-2000, f. & cert. ef. 4-24-00; NB 8-2000, f. & cert. ef. 7-3-00; NB 9-2000, f. & cert. ef. 9-18-00; NB 10-2000, f. & cert. ef. 12-15-00; NB 2-2001, f. & cert. ef. 2-21-01; NB 6-2001, f. & cert. ef. 4-24-01; NB 9-2001, f. & cert. ef. 7-9-01; NB 13-2001, f. & cert. ef. 10-16-01; NB 4-2002, f. & cert. ef. 3-5-02; NB 11-2002, f. & cert. ef. 4-25-02; NB 14-2002, f. & cert. ef. 7-17-02; NB 19-2002, f. & cert. ef. 10-18-02; NB 21-2002, f. & cert. ef. 12-17-02; NB 2-2003, f. & cert. ef. 3-6-03; NB 4-2003, f. & cert. ef. 4-23-03; NB 8-2003, f. & cert. ef. 7-7-03; NB 10-2003, f. & cert. ef. 10-2-03; NB 13-2003, f. & cert. ef. 12-9-03

# ADMINISTRATIVE RULES

## Construction Contractors Board Chapter 812

**Adm. Order No.:** CCB 11-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 812-002-0130, 812-004-0110, 812-004-0210, 812-010-0050, 812-010-0290, 812-010-0510, 812-010-0520

**Rules Amended:** 812-001-0020, 812-002-0200, 812-002-0420, 812-002-0440, 812-002-0540, 812-003-0000, 812-003-0020, 812-003-0025, 812-004-0320, 812-004-0340, 812-004-0400, 812-004-0535, 812-005-0005, 812-006-0020, 812-010-0020, 812-010-0030, 812-010-0060, 812-010-0085, 812-010-0140, 812-010-0280, 812-010-0400, 812-010-0420, 812-010-0425, 812-010-0430, 812-010-0440, 812-010-0460, 812-010-0500

**Rules Repealed:** 812-002-0240, 812-010-0240, 812-002-0240(T), 812-002-0540(T), 812-003-0000(T), 812-003-0020(T), 812-003-0025(T), 812-002-0420(T)

**Subject:** OAR 812-001-0020 is amended to add the "Notice of Compliance with Homebuyer Protection Act" required in HB 3539.

OAR 812-002-0130 is adopted to add a new definition to define claimant as this term is used throughout OAR 812 Division 4. OAR 812-002-0200 is amended to include suspensions and lapses to the definition to concur with current agency practices. OAR 812-002-0240 is repealed since the definition of "developer" is no longer necessary once SB 906 became operative on October 1, 2003. OAR 812-002-0420 is amended to include suspended licenses under the definition of "lapse in license". OAR 812-002-0440 is amended to include claimants in the coverage of the definition of "last-known address" of record. OAR 812-002-0540 is amended to delete the word "developer" from the definition of "owner of a structure" which was no longer necessary once SB 906 became operative and defines a developer as a contractor.

OAR 812-003-0000 is amended to implement SB 906 that became operative on October 1, 2003, and amends ORS 701.005 by adding a new licensed developer category to the statutes. Repeal the permanent rule filed on August 8, 2003, on 812-003-0000(9) and (10) with an effective date of January 1, 2004, because the Board determined at their December 2, 2003 Board meeting to delay a fee increase at this time due to increased revenue receipts. Repeal perm rule 812-003-0000(11) filed on September 29, 2003, with an effective date of January 1, 2004, and repeal perm rule 812-003-0000(11) filed on June 3, 2003, with an effective date of October 1, 2003; because the Board determined at their December 2, 2003 Board meeting to delay any fee increases at this time due to increased revenue receipts.

OAR 812-003-0020, and 812-003-025 are amended to implement SB 906 that became operative on October 1, 2003, and amends ORS 701.005 by adding a new licensed developer category to the statutes. OAR 812-003-0015 is amended to define the type of insurance providers authorized by the agency and to clarify the type of coverage required.

812-004-0110 is adopted to implement HB 2233 (chapter 294, Oregon Laws 2003) to collect a fee for processing claims of \$50. 812-004-0210 is adopted to require parties to notify the agency of address changes during the processing of a claim. 812-004-0320 is amended to allow claims for defective work filed by an unlicensed contractor to comply with Ors 701.065 as amended in 2003. Limits the bar to claim filing by an unlicensed contractor to a claim for unpaid fees. Adds a provision to allow dismissal where evidence in the file shows claimant failed to provide the pre-claim notice required under HB 2233 (chapter 294, Oregon Laws 2003). Allows filing a second claim containing the same allegations as an earlier claim under certain circumstances. OAR 812-004-0340 is amended to provide a more specific description of the information required on the location of the work involved in the claim and to implement HB 2233 requirements for pre-claim notice. 812-004-0400 is amended to

implement HB 2233 (chapter 294, Oregon Laws 2003) to charge a processing fee. 812-004-0535 is amended to provide for the consideration of contract defenses in the evaluation of whether to award damages on a claim.

OAR 812-005-0005 is amended to implement the provisions of SB 906.

OAR 812-006-0020 is amended to delete pre-July 1, 2002 language that is no longer needed.

OAR 812-010-0020 is amended to replace the citation to repealed arbitration provision with new citation to the Revised Uniform Arbitration Act and to update provisions related to effective dates of these amendments to rules. OAR 812-010-0050, 812-010-0060, 812-010-0140, 812-010-0430, 812-010-0440, 812-010-0460, 812-010-0500, 812-010-0510, and 812-010-0520 are adopted to implement HB 2279 (chapter 598, Oregon Laws 2003). OAR 812-010-0030 is amended to change the title "hearings officer" to "administrative law judge" and to correct cites. OAR 812-010-0085 is amended to include reference to the new OAR 812-004-0210 that requires parties to notify agency of changes in address. OAR 812-010-0240 is repealed because chapter 598, Oregon Laws 2003 does not require oaths any longer. OAR 812-010-0280 is amended to implement HB 2279 (chapter 598, Oregon Laws 2003). OAR 812-010-0290 is adopted to implement HB 2279 (chapter 598, Oregon Laws 2003). OAR 812-010-0400 is amended to delete the certified mail requirement. OAR 812-010-0420 is amended to correct the cite. OAR 812-010-0425 is amended to require delivery to the CCB as well as the arbitrator of a petition to vacate, modify or correct an award.

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

### 812-001-0020

#### Notices to be Given by Contractor or Seller

(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 March 11, 2003.

(3) The Construction Contractors Board adopts the form "Notice of Compliance with Homebuyer Protection Act" (HPA) as created November 25, 2003.

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

Stats. Implemented: ORS 87.093 & 701.055

Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 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

### 812-002-0130

#### Claimant

"Claimant" means a person who files a claim against a contractor under ORS 701.139 to 701.180.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139 - 701.180

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

### 812-002-0200

#### Date the Contractor Becomes Aware of a Lapse in License

"Date the contractor becomes aware of a lapse in license" includes but is not limited to the date a notice is mailed to the address of record from the Construction Contractors Board that his/her license has been suspended, terminated or lapsed for any reason.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.065 & ORS 701.115

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

### 812-002-0420

#### Lapse in License

"Lapse in license" as used in ORS 701.065(2)(b)(A), 701.075(6) and 701.115(4) commences at the time that a license expires, is suspended or is terminated for any reason and ends when the license is renewed or reinstated by the agency.

Stat. Auth.: ORS 670.310 & ORS 701.235

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 701.065, ORS 701.115 & ORS 701.225  
Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 6-2003(Temp), f. & cert. ef. 7-9-03 thru 1-3-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-002-0440

### Last-Known Address of Record

(1) "Last-known address of record" for a contractor, as used in ORS 701.080, or for a claimant means the most recent of:

(a) The mailing address provided by the contractor or claimant in writing to the agency, designated by the contractor or claimant as the contractor's or claimant's mailing address; or

(b) The forwarding address for the contractor 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 & ORS 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-002-0540

### Owner of a Structure

(1) "Owner of a structure" means a person not required to be licensed under ORS Chapter 701 who:

(a) Has a structure built by contractor;

(b) Purchases or enters into an agreement to purchase a structure from a contractor or developer; or

(c) Owns, leases, or rents a structure on which alterations or repairs are being or have been made.

(2) "Owner of a structure" may also include:

(a) An association of unit owners that files a claim related to the common elements of a condominium, as those phrases are defined in ORS 100.005.

(b) The following agents of persons described in section (1) of this rule:

(A) Property managers licensed under ORS Chapter 696; or

(B) A person who is acting on behalf of an incapacitated person, based on guardianship, power of attorney, or other legal representation.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.010 & ORS 701.225

Hist.: CCB 4-1998, f. & cert. ef. 4-30-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 6-2001, f. & cert. ef. 9-27-01; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-003-0000

### Licensing Generally

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

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

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

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

(5) Each entity shall:

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

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

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

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

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

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

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

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

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

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

(c) An entity whose license has lapsed is considered unlicensed from the date the lapse occurred until the date the license is backdated and renewed, reissued, or reinstated. During a period of lapse, the entity shall not perform the work of a contractor.

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

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

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

(8) License number in advertising and contracts:

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

(b) All written bids, written inspection reports and building contracts subject to ORS Chapter 701 shall show the contractor's license number.

(c) All telephone directory space ads and display ads shall show the contractor's license number.

(d) Except as set forth in sub paragraph (e) all business cards, business letterhead, business signs at construction sites, all advertising, shall show the contractor's license number. This rule is effective upon filing for all contractors filing for new license, and is effective for all existing contractors when they purchase new business cards, business letterhead, and business signs for construction sites, or January 1, 1998, whichever date occurs sooner.

(e) Sub paragraph (d) does not apply to a company whose primary business is other than construction and has a Standard Industrial Classification (SIC) code from other than Major Groups 15, 16, and 17.

(9) The initial two-year license fee for all license applications received on or after January 1, 1999, are as follows:

(a) Residential-Only Contractor — \$190;

(b) Limited Contractor — \$190;

(c) All-Structures Contractor — \$225;

(d) Inspector — \$190

(e) Licensed Developer — \$225.

(10) The two-year renewal fee for all license renewals with a renewal date of January 1, 1999, and after and all other license renewal applications received by the agency on or after January 1, 1999, are as follows:

(a) Residential-Only Contractor — \$160;

(b) Limited Contractor — \$160;

(c) All-Structures Contractor — \$190;

(d) Inspector — \$160;

(e) Licensed Developer — \$225.

(11) The reinstatement fee is \$15 for Inspectors, Residential-Only and Limited Contractors, and is \$20 for All-Structures contractors.

(a) Except as set forth in (b), the reinstatement fee shall be charged for any renewal, reissue, or reinstatement received by the agency after the prior license expiration date.

(b) The agency may waive the reinstatement fee if:

(A) The properly-completed renewal form and correct fee are received by the agency prior to the expiration date and all other renewal requirements are met within one month after the expiration date; or

(B) The licensee's failure to meet the renewal date was caused entirely or in part by an agency error or omission.

(12) A person licensed as a General Contractor — All-Structures may also perform the work of a Specialty Contractor — All-Structures. A person licensed as a General Contractor — Residential-Only may also perform the work of a Specialty Contractor — Residential-Only.

(13) A Limited Contractor may perform Specialty Contractor, General Contractor, residential, small commercial and large commercial construction work, so long as all of the following conditions are met:

(a) The licensee's annual gross business sales do not exceed \$40,000;

# ADMINISTRATIVE RULES

(b) The licensee does not enter into a contract in which the contract price exceeds \$5,000;

(c) If the contract price in a contract for work performed by the licensee is based on time and materials, the amount charged by the licensee shall not exceed \$5,000;

(d) The licensee consents to inspection by the Construction Contractors Board of its Oregon Department of Revenue tax records to verify compliance with subsection (a).

(e) For purposes of this section, "contract" includes a series of agreements between the licensee and a person for work on any single work site within a one-year period.

(14) An Inspector may perform inspections, but may not construct, alter, repair, add to, subtract from, improve, move, wreck or demolish for another, any building, highway, road, railroad, excavation or other structure, project, development or improvement attached to real estate or do any part thereof, or act as a contractor performing construction management on a project that involves any of these activities.

(15) The following surety bond amounts are required:

(a) For those applicants applying for a new license or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the bond amount required is as follows:

- (A) General Contractor — All Structures — \$10,000;
- (B) General Contractor — Residential — \$10,000;
- (C) Specialty Contractor — All Structures — \$5,000;
- (D) Specialty Contractor — Residential — \$5,000;
- (E) Limited Contractor — \$2,000.

(b) As required by ORS 701.085 as amended by chapter 325, 1999 Session Laws, for those applicants applying for a new license or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the bond amount required is as follows:

- (A) General Contractor — All Structures — \$15,000;
- (B) General Contractor — Residential — \$15,000;
- (C) Specialty Contractor — All Structures — \$10,000;
- (D) Specialty Contractor — Residential — \$10,000;
- (E) Limited Contractor — \$5,000;
- (F) Inspector — \$10,000;
- (G) Licensed Developer — \$15,000.

(c) A contractor may obtain or maintain a bond in an amount that exceeds the amount required under subsection (b) of this section if the bond obtained or maintained is in an amount that is equal to an amount required under subsection (b) of this section.

(16) The following general liability insurance amounts are required:

(a) For those applicants applying for a new license or reissue prior to July 1, 1999, and for those applicants applying for renewal prior to August 1, 1999, the following general liability insurance amount is required as follows:

- (A) General Contractor — All Structures — \$500,000;
- (B) General Contractor — Residential — \$100,000;
- (C) Specialty Contractor — All Structures — \$500,000;
- (D) Specialty Contractor — Residential — \$100,000;
- (E) Limited Contractor — \$100,000.

(b) As required by ORS 701.105, for those applicants applying for a new license or reissue on or after July 1, 1999, and for those applicants applying for renewal on or after August 1, 1999, or with an expiration date of August 1, 1999, or later the following general liability insurance amount is required as follows:

- (A) General Contractor — All Structures — \$500,000;
- (B) General Contractor — Residential — \$500,000;
- (C) Specialty Contractor — All Structures — \$500,000;
- (D) Specialty Contractor — Residential — \$300,000;
- (E) Limited Contractor — \$100,000;
- (F) Inspector — \$300,000;
- (G) Licensed Developer — \$500,000.

(17) A fee of \$20 shall be charged for any changed license category.

(18) On all construction projects regulated under the state Prevailing Wage Law, ORS 279.348 to 279.365 or the Davis Bacon Act and related acts, 40 USC 276a, the primary contractor shall provide the list of subcontractors required by ORS 701.055(11) to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries, 800 NE Oregon #32, Portland, OR 97232.

(a) The initial list of subcontractors will be submitted to the contracting public agency and to the Wage and Hour Division of the Bureau of Labor and Industries on the same date that the initial Payroll and Certified Statement form (WH-38) is due. Instructions for submitting form WH-38 are contained in OAR 839-016-0010.

(b) The primary contractor will prepare and submit updated lists of subcontractors with each submittal of the Payroll and Certified Statement form (WH-38).

(19) A contractor shall not engage in dishonest or fraudulent conduct injurious to the welfare of the public.

(20) A contractor shall cooperate fully with any investigation undertaken by the Board pursuant to ORS 701.225.

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

Stat. Auth.: ORS 670.310, 701.235, 701.280, 701.992 & 183.310 – 183.500

Stats. Implemented: ORS 701.055, 701.075, 701.102, 701.125 & 701.280

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 2-1982, f. 4-1-82, ef. 7-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0010; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; BB 1-1987, f. & ef. 3-5-87; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 7-1992, f. & cert. ef. 12-4-92; CCB 8-1992(Temp), f. & cert. ef. 12-4-92; CCB 1-1993, f. & cert. ef. 2-1-93; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 1-1995, f. & cert. ef. 2-2-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 4-1996, f. 11-7-96, cert. ef. 11-8-96; CCB 5-1996, f. 11-25-96, cert. ef. 11-27-96; CCB 7-1996, f. & cert. ef. 12-11-96; CCB 2-1997, f. 7-7-97, cert. ef. 7-8-97; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2002(Temp), f. & cert. ef. 5-23-02 thru 11-19-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 5-2003, f. 6-3-03, cert. ef. 10-1-03; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 8-2003, f. 8-8-03 cert. ef. 1-1-04; CCB 9-2003, f. 9-29-03, cert. ef. 1-1-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-003-0020

### Bonds

(1) A "properly executed bond" must be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(2) The surety bond's effective date is the date on which the licensee has first met all requirements for licensing or renewal. The bond shall be continuous. The surety will be responsible for ascertaining the bond's effective date.

(3) A surety bond may be cancelled only after the surety has given 30 days' notice to the agency. Cancellation will be effective 30 days after receipt of the cancellation notice. The bond shall cover final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

(4) The name of the entity as it appears on the bond must be the same as the name on the application:

(a) If the entity is a sole proprietorship, the bond must include the name of the owner;

(b) If the entity is a partnership, the bond must include the names of all partners (except limited partners) and any business name(s) used;

(c) If the entity is a limited liability partnership, the bond must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a corporation, the bond must be issued showing the corporate name; or

(e) If the entity is a limited liability company, the bond must be issued in the name of the limited liability company; or

(f) The inclusion or exclusion of business name(s) on a bond shall not limit the liability of an entity. Claims against a licensed and bonded entity will be processed regardless of business names used by such entity.

(5) If at any time an entity amends, deletes, or adds a business name(s) the agency must be notified within 30 days of the date of the change.

(6) If an entity licenses as a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability company, and seeks to change the licensed entity to one of the other types, the application must be accompanied by a new bond. Riders to existing bonds changing the type of entity bonded will be construed as a cancellation of the bond and will not be otherwise accepted.

(7) Bond documents received at the agency office via electronic facsimile shall be accepted as original documents. The surety shall provide the original bond document to the agency upon request.

(8) In accordance with ORS 701.085(7), the agency may require an applicant (any person applying to renew or reinstate his/her license or applying for a new license), to file a bond of up to five times the normally required amount (up to \$75,000 for a General Contractor or Licensed Developer, \$50,000 for a Specialty Contractor or Inspector, or \$25,000 for a Limited Contractor) or licensee, if it determines that an applicant, or a

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previous license of a corporate officer, owner, member or partner of a current applicant or licensee, has:

(a) A history of unpaid final orders consisting of two or more final orders unpaid for longer than thirty (30) days following the date of issuance; or

(b) Three or more open owner claims filed on three or more different structures by three or more different owner claimants; or

(c) Five or more claims open at one time.

(9) A properly executed bond shall include the following:

"NOW THEREFORE, the conditions of the foregoing obligation are that if said principal with regard to all work done by the principal as a "contractor" as defined by ORS 701.005, shall pay all amounts that may be ordered by the Construction Contractors Board against the principal by reason of negligent or improper work or breach of contract in performing any of said work, in accordance with ORS Chapter 701 and OAR chapter 812, then this obligation shall be void; otherwise to remain in full force and effect.

This bond is for the exclusive purpose of payment of final orders of the Construction Contractors Board in accordance with ORS Chapter 701.

This bond shall be one continuing obligation, and the liability of the surety for the aggregate of any and all claims, which may arise hereunder, shall in no event exceed the amount of the penalty of this bond.

This bond shall become effective on the date the principal meets all requirements for licensing or renewal and shall continuously remain in effect until depleted by claims paid under ORS Chapter 701, unless the surety sooner cancels the bond. This bond may be canceled by the surety and the surety be relieved of further liability for work performed on contracts entered after cancellation by giving 30 days' written notice to the principal and the Construction Contractors Board of the State of Oregon. Cancellation shall not limit the responsibility of the surety for final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

This bond shall not be valid for purposes of licensing in accordance with ORS Chapter 701 unless filed with the Construction Contractors Board within sixty (60) days of the date shown below."

(10) If a claim is filed against a licensee for work done during the work period of a contract entered while the security required under ORS 701.085 is in effect, the security shall be held until final disposition of the claim.

(11) Any contractor licensed as of November 7, 1997, who maintains a license in accordance with this chapter shall be in compliance with this rule until the renewal of the contractor's license. At that time, the contractor shall provide a continuous bond that is in compliance with this rule.

(12) This rule permits sureties to file a single rider to amend their present bonds on file with the Construction Contractors Board.

(a) The rider shall be received by the Board prior to November 14, 1997, and shall specify that bonds on file as of January 1, 1998, shall be read to include the new bond conditions as follows:

This rider converts all existing bond forms to continuous until canceled bond forms as required by OAR 812-003-0020. All bonds shall remain in force continuously unless the surety gives written notice to the Construction Contractors Board of its intent to cancel the bond.

The bonds shall cover final orders relating to work performed during the work period of a contract entered into prior to the cancellation.

These bonds may be canceled by the surety and the surety relieved of further liability for work performed on contracts entered into after cancellation by giving thirty (30) days' written notice to the principal and the Construction Contractors Board.

To the extent that the language of the existing bonds being converted may vary from the new language, the new language will be controlling.

(b) This rule shall be liberally construed to effect its purpose of making a practical transition to the new bond form. Nothing in this rule shall be construed to increase the bond amount without a separate increase rider.

(c) Sureties that elect to file a rider shall also file a certificate that the bond principals have been advised of the intended election by the surety.

Stat. Auth.: ORS 701.105, ORS 701.235

Stats. Implemented: ORS 701.085, ORS 701.105

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0030; 1BB 2-1983, f. & ef. 7-6-83; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 3-1984, f. & ef. 5-11-84; 1BB 4-1984, f. & ef. 8-16-84; 1BB 6-1984(Temp), f. & ef. 9-18-84; 1BB 3-1985, f. & ef. 4-25-85; BB 2-1987, f. & ef. 7-2-87; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 2-1996, f. & cert. ef. 6-18-96; CCB 5-1997(Temp), f. & cert. ef. 11-7-97; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 6-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-17-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 3-2001(Temp), f. & cert. ef. 4-19-01 thru 10-15-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-003-0025

### Renewal and Reissue of License

(1) A license may be renewed or reissued upon:

(a) The applicant's completion of the renewal form or application form prescribed by the agency; and

(b) Payment of the fee or fees, and

(c) Receipt of the required certification of insurance coverage, and

(d) A non-cancelled bond on file. If it appears to the agency that the required surety bond has been cancelled, the applicant shall submit a reinstatement from the surety on the cancelled bond or a new, original, continuous until cancelled surety bond.

(2) Licensees shall submit a signed acknowledgment that if the licensee qualifies as an independent contractor the licensee understands that the licensee and any heirs of the licensee will not qualify for workers' compensation or unemployment compensation unless specific arrangements have been made for the licensee's insurance coverage and that the licensee's election to be an independent contractor is voluntary and is not a condition of any contract entered into by the licensee.

(3) A licensee may qualify for Limited Contractor license and reduce the bond to \$5,000 upon certification that the licensee will not enter into contracts that exceed \$5,000, that the licensee's gross business sales of work subject to ORS Chapter 701 was less than \$40,000 in the previous twelve months, is expected to be less than \$40,000 during the next twelve months, and that the licensee agrees that if the licensee's gross construction business volume exceeds \$40,000 during the coming year the licensee will immediately increase the bond amount to \$10,000 or \$15,000, and increase the insurance coverage if necessary, to meet the requirements of the appropriate license category. The reduced bond may be accomplished by submission of a decrease rider to an existing bond or the submission of a new bond. The effective date on either the decrease rider or the new bond must be the license renewal date or after. In addition, the agency may refuse to authorize a reduced amount until any pending claim(s) against the licensee are resolved.

(4) If a licensee provides a decrease rider to an existing bond in accordance with this rule prior to the license renewal date, the agency will determine the effective date to be the date of renewal or reissue.

(5) The effective date of renewal shall be the previous license expiration date when:

(a) All requirements for renewal are met prior to the previous license expiration date; or

(b) All requirements for renewal, including submission of either a valid continuous until canceled bond or back-dated new bond, certification of insurance coverage, and payment of renewal fee plus reinstatement fee, are met, providing the contractor applies for renewal not more than one year after the license lapses.

(6) If the contractor applies for renewal more than one year after the license lapses, the effective date of reissue shall be the date all requirements for licensing, including, but not limited to, submission of a newly issued continuous until canceled bond or reinstatement of an existing continuous until canceled bond, certification of insurance coverage and payment of new license fee.

(7) For liens perfected and claims commenced on or after January 1, 1998:

(a) The time period under ORS 701.065(2)(a)(A) and 701.065(2)(c)(B) (2003 Laws) for a completed application for license to be submitted to the Board is 90 calendar days from the date the contractor became aware of the requirement that the contractor be licensed;

(b) The time period under ORS 701.065(2)(b)(A) for a completed application for license renewal to be submitted to the Board is 90 calendar days from the date the contractor became aware of a lapse in license.

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

Stats. Implemented: ORS 701.065, ORS 701.102 & ORS 701.115

Hist.: 1BB 5, f. 6-15-76, ef. 7-1-76; 1BB 7, f. & ef. 11-14-77; 1BB 1-1978, f. & ef. 5-23-78; 1BB 3-1980(Temp), f. 6-2-80, ef. 7-1-80; 1BB 4-1980, f. & ef. 7-14-80; 1BB 5-1980, f. & ef. 10-7-80; 1BB 6-1980, f. & ef. 11-4-80; 1BB 3-1981, f. 10-30-81, ef. 11-1-81; 1BB 1-1982, f. 3-31-82, ef. 4-1-82; 1BB 4-1982, f. & ef. 10-7-82; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0035; 1BB 3-1983, f. 10-5-83, ef. 10-15-83; 1BB 4-1984, f. & ef. 8-16-84; 1BB 3-1985, f. & ef. 4-25-85; BB 3-1987, f. 12-30-87, cert. ef. 1-1-88; BB 2-1988, f. & cert. ef. 6-6-88; BB 2-1989, f. 6-29-89, cert. ef. 7-1-89; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 4-1995, f. & cert. ef. 10-5-96; CCB 4-1997, f. & cert. ef. 11-3-97; CCB 4-1998, f. & cert. ef. 4-30-98; CCB 6-1998, f. 8-31-98, cert. ef. 9-1-98; CCB 3-1999(Temp), f. & cert. ef. 6-29-99 thru 12-25-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-1999, f. 9-10-99, cert. ef. 11-1-99; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 10-2003(Temp), f. 9-29-03, cert. ef. 10-1-03 thru 3-27-04; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-004-0110

### Claim Processing Fee; Waiver of Fee

(1) The claim processing fee authorized under ORS 701.147 is \$50.

(2) The agency shall collect the processing fee under OAR 812-004-0400.

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(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.

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

## 812-004-0210

### 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.

(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 & 701.235

Stats. Implemented: ORS 701.080

Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-004-0320

### Jurisdictional Requirements

(1) A claim must be of a type described under ORS 701.140.

(2) A claim must be filed with the agency within the time allowed under ORS 701.143.

(3) A claim will be processed only against a licensed entity. Whether a contractor is licensed for purposes of this subsection shall be determined as follows:

(a) For an owner claim, employee claim, primary contractor claim or subcontractor claim, the entity against which the claim is filed will be considered licensed if that entity was licensed during all or part of the work period.

(b) For a material claim, the entity against which the claim is filed will be considered licensed if one or more invoices involve material delivered while the entity was licensed. Damages will be awarded only for material delivered within the period of time that contractor was licensed.

(4)(a) Claimant must have been properly licensed at the time the bid was made or the contract was entered into and must have remained licensed continuously throughout the work period if:

(A) The work at issue in the claim requires that claimant be licensed under ORS 701.055 in order to perform the work; and

(B) Claimant files a claim arising out of a contract to construct the work at issue and the claim is for unpaid labor or materials furnished under the contract.

(b) As used in this subsection, "properly licensed" means the claimant:

(A) Had a current valid license issued by the agency and was not on inactive status;

(B) Was licensed for the type of work at issue in the claim;

(C) Complied with the requirements of ORS 701.035 and OAR 812-003-0002 as they applied to claimant's license status as an "exempt" or "nonexempt" contractor; and

(D) Complied with any other requirements and restrictions on claimant's license.

(5) Claims will be accepted only when one or more of the following relationships exists between the claimant and the respondent:

(a) A direct contractual relationship based on a contract entered into by the claimant and the respondent, or their agents;

(b) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim; or

(c) A real estate purchase conditioned upon an inspection report or repairs made by the respondent.

(6) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or

rented for fabrication into or use upon structures located within the boundaries of the State of Oregon.

(7) A claim will be dismissed if the claimant fails to establish that the claimant gave a pre-claim notice to the respondent as required under ORS 701.147. Proof of this notice must be in the form required under OAR 812-004-0340. Nothing in this section of this rule prevents closing a claim under OAR 812-004-0350 if the claimant fails to provide documentation required under OAR 812-004-0340(2)(m).

(8)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 701.140 that is the same as an allegation contained in a claim previously filed by the same claimant against the same respondent.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 701.143.

(9) A claim by a person furnishing material, or renting or supplying equipment to a contractor may not include a claim for non-payment for tools sold to a licensee, for equipment sold to a licensee and not fabricated into a structure, for interest or service charges on an account, or for materials purchased as stock items.

(10) Claims by a contractor or by persons furnishing material, or renting or supplying equipment to a contractor will not be processed unless they are at least \$150 in amount.

(11) The agency may process a claim against a licensed contractor whose license was inactive under OAR 812-003-0050 during the work period.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.065, 701.139, 701.140, 701.143, 701.145, 701.146, 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-004-0340

### Form of Claims

(1) A claim shall be submitted on a Statement of Claim form provided by the agency. The agency may require the use of the most recent revision of the Statement of Claim form.

(2) The claimant shall provide the following information if applicable:

(a) The name, address and telephone number of the claimant;

(b) The name, address, telephone number and license number of the licensee;

(c) The amount, if known at the time the Statement of Claim is filed, that the claimant alleges is due from the licensee after crediting payments, offsets and counterclaims in favor of the licensee to which claimant agrees;

(d) Identification of the type of claim;

(e) The date on which the contract was entered into;

(f) If the contract was in writing, a copy of the contract, including all relevant attachments, if any;

(g) The location of the work at issue in the claim, described by a postal address or other description sufficient to locate the work site on a map and on the ground;

(h) The beginning and ending date of the work or invoices;

(i) Payments, offsets and counterclaims of the contractor, if known;

(j) Whether the project involves work on a residential, small commercial or large commercial structure;

(k) A certification by the claimant that the Statement of Claim is true;

(l) If a court judgment or arbitration award is the basis for the claim, a copy of the judgment or award, the original complaint and any answers or counter-suits related to the parties to the claim filed in the court action or arbitration;

(m) A copy of the pre-claim notice required under ORS 701.147(9) and of the certified or registered mail receipt for the pre-claim notice.

(3) A subcontractor claim shall include copies of each original invoice relating to the claim.

(4) An employee claim shall include copies of time cards or other evidence of the amount of compensation claimed.

(5) An employee trust claim shall include the name of each employee that is the subject of the claim, the dates that employee worked without payment of employee benefits and the following information for each date and employee:

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- (a) The hours worked without payment of employee benefits;
- (b) The amount of the unpaid benefits;
- (c) The address of the job site where the employee worked; and
- (d) Whether the structure at the job site is a residential structure, small commercial structure or large commercial structure.

(6) A construction lien claim shall include evidence that the claimant paid the primary contractor, a copy of the notice of right to lien, a copy of the lien bearing the county recorder's stamp and signature, a copy of each invoice or billing constituting the basis of the lien, a copy of the ledger sheet or other accounting of invoices from the lien claimant, if applicable, and any foreclosure documents.

(7) A material claim shall include recapitulation of the indebtedness showing the job site address, the date of each invoice, each invoice number, each invoice amount and a copy of each original invoice relating to the claim.

(8) A claim involving negligent or improper work shall include a list of the alleged negligent or improper work. A claim involving a breach of contract shall describe the nature of the breach of contract.

(9) The Statement of Claim form must be signed by the claimant or an agent of the claimant.

(10) A Statement of Claim that does not comply with the requirements of this rule is subject to OAR 812-004-0350.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 701.139, 701.140, 701.143, 701.145 & 701.146

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 2-2001, f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 2-2003, f. & cert. ef. 3-4-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-004-0400

### Initial Administrative Processing of Claims; Collection of Fee

(1) Upon receipt of a claim, the agency shall:

(a) Send a copy of the claim to the respondent;

(b) Verify that claimant has provided information required under OAR 812-004-0340 and request additional information from claimant if necessary;

(c) Make a preliminary determination that the board has or lacks jurisdiction over the claim based on the information provided by the claimant;

(d) If the agency makes a preliminary determination that it has jurisdiction over the claim and the agency does not waive the claims processing fee required under OAR 812-004-0110, the agency shall request payment of the claims processing fee. Except as provided in section (2) of this rule, the agency may suspend processing of the claim until claimant pays this fee.

(e) If the agency determines that the claim should be dismissed based on the information submitted by claimant, the agency shall issue a proposed order to dismiss under OAR 812-004-0550. If the claimant requests a hearing on the dismissal and the agency does not waive the claims processing fee required under OAR 812-004-0110, the agency shall request payment of the claims processing fee and may not transmit the claim to the Office of Administrative Hearings for a hearing until the fee is paid.

(f) If the claimant fails to pay the fee required under OAR 812-004-0110 within 60 days of written notification that the fee is due, the agency may close the claim. The request for payment and closure must comply with OAR 812-004-0260.

(2) The agency may initiate an investigation to determine the validity of the claim. The investigation may include an investigation conducted at an on-site meeting. At the agency's discretion, the agency may investigate a claim even though the fee required under OAR 812-004-0110 has not been paid if the agency believes the public will benefit from continuing to investigate the claim.

Stat. Auth.: ORS 670.310 & 701.235

Stats. Implemented: ORS 183.415, 183.460, 701.140 & 701.145, 701.146 & 701.147

Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 4-2003, f. & cert. ef. 6-3-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-004-0535

### Elements of Claim that Must Be Proved

For purposes of OAR 812-004-0540(5), 812-004-0550(2), 812-009-0100 and 812-009-0120, in order for the agency to award damages to claimant the following conditions must be satisfied:

(1) The record of the claim must contain evidence that persuades the agency, arbitrator or administrative law judge that:

(a) Claimant suffered damages;

(b) Respondent caused those damages by acts or omissions within the scope of ORS 701.140; and

(c) The monetary value of those damages is substantiated on the record.

(2) The record of the claim must contain no evidence that persuades the agency, arbitrator or administrative law judge that the claim must be dismissed because the claimant is not entitled to recover damages under the claim.

Stat. Auth.: ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.139, ORS 701.140, ORS 701.143, 701.145, 701.146 & 701.147

Hist.: CCB 2-2003, f. & cert. ef. 3-4-03; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-005-0005

### Schedule of Penalties

The agency may assess penalties, not to exceed the amounts shown in the following guidelines:

(1) \$600 for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), which may be reduced to \$200 if the respondent becomes licensed or to \$50 if the advertisement or bid is withdrawn immediately upon notification from the agency that a violation has occurred and no work was accepted as a result of the advertisement or bid; and

(2) \$700 per offense without possibility of reduction for advertising or submitting a bid to do work as a contractor in violation of ORS 701.055(1) and section 812-003-0000(7), when one or more previous violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(3) \$1,000 per offense for performing work as a contractor in violation of ORS 701.055(1) when the Board has no evidence that the person has worked previously without having a license and no consumer has suffered damages from the work, which may be reduced to \$700 if the respondent becomes licensed within a specified time; and

(4) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when an owner has filed a complaint for damages caused by performance of that work, which may be reduced to \$700 if the contractor becomes licensed within a specified time and settles or makes reasonable attempts to settle with the owner; and

(5) \$5,000 per offense for performing work as a contractor in violation of ORS 701.055(1), when one or more violations have occurred, or when an inactive, lapsed, invalid, or misleading license number has been used; and

(6) \$500 per offense for failure to respond to the agency's request for the list of subcontractors required in ORS 701.055(11); and

(7) \$1,000 per offense for hiring a unlicensed subcontractor; and

(8) For failing to provide an "Information Notice to Owners about Construction Liens" as provided in ORS 87.093, when no lien has been filed, \$200 for the first offense, \$400 for the second offense, \$600 for the third offense, \$1,000 for each subsequent offense. Any time a lien has been filed upon the improvement, \$1,000.

(9) Failure to include license number in advertising or on contracts, in violation of OAR 812-003-0000(8): First offense \$100, second offense \$200, subsequent offenses \$400.

(10) Failure to list with the Construction Contractors Board a business name under which business as a contractor is conducted in violation of OAR 812-003-0000(5): First offense \$50, second offense \$100, subsequent offenses \$200.

(11) Failure to use a written contract as required by ORS 701.055(14), \$200; when a claim has been filed, \$400; second and subsequent offenses, \$1,000.

(12) Violation of ORS 701.055(13), failure to provide a Consumer Notification form; \$100 first offense; \$500 second offense; \$1,000 third offense; and \$5,000 for subsequent offenses. Civil penalties shall not be reduced unless the agency determines from clear and convincing evidence that compelling circumstances require a suspension of a portion of the penalty in the interest of justice. In no event shall a civil penalty for this offense be reduced below \$100.

(13) Failure to conform to information provided on the application in violation of ORS 701.075(2), issuance of a \$1,000 civil penalty, and suspension of the license until the contractor provides the agency with proof of conformance with the application.

(a) If the violator is a limited contractor working in violation of the conditions established pursuant to OAR 812-003-0000(13), the licensee shall be permanently barred from licensure in the Limited Contractor category.

(b) If the violator is a licensed developer working in violation of the conditions established pursuant to ORS 701.005(7), the licensee shall be permanently barred from licensure in the Licensed Developer category.

(14) Knowingly assisting an unlicensed contractor to act in violation of ORS Chapter 701, \$1,000.

(15) Failure to comply with any part of ORS Chapters 316, 656, or 657, 701.035 or 701.075, as authorized by ORS 701.100, \$1,000 and sus-

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pension of the license until the contractor provides the agency with proof of compliance with the statute.

(16) Violating an order to stop work as authorized by ORS 701.225(3), \$1,000 per day.

(17) Working without a construction permit in violation of ORS 701.135, \$1,000 for the first offense; \$2,000 and suspension of CCB license for three (3) months for the second offense; \$5,000 and permanent revocation of CCB license for the third and subsequent offenses.

(18) Failure to comply with an investigatory order issued by the Board, \$500 and suspension of the license until the contractor complies with the order.

(19) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public: first offense, \$1,000, suspension of the license or both; second and subsequent offenses, \$5,000, per violation, revocation or suspension of the license until the fraudulent conduct is mitigated in a manner satisfactory to the agency or both.

(20) Engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public by:

(a) Not paying prevailing wage on a public works job; or

(b) Violating the federal Davis-Bacon Act; or

(c) Failing to pay minimum wages or overtime wages as required under state and federal law; or

(d) Failing to comply with the payroll certification requirements of ORS 279.354; or

(e) Failing to comply with the posting requirements of ORS 279.350: \$1,000 and suspension of the license until the money required as wages for employees is paid in full and the contractor is in compliance with the appropriate state and federal laws.

(21) Violation of ORS 701.135(1)(L) by engaging in conduct as a contractor that is dishonest or fraudulent and injurious to the welfare of the public, as described in subparagraphs (19) or (20), where more than two violations have occurred: \$5,000 and revocation of the license.

(22) When, as set forth in ORS 701.135(1)(h), the number of licensed contractors working together on the same task on the same job site, where one of the contractors is licensed exempt under ORS 701.035(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows: \$1,000 for the first offense, \$2,000 for the second offense, six month suspension of the license for the third offense, and three-year revocation of license for a fourth offense.

(23) Performing home inspections without being an Oregon certified home inspector in violation of OAR 812-008-0030(1): \$5,000.

(24) Using the title Oregon certified home inspector in advertising, bidding or otherwise holding out as a home inspector in violation of OAR 812-008-0030(3): \$5,000.

(25) Failure to conform to the Standards of Practice in violation of OAR 812-008-0080(1)-(14): \$750 per offense.

(26) Failure to conform to the Standards of Behavior in OAR 812-008-0080(15)(b)-(h): \$750 per offense.

(27) Offering to undertake, bidding to undertake or undertake repairs on a structure inspected by an owner or employee of the business entity within 12 months following the inspection in violation of ORS 701.355: \$5,000 per offense.

(28) Failure to include certification number in all written reports, bids, contracts, and an individual's business cards in violation of OAR 812-008-0080(1)(d): \$400 per offense.

(29) Violation of work practice standards for lead-based paint activity pursuant to OAR 812-007-0070; \$5,000 per violation and suspension of the lead-based paint business endorsement for up to one year.

(30) Violation of ORS 279.323:

(a) Imposition of a civil penalty on the contractor of up to ten percent of the amount of the subcontract bid submitted by the complaining subcontractor to the contractor or \$15,000, whichever is less; and

(b) Imposition of a civil penalty on the contractor of up to \$1,000; and

(c) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to six months for a second offense if the offense occurs within three years of the first offense.

(d) Placement of the contractor on a list of contractors not eligible to bid on public contracts established to ORS 701.227(4), for a period of up to one year for a third or subsequent offense if the offense occurs within three years of the first offense.

(31) Violation of ORS 701.175, inclusion of provisions in a contract that preclude a homeowner from filing a claim with the Board: \$1,000 for the first offense, \$2,000 for the second offense, and \$5,000 for the third and subsequent offenses.

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

Stats. Implemented: ORS 701.135, 701.175, 701.227, 701.992, & 279.323

Hist.: IBB 4-1982, f. & ef. 10-7-82; IBB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0080(13); IBB 3-1983, f. 10-5-83, ef. 10-15-83; IBB 3-1984, f. & ef. 5-11-84; IBB 3-1985, f. & ef. 4-25-85; BB 1-1987, f. & ef. 3-5-87, BB 1-1988(Temp), f. & cert. ef. 1-26-88; BB 2-1988, f. & cert. ef. 6-6-88; CCB 1-1989, f. & cert. ef. 11-1-89; CCB 2-1990, f. 5-17-90, cert. ef. 6-1-90; CCB 3-1990(Temp), f. & cert. ef. 7-27-90; CCB 4-1990, f. 10-30-90, cert. ef. 11-1-90; CCB 3-1991, f. 9-26-91, cert. ef. 9-29-91; CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 2-1992, f. & cert. ef. 4-15-92; CCB 4-1992, f. & cert. ef. 6-1-92; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 3-1995, f. 9-7-95, cert. ef. 9-9-95; CCB 4-1995, f. & cert. ef. 10-5-95; CCB 3-1996, f. & cert. ef. 8-13-96; CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 7-1999(Temp), f. & cert. ef. 11-1-99 thru 4-29-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 13-2000(Temp), f. & cert. ef. 11-13-00 thru 5-11-01; CCB 2-2001 f. & cert. ef. 4-6-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 1-2002(Temp), f. & cert. ef. 3-1-02 thru 8-26-02; CCB 2-2002, f. & cert. ef. 3-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-006-0020

### Exemptions

(1) In lieu of the education courses required under ORS 701.280, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

(a) Has completed the licensing requirements of ORS 446.395 for manufactured dwelling installers;

(b) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(2) In lieu of the test required under ORS 701.075, an applicant may provide evidence satisfactory to the agency that the responsible managing individual:

(a) Is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, or trustee prior to July 1, 2000, and that the business has been lapsed with the agency for 12 months or less; or

(b) Effective January 1, 2002, is listed on the agency's current computer license records as having been licensed as a sole proprietor, partner, corporate officer, member, designated RMI, or trustee prior to July 1, 2000 and that the business has been lapsed with the agency for 24 months or less.

(3) Education and testing that was completed prior to the 12-month lapse in OAR 812-006-0020(1)(b) shall not be used to fulfill this requirement.

(4) Effective January 1, 2002, education and testing that was completed prior to the 24-month lapse in OAR 812-006-0020(1)(c) shall not be used to fulfill this requirement.

Stat. Auth.: ORS 670.310, ORS 701.235 & ORS 701.280

Stats. Implemented: ORS 701.075 & ORS 701.280

Hist.: CCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; CCB 5-1992, f. 7-31-92, cert. ef. 8-1-92; CCB 3-1993, f. & cert. ef. 6-9-93; CCB 4-1993, f. 8-17-93, cert. ef. 8-18-93; CCB 5-1993, f. 12-7-93, cert. ef. 12-8-93; CCB 1-1994, f. 6-23-94, cert. ef. 7-1-94; CCB 2-1994, f. 12-29-94, cert. ef. 1-1-95; CCB 2-1995, f. 6-6-95, cert. ef. 6-15-95; CCB 1-1998, f. & cert. ef. 2-6-98; CCB 1-1999, f. 3-29-99, cert. ef. 4-1-99; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 7-2000, f. 6-29-00, cert. ef. 7-1-00; CCB 9-2000, f. & cert. ef. 8-24-00; CCB 4-2001(Temp), f. & cert. ef. 5-18-01 thru 11-13-01; Administrative correction 11-20-01; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2002, f. 6-26-02 cert. ef. 7-1-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0020

### Applicability of Rules; Application of chapter 598, Oregon Laws 2003

(1) The rules in division 10 of this chapter apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 812-004-0590.

(b) The parties to the arbitration agree that the Construction Contractors Board may arbitrate a construction dispute and the agency accepts the dispute for arbitration under ORS 701.148.

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Construction Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 701.148.

(d) Arbitration by the Construction 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 10 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for an 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 10 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;



# ADMINISTRATIVE RULES

(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; and

(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 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 183, ORS 701.139, ORS 701.147 & ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0030

### 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 judge" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

Stat. Auth.: ORS 670.310, & ORS 701.235  
Stats. Implemented: ORS 183 & ORS 701  
Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0050

### Application for Judicial Relief

An application for to the court for judicial relief under the rules in division 10 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 & 701.235  
Stats. Implemented: Ch. 598, OL 2003  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0060

### Appointment of Arbitrator

Assignment of arbitrator shall be as provided in ORS 701.147 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, ORS 701.235  
Stats. Implemented: ORS 701.147, ORS 701.148, sec. 8, ch. 294, OL 2001 & sec. 10, ch. 75, OL 2003  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 1-2000(Temp), f. 1-20-00, cert. ef. 1-24-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0085

### 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, 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 812-004-0210, 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, [or] withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310 - 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 183, 701  
Hist.: CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0140

### 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 known, 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 10 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. Such decision shall be final.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 3-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 7-22-00; CCB 4-2000, f. & cert. ef. 5-2-00; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0280

### Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such 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 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0290

### 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 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0400

### Service 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

# ADMINISTRATIVE RULES

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 hearing, the notice of hearing shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.080, ORS 701.147 & ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0420

### Time, Form, and Scope of Award; Limitation on Award

(1) An 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 that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition 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 812-004-0540, 812-004-0550 or 812-010-0110; or

(b) The Statement of Claim filed by the party under OAR 812-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 701.085 and the parties to the claim have not agreed that the arbitration will bind 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 as to the offset. 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 812-010-0440 and 812-010-0460, an arbitration award is effective as an order to pay under OAR 812-004-0600 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 for to modify or correct the award under OAR 812-010-0425.

(9)(a) Except as otherwise provided in 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 respondent's bond required under ORS 701.085 and other amounts that are not payable from the bond under OAR 812-004-0250 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 at 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 - ORS 183.500, ORS 670.310 & ORS 701.235

Stats. Implemented: ORS 701.145 & ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0425

### Petition to Modify or Correct an Award

(1) A party to arbitration or the agency 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 812-010-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator no later than 21 days after the proposed award was mailed to the parties.

(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.

(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 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, ORS 670.310, & ORS 701.235

Stats. Implemented: ORS 183, ORS 701.147 & ORS 701.148

Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 7-2003, f. & cert. ef. 8-8-03; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0430

### Form of Petition to Vacate, Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 812-010-0425 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 the other parties to the arbitration.

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(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, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 183 & ORS 701.148  
Hist.: CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0440

### Payments from Licensee's Bond

(1) As used in this rule, award means an award that becomes effective:

- (a) Under OAR 812-010-0420(8); or
- (b) After an amended award is issued under OAR 812-010-0425(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 to the extent payment is authorized under ORS 701.150. Payments from the bond shall be limited to sums for arbitrated claims and shall be subject to the laws in ORS Chapter 701 and rules in division 4 of this chapter.

(3) An award may be submitted to a surety company for payment under OAR 812-004-0600 if no party files a petition to vacate, 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 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.143 & ORS 701.150  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 8-2001, f. 12-12-01, cert. ef. 1-1-02; CCB 5-2002, f. 5-28-02, cert. ef. 6-1-02; CCB 9-2002(Temp), f. & cert. ef. 9-6-02 thru 3-5-03; CCB 10-2002, f. & cert. ef. 11-20-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0460

### 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 812-010-0425(9).

(2) After an award becomes effective under OAR 812-010-0420(7) a denial of a petition to vacate, modify or correct an award is issued under OAR 812-010-0425(8) or an amended award is issued under OAR 812-010-0425(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 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 vacate, modify or correct the award with the court under section 22, chapter 598, Oregon Laws 2003. The party filing the petition must file the petition and deliver a copy of the petition to the agency within 30 days of 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 claimant does not file the award with the court under section 22, chapter 598, Oregon Laws 2003, respondent must file the award with court prior to respondent filing a petition of the award under section 22, chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.145 & 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 6-2002 f. 6-10-02 cert. ef. 7-1-02; CCB 8-2002, f. & cert. ef. 9-3-02; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0500

### Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to sections 14(1) to (3), chapter 598, Oregon Laws 2003.

Stat. Auth.: ORS 183.310 - ORS 183.500, ORS 670.310 & ORS 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 8-1998, f. 10-29-98, cert. ef. 11-1-98; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 5-1999, f. & cert. ef. 9-10-99; CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0510

### 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 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

## 812-010-0520

### 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 812-010-0510 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 & 701.235  
Stats. Implemented: ORS 701.148  
Hist.: CCB 11-2003, f. 12-5-03, cert. ef. 1-1-04

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**Adm. Order No.:** CCB 12-2003(Temp)

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03 thru 6-6-04

**Notice Publication Date:**

**Rules Amended:** 812-001-0020

**Subject:** The form "Information Notice to Property Owners About Construction Responsibilities" contains obsolete phone numbers that need to be corrected.

**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 created November 25, 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  
Hist.: 1BB 4-1981, f. 11-24-81, ef. 1-1-82; 1BB 3-1982, f. 6-4-82, ef. 1-1-83; 1BB 1-1983, f. & ef. 3-1-83; Renumbered from 812-011-0076; 1BB 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 12-2003(Temp), f. & cert. ef. 12-9-03 thru 6-7-04

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## Department of Administrative Services, Budget and Management Division Chapter 122

**Adm. Order No.:** BMD 7-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 12-4-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 122-070-0065

**Rules Amended:** 122-070-0000, 122-070-0010, 122-070-0030, 122-070-0060, 122-070-0070, 122-070-0080

**Subject:** Add rule 122-070-0065 to clarify needs in managing tax exempt bond proceeds to insure compliance with all federal tax code requirements to maintain tax-exempt under federal law.

Amend other rules to include current programs administered by the Capital Investment Section, correct for changes in the requirements associated with Oregon tax-exempt debt and adjust fees for debt issuance that have not changed since 1996.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 122-070-0000

### Authority

(1) The Director of the Department of Administrative Services is authorized by ORS 283.085 to 283.092 to enter into financing agreements to acquire real property or personal property for state agencies. ORS 283.060 authorizes the Department of Administrative Services, with the approval of the Governor, to make reasonable rules and regulations that are necessary or proper for the administration of the law that the Department is charged with administering.

(2) Lottery bond financings are authorized by ORS 286.580 and are to be issued by the State Treasurer with the concurrence of the Director of the Department of Administrative Services.

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(3) The State of Oregon acting through the Oregon State Treasurer is authorized by ORS 288.165 to issue and borrow money by entering into a credit agreement, or issuing notes, warrants, short-term promissory notes, commercial paper or other obligations in anticipation of taxes, grants or other revenues. Department of Administrative Services shall account for and administer the proceeds of the obligations and the repayment of the obligations.

(4) The Director of the Oregon Department of Administrative Services ORS 353.559 Sec. 18, as directed by the State Treasurer, may issue general obligation bonds, obtain credit enhancement to provide additional security or liquidity for general obligation bonds, enter into security documents with a bond trustee, establish one or more debt service reserve accounts for the purpose of paying bond debt service, to pay any costs and expenses of issuing or administering the general obligation bonds, and establish a process to allow for repayment of the bonds with proceeds under the Master Settlement Agreement by any of the United States tobacco products manufacturers as directed by the Legislative Assembly or other sources of funds identified as the source of repayment.

(5) The Department of Administrative Services shall develop the cash flow forecast, account for the proceeds, pay all issuance costs ORS 310.140 (actual costs) and administer the repayment of Short Term Borrowings ORS 293 as amended by Senate Bill 1002 71st Legislative Assembly — 2002 Special Session. Short Term Borrowings are also known as tax anticipation notes (TAN's)

(6) Oregon Appropriation Bonds are authorized, ORS 293.537 as amended by SB 856 of the 72nd Oregon Legislative Assembly in regular session, to be issued by the State Treasurer with the concurrence of the Director of the Department of Administrative Services.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96; Renumbered from 125-023-0000; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, 12-4-03

## 122-070-0010

### Definition of Financing Agreements

(1) ORS 283.085(4) defines a financing agreement as: A lease purchase agreement, an installment sale agreement, a loan agreement, or any other agreement to finance real or personal property which is or will be owned and operated by the state or any of its agencies.

(2) Distinguishing between a financing agreement and an operating lease:

(a) The transaction is a financing agreement if it meets one of the following criteria:

(A) The agreement transfers ownership of property to the state or any of its agencies when the agreement ends;

(B) The agreement contains a nominal or bargain purchase option. A nominal or bargain purchase is a price less than fair market value at the time of purchase;

(C) The term of the agreement is 75% or more of the economic useful life of the property;

(D) The present value of the minimum payments under the agreement is at least 90% of the current fair market value of the property. Minimum agreement payments include any penalty for terminating the agreement.

(b) Operating leases are not subject to ORS 283.085 — 283.092.

(3) Characteristics of various forms of financing agreements:

(a) Certificates of Participation (COPS) are a form of financing agreement characterized by the following features:

(A) Each certificate represents an ownership interest in and a right to receive (1) a portion of the principal component of the loan payments to be paid by the State pursuant to the terms of the loan agreement and (2) a portion of the interest component of the loan payment.

(B) The State's obligation to make loan payments is subject to legislative appropriation.

(C) Originally offered and sold widely on the regional and national municipal security markets;

(D) Actively sold and resold throughout their life on the municipal securities market;

(E) Involves an independent, third party trustee to execute the terms of the COP financing agreement;

(F) Rated by a nationally recognized credit analysis corporation.

(b) Privately placed financing agreements are another form characterized by the following features:

(A) Offered to a select number of sophisticated investors or investment institutions;

(B) Not usually rated by a credit analysis corporation.

(c) Vendor or Owner financing is another form characterized by the following features:

(A) Agreement between the state or any of its agencies and the existing owner, manufacturer or retailer to pay for a product purchased over time;

(B) Not rated by a credit analysis corporation.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96; Renumbered from 125-023-0010; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

## 122-070-0030

### All Financing Agreements Whose Principal Portion Exceeds \$100,000 Are to Be Executed in Name of the Department of Administrative Services Director

(1) The Director of the Department of Administrative Services (Director) is the only party with the authority to enter into financing agreements under ORS 283.087 to 283.092.

(2) In cases of financing agreements approved in writing by the Treasury and the Department of Administrative Services to acquire equipment being procured through the Department of Administrative Services, Procurement, Fleet and Surplus Services Division in accordance with ORS Chapter 279, the Director's approval of the financing agreement will serve as direction to the Procurement, Fleet and Surplus Services Division Administrator to sign the financing agreement under the Director's authority.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96; Renumbered from 125-023-0030; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

## 122-070-0060

### Management of All COP Funds

(1) The Department of Administrative Services will be responsible for managing the investments of all COP funds in coordination with the State Treasurer.

(2) Records of COP fund balances and interest earnings:

(a) The Department of Administrative Services will retain records of all transactions related to COPs;

(b) The Department of Administrative Services will calculate the reasonable distribution of interest earnings on a single financing agreement account which funds independent projects of separate departments or agencies;

(c) The Department of Administrative Services will report, to agencies participating in COP funds, the account interest earnings and account balances at the close of every fiscal year.

(3) COP payment from agencies:

(a) All departments or agencies with projects funded by outstanding COP series will make repayment of principal and interest as prescribed in the respective interagency agreement with the Department of Administrative Services;

(b) COP payments will be a fixed amount for a semi-annual cycle:

(A) The Trustee in accordance with the terms of Trust agreements between the Department of Administrative Services and Trustee, will accumulate COP payments;

(B) The Trustee will invest payments. Earnings will be credited to the respective departments or agency's payment account;

(C) At the end of every payment cycle the interest earnings on payments accumulated during the cycle will be credited against the COP interest due the next cycle;

(D) When the end of a payment cycle marks the end of the entire COP obligation, any accumulated interest earnings remaining after all obligations are paid will be provided to the department or agency.

Stat. Auth.: ORS 184.340

Stats. Implemented: ORS 283.085 - 283.092

Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96; Renumbered from 125-023-0060; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

## 122-070-0065

### Management of All Bond and Note proceeds

(1) All costs incurred by the Department of Administrative Services and State Treasurer in the prudent management efforts of outstanding general obligation, revenue bond or note proceeds will be charged to the department or agency served by the bonds.

(2) All project proceeds will be held in designated accounts at the Oregon State Treasury. The agency and the Department of Administrative Services shall cooperate to record the expenditure of the bond proceeds for

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all legal expenditures and to comply with the provisions of the Internal Revenue Code and regulations.

(3) Any reserve account equal to the maximum allowable reserve authorized in federal tax code at the time the bonds are issued shall be held by an independent Trustee. Interest earnings on the reserve shall be used to pay debt service on the related bonds after the payment of any arbitrage earnings payable under federal tax code, when due.

Stat. Auth.: ORS 184.340  
Stats. Implemented: ORS 286 .560  
Hist.: BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

## 122-070-0070

### Trustee and Fiscal Agent Charges

(1) Annual charges for Fiscal Agent services and Trustee services for any of the bond, COP or note programs administered by the Department will be passed through to the department or agency served by the respective bond, COP or note series or portions of a series.

(2) All other costs incurred by the Department of Administrative Services in the prudent management efforts of outstanding financing agreements will be charged to the department or agency served by the respective financing agreement.

Stat. Auth.: ORS 184.340  
Stats. Implemented: ORS 283.085 - 283.092  
Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96, Renumbered from 125-023-0070; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

## 122-070-0080

### Fees

(1) ORS 283 .089(8) permits the Department of Administrative Services to bill every state agency benefiting from the use of financing agreements, for the costs incurred in preparing and executing them. Those costs include but are not limited to:

- (a) Underwriting costs;
- (b) Finance agreement repayment insurance;
- (c) State Treasury, Auditor, Bond Counsel, Financial Consultant, and Attorney General fees;

- (d) Credit rating charges, official statement printing costs.
- (e) Federal tax code compliance calculations and documentation.

(2) Schedule of the Department of Administrative Services' charges:  
New issues of financing agreements:

(A) Vendor financing or third party financing of equipment acquisitions will be processed by the Department of Administrative Services and will be charged a fee of \$500;

(B) Owner financing agreements providing for the acquisition of real property will be charged a fee of \$1,000;

(C) Third party financing agreements provided by private parties to finance real property purchases will be charged a fee of \$4,000;

(D) Public sale of all bond, certificate and note issuance including but not limited to Certificates of Participation (COP), Lottery Revenue Bonds, Appropriation Bonds, tax anticipation notes and Oregon Opportunity General Obligation bonds will be charged as follows:

- (i) Single project financing will be charged \$18,500;
- (ii) A single financing, funding more than one project will be charged \$25,000. The charge will be prorated among the projects financed;
- (iii) If more than one financing is sold in a combined offering the charge will be \$15,000 per issue.

(b) Advance refundings of outstanding series will be charged \$15,000 per series.

(c) Annual calculations of arbitrage liability for statewide financial reporting and each five year reporting period will be reimbursed as follows:

(A) If the calculation and documentation is performed by the Department of Administrative Services, Budget and Management Division, Capital Investment Section (CIS):

(i) Each bond series with a single beneficiary agency that has project money unspent or a bond funded reserve will be charged \$1,000 annually each August when CIS provides the calculation to the agency of the estimate of arbitrage liability.

(ii) Each bond series with multiple beneficiary agencies that has project money unspent or a bond funded reserve will be charged \$500 annually each August when CIS provides the calculation to the agency of the estimate of arbitrage liability. If the calculation and documentation is performed by a private contractor under a professional service contract with CIS, the agency will reimburse CIS for the costs of the service performed. Agencies will reimburse CIS for the direct cost of any work performed by CIS bond counsel related to federal tax code compliance requirements.

Stat. Auth.: ORS 184.340  
Stats. Implemented: ORS 283.085 - 283.092

Hist.: GS 15-1992, f. & cert. ef. 7-24-92; BMD 1-1996, f. 4-11-96, cert. ef. 4-15-96, Renumbered from 125-023-0080; BMD 4-2003(Temp), f. & cert. ef. 9-24-03 thru 3-22-04; BMD 7-2003, f. & cert. ef. 12-4-03

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

**Adm. Order No.:** HRSD 22-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 11-25-03 thru 3-23-04

**Notice Publication Date:**

**Rules Amended:** 105-040-0050

**Subject:** 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.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 325

## 105-040-0050

### Direct Appointment

**Applicability:** Classified unrepresented and management service positions, and initial appointment to all classified positions. This rule provides state agencies an alternative method to the open competitive process when making appointments to positions in state service. Through this alternative method, as in the competitive process, agency heads shall take proactive steps to achieve a diverse workforce representative of the Oregon community as a means of fulfilling their Affirmative Action Plans.

(1) The agency head has the delegated authority and discretion to make direct appointments consistent with the criteria established in (a) and (b) below:

(a) Criteria for direct appointment:

(A) A recent open competitive recruitment results in no suitable candidates as determined, documented, and certified by the agency head. To be considered recent, an open competitive recruitment must have been completed within the previous six (6) months. When a recent statewide or agency promotion recruitment results in no suitable candidates, OAR 105-040-0020, Types and Order of Applicant Lists, requires an open competitive recruitment before a direct appointment can be made; or

(B) An incumbent is appointed to a position being moved into, out of, or within the executive service and duties have not significantly changed in accordance with HRSD State Policy 30.005.01, Effect of Position Classification Change on Incumbents; or

(C) The appointment is being made as part of a court or administrative order, consent decree, court or administrative settlement, or negotiated tort claim settlement; or

(D) The position requires special or unique skills at the professional level. Special or unique skills at the professional level are those which require specialized knowledge typically acquired from college coursework at the bachelor degree level or beyond; or

(E) The position being filled has critical timing requirements affecting recruitment. Critical timing requirement affecting recruitment means that the position is critical to agency operations and there is a demonstrated need to fill the position quickly, i.e. that candidates with the required skills and expertise would be lost if the normal recruiting process of 6-8 weeks were followed; or

(F) The position is an unclassified executive service position that does not meet the criteria in (i) – (v) of this rule and an exception has been granted by the Director of the Department of Administrative Services in accordance with HRSD State Policy 40.055.01, Appointment to the Executive Service; and

(b) Minimum Qualifications:

(A) The individual to be directly appointed meets the minimum qualifications of the classification; or

(B) The individual is appointed as an underfill and is able to meet the minimum qualifications of the position within 12 months of the appointment.

(2) Each direct appointment shall be documented. The documentation shall be retained for a minimum of three (3) years. The documentation shall cite the applicable rule criteria, results of any open competitive recruitment, the qualifications of the individual selected, and the agency appointing authority authorization signature.

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

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Hist.: PD 7-1981, f. & ef. 12-18-81; PD 4-1982, f. & ef. 7-1-82; PD 1-1985, f. & ef. 3-1-85; PD 1-1986, f. & ef. 1-23-86; PD 1-1989, f. & cert. ef. 2-10-89; PD 2-1989, f. & cert. ef. 12-1-89; Suspended by PD 1-1993(Temp), f. & cert. ef. 2-17-93; PD 2-1993(Temp), f. & cert. ef. 8-27-93; PD 1-1994, f. & cert. ef. 2-23-94; PD 2-1994, f. & cert. ef. 8-1-94; Renumbered from 105-043-0005; PD 3-1995, f. & cert. ef. 11-3-95; HRSD 2-1997, f. & cert. ef. 11-5-97; HRSD 16-2003, f. 7-15-03, cert. ef. 7-21-03; HRSD 22-2003(Temp), f. & cert. ef. 11-25-03 thru 3-23-04

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**Department of Administrative Services,  
Public Employees' Benefit Board  
Chapter 101**

**Adm. Order No.:** PEBB 1-2003  
**Filed with Sec. of State:** 12-4-2003  
**Certified to be Effective:** 12-4-03  
**Notice Publication Date:** 11-1-03

**Rules Adopted:** 101-001-0020, 101-005-0010, 101-005-0020, 101-005-0030, 101-005-0040, 101-005-0050, 101-005-0060, 101-005-0070, 101-005-0080, 101-005-0090, 101-005-0100, 101-005-0110, 101-005-0120, 101-005-0130, 101-005-0140, 101-006-0010, 101-006-0020, 101-030-0022, 101-040-0080

**Rules Amended:** 101-010-0005, 101-020-0010, 101-020-0015, 101-020-0018, 101-020-0020, 101-020-0030, 101-020-0035, 101-020-0040, 101-030-0005, 101-030-0040, 101-040-0005, 101-040-0010, 101-040-0025, 101-040-0030, 101-040-0035, 101-040-0040, 101-040-0045, 101-040-0050, 101-050-0010, 101-050-0015, 101-050-0025

**Rules Repealed:** 101-040-0060, 101-040-0070

**Subject:** This rulemaking adopts new rules governing the purchasing and contracting for services, insurance benefits, and consultants of the Public Employees' Benefit Board. This rulemaking also amends current rules governing the eligibility of benefits' and the procedures of the Public Employees' Benefit Board and are made a part of OAR chapter 101 generally. Experience in using the rules, changes and clarification of federal regulations governing Internal Revenue Service Code Section 125, and the ongoing development of the agency-specific PEBB administrative manual has identified the need for clarification of existing rules and addition of new rules.

**Rules Coordinator:** Mary Unger—(503) 378-2349, ext. 320

## 101-001-0020

### Social Security Numbers

Public Employees' Benefit Board may use Social Security numbers of participants in PEBB-sponsored benefit programs to uniquely identify the participant only if PEBB obtains consent from the participant.

Stat. Auth.: ORS 243.061-ORS 243.302  
Stats. Implemented: ORS 243.061-ORS 243.302  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0010

### Renewal, Screening and Selection for Benefits and Consultants Contracts

The Board is charged with the obligation of obtaining Benefit Plans to provide Benefits to Eligible Employees. OARs 101-005-0040 through 101-005-0140 set forth the screening, selection and renewal process to be used for all such Benefit Plan contracts. OAR 101-005-0010 sets forth the screening and selection process to be used for retaining Consultants. The Board has sole authority for procuring all benefits and services contemplated by ORS 243.061 through 243.302.

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0020

### Policy

The policy of the Board is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering high quality Benefits at a cost that is affordable to both the employees and the state, consistent with the requirements of ORS 242.135. The Board may enter into more than one contract for each type of Benefit Plan sought.

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.125 and 243.135(2)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0030

### Definitions

For the purposes of OARs 101-005-0010 through 101-006-0020 the following terms have the meanings indicated below.

(1) "Benefit Plan" includes, but is not limited to:

(a) Contracts for insurance or other benefit based on life; supplemental medical, supplemental dental, optical, accidental death or disability insurance; group medical, surgical, hospital or any other remedial care recognized by state law; and related services and supplies. "Benefit plan" includes comparable benefits for employees who rely on spiritual means of healing.

(b) Comparable benefits for employees who rely on spiritual means of healing;

(c) Self insurance programs managed by the Board; and

(d) Employee assistance programs.

(2) "Benefits" means those goods and services provided under Benefit Plans.

(3) "Board" means the Public Employees' Benefit Board.

(4) "Consultant" means consultants, brokers or other advisory personnel hired by the Board pursuant to ORS 243.125(5) to assist in acquiring adequate Benefit Plan coverage for eligible state employees; assist in the study of all matters connected with the provision of adequate Benefit Plan coverage for eligible state employees; assist in the development and implementation of decision-making processes; design and implement additional programs to review, monitor and assist in the improvement of Eligible Employees and their dependents' health; and provide other services as required by the Board.

(5) "Contractor" means an individual or firm selected to provide Benefits and with whom the Board contracts;

(6) "Eligible Employee" shall have the same definition as is described in ORS 243.105(4).

(7) "Emergency" means an unusual circumstance that creates a substantial risk of interruption of Benefit services that requires prompt execution of a contract to remedy the condition.

(8) "Proposal" means a competitive Proposal, binding on the Proposer and submitted in response to a Request for Proposals, where Proposal evaluation and contract award are based on criteria such as Proposer qualifications and experience, product features and characteristics, service quality and efficiency and conformance with the specifications and requirements of the solicitation. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for contract award.

(9) "Proposer" means a person or entity who submits a Proposal in response to a Request for Proposals.

(10) "Renewal Contractors" means those Contractors who provided the same or similar employee Benefit Plan services under a contract with the Board in the year immediately prior.

(11) "Request for Proposals" or "RFP" means the written document soliciting competitive written Proposals and setting forth the criteria and method to be used by the Board to determine the Responsible Proposers offering the best Responsive Proposals.

(12) "Responsible Proposer" shall have the meaning described in OAR 101-005-0130.

(13) "Responsive (Non-Responsive) Proposer" shall have the meaning described in OAR 101-005-0120.

(14) "Single Source" means the only vendor of a particular product or service reasonably available. If the Board chooses to procure a particular Benefit or service that is only available from one vendor, documentation must be maintained to support the determination that the product or service is available only from that one seller.

(15) "Formal Selection Procedure" means the process described in OAR 101-005-0040(1).

(16) "Informal Selection Procedure" means the process described in OAR 101-005-0040(2)

Stat. Auth.: ORS 243.125(1)  
Stats. Implemented: ORS 243.105 (1), (2), & (4); 243.125(5)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0040

### Procurement and Renewal Processes

(1) Formal Selection Procedure: This procedure will be used for the procurement of Benefits. Exceptions to this procedure are specified in sections (2), (3), (4) and (5).

(a) Announcement: The Board will give notice of intent to contract for Benefits via the Vendor Information Program (VIP) System and in a trade periodical or newspaper of general circulation. The notice shall include a description of the Benefits sought, the scope of the services required, and a description of special requirements, if any. The notice will invite qualified prospective contractors to apply. The notice will specify when and where

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the application may be obtained, to whom it must be returned, and the closing date.

(b) Proposal: The Proposal from the prospective contractors will consist of a statement that describes the prospective contractor's credentials, performance data and other information sufficient to establish contractor's qualifications for providing the Benefits sought, as well as any other information requested in the announcement.

(c) Evaluation: The Board will evaluate the qualifications of all applicants and select prospective contractors as set forth in OAR 101-005-0110.

(d) Award of Contracts: The Board will make final selections based on the evaluation criteria including, but not limited to, applicant capability, experience, approach, compensation requirements and references, and will place emphasis on employee choice among high quality plans; plan performance and information; a competitive marketplace; employer flexibility in plan design and contracting; quality customer service; creativity and innovation; plan benefits as part of total employee compensation; and the improvement of employee health.

(2) Informal Selection Procedure: This procedure may be used at the Board's discretion, when the informal selection procedure will not interfere with competition among prospective contractors, reduce the quality of services or increase costs. The Board will contact a minimum of three prospective contractors known to the Board to be qualified to propose the sought-after services. The selection will be made by the Board based upon the factors described in paragraph (1)(d) of this rule. If three quotes are not received, the Board will make a written record of its efforts to obtain quotes.

(3) Single Source Procedure: PEBB may negotiate with a single source provider of Benefits if the services are available only from one contractor, or the prospective contractor has special skills uniquely required for the adequate performance of the services.

(4) Renewal Procedure: If the Board does not issue a procurement to solicit formal proposals from qualified carriers, the Board may directly negotiate and enter into renewal contracts each Plan Year with Renewal Contractors to provide Benefits services without following the procedures set forth in sections (1) and (2) above. The Board may renew contracts with Renewal Contractors for as many years as the Board determines is in the best interest of the state and employees. The Board may invite renewal Proposals from those contractors who provided the same or similar employee Benefit Plan services in the year immediately prior. The Board will negotiate with Renewal Contractors and enter into contracts with them after giving full consideration to the factors listed in paragraph (1)(d).

(5) Emergency Appointment Procedure: The Board may select a Contractor without following any of the above procedures when Emergency conditions require. In such instance, the recommended appointment and a written description of the conditions requiring the use of this appointment procedure shall be submitted to the Board. The Board will determine if an Emergency exists, declare the Emergency and negotiate a contract with the Contractor after giving full consideration to the factors listed in paragraph (1)(d).

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.135  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0050

### Mistakes

(1) Treatment of Mistakes. If the Board discovers certain mistakes in a Proposal after opening, but before award of the Contract, the Board may take the following action:

(a) The Board may waive, or permit a Proposer to correct, a minor informality. A minor informality is a matter of form(s) rather than substance that is evident on the face of the Proposal, or an insignificant mistake that can be waived or corrected without prejudice to other Proposers.

(b) The Board may correct a clerical error if the intended Proposal and the error are evident on the face of the Proposal, or other documents submitted with the Proposal, and the Proposer confirms the Board's correction in writing. A clerical error is a Proposer's error in transcribing its Proposal.

(2) Rejection for Mistakes. The Board may reject any Proposal in which a mistake is evident on the face of the Proposal and the intended correct Proposal is not evident or cannot be substantiated from documents accompanying the Proposal; i.e., documents submitted with the Proposal.

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.125(1)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0060

### Records Maintenance

PEBB will maintain a file for seven (7) years on the selection process for all Benefits Contracts entered on behalf of the state that will include:

(1) The method and copy of announcement;

(2) The names of firms or individuals and cost estimates considered;  
(3) The basis for selection;  
(4) A copy of the resulting contract and any subsequent amendments.  
Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0070

### Contract Amendments (Including Supplemental Work)

An amendment for additional services that are reasonably related to the scope of work under the original Benefits Plan contract, including extra work, or change that increases the original contract price or length of time, may be made with the Contractor without re-entering the formal procurement process provided that the amendment does not materially alter such a contract.

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0080

### RFP Protest; Request for Change; Request for Clarification

(1) Protest.

(a) Unless otherwise specified in the RFP, a Proposer must deliver a written protest to the Board not less than 10 (ten) calendar days prior to closing:

(b) Content of Protest. A Proposer's written protest shall include:

(A) A detailed statement of the legal and factual grounds for the protest;

(B) A description of the resulting prejudice to the Proposer; and

(C) A statement of the desired changes to the RFP.

(2) Request for Change.

(a) Unless otherwise specified in the RFP, a Proposer may request in writing a change to the Contract terms and conditions. If the RFP allows for a Proposer to make a request for changes, and unless otherwise specified in the RFP, a Proposer must deliver the written request for change to the Board not less than 10 (ten) calendar days prior to closing:

(b) A Proposer's written request for change shall include a statement of the requested changes to the Contract terms and conditions, including specifications together with the reason for the requested change.

(3) Board Response. The Board shall not consider a Proposer's request for change or protest after the deadline established for submitting such request or protest. The Board shall provide notice to the applicable entity if it entirely rejects a protest. If the Board agrees with the entity's request or protest, in whole or in part, the Board shall either issue an addendum reflecting its determination under OAR 137-030-0055 or cancel the solicitation under OAR 137-030-0115.

(4) Extension of Closing. If the Board receives a written request for change or protest from a Proposer in accordance with this rule, the Board may extend closing if the Board determines an extension is necessary to consider the request or protest and to issue an addendum, if any, to the RFP.

(5) Clarification. Prior to the deadline for submitting a written request for change or protest, a Proposer may request that the Board clarify any provision of the RFP. The Board's clarification to a Proposer, whether orally or in writing, does not change the RFP and is not binding on the Board unless the Board amends the RFP by addendum.

Stat. Auth.: ORS 243.061 - 243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0090

### Addenda to an RFP

(1) Issuance; Receipt. The Board may change an RFP only by written addenda. A Proposer shall provide written acknowledgement of receipt of all issued addenda with its Proposal, unless the Board otherwise specifies in the addenda.

(2) Notice and Distribution. The RFP shall specify how the Board will provide notice of addenda and how the Board will make the addenda available.

(3) Timelines; Extensions. The Board shall issue addenda within a reasonable time to allow prospective Proposers to consider the addenda in preparing their Proposals. The Board should extend the Closing if the Board determines prospective Proposers need additional time to review and respond to addenda. Except to the extent required by public interest, the Board shall not issue addenda less than 72 hours before the closing unless an addendum also extends the Closing.

(4) Request for Change or Protest. Unless a different deadline is set forth in an addendum, a Proposer may submit a written request for change or protest to the addendum by the close of the Board's next business day after issuance of the addendum.

Stat. Auth.: ORS 243.061 – 243.302

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0100

### Extension of Time for Acceptance of Proposal

(1) The Board may request, orally or in writing that Proposers extend, in writing, the time during which the Board may consider their Proposal. If a Proposer agrees to such extension, the Proposal shall continue as irrevocable, valid and binding on the Proposer for the agreed-upon extension period.

Stat. Auth.: ORS 243.061-243.302  
Stats. Implemented: ORS 243.125(1)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0110

### Evaluation of Proposals

(1) Evaluation. The evaluation process described in this rule applies to the Formal Selection Procedure set forth in OAR 101-005-0040(1). The Board and any assigned representatives, including but not limited to, PEBB stakeholders and staff shall evaluate Proposals only in accordance with criteria set forth in the RFP and applicable law. The Board shall evaluate Proposals to determine the Responsible Proposer or Proposers submitting the best responsive Proposal or Proposals.

(2) Competitive Range; Protest; Award.

(a) Determining Competitive Range. If the Board does not cancel the solicitation, after the opening the Board will evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. After evaluation of all Proposals in accordance with the criteria set forth in the Request for Proposals, the Board will determine the Proposers in the competitive Range.

(b) Protesting Competitive Range. The Board shall provide written notice to all Proposers identifying Proposers in the competitive range. A Proposer that is not within the competitive range may protest the Board's evaluation and determination of the competitive range in not more than two (2) business days after the Board has sent written e-mail notice of the competitive range to all Proposers. After opening, all Proposals are open for public inspection subject to the Oregon Public Records Law.

(c) Intent to Award; Discuss or Negotiate. After the protest period provided in accordance with paragraph (2)(b) expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may engage in discussions and negotiations with Proposers in the competitive range.

(3) Discussions and Negotiations. If the Board chooses to enter into discussions and negotiations with the Proposers in the competitive range, the Board shall proceed as follows:

(a) Initiating Discussions. The Board shall initiate oral or written discussions and negotiations with all of the Proposers in the competitive range regarding their Proposals.

(b) Conducting Discussions. The Board may conduct discussions and negotiations with each Proposer in the competitive range necessary to fulfill the purposes of this section, but need not conduct the same amount of discussions or negotiations with each Proposer. The Board may terminate discussions and negotiations with any Proposer in the competitive range at any time. However, the Board shall offer all Proposers in the competitive range the opportunity to discuss their Proposals with the Board before the Board notifies Proposers of the award decisions.

(A) In conducting discussions, the Board and any designated representatives:

(i) Shall treat all Proposers fairly and shall not favor any Proposer over another;

(ii) Shall not discuss Proposers' Proposals with any other Proposers and shall maintain all Proposals as confidential documents.

(B) At any time during the time allowed for discussions and negotiations, the Board may:

(i) Continue discussions and negotiations with a particular Proposer or Proposers; or

(ii) Terminate discussions with a particular Proposer and continue discussions with other Proposers in the competitive range;

(C) The Board may continue discussions and negotiations with Proposers until the Board has determined which Proposer or Proposers shall be awarded contracts.

(d) Intent to Award; Protest. The Board shall provide written notice to all Proposers in the competitive range of the Board's intent to award the contracts. An unsuccessful Proposer may protest the Board's intent to award in accordance with OAR 101-005-0140. After the protest period provided in accordance with OAR 101-005-0140 expires, or after the Board has provided a final response to any protest, whichever date is later, the Board may commence final Contract execution with the successful Proposer or Proposers.

Stat. Auth.: ORS 243.061 – 243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0120

### Rejection of a Proposal

(1) Rejection of Proposals.

(a) The Board may reject any Proposal and deem the Proposal as non-responsive upon finding that to accept the Proposal may impair the integrity of the procurement process, or that rejecting the Proposal is in the state's or employees' interest, or that the Proposer failed to provide information required by the RFP.

(b) The Board may reject all Proposals for good cause upon the Board's written finding it is in the state's or employees' interest to do so. The Board shall notify all Proposers of the rejection of all Proposals, along with the good cause justification and finding.

Stat. Auth.: ORS 243.061-243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0130

### Responsible Proposer

(1) Before awarding a Contract, the Board must have information that indicates the Proposer meets the applicable standards of responsibility. To be a Responsible Proposer, the Board must determine that the Proposer:

(a) Is qualified legally to contract with the Board;

(b) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Proposer fails to promptly supply information requested by the Board concerning responsibility, the Board may base the determination of responsibility upon any available information, or may find the Proposer non-responsive; and

(c) Is authorized to do business in Oregon.

(2) Form(s) of Business Entity. For purposes of this rule, the Board may investigate any entity submitting a Proposal. The investigation may include that entity's officers, directors, owners, affiliates, or any other entity acquiring ownership of the entity to determine application of this rule.

Stat. Auth.: ORS 243.061-243.302  
Stats. Implemented: ORS 243.135, 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-005-0140

### Protest of Contractor Selection, Contract Award

(1) Purpose. An adversely affected or aggrieved Proposer must exhaust all avenues of administrative review and relief before seeking judicial review of the Board's Contractor selection or contract award decision.

(2) Notice of Intent to Award. Unless otherwise provided in the RFP, the Board shall provide written notice to all Proposers of the Board's intent to award the contract(s). The Board's award(s) shall not be final until the later of the following:

(a) Seven (7) days after the date of the notice, unless the RFP provided a different period for protest; or

(b) The Board provides a written response to all timely filed protests that denies the protests and affirms the award.

(3) Right to Protest Award. An adversely affected or aggrieved Proposer may submit to the Board a written protest of the Board's intent to award within fourteen (14) days after issuance of the notice of intent to award the contract, unless a different protest period is provided under the RFP.

(a) The Proposer's protest shall be in writing and must specify the grounds upon which the protest is based.

(b) A Proposer is adversely affected or aggrieved only if the Proposer is eligible for award of the contract as a Responsible Proposer and the Board committed a substantial violation of a provision in the RFP or of an applicable procurement statute or administrative rule, and the protesting Proposer was unfairly evaluated.

(c) The Board shall not consider a protest submitted after the time period established in this rule or such different period as may be provided in the RFP.

(4) Authority to Resolve Protests. The chairperson of the Board, or his or her designee, has the authority to settle or resolve a written protest submitted in accordance with the requirements of this rule.

(5) Decision. If a protest is not settled, the chairperson of the Board, or his or her designee, shall promptly issue a written decision on the protest. Judicial review of this decision will be available if provided by statute.

(6) Award. The successful Proposer shall promptly execute the contract after the award is final. The Board shall execute the contract only after it has obtained all applicable required documents and approvals.

Stat. Auth.: ORS 243.061-243.302  
Stats. Implemented: ORS 243.135 & 243.125  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03



# ADMINISTRATIVE RULES

## 101-006-0010

### Applicable Personal Service Contract Rules

The following provisions of the Department of Administrative Services' Personal Service Contracts rules listed below shall be applicable to PEBB's procurement contracts for services from Consultants, as that term is defined in OAR 101-005-0030(4). Where the following rules refer to the "Contracting Agency" or "Agency", it shall mean the Board. Where the following rules refer to "Contractors" performing Personal Services Contracts, it shall mean Consultants. Where the following rules refer to approval by the Division or DAS, such requirement for approval is not incorporated in these rules, nor is such approval required for the Board to obtain, renew or amend contracts with Consultants. Where the following rules indicate that an Agency shall provide notice to DAS or provide DAS with access to its records, such provisions are not incorporated in these rules and such obligations shall not apply to the Board. Applicable rules include OAR 125-020-0210 — Contract Form(s); 125-020-0300(2) and (3) — Introduction to Screening and Selection Procedures; 125-020-0310 — Solicitation Requirements; 125-020-0320 — Formal Selection Procedures; 125-020-0330 — Informal Selection Procedures; 125-020-0335 — Selection by Negotiation; 125-020-0340 — Emergencies; 125-020-0350(10 and (3) — Sole Source; 125-020-0360 — Protest Procedures; 125-020-0400 — Contract Requirements; 125-020-0410 — Independent Contractor Status; 125-020-0440 — Tax compliance; OAR 125-020-0510 — Contract Files; and 125-020-0520(1), (2), (4), (5), (7)(a)(A) and (7)(a)(B) — Contract Amendments.

Stat. Auth.: ORS.243.061-243.301  
Stats. Implemented: ORS.243.125(1) & (5)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-006-0020

### Renewal process for Consultant's Contracts

(1) Renewal Procedure: If the Board does not issue a procurement to solicit formal proposals from Consultants, the Board may directly negotiate and enter into renewal contracts with Renewal Contractors to provide Consultant services without following the procedures set forth in OAR 101-006-0010. The Board may renew contracts with Renewal Contractors for as many years as the Board determines is in the best interest of the state. The Board may invite renewal Proposals from those contractors who provided the same or similar Consultant services in the year immediately prior.

(2) The Board will negotiate with Renewal Contractors and enter into contracts with them after giving full consideration to the following factors which include, but are not limited to: applicant capability, experience, approach, compensation requirements and references.

Stat. Auth.: ORS. 243.061-242.301  
Stats. Implemented: ORS. 242.125(1) & (5)  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-010-0005

### Definitions

Unless the context indicates otherwise, as used in OAR chapter 101, Divisions 1 through 60, the following definitions shall apply:

(1) "Actively at Work" means:

(a) For medical and dental insurance coverage an employee at work, in Paid Regular status, scheduled for work during the month for which insurance coverage is requested, or using accrued leave on the effective date of coverage. In accordance with the Health Insurance Portability and Accountability Act (HIPAA) (P.L. 104-191) enacted on August 21, 1996, an employee may not be denied eligibility for health insurance coverage based on health status or disability.

(b) For life, disability and accidental death and dismemberment coverage an employee who is physically on-the-job and receiving pay for the first scheduled day of work and performing the material duties of the employee's own occupation at the employer's usual place of business. If an employee is incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of his or her insurance or increase in insurance, the insurance or increase will not become effective until the day after the employee completes one full day of active work.

(2) "Administrator" means the individual who administers the benefits plans on behalf of the Board.

(3) "Affidavit of Dependency" means a written document in which an Eligible Employee attests that the dependent meets the criteria set forth in OAR 101-010-0005(7) on the date the document is signed by the eligible employee.

(4) "Affidavit of Domestic Partnership" means a written document in which an Eligible Employee and another individual attest that they meet the criteria set forth in OAR 101-010-0005(8) on the date the document is signed by the Eligible Employee and individual.

(5) "Board" means the Public Employees' Benefit Board established under ORS 243.061.

(6) "Decline Benefits" means the employee waives his or her right to the employer contribution and enrollment in any of the insurance plans available through PEBB including flexible spending accounts and all voluntary insurance plans.

(7) "Dependent Child(ren)" means any child who meets at least one criterion in (a) and at least one criterion in (b) of the following:

(a) The Dependent Child(ren): Is unmarried and without a Domestic Partner; and

(A) Is under the age of 19 at the end of the calendar year; or

(B) Is between the age of 19 and 24 and continues to qualify as a student or meets the gross income test set forth by the Internal Revenue Service in the Tax Guide for Personal Exemptions and Dependents;

(C) Meets the criteria for a "dependent child" of an Eligible Employee, or the Eligible Employee's spouse or Domestic Partner, under Section 152 of the Internal Revenue Code, as enacted on November 22, 1999, whether or not the Eligible Employee, or the Eligible Employee's spouse or Domestic Partner actually claims or receives a dependent exemption from federal income tax for the child. Not all individuals listed in Section 152 of the Internal Revenue Code are eligible — see 101-010-0005(13).

(b) The Dependent Child(ren)

(A) Is a natural or adopted child or a child placed for adoption of the employee or the employee's spouse or Domestic Partner;

(B) Is a child living in the home of the employee, or the employee's spouse or Domestic Partner, who is a legal ward by court decree; a dependent by Affidavit of Dependency; or is under the legal guardianship of the employee, or the employee's spouse or Domestic Partner;

(C) Is a child aged 24 or older and who is incapable of self-sustaining employment by reason of mental retardation or physical handicap. The child must have been covered by the plan at the time of his or her 24th birthday, and the physical handicap or mental retardation must have existed prior to the child attaining age 24.

(c) The dependent child of a Domestic Partner is entitled to the same benefits under these rules as the dependent child of an Eligible Employee or his or her spouse.

(8) "Domestic Partner" means an individual who, together with an Eligible Employee, meets all of the criterion listed below. The individual and Eligible Employee:

(a) Are both at least eighteen (18) years of age;

(b) Share a close personal relationship and are responsible for each other's welfare;

(c) Are each other's sole Domestic Partners;

(d) Are not married to anyone nor has had another Domestic Partner within the prior six months;

(e) Are not related by blood closer than would bar marriage in the State of Oregon;

(f) Have jointly shared the same regular and permanent residence for at least six (6) months; and

(g) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter, and any other expenses of maintaining a household.

(9) "Eligible Employee" means an employee of a PEBB participating organization, including state officials, in the exempt, unclassified, classified and management service who are expected to work at least 90 days; and who work at least half time or are in a position classified as job share.

(10) "Family Member" means:

(a) A legally married spouse of an Eligible Employee; and

(b) A Dependent Child.

(11) "Group Health Plan" for purposes of opting out of medical coverage means:

(a) Any medical plan offered or contributed to by an employer or a former employer;

(b) Medical coverage provided by a federal government or other governmental entities as a plan sponsor, employer or a former employer such as CHAMPUS or TriCare; and other group coverage as approved by PEBB. Reference 101-020-0015 regarding Opting Out of medical insurance.

(12) "Half Time" means an employee who works less than full-time but at least:

(a) Eighty (80) Paid Regular hours per month; or

(b) .5 FTE for OUS employees; or

(c) As defined by collective bargaining.

(13) "Ineligible Dependent" means a dependent who does not meet the definition of spouse, Domestic Partner, or Dependent Child as set forth in 101-010-0005. The following individuals are not eligible:

(a) Children under age 19 who are other than a natural or an adopted child or a child placed for adoption with the employee or the employee's spouse or Domestic Partner and for whom the employee, spouse, or Domestic Partner has no financial or medical responsibility.

# ADMINISTRATIVE RULES

(b) Children between the ages of 19 and 24 who are other than a natural or adopted child or a child placed for adoption with the employee or the employee's spouse or Domestic Partner and for whom the employee, spouse, or Domestic Partner has no financial or medical responsibility or do not meet the test for student status or gross income as set forth and provided to taxpayers annually by the Internal Revenue Service in the Tax Guide for Personal Exemptions and Dependents.

(c) Members of the employee's household who may be eligible dependents under Internal Revenue Service guidelines but are not eligible for enrollment on the PEBB plan such as the employee's brother, sister, half-brother, half-sister, step-brother, step-sister, parent, grandparent, great grandparent or other direct ancestor, step-father, step-mother, brother or sister of the employee's father or mother, a son or daughter of the employee's brother or sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, foster parent, or foreign students. The exception is when the employee has financial and medical responsibility for a child that is under the age of 19 and who qualifies under 101-010-0005(7).

(14) "Open Enrollment Period" means a period designated by the Board during which employees are permitted to make changes to their insurance coverage and other benefit choices for the next Plan Year.

(15) "Opt Out" means to elect a form of benefit that may include a cash payment, to be determined by the Board, in lieu of receiving health insurance coverage through PEBB.

(16) "Paid Regular" means paid work time that includes vacation, sick, personal leaves and compensatory time.

(17) "PEBB" means the Public Employees' Benefit Board and the system of benefits administered under the PEBB program established under ORS 243.061.

(18) "PEBB Participating Organization" means every participating state agency, officer, Board, commission, department or other entity of state government.

(19) "Plan Year" means a period of twelve (12) consecutive months, currently designated by the Board as the calendar year of January through December.

(20) "Pre-existing Condition" means:

(a) For medical and dental coverage, a physical or mental condition which was diagnosed or treated or for which medication was prescribed or taken in the six months before coverage begins. A condition is diagnosed whenever a physician tells a person that he or she has that condition or makes an entry to that effect in the person's medical records. This applies even if the physician is examining or treating the person for a different condition.

(b) For life and disability insurance coverage, a mental or physical condition for which an individual has consulted a physician, received medical treatment or services or taken prescribed drugs or medication six months prior to the effective date of insurance.

(21) "Qualified Status Change" (QSC) means any of the following:

(a) Events that change the legal marital status of an Eligible Employee including marriage, death of spouse, divorce, legal separation, or annulment;

(b) Events that change the status of a Domestic Partner relationship including a Domestic Partner initially meeting qualifying criteria, death of the Domestic Partner, or termination of the Domestic Partnership;

(c) Events that change the number of an Eligible Employee's or Domestic Partner's Family Members including birth, adoption, placement for adoption, or death of a Family Member;

(d) A termination or commencement of employment by the Eligible Employee, spouse, or Domestic Partner;

(e) A reduction or increase in hours of employment by the Eligible Employee, spouse, or Domestic Partner which affects eligibility, including a switch between half-time and full-time, or commencement or return from an unpaid leave of absence, or commencement or return from a FMLA (Family and Medical Leave Act) leave whether the FMLA leave is paid or unpaid or as otherwise permitted by the Family and Medical Leave Act and the Oregon Family Leave Act;

(f) An event that causes an employee's or Domestic Partner's Family Member to satisfy or cease to satisfy the eligibility requirements for coverage due to age, student status or any similar circumstance;

(g) An increase in Eligible Employee out-of-pocket premium amount resulting from decisions of the employer or employee;

(h) An involuntary loss of other coverage (HIPAA Special Enrollment) due to:

(A) An Eligible Employee's Family Member or Domestic Partner exhausts COBRA through previous employer;

(B) An Eligible Employee's Family Member or Domestic Partner ceases to be eligible for other group coverage (i.e., coverage discontinued by employer); or

(C) Employer contributions towards other coverage from the employer of an Eligible Employee's Family Member or Domestic Partner cease;

(i) In compliance with a final judgment, decree or order resulting from a divorce, legal separation, annulment or change in custody proceedings including issuance of a Qualified Medical Child Support Order (QMCSO) requiring enrollment of a Dependent Child(ren) on the existing medical and dental plan(s);

(j) An Eligible Employee or an Eligible Employee's Family Member or Domestic Partner moves out of the plan service area, and thus loses eligibility for that plan;

(k) Gain or loss of Medicare or a Medicaid plan;

(l) In the Dependent Care Flexible Spending Account (FSA), dependent care cost changes only if:

(A) The cost change is imposed by a dependent care provider who is not a relative of the employee as defined by IRC 152(a)(1)-(8); or

(B) A change of dependent care provider results in a change in the cost of day care; or

(C) A dependent child attains age 13; or

(D) A court makes a change in the legal custody agreement.

(m) A change or cessation of coverage, such as an overall reduction in coverage, addition or elimination of benefit options, and changes in the spouses', Domestic Partner's or Dependent Child's coverage through their employers.

(22) "Reinstatement" or "Reinstated" means to reactivate all previous medical, dental, life, and disability insurance policies, if available, on a guaranteed basis when returning from a leave or termination.

(23) "State Contribution" means the amount of money paid by the State of Oregon on behalf of Eligible Employees for the purchase of the benefits provided through PEBB.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0010

### Medical and Dental Enrollment — Current Employee

(1) Eligible Employees must work at least Half Time during the immediately preceding month to be eligible for benefits for the next month.

(2) Except as provided in subsection (3) below, Eligible Employees may change plans only during the Open Enrollment Period. If an Eligible Employee wishes to change insurance plans or coverage, the employee must complete the required enrollment applications during the Open Enrollment Period.

(3) Eligible Employees may change to another plan of insurance outside of the Open Enrollment Period because of and consistent with a Qualified Status Change. The change must be requested within 60 days of the Qualified Status Change event. Coverage will be effective the first day of the month following either the date the agency received the completed applicable form(s) or the Qualified Status Change, whichever is later.

(4) It is the responsibility of the Eligible Employee to maintain a valid enrollment.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0015

### Opting Out of Medical Insurance

(1) Eligible Employees covered by another group medical plan may Opt Out of medical insurance within 60 days of their hire date or during the annual Open Enrollment Period, or consistent with a Qualified Status Change. Eligible Employees may receive cash in lieu of benefits as determined by PEBB annually. Documentation of other group coverage as defined in OAR 101-010-0005(11) must be provided by the employee at the time of enrollment.

(2) Employees who Opt Out may re-enroll in a medical plan during a subsequent Open Enrollment Period or within 60 days of a Qualified Status Change.

(3) Active employees enrolled in Medicare may not Opt Out in lieu of enrollment in medical plan coverage.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602, & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

# ADMINISTRATIVE RULES

## 101-020-0018

### Declining Benefits

(1) An employee may Decline Benefits by waiving his or her right to the employer contribution and enrollment in any of the insurance plans available through PEBB including flexible spending accounts and all voluntary insurance plans. Requests to decline coverage must be in writing and submitted to the agency within the timelines governing all other elections.

(2) Employees enrolled in PEBB benefits may decline coverage midyear when the employee becomes enrolled in another Group Health Plan. Employees who experience an increase in out-of-pocket premium share may decline coverage midyear when the increase in cost is the result of a Qualified Status Change.

(3) An employee who declined participation may enroll in PEBB benefits midyear because of and consistent with a Qualified Status Change event. Employees who experience a decrease in out-of-pocket premium share may request coverage midyear when the decrease in cost is the result of a Qualified Status Change.

(4) Coverage changes must be requested within 60 days of the Qualified Status Change event. Coverage changes will be effective the first day of the month following the date the agency received the completed applicable form(s) or the Qualified Status Change, whichever is later.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 183.310-550, 192.660, 243.061 -302 & 292.051

Hist.: PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0020

### Adding Eligible Family Members and Domestic Partners to Medical and Dental Insurance

(1) Spouse. A new spouse or the spouse's Dependent Child(ren) may be added to an Eligible Employee's medical and dental insurance coverage by submitting the completed applicable form(s) to the agency within 60 days of the marriage date. Insurance coverage will be effective beginning on the first day of the month following either the date the agency received the completed applicable form(s) or the Qualified Status Change, whichever is later.

(2) Domestic Partner. A new Domestic Partner or the Domestic Partner's Dependent Child(ren) may be added to an Eligible Employee's medical and dental coverage by submitting the completed applicable form(s) to the agency within 60 days of meeting the criteria for Domestic Partner enrollment and signing the Affidavit of Domestic Partnership. Insurance coverage will be effective on the first day of the month following receipt of the completed applicable form(s) and Affidavit of Domestic Partnership by the agency.

(3) Newborns. Insurance coverage will be automatically effective for newborns for the month of birth. Newborn children must be enrolled within 60 days of the date of birth. Benefits will not be paid after the month of birth unless the newborn is enrolled for coverage. The initial premium payment is adjusted retroactive to the first of the month following the date of birth.

(4) Adding Dependent Child by Affidavit.

(a) A Dependent Child that is not adopted may be added to an Eligible Employee's medical, dental and life coverage by submitting completed applicable form(s) within 60 days of the date of birth or the date the new child is legally placed in the physical custody of the Eligible Employee or his or her spouse or Domestic Partner and the Eligible Employee or his or her spouse or Domestic Partner has assumed the financial responsibility for the support and care of the child. An Affidavit of Dependency form(s) must be included with the enrollment.

(b) Insurance coverage for a new child shall be effective the first of the month following receipt of the completed applicable form(s) by the agency or the first of the month after eligibility is met, whichever is later.

(5) Adopted Children.

(a) Newborn Adopted Children. Adopted newborn children may be added to an Eligible Employee's medical, dental and life insurance coverage within 60 days of the date the governmental or adoptive agency, the birth parent, and the adoptive parent sign an agreement of adoption.

(A) If the date of the agreement and the agency's receipt of the completed applicable form(s) occur before the date of birth or within 31 days of the date of birth, coverage shall be effective the date the eligibility is met. Documentation of the adoption agreement must be included with the enrollment.

(i) The initial premium payment is adjusted retroactive to the first of the month of adoption or placement for adoption. Premium adjustments must occur in whole month increments.

(ii) Claims payment will not occur prior to the date of the adoption or placement for adoption.

(iii) Insurance coverage will not be retroactive to the date of birth for adoptive newborns.

(B) If the date of the agreement and the agency's receipt of the completed applicable form(s) occur beyond 31 days but within 60 days of the date of birth, coverage will be effective the first of the month following the date and receipt of the completed applicable form(s).

(C) In all cases, documentation of the adoption agreement between the agency, the birth parent, and the adoptive parent is required.

(6) Under HIPAA regulations Family Members previously eligible for enrollment can be added to coverage at the same time a new Family Member is added to the coverage. Reference: Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) enacted August 21, 1996.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0030

### Moving Out of Plan's Service Area

Eligible individuals who move out of their plan's service area and lose the availability of their plan experience a Qualified Status Change and the employee may change the enrollment election to another plan within 60 days of the date the eligible individual changes residence. Such employees must re-enroll for insurance coverage in the new location within 60 days of the date of change of residence to assure claims are paid. Insurance coverage changes will be effective beginning on the first day of the month following receipt of completed applicable form(s) by the agency.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0035

### Loss of Other Coverage

Eligible Employees, their Domestic Partners and Family Members who lose other group insurance coverage experience a Qualified Status Change and may enroll in PEBB insurance within 60 days of the date the other coverage ended. Coverage from a group program to the PEBB program shall show continuous group coverage, therefore, the effective date is determined based upon the date the other group coverage ends.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659.450-460, 659.470-494, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-020-0040

### Late Enrollment

(1) Late enrollment for new employees.

(a) Employees who do not submit completed applicable form(s) during the PEBB specified enrollment time and who submit late completed applicable form(s) may obtain only medical, dental and basic life insurance coverage.

(b) All late enrollment requests must be reviewed by PEBB.

(c) PEBB may allow employees to enroll in an eligible medical and dental plan of choice. The effective date of coverage will be the first of the month following the Agency's receipt of the completed applicable form(s).

(d) Employees failing to add eligible Family Members within the time frames required under OAR 101-020-0020 must complete the applicable form(s) and appeal to PEBB for late enrollment. PEBB will ask the employee to document, by explanation with sufficient supporting data or information, that the late enrollment was due to circumstances beyond the member's control or due to a reasonable misunderstanding of the enrollment requirements. If sufficient documentation is received to confirm the enrollment error, PEBB will correct the error effective the first of the month following receipt of the request. If such documentation is not received, PEBB will deny the request to correct the error.

(e) Employees failing to enroll newborn children within 60 days of birth will be allowed to add the newborn child(ren) to their existing coverage during the first twelve (12) months of life, retroactive to the date of birth, following receipt of completed applicable form(s) and PEBB's review and approval.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

# ADMINISTRATIVE RULES

## 101-030-0005

### Continuation of Medical and Dental Insurance under Provisions of Public Law 99-272, Title X, of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)

Eligible Individuals and Their Rights.

(1) Individuals who continue PEBB health plan coverage under COBRA provisions have the same rights as are afforded active group members. PEBB shall provide information to employees explaining their rights to coverage and obligations under COBRA.

(2) Individuals continuing coverage under COBRA may change insurance plans or add eligible Family Members or Domestic Partners during a scheduled open enrollment.

(3) Qualified beneficiaries experiencing a Qualified Status Change event may change plans at the time of their COBRA election.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-030-0022

### Continuation of Coverage For Employees On Active Military Leave

(1) State employees who would otherwise lose group health coverage due to active military leave will receive paid continuation of the medical and dental insurance coverage. The continued coverage will be the same coverage as was in place the day before active duty began. The paid coverage will continue for employees on active military duty for the length of the leave or up to but not to exceed twelve (12) months.

(a) State employees on Military Leave who are eligible for paid insurance may change plans, add or delete eligible individuals during Open Enrollment or as a result of and consistent with a Qualified Status Change.

(b) State employees covered under State of Oregon paid insurance due to active military leave that exhaust their twelve (12) month coverage period, and are still in active duty status, and have not returned to work, will experience a COBRA event and will be allowed all COBRA rights of continuation.

(c) For a period up to but not to exceed twelve (12) months, employees enrolled in PEBB-sponsored Life Insurance, Accidental Death and Dismemberment (AD&D) and Long Term Care may elect to continue this coverage under active military leave by self-paying the premiums to their payroll department.

(d) An employee enrolled in PEBB-sponsored Short-Term Disability or Long-Term Disability coverage is not eligible to continue this coverage under active military leave.

(e) If an employee on active military leave returns to work the first day immediately following the end of the leave, retroactive Reinstatement will occur in accordance with 101-020-0045(d).

(f) Employees on unpaid active military leave are not eligible to participate and are not covered by the Dependent Care FSA. Upon return to work and paid status, employees must re-enroll in Dependent Care FSA.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-ORS 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-030-0040

### Life, Accidental Death and Dismemberment (AD&D), and Disability.

Individuals covered through PEBB under Life, Disability, and Accidental Death and Dismemberment (AD&D) plans may continue coverage under the plans after an event that in a loss of eligibility as described in this rule. Except for the portability and conversion options described in subsections (b) and (c) below, the applicable premium payment must be paid each month through the agency.

(1) Life Insurance;

(a) Continuation of Active Coverage.

(A) Medical and Non-Medical Leaves

Employees whose employment is interrupted by a leave without pay may continue any life insurance policies for up to twelve (12) months from the date that coverage ends by paying the full premium required each month.

(B) Involuntary Temporary Reduction of Hours. Employees who, at the agency's request, lose benefit eligible status due to a temporary reduction in hours of no more than 90 days may continue any life insurances for up to three (3) months from the date of the loss of eligible status. Premium payment in full is due each month.

(C) Active Military Leave. Employees may self-pay for any life insurance coverage for up to twelve (12) months from the date active employee coverage ends.

(D) Layoff or Termination. An individual may not continue life insurance coverage through self-payment after lay off or termination by a PEBB participating organization. Employee, spouse and Domestic Partner life

insurances may be purchased through the portability provisions set forth below in subsection (b).

(E) Retirement or Disability Retirement. Employee, Spouse, Domestic Partner and Dependent Life coverage may be converted to individual whole life policies through the life insurance company upon the retirement or disability retirement of the covered individual.

(F) Retiree Life Insurance Option. Employees whose life insurance ends due to retirement have the option to purchase the Retiree Life Insurance Option without submitting evidence of insurability. Application must be submitted within 60 days of the date active insurance ends.

(G) Death of an Employee. Spouse, Domestic Partner and Dependent Life coverage may be converted to individual whole life policies or continued via the portability option through the life insurance company upon the death of the Eligible Employee through whom coverage was obtained.

(b) Continuation of Coverage by Portability. Employees may continue the same amount of optional life insurance coverage at the group rate, plus billing fees. Portability is not available for basic life or dependent life policies. The policy remains a term life policy. Application must be made directly to the insurance company within 60 days of the date active coverage ends.

(A) Termination or Layoff. Optional Employee and Spouse/Domestic Partner Life are eligible for continuation through portability if employee is terminated or laid off.

(B) Retirement or Disability. Life insurance may not be purchased through portability upon retirement, or if coverage is lost due to a disability.

(c) Continuation of Coverage by Conversion. Employees who lose benefit eligible status due to any reason may convert any life insurance coverage to individual whole life policies. Application must be made directly to the insurance company within 60 days of the date active coverage ends. An employee may continue coverage under this subsection if the employee loses benefit eligible status.

(2) Accidental Death & Dismemberment (AD&D); Continuation of Active Coverage.

(a) Medical and Non-Medical Leaves. Employees whose employment is interrupted by a leave without pay can self-pay the premium for (AD&D) coverage for up to twelve (12) months.

(b) Active Military Leave. Employees whose employment is interrupted by active military leave may continue their accidental death and dismemberment policy for up to twelve (12) months beginning on the date active coverage ends by self-paying the full premium required by the first of each month; however, an exclusion is applied for loss resulting from war or act of war.

(c) Involuntary Temporary Reduction of Hours. Employees who, at their employer's request, lose benefit eligible status due to a temporary reduction in hours of no more than 90 days may continue AD&D insurances for up to three (3) months beginning on the date active coverage ends.

(d) Termination or Retirement. Employees who terminate or retire cannot self-pay premiums.

(e) Conversion and Portability. There are no conversion or portability rights for the AD&D coverage.

(3) Short-Term or Long-Term Disability.

(a) Medical Leave. Employees on medical leave are not required to self-pay Short-Term and Long-Term Disability premiums if no disability claim is pending. Employees are not required to self-pay Long-Term Disability premiums throughout the elimination period if a disability claim is pending.

(b) Non-Medical Leave. Employees whose employment is interrupted by a non-medical leave without pay cannot self-pay Short or Long-Term Disability premium.

(c) Active Military Leave. Employees whose employment is interrupted by active military leave cannot self-pay Short or Long-Term Disability insurance premiums.

(d) Involuntary Temporary Reduction of Hours. Employees who, at their employer's request, lose benefit eligible status due to a temporary reduction in hours of no more than 90 days may continue Short and Long-Term Disability insurance for up to three (3) months from the date of loss of eligibility by paying the full premium amount by the required due date.

(e) Terminating Due to Disability. Employees terminating due to a disability are not required to self-pay disability premiums during the elimination period defined in the applicable policy in order to receive the disability benefit.

(f) Conversion and Portability. There are no conversion or portability rights for the Short or Long-Term Disability policies.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707, 743.752-760 & PL 104-191

# ADMINISTRATIVE RULES

Hist.: PEGB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEGB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEGB 1-2001, f. & cert. ef. 9-6-01; PEGB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEGB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0005

### Election Changes

(1) Election changes may be made during the Open Enrollment Period by completing and submitting applicable form(s).

(2) An election change request due to a Qualified Status Change event must be submitted in writing within 60 days of the status change event. The requested change must be consistent with the type of Qualified Status Change experienced. The change will be effective the first day of the month following either the date the agency receives completed applicable form(s) or the Qualified Status Change, whichever is later.

(3) Employees who are rehired and return to work 31 or more days after the date of a termination of employment may make changes without experiencing a Qualified Status Change. The requested change must be submitted in writing and received in the agency within 60 days of the employee's rehire date. The change will be made effective the first of the month following receipt of the completed applicable form(s) in the agency.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707, & 743.752-760

Hist.: PEGB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEGB 1-2001, f. & cert. ef. 9-6-01; PEGB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEGB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0010

### Returning to Benefit Eligible Status

Employees are eligible for benefits if they are expected to work at least 90 days and they work at least Half Time or are in a position classified as job share.

(1) Following Leave Without Pay and Reduction of Hours. Employees who return to benefit eligible status following a period of ineligibility due to leave without pay or a reduction of hours must work at least Half Time in the month they return to be eligible for benefits the following month.

(2) Following Termination, Layoff, Family and Medical Leave, Continuation of Benefits for Injured Workers, and Active Military Duty.

(a) Employees who return to benefit eligible status following a period of ineligibility due to termination, layoff, or active military duty are not required to work at least Half-Time in the month they return to be eligible for benefits the following month.

(b) Employees who return to benefit eligible status following Family and Medical Leave or continuation of benefits for injured workers are not required to work at least half-time in the month they return to be eligible for benefits the following month.

(c) Returning employees who were not enrolled in any insurance program at the time of termination or layoff are treated as new hires.

(3) Returning Within twelve (12) Months. Employees who return to Paid Regular status within twelve (12) months of the coverage end date because of any cause have automatic Reinstatement of the insurance coverage options they had in effect prior to losing benefit eligibility. Exceptions to Reinstatement are Dependent Care Flexible Spending Account and Long Term Care Insurance. Employees may make enrollment changes when they return to eligible status. Changes can also be made on account of and consistent with a separate and distinct Qualified Status Change event. Employees returning to benefit eligible status before current coverage ends must experience a separate and distinct Qualified Status Change event to be eligible to change plans. The requested change must be consistent with the Qualified Status Change event.

(a) Deductibles. Eligible individuals receive credit only for deductibles incurred within the Plan Year when they left service or went on leave.

(b) Retroactive Effective Date. If an employee returns to Paid Regular status on the day immediately following military leave or leave under FMLA or OFLA, insurance coverage options in effect previously are Reinstated retroactive to the first day of the month in which the employee returns.

(c) Open Enrollment Rights. Employees returning to Paid Regular status within twelve (12) months of the coverage end date but who were not on Paid Regular status during the Open Enrollment Period for the Plan Year during which they return also have open enrollment rights.

(d) Life Insurance. Employees whose life insurance ends may have the amount of life coverage previously in effect Reinstated without a medical history statement as long as they return to Paid Regular status within twelve (12) months of the coverage end date and did not convert the policy. If an employee converted to an individual policy, the employee must provide a medical history statement to become insured again under the group policy.

(e) Disability. Employees who return to Paid Regular status within twelve (12) months of the coverage end date may reinstate the amount of disability coverage previously in effect. Credit will be given for Pre-existing Conditions as if there had been no break in coverage in the following instances:

(A) If the employee becomes insured again within 90 days.

(B) If the employee's insurance ended due to an occupational disability leave.

(C) If the employee's insurance ended because the employee received Long-Term Disability benefits under the group policy.

(D) Returning Beyond 90 Days (Disability Insurance only). Employees enrolled in a disability plan prior to leaving Paid Regular status will not receive credit for time served toward the Pre-existing Condition limitation if the employee returns to benefit eligible status beyond 90 days. This provision applies consistently to employees who return to Paid Regular status within the same Plan Year or in a subsequent Plan Year. An exception is made for an employee returning to Paid Regular status from a medical leave of absence and who received benefits under the Short or Long Term Disability plans during the leave.

(4) Returning Beyond Twelve (12) Months. No Reinstatement of previous benefit levels exists for employees returning to active or Paid Regular status after twelve (12) months from the coverage end date. Employees will receive new hire rights. The employee may enroll in any program available by submitting the completed applicable form(s) within 60 days of returning to Paid Regular status. Guarantee issue options are available for those employee's returning to Paid Regular status beyond twelve (12) months from the coverage end date.

(a) Medical and Dental Insurance. Employees who return to Paid Regular status after twelve (12) months from the coverage end date due to a leave without pay, termination, or layoff, will be treated as new hires and must re-enroll for medical and dental insurance.

(b) Life Insurance. The employee is not eligible for guarantee issue if other life insurance has been ported.

(c) Long Term Care. For Long Term Care Insurance, the employee returning to benefit eligible status is not eligible for guarantee issue a second time because the employee had an initial guarantee enrollment and the opportunity to continue the policy at the same rates.

(5) Pre-existing Conditions. Enrollees will be given credit for coverage under a previous medical benefit plan if the previous plan was continuous to a date not more than 63 days prior to the effective date of the new medical benefit plan. Pre-existing Condition limitations do not apply to pregnancy or to newborn or adopted children younger than age 18 who were covered within 60 days of becoming eligible.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEGB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEGB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEGB 1-2001, f. & cert. ef. 9-6-01; PEGB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEGB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0025

### Dental Insurance

(1) A spouse, Domestic Partner, and Dependent Child(ren) of an Eligible Employee or Domestic Partner will be subject to a 12 month waiting period for basic and major services and a 24-month waiting period for orthodontic services, required by the indemnity dental plan policies, if:

(a) The spouse, Domestic Partner, or Dependent Child(ren) was not enrolled when initially eligible and continuously covered on a PEGB dental policy by the employee who enrolled the individual when initially eligible; or

(b) The spouse, Domestic Partner or Dependent Child(ren) experienced a break of twelve (12) months or more in PEGB dental coverage and was subsequently re-enrolled during an Open Enrollment Period.

(c) During the 12 month waiting period, coverage is limited to preventive services and relief of pain as provided in the policy.

(d) For orthodontic benefits, there is a 24-month waiting period for individuals enrolled after the initial eligibility period.

(2) Employees who change from one dental plan to another during the Open Enrollment Period or due to a move out of service area are not subject to the waiting period.

(3) Employees whose spouse, Domestic Partner, and Dependent Child(ren), and Dependent Child(ren) of the Domestic Partner who experience a Qualified Status Change may enroll in a dental plan within 60 days of and consistent with the status change. Individuals enrolled due to status changes are not subject to the waiting periods according to plan provisions.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

# ADMINISTRATIVE RULES

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0030

### Life Insurance

#### (1) Enrollment.

(a) Eligible Employees may enroll within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change provided they show satisfactory evidence of insurability to the insurance carrier, if applicable. Coverage is effective as follows and is subject to the Actively at Work requirements — see 101-010-0005(1)(b):

(A) New Hires. For insurance not subject to medical underwriting, coverage is effective the first day of the month following the date the application is received by the agency if applied for within 60 days of hire date. For insurance subject to approval of the Medical History Statement, coverage is effective the first of the month following the date of approval.

(B) Open Enrollment. All amounts are subject to medical underwriting. For insurance subject to approval of the Medical History Statement, coverage is effective the latter of either the first day of the month following the date of approval, or the first day of the Plan Year.

(C) Change in Status. For insurance not subject to medical underwriting, coverage is effective the first of the month following the date the completed applicable form(s) is received by the agency if applied for within 60 days of the change in family status. For insurance subject to approval of the Medical History Statement, coverage is effective the first day of the month following approval. The effective date cannot precede the date of the change in status.

(2) Termination of Coverage. Coverage for life insurance ends on the last day of the month for which a premium payment was made.

(a) Portability. Employees terminating (for reasons other than disability or retirement) may continue their Employee, Domestic Partner and Spouse Life coverage at the same age-graded rates. A billing fee will be charged by the insurance carrier for administration of this continuation option.

(b) Conversion Rights. Employees terminating employment for any reason, or whose hours are reduced below 80 hours of the Paid Regular hours in the month, shall have the right to apply for individual plans of insurance. Application must be made within 60 days following termination of coverage. The individual non-group plan shall be issued without regard to the health of any person for whom application is made.

(c) Rollover of Optional Employee Life: When two individuals are married or in a Domestic Partnership and both are state employees, the employee or the spouse or Domestic Partner can roll over the Optional Life Insurance coverage to the other's benefit package upon termination of employment.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0035

### Accidental Death and Dismemberment Insurance

(1) Enrollment. Eligible Employees may enroll for AD&D insurance within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event. Coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For new hire enrollment or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the Plan Year.

(2) Termination of Coverage. Coverage ends on the last day of the month for which a premium payment was made.

(3) Continuation. There are no conversion or portability options for accidental death and dismemberment insurance.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0040

### Long Term Disability Insurance

(1) Enrollment: Eligible Employees may enroll for Long-Term Disability insurance within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event. Employee claims shall be subject to a Pre-existing Conditions limitation and Actively at Work requirements as specified in plan documents.

Coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For new hire enrollment or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the Plan Year.

(c) For purposes of disability insurance, employees are Actively at Work if they are on the job and receiving pay for their first scheduled day of work and perform(s)ing the material duties of their own occupation at the employer's usual place of business. If an employee is incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of insurance or increase in insurance, the insurance or increase will not become effective until the day after the employee completes one full day of active work.

(2) Termination of Coverage: Coverage ends on the last day of the month for which a premium payment was made.

(3) Continuation: There are no conversion or portability options for Long-Term Disability insurance.

(4) Reinstatement Following a Compensable On-the-Job Injury or Illness. Employees may be Reinstated in their Long-Term Disability coverage following a compensable on-the-job injury or illness. Coverage is effective the first day of the month following the date the employee returns to work, provided the employee is Actively at Work that day.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0045

### Short Term Disability Insurance

(1) Enrollment. Eligible Employees may enroll for Short-Term Disability insurance within 60 days of employment, during the Open Enrollment Period, or within 60 days following a Qualified Status Change event. Employee claims shall be subject to a Pre-existing Conditions limitation and Actively at Work requirements as specified in plan documents. Coverage is effective as follows and is subject to the Actively at Work requirements:

(a) For new hire enrollment or enrollment changes due to a Qualified Status Change, the effective date is the first of the month following receipt of the completed applicable form(s) by the agency.

(b) For open enrollment changes, the effective date is the first day of the new Plan Year.

(c) For purposes of disability insurance, employees are Actively at Work if they are on the job and receiving pay for their first scheduled day of work and performing the material duties of their own occupation at the employer's usual place of business. If an employee is incapable of active work because of sickness, injury or pregnancy on the day before the scheduled effective date of insurance or increase in insurance, the insurance or increase will not become effective until the day after the employee completes one full day of active work.

(2) Termination of Coverage. Coverage ends on the last day of the month for which premium payment is made.

(3) Continuation. There are no conversion or portability options for Short-Term Disability insurance.

(4) Reinstatement Following a Compensable On-the-Job Injury or Illness: Employees may be Reinstated in their Short-Term Disability coverage following a compensable on-the-job injury or illness. Coverage is effective the first day of the month following the date the employee returns to work, provided the employee is Actively at Work on that day.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0050

### Dependent Care Flexible Spending Account Program

#### (1) Enrollment.

(a) Eligible Employees are those whose expenses qualify for reimbursement under IRS provisions and who are:

(A) Single; or

(B) Married, and the expenses are necessary for both the employee and the spouse to work; or,

(C) Married, and the spouse is either disabled, actively seeking employment, or a full-time student at least five months during the year.

(b) Eligible Employees may enroll for the pretax Dependent Care Flexible Spending Account within 60 days of employment, during the Open

# ADMINISTRATIVE RULES

Enrollment Period, or within 60 days following and consistent with a Qualified Status Change event. Coverage is effective as follows:

(A) New Hires. Participation in the account will be effective the first of the month following receipt of the completed applicable form(s) by the agency.

(B) Open Enrollment. Enrollments occurring during the Open Enrollment Period will be effective the first day of the following new Plan Year.

(C) Change in Family Status. Change must be consistent with the Qualified Status Change event. Midyear enrollment change requests must be made within 60 days of the qualified event. Midyear enrollment following a Qualified Status Change will be effective the first of the month following receipt of the completed applicable form(s) by the agency or following the status change event, whichever is later.

(c) Employees who elect to participate in the pretax dependent care reimbursement account do not have to re-enroll each Plan Year. Participation will continue from one year to the next unless the employee makes a change in participation during open enrollment or because of and consistent with a Qualified Status Change event.

(d) In any Plan Year, the maximum amount of dependent care expenses that will be reimbursed under the plan is as follows:

(A) In no event may the maximum amount allocated by a participant to the dependent care account exceed \$5,000 per Plan Year, or \$2,500 per Plan Year for a married participant who files a separate income tax return.

(B) If the participant is single or is married and earns less than his or her spouse in a calendar year, the compensation paid to the participant by the employer as reflected on his or her Form W-2 for the year; or

(C) If the participant is married and the earned income of his or her spouse is less than the compensation paid to the participant by the employer in a calendar year, the earned income of the spouse. If the spouse is a full-time student or is physically or mentally incapable for caring for himself or herself, the spouse will be deemed to have earned income (for each month that the spouse is a student or incapacitated) of \$200 per month if the participant has one dependent for whom care is provided and of \$400 per month if the participant has two or more dependents for whom care is provided.

(2) Changes in Participation. According to federal tax regulations, once participants commence participation in a Dependent Care Flexible Spending Account, they cannot change the amount of money put in the account, or stop the payroll deductions until the next Open Enrollment Period unless they experience a Qualified Status Change.

(3) Termination of Employment and Rehire.

(a) Employees terminated and rehired within the same or a subsequent Plan Year cannot be automatically reinstated in the Dependent Care Flexible Spending Account.

(b) Rehired employees may enroll in the Dependent Care Flexible Spending Account within 60 days of their hire date. The enrollment will become effective the first of the month following receipt of the completed applicable form(s) by the employing agency.

(c) Employees terminating employment (including retiring) may request, by submission of completed applicable form(s), to stop the dependent care deduction in coordination with their last work day. The request must be made before the deduction is taken.

(4) Use It or Lose It Rule. The Dependent Care Flexible Spending Account is subject to the Internal Revenue Service "Use It or Lose It" rule. This means that participants must incur all expenses to be reimbursed by the account during the Plan Year (January 1 – December 31). While participants may request expense reimbursement from the account through March 31 of the following year, all expenses must be incurred during the previous Plan Year. Any funds remaining in the account will be forfeited.

Stat. Auth.: ORS 243.061 - ORS 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-040-0080

### Correcting Enrollment Errors

These provisions cover errors that may occur when employees elect insurance coverage and when agencies process those elections. If an employee becomes aware of an enrollment error at the time they receive their first paycheck stub of the plan year, the plan identification card, the confirmation letter, or denied claim, it is the employee's responsibility to bring the error to PEBB's attention.

(1) Employee Errors in Completing Form(s).

(a) Enrollment errors may occur when employees complete the PEBB form(s) as new employees and submit mid-year enrollment changes.

(b) If employees recognize they made an error on the applicable form(s) and it is prior to payroll implementation, the error can be corrected

by the agency representative. Implementation means the benefit election has been entered into the payroll system and mailed to the carriers.

(c) Within 60 Calendar Days of the New Hire Date or the Qualified Status Change Event.

(A) If the employee recognizes the error after payroll implementation, but within 60 calendar days of the allowable timeline, the requested correction must be reviewed by PEBB.

(B) The employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the enrollment error, PEBB will correct the error effective the original effective the first of the month following the date the form(s) was originally received. If such documentation is not received, PEBB will deny the request to correct the error.

(d) After 60 Calendar Days of the New Hire Date or the Qualified Status Change Event.

(A) If the employee recognizes an enrollment error after 60 calendar days of the new hire date or the Qualified Status Change event.

(B) The employee must clearly document that the enrollment didn't accurately reflect their intent.

(C) If the employee can document they made a mistake and did not enroll the way they intended, PEBB will correct the error effective the first of the month following the receipt of the request to correct the enrollment error.

(D) If documentation is not received, PEBB will deny the request to correct the error.

(e) After 120 Calendar Days of the New Hire Date or the Qualified Status Change Event. If the employee recognizes they made an enrollment error and it is after 120 calendar days of the new hire date or the Qualified Status Change date, the request to correct the error will be denied.

(2) Employee Errors during Open Enrollment. Employees may miss enrollment timelines or make enrollment errors during the annual Open Enrollment Period. PEBB authorizes agencies to accept late applicable form(s) and changes or corrections to enrollment elections without PEBB approval for 30 days following the Open Enrollment Period.

(a) Employee Fails to Submit Form(s).

(A) Employee requests received beyond 30 days following the Open Enrollment Period are considered late and must be reviewed by PEBB. Employees who submit a late Open Enrollment request will be allowed to enroll in or make changes to existing plan choices. The effective date of coverage will be the first of the new Plan Year.

(b) Employee Submits Incorrect Form(s).

(A) Within 60 Calendar Days of the New Plan Year. Employees who become aware of an enrollment error at the time they receive their first paycheck stub of the Plan Year, the plan identification card or the confirmation letter, may request PEBB approval to correct the error. PEBB will approve the correction effective the first of the new Plan Year.

(B) After 60 Calendar Days of the New Plan Year. Employees who become aware of an enrollment error may request PEBB approval to correct the error. The employee must clearly document that the enrollment did not actually reflect their intent. If sufficient documentation is provided, PEBB will approve the correction effective the first of the month following receipt of the request to correct the error.

(C) After 120 Calendar Days of the New Plan Year. If the employee recognizes they made an enrollment error, the request to correct the error will be denied.

(3) Enrollment Errors That Occur When Processing Applicable Forms. Errors may occur when enrollment elections are processed in the state's payroll system, when employees receive wrong information, and when employees do not receive enrollment information in a timely manner.

(a) Within 60 Calendar Days of the First Day of Open Enrollment, New Hire, or Qualified Status Change. If it is determined that incorrect information has been provided or transmission of information from the agency employer to the employee has been delayed, and it is identified within the first 60 calendar days of the agency's receipt of the applicable form(s), the agency will correct the error in the payroll system retroactive to the original effective date and the system will automatically reconcile any overcharges or undercharges.

(b) After 60 Calendar Days of the First Day of Open Enrollment, New Hire, or Qualified Status Change.

(A) If it is determined that incorrect information has been provided or information has been delayed, and it is identified after 60 calendar days, PEBB must review any requested corrections.

(B) During PEBB's review, if the agency confirms and provides documentation of the error, PEBB will approve correction of the enrollment error retroactive to the original effective date but no earlier than the first of the previous Plan Year.

(4) Overcharges and Undercharges of Insurance Premium. Overcharges and undercharges of insurance premium may occur from

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enrollment errors, such as employees failing to add or remove dependents from coverage or employees listing incorrect birth date information on the form(s). Data entry errors also create premium discrepancies. Processing errors may be corrected as described in (3) Enrollment Errors That Occur When Processing Applicable Forms, above. Employee errors that result in premium discrepancies will be reviewed as follows:

(a) Within 60 Calendar Days of the First Payroll Deduction Reflecting the Discrepancy. PEBB will review requests to correct the error and a premium refund or charge for employees failing to add or remove dependents from coverage or including incorrect birth date information. If notified within the 60 calendar days, PEBB will approve the correction and premium reconciliation retroactive to the date the discrepancy first occurred.

(b) More Than 60 Calendar Days of the First Payroll Deduction. If the employee or the agency contacts PEBB more than 60 days from the first payroll deduction, PEBB will correct the error the first of the next month. In instances where premiums were paid in error, no premium refund will occur.

Stat. Auth.: ORS 243.061 - ORS 243.302  
Stats. Implemented: ORS 243.061 - ORS 243.302  
Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-050-0010

### Enrollment Changes

(1) Plan Changes. PEBB may, from time to time, conduct plan change periods for retiree plan participants. Individuals enrolled in retiree medical and dental plans do not have the option to change plans during the annual Open Enrollment Period for active employees.

(2) Adding Eligible Family Members and Domestic Partners to Medical and Dental Insurance.

(a) Spouse. A new spouse or the spouses' Dependent Child(ren) may be added to an eligible retiree's medical or dental coverage by submitting the completed applicable form(s) to the Retiree Plan Administrator within 60 days of the marriage date. Insurance coverage will be effective beginning on the first day of the month following either the date the Retiree Plan Administrator receives the request for coverage or the Qualified Status Change, whichever is later.

(b) Domestic Partner. A new Domestic Partner or the Domestic Partner's Dependent Child(ren) may be added to the retiree's medical or dental coverage by submitting the completed applicable form(s) to the Retiree Plan Administrator within 60 days of meeting the criteria for Domestic Partner enrollment and signing the Affidavit of Domestic Partnership. Insurance coverage for the Domestic Partner or his or her Dependent Child(ren) will be effective on the first day of the month following receipt of the completed applicable form(s) and Affidavit of Domestic Partnership by the Retiree Plan Administrator.

(c) Newborns

(A) Newborn insurance coverage will be automatically effective for newborns for the month of birth. Newborn children must be enrolled within 60 days of the date of birth. Claims will not be paid after the month of birth unless the newborn is enrolled for coverage.

(B) The initial premium payment is adjusted retroactive to the first of the month following the date of birth.

(d) Adding Dependent Child By Affidavit.

(A) A dependent child that is not adopted may be added to an eligible retiree's medical or dental coverage by submitting the completed applicable form(s) within 60 days of the date of birth or the date the new child is legally placed in the physical custody of the eligible retiree or his or her spouse or Domestic Partner and the eligible retiree or his or her spouse or Domestic Partner has assumed the financial responsibility for the support and care of the child. An Affidavit of Dependency form(s) must be included with the enrollment.

(B) Insurance coverage for a new child shall be effective the first of the month following receipt of the completed applicable form(s) by the Retiree Plan Administrator or the first of the month after eligibility is met, whichever is later.

(e) Adding Dependent Children by Adoption or Placement for Adoption.

(A) Newborn Adopted Children. Newborn children may be added to an eligible retiree's medical or dental insurance coverage within 60 days of the date the governmental or adoptive agency, the birth parent, and the adoptive parent sign an agreement of adoption. If the date of the agreement and the agency's receipt of the completed applicable form(s) occur before the date of birth or within 31 days of the date of birth, coverage shall be effective the date the eligibility is met. Documentation of the adoption agreement must be included with the enrollment.

(i) The initial premium payment is adjusted retroactive to the first of the month of adoption or placement for adoption. Premium adjustments must occur in whole month increments.

(ii) Claims payment will not occur prior to the date of the adoption or placement for adoption.

(iii) Insurance coverage will not be retroactive to the date of birth for adoptive newborns.

(iv) If the date of the agreement and the agency's receipt of the completed applicable form(s) occur beyond 31 days but within 60 days of the date of birth, coverage will be effective the first of the month following the agreement and receipt of the completed applicable form(s).

(v) In all cases, documentation of the adoption agreement between the agency, the birth parent, and the adoptive parent is required.

(B) Adopted Children Other Than Newborn

(i) Adopted children may be added to an eligible retiree's medical or dental insurance coverage within 60 days of the date the governmental or adoptive agency and the adoptive parents agree and sign the final adoption agreement. Coverage will be effective the first of the month following the date of the agreement and the agency's receipt of the completed applicable form(s).

(ii) Children placed for adoption may be added to the eligible retiree's medical or dental insurance coverage within 60 days of:

(iii) The date the child is placed in the physical custody of the retiree, spouse or Domestic Partner for the purpose of adoption; and

(iv) The adoptive parents assume financial responsibility for the child.

(v) The retiree, spouse or Domestic Partner must provide a copy of the placement agreement from the governmental or adoptive agency verifying the date of placement for adoption. Coverage will be effective the first of the month following the date of the agreement and the agency's receipt of the completed applicable form(s).

(3) Deleting Ineligible Individuals. The retiree is responsible for deleting ineligible individuals from his or her medical or dental plan by submitting the completed applicable form(s) to the Retiree Plan Administrator and maintaining a valid enrollment. Ineligible individuals must be deleted from coverage in writing within 60 days of when the individual becomes ineligible. Coverage terminates the last day of the last month of eligibility.

(4) Moving Out of a Plan's Service Area. Eligible individuals who move out of their plan's service area and lose the availability of their plan experience a Qualified Status Change and may change to another plan within 60 days of the date the eligible individual changes residence. Such retirees must re-enroll for insurance coverage in the new location within 60 days of the date of change of residence to assure claims are paid. Insurance coverage changes will be effective beginning on the first day of the month following receipt of completed applicable form(s) by the Retiree Plan Administrator or date of residence change, whichever is later.

(5) Loss of Other Coverage. Family Members and Domestic Partners of retirees who lose other group insurance coverage experience a Qualified Status Change and may enroll in PEBB medical and dental insurance within 60 days of the date the other coverage ended. Coverage from a group program to the PEBB program shall show continuous group coverage; therefore, the effective date is determined based upon the date the other group coverage ends.

(6) Late Enrollment for New and Current Retirees.

(a) Retirees who do not submit completed applicable form(s) during the PEBB specified enrollment time and who submit late applicable form(s) may still obtain medical and dental coverage. All late enrollment requests must be approved by PEBB. PEBB may allow retirees, who do not submit completed applicable form(s) within the first 120 days of loss of active coverage, to enroll in an eligible medical and dental plan of choice. The effective date of coverage will be retroactive to termination of active group coverage. Late enrollment requests received later than 120 days of loss of active coverage will be denied.

(b) Retirees failing to add eligible Family Members within the time frames required under OAR 101-020-0020 must complete the applicable form(s) and appeal to PEBB for late enrollment. PEBB will ask the retiree to demonstrate, by explanation, with sufficient supporting data or information that the late enrollment was due to circumstances beyond the member's control or due to a reasonable misunderstanding of the enrollment requirements. If sufficient documentation is received to confirm the enrollment error, PEBB will correct the error effective the first of the month following receipt of the request. If such documentation is not received, PEBB will deny the request to correct the error.

(c) Retirees failing to enroll newborn children within 60 days of birth will be allowed to add the newborn child(ren) to their existing coverage during the first twelve (12) months of life, retroactive to the date of birth, following receipt of completed applicable form(s) and PEBB's review and approval.

(2) Retiree Enrollment Errors.

(a) Retiree enrollment errors will be administered in accordance with 101-040-0080, Correcting Enrollment Errors.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 243.061 - ORS 243.302  
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760  
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-050-0015

### Retirees Returning to Work in a State of Oregon Agency and to Benefit Eligible Status

(1) Retirees returning to work on a full-time basis, or returning to work on at least a Half Time or job share basis, may be eligible for active employee benefits. All medical, dental, life and disability coverage previously in effect as an active employee will be Reinstated effective the first day of the month following the date of hire if returning to work within twelve (12) months of the coverage end date. If the retiree returns to active duty beyond twelve (12) months from the coverage end date, the employee must complete new hire applicable form(s).

(2) Retirees enrolled in a PEBB non-Medicare retiree plan may suspend the retiree coverage while in benefit eligible status by notifying the Retiree Plan Administrator.

(3) Retirees enrolled in Medicare who return to active benefit eligible status must enroll on the active plans. Retirees not enrolled in Medicare may decline or enroll in coverage.

(4) There may be no break in coverage from PEBB non-Medicare retiree to active or vice versa. Coverage must be continuous.

(5) Retirees returning to active status who continue to be covered under PEBB retiree or COBRA options, and are receiving paid premium subsidies, are not eligible to receive Opt Out cash.

(6) If returning beyond twelve (12) months, new hire rights include guarantee issue options for life insurance provided the retiree did not previously convert life insurance.

(7) If returning beyond twelve (12) months, the employee is not eligible for guarantee issue for Long Term Care insurance a second time. The employee had an initial guarantee enrollment and the opportunity to continue the policy at the same rates.

Stat. Auth.: ORS 243.061 - ORS 243.302  
Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760  
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

## 101-050-0025

### Retirees Eligible for Medicare

(1) PEBB retirees not eligible for Medicare coverage may enroll in PEBB non-Medicare retiree plans according to provisions of 101-050-0005.

(2) PEBB retirees eligible for Medicare coverage may be eligible to enroll in the Public Employees Retirement System (PERS) Medicare plans within 90 days of retirement or of becoming Medicare eligible while covered under the PEBB non-Medicare retiree plans.

(3) Retirees, their spouse, Domestic Partner, or dependents who become eligible for Medicare are no longer eligible to continue a PEBB non-Medicare retiree plan. The coverage will be terminated the first of the month following 60 days from the date the ineligible coverage is discovered.

(4) When retirees become eligible for Medicare, they are no longer eligible for participation in PEBB plans. If a retiree becomes eligible for Medicare but the spouse or Domestic Partner and dependents are not, these Family Members may continue PEBB coverage as long as they were already on the retiree's coverage when the retiree becomes eligible for Medicare.

Stat. Auth.: ORS 243.061 - ORS 243.302  
Stats. Implemented: ORS 243.061-243.302, 659A.060-069, 659A.150 -186, 743.600-602, 743.707 & 743.752-760  
Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03

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## Department of Agriculture, Oregon Clover Commission Chapter 664

**Adm. Order No.:** OCC 1-2003

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

**Certified to be Effective:** 1-15-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 664-015-0010, 664-015-0020, 664-015-0030

**Rules Amended:** 664-010-0020

**Subject:** The rules describe the composition of the Oregon Clover Commission, qualifications to serve on the commission and reasons

for removal of a commission member. The Commission's penalty rules are amended to comply with new statutory changes.

**Rules Coordinator:** John H. McCulley—(503) 370-7019

## 664-010-0020

### 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.: ORS 576, 2003 OL Ch. 604  
Stats. Implemented: ORS 576, 2003 OL Ch. 604  
Hist.: CC 3-1991, f. & cert. ef. 6-14-91; OCC 1-2003, f. 12-12-03 cert. ef. 1-15-04

## 664-015-0010

### Number of Commissioners, Terms

The Oregon Clover Commission will consist of ten 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 terms of office.

Stat. Auth.: ORS 576, 2003 OL Ch. 604  
Stats. Implemented: ORS 576, 2003 OL Ch. 604  
Hist.: OCC 1-2003, f. 12-12-03 cert. ef. 1-15-04

## 664-015-0020

### 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 Clover Seed 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 clover seed;

(b) A majority of the Commission members will be producers;

(c) No more than two Commission members will be handlers, each employed by separate entity;

(d) All Commission members who are not a handler or the public member will be producers.

Stat. Auth.: ORS 576, 2003 OL Ch. 604  
Stats. Implemented: ORS 576, 2003 OL Ch. 604  
Hist.: OCC 1-2003, f. 12-12-03 cert. ef. 1-15-04

## 664-015-0030

### 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, but not limited to, the following reasons:

(a) Two unexcused absences, 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.

(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.: ORS 576, 2003 OL Ch. 604  
Stats. Implemented: ORS 576, 2003 OL Ch. 604  
Hist.: OCC 1-2003, f. 12-12-03 cert. ef. 1-15-04

# ADMINISTRATIVE RULES

## Department of Agriculture, Oregon Fine Fescue Commission Chapter 604

**Adm. Order No.:** CRFC 1-2003

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-21-03

**Notice Publication Date:** 10-1-03

**Rules Adopted:** 604-030-0010, 604-030-0020, 604-030-0030, 604-030-0040

**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 576 (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 Oregon Laws, Chapter 576 (section 9).

**Rules Coordinator:** David S. Nelson—(503) 585-1157

### 604-030-0010

#### Number of Commissioners, Terms

The Oregon Fine Fescue Commission will consist of eight (8) members appointed by the Director of the Oregon Department of Agriculture for a term or three (3) 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. There shall be no limit on the number of terms a commissioner may serve.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: CRFC 1-2003, f. & cert. ef. 11-26-03

### 604-030-0020

#### 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 Fine Fescue 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 Fine Fescue grass seed;

(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) All members of the Oregon Fine Fescue Commission will serve from the state at large, except that two members of the Commission shall be from Union County, and all members must reside within the State of Oregon.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: CRFC 1-2003, f. & cert. ef. 11-26-03

### 604-030-0030

#### 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 reasons:

(a) Two unexcused absences, 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;

(g) Not working for the positive economic benefit of the commodity;

(h) Inefficiency; or

(i) Misconduct.

(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.: CRFC 1-2003, f. & cert. ef. 11-26-03

### 604-030-0040

#### 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 Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair, or 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 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, and the Treasurer will oversee the financial records of the Commission.

Stat. Auth.: 2003 OL Ch. 604, ORS 576

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: CRFC 1-2003, f. & cert. ef. 11-26-03

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## Department of Agriculture, Oregon Hazelnut Commission Chapter 623

**Adm. Order No.:** HZL 2-2003

**Filed with Sec. of State:** 12-8-2003

**Certified to be Effective:** 12-8-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 623-030-0010, 623-030-0020, 623-030-0030

**Subject:** These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39) or penalties for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Oregon Laws, Chapter 604 (section 9).

**Rules Coordinator:** Polly Owen—(503) 678-6823

### 623-030-0010

#### Number of Commissioners, Terms

The Oregon Hazelnut Commission will consist of eight members 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.: HZL 2-2003, f. & cert. ef. 12-8-03

### 623-030-0020

#### 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 Hazelnut 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 hazelnuts;

(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, the industry will strive to have broad geographic representation.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.

Stats. Implemented: 2003 OL Ch. 604, ORS 576

Hist.: HZL 2-2003, f. & cert. ef. 12-8-03.

## 623-030-0030

### 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 reasons:

(a) Two unexcused absences, 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.: HZL 2-2003, f. & cert. ef. 12-8-03

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### Department of Agriculture, Oregon Highland Bentgrass Commission Chapter 641

**Adm. Order No.:** OHBC 1-2003

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 1-15-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 641-030-0010, 641-030-0020, 641-030-0030

**Subject:** These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB854) 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.

**Rules Coordinator:** Lisa Ostlund—(503) 364-2944

## 641-030-0010

### Number of Commissioners, Terms

The Oregon Highland Bentgrass Commission will consist of seven (7) 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 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: OHBC 1-2003, f. 12-10-03, cert. ef. 1-15-04

## 641-030-0020

### Qualifications of Commissioners

Members of the Highland Bentgrass 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 Highland Bentgrass seed;

(2) Five (5) of the members will be Highland Bentgrass seed producers;

(3) One (1) member will be a Highland Bentgrass seed handler.

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: OHBC 1-2003, f. 12-10-03, cert. ef. 1-15-04

## 641-030-0030

### 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 reasons:

(a) Two (2) unexcused absences, 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.

(g) Not working for the positive economic benefit of the commodity;

(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 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: OHBC 1-2003, f. 12-10-03, cert. ef. 1-15-04

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### Department of Agriculture, Oregon Mint Commission Chapter 642

**Adm. Order No.:** OMC 1-2003

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 1-15-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 642-030-0010, 642-030-0020, 642-030-0030

**Rules Amended:** 642-010-0020

**Subject:** These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB854) 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

## 642-010-0020

### Penalties

Penalty for delaying transmittal of assessment moneys "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.

(2) A commission may waive the penalty and interest described in subsection (1) of this section upon showing of good cause."

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576

Hist.: OMC 1-1984, f. & ef. 6-18-84; OMC 1-2003, f. 12-10-03, cert. ef. 1-15-04

## 642-030-0010

### Number of Commissioners, Terms

The Oregon Mint Commission will consist of seven (7) 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 Or. Laws Ch. 604, ORS 576

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576

Hist.: OMC 1-2003, f. 12-10-03, cert. ef. 1-15-04

## 642-030-0020

### Qualifications of Commissioners

Members of the Mint 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 mint oil;

(2) Five (5) of the members will be mint oil producers;

(3) One (1) member will be a mint oil handler.

# ADMINISTRATIVE RULES

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576  
Hist.: OMC 1-2003, f. 12-10-03, cert. ef. 1-15-04

## 642-030-0030

### Removal of Commissioners

(1) The Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause.

(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 Or. Laws Ch. 604, ORS 576  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576  
Hist.: OMC 1-2003, f. 12-10-03, cert. ef. 1-15-04

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## Department of Agriculture, Oregon Potato Commission Chapter 658

**Adm. Order No.:** OPC 1-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 12-4-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 658-010-0007, 658-030-0010, 658-030-0020, 658-030-0030

**Rules Amended:** 658-010-0005, 658-010-0006

**Subject:** These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB 854) that relate to the number, term, qualifications, removal and other aspects of commodity commissioner appointment, service and removal, including the appointment of a public member. These rules may also address other organizational aspects of the commission and, where necessary may address the commission's assessment rate if necessary to meet the limits in 2003 Oregon Laws, Chapter 604 (section 39) or penalties for non-payment of assessment as stated in 2003 Oregon Laws, Chapter 604 (section 42). In addition, these rules may include exemptions from assessments based on commodity quantities, types of commodity sale, or types of commodity producer. 2003 Or. Laws Chapter 604 (section 9).

**Rules Coordinator:** Megan Demarest—(503) 731-3300

## 658-010-0005

### Assessments

As authorized and required by ORS 576.325 to 576.335, any person who is a first purchaser (or any person who otherwise is required to pay an assessment and make reports) will complete and forward reports approved by the Oregon Potato Commission to such commission and will forward such assessments to the Oregon Potato Commission, on or before the 20th of each month covering all potatoes purchased or sold during the prior month

Stat. Auth.: ORS 579  
Stats. Implemented: ORS 579.210 & ORS 579.240  
Hist.: PC 2, f. 10-5-59; OPC 1-2001, f. & cert. ef. 1-12-01; OPC 1-2003, f. & cert. ef. 12-4-03

## 658-010-0006

### Imposition of Assessment

Potatoes grown in Oregon when utilized entirely for chipping or processing will be assessed at 80 percent of the net payable weight.

Stat. Auth.: ORS 579  
Stats. Implemented: ORS 579.210  
Hist.: PC 5, f. 6-21-71, ef. 7-11-71; OPC 1-2003, f. & cert. ef. 12-4-03

## 658-010-0007

### Exclusions from Assessments

(1) Any first purchaser or handler will deduct and withhold an assessment of \$.04 from the price paid to the producer for potatoes grown in Oregon.

(2) Notwithstanding subsection (1) of this rule, no assessment will be due, deducted or withheld for any producer growing less than three acres of potatoes in Oregon during the preceding 12 month period.

(3) Notwithstanding subsection (1) of this rule, no assessment will be deducted for any sale or sales of potatoes made by the producer direct to the consumer.

Stat. Auth.: 2003 OL Ch. 604, ORS 576.  
Stats. Implemented: 2003 OL Ch. 604, ORS 576  
Hist.: OPC 1-2003, f. & cert. ef. 12-4-03

## 658-030-0010

### Number of Commissioners, Terms

The Oregon Potato Commission will consist of ten (10) 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.: OPC 1-2003, f. & cert. ef. 12-4-03

## 658-030-0020

### 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 Potato 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 potatoes;

(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, the appointments shall be made so that each major potato-producing area of the state is represented as follows:

(a) Three from the Blue Mountain area, comprised of the counties of Baker, Union, Wallowa, Grant, Morrow and Umatilla.

(b) Two from the area comprised of Malheur and Harney Counties.

(c) One from central Oregon, comprised of the counties of Crook, Deschutes, Gilliam, Sherman, Wasco, Wheeler and Jefferson.

(d) Two from the area comprised of Klamath, Coos, Curry, Douglas, Jackson, Josephine and Lake counties.

(e) One from the Willamette Valley area, comprised of the counties of Benton, Clackamas, Clatsop, Columbia, Hood River, Lincoln, Lane, Linn, Marion, Multnomah, Polk, Tillamook, Yamhill and Washington.

(f) One as a member of the public.

(4) Notwithstanding subsection (3) of this section, if a position remains vacant for more than one year 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.: OPC 1-2003, f. & cert. ef. 12-4-03

## 658-030-0030

### Removal of Commissioners

(1) The Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause.

(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.: OPC 1-2003, f. & cert. ef. 12-4-03

# ADMINISTRATIVE RULES

## Department of Agriculture, Oregon Ryegrass Growers Seed Commission Chapter 657

**Adm. Order No.:** RGSC 1-2003

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 1-15-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 657-030-0010, 657-030-0020, 657-030-0030

**Subject:** These rules implement the provisions of 2003 Oregon Laws, Chapter 604 (SB854) 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.

**Rules Coordinator:** Lisa Ostlund—(503) 364-2944

### 657-030-0010

#### Number of Commissioners, Terms

The Oregon Ryegrass Growers Seed 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 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: RGSC 1-2003, f. 12-10-03, cert. ef. 1-15-04

### 657-030-0020

#### Qualifications of Commissioners

(1) Members of the Ryegrass Growers Seed Commission will have the following qualifications, which will continue during the term of office of the member:

(a) 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 ryegrass seed;

(b) Seven (7) of the members will be ryegrass seed producers;

(c) One (1) of the members will be a ryegrass seed handler.

(2) In addition to the qualifications set forth in subsection (1) of this rule, the seven (7) producer commissioners shall be from each of the following regions:

(a) Two (2) shall be from Linn County;

(b) One (1) shall be from Lane or Benton Counties;

(c) One (1) shall be from Marion or Polk Counties;

(d) Three (3) shall be from Oregon At Large.

(3) Notwithstanding subsection (2) of this section, if a position remains vacant for more than six (6) months following reasonable efforts to recruit a member from a particular region, a producer 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 (2) of this section.

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: RGSC 1-2003, f. 12-10-03, cert. ef. 1-15-04

### 657-030-0030

#### Removal of Commissioners

(1) The Director of the Department of Agriculture may remove a commissioner from office, and declare the position vacant for cause.

(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 Or. Laws Ch. 604, ORS 576.

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.

Hist.: RGSC 1-2003, f. 12-10-03, cert. ef. 1-15-04

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**Department of Agriculture,  
Oregon Tall Fescue Commission  
Chapter 607**

**Adm. Order No.:** OTFC 1-2003

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-26-03

**Notice Publication Date:** 10-1-03

**Rules Adopted:** 607-030-0010, 607-030-0020, 607-030-0030, 607-030-0040

**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 576 (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 Oregon Laws, Chapter 576 (section 9).

**Rules Coordinator:** David S. Nelson—(503) 585-1157

### 607-030-0010

#### Number of Commissioners, Terms

The Oregon Tall Fescue Commission will consist of eight (8) members appointed by the Director of the Oregon Department of Agriculture for a term or three (3) 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 2 consecutive, full terms of office.

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576

Hist.: OTFC 1-2003, f. & cert. ef. 11-26-03

### 607-030-0020

#### 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 Tall Fescue 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 Tall Fescue grass seed;

(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) All members of the Oregon Tall Fescue Commission will serve from the state at large, and may reside anywhere within the State of Oregon.

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576

Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576

Hist.: OTFC 1-2003, f. & cert. ef. 11-26-03

### 607-030-0030

#### 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 reasons:

(a) Two unexcused absences, 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;

(g) Not working for the positive economic benefit of the commodity;

(h) Inefficiency; or

(i) Misconduct.

(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.

# ADMINISTRATIVE RULES

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576  
Hist.: OTFC 1-2003, f. & cert. ef. 11-26-03

## 607-030-0040

### 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 Treasurer who will serve until their successors are elected and qualified. The Chair, Vice Chair, or Treasurer may resign as such or may be removed from that position by vote of a majority of the Commissioners. If the Chair, Vice Chair, or 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, and the Treasurer will oversee the financial records of the Commission.

Stat. Auth.: 2003 Or. Laws Ch. 604, ORS 576  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576  
Hist.: OTFC 1-2003, f. & cert. ef. 11-26-03

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**Department of Agriculture,  
Oregon Trawl Commission  
Chapter 656**

**Adm. Order No.:** OTC 1-2003

**Filed with Sec. of State:** 11-28-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 656-030-0010, 656-030-0020, 656-030-0030, 656-030-0040

**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 Oregon Laws, Chapter 604 (section 9).

**Rules Coordinator:** Brad Pettinger—(503) 325-3384

## 656-030-0010

### Number of Commissioners, Terms

The Oregon Trawl Commission will consist of eight (8) 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 Or. Laws Ch. 604, ORS 576.  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.  
Hist.: OTC 1-2003, f. 11-28-03 cert. ef. 1-1-04

## 656-030-0020

### 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 Trawl 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 trawl caught products;

(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, members shall be from Oregon Coastal Region.

(4) Notwithstanding subsection (3) of this section, if a position remains vacant for more than one (1) year 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 Or. Laws Ch. 604, ORS 576.  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.  
Hist.: OTC 1-2003, f. 11-28-03 cert. ef. 1-1-04

## 656-030-0030

### 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 reasons:

- (a) Six or more unexcused absences, 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;
- (g) Not working for the positive economic benefit of the commodity;
- (h) Inefficiency; or
- (i) Misconduct.

(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 Or. Laws Ch. 604, ORS 576.  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.  
Hist.: OTC 1-2003, f. 11-28-03 cert. ef. 1-1-04

## 656-030-0040

### Chair and Other Officers

(1) 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. The Chair or Vice Chair 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 Or. Laws Ch. 604, ORS 576.  
Stats. Implemented: 2003 Or. Laws Ch. 604, ORS 576.  
Hist.: OTC 1-2003, f. 11-28-03 cert. ef. 1-1-04

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**Department of Community Colleges and  
Workforce Development  
Chapter 589**

**Adm. Order No.:** DCCWD 7-2003(Temp)

**Filed with Sec. of State:** 11-20-2003

**Certified to be Effective:** 11-20-03 thru 5-12-04

**Notice Publication Date:**

**Rules Adopted:** 589-020-0220

**Subject:** Executive Order #03-16 established the Employer Workforce Training Account and directed the Department of Community Colleges and Workforce Development to develop and adopt rules to implement the administration of the Account. This rule established the role of the Workforce Response Teams; establishes the amount of funds and manner of distribution of funds; the criteria for the use of the funds earmarked for Regional disbursement and the 100% non-federal match requirement for such funds; the use of funds earmarked for Statewide Opportunity areas; responsibilities of the designated organization or entity serving as the fiscal agent; and performance and reporting requirements.

**Rules Coordinator:** Laura J. Roberts—(503) 378-8648, ext. 238

# ADMINISTRATIVE RULES

## 589-020-0220

### Employer Workforce Training Fund

(1) Purpose: The Employer Workforce Training Account (EWTA) was established by Executive Order # EO 03-16. In order to administer the EWTA, the Department of Community Colleges and Workforce Development (DCCWD) will establish the Employer Workforce Training Fund (EWTF). The EWTF is funded from the State of Oregon's allocation of Workforce Investment Act funds that are identified as the reserve under section 128(a) and 133(a) of the Workforce Investment Act of 1998 (P.L. 105-220). The funds are to be used to support the retention and growth of living wage jobs, a skilled workforce, and competitive businesses in Oregon. Funds are prioritized and awarded through the state and through regional Workforce Response Teams (WRTs).

#### (2) Definitions:

(a) Employer Workforce Training Fund (EWTF): State funds reserved by the Governor for use in accordance with the provisions of Section 128 and 134 of the Workforce Investment Act to fulfill the purposes listed in Executive Order # EO 03-16. EWT funds are a portion of the funds made available to the State identified through OAR 151-020-0020 "Allocation to Subrecipients". The EWTF supports training of current workers, for growing businesses, training initiatives for industry associations and strategic economic clusters, and initiatives designed by business-labor consortia.

(b) Incumbent worker: an individual who is employed, but who does not necessarily have to meet the eligibility requirements for intensive and training services for employed adults and dislocated workers as required at 20 CRF 663.220(a)(2) and 663.310. (see WIA sec. 134(a)(3)(A)(iv)(I).)

(c) Workforce Response Teams (WRT): WRTs are formed by and with the collective partners in their represented regional areas. These teams:

- (A) Provide a single point of contact and a quick turnaround for existing businesses and their workforce needs;
- (B) Select a fiscal agent to administer the regional funds
- (C) Set regional funding priorities for contracts; and
- (D) Prioritize projects and award funds to eligible businesses and associations.

#### (3) Fund Allocation:

(a) For the period July 1, 2003 through June 30, 2004, the Department of Community Colleges and Workforce Development shall set aside \$6,000,000 in Workforce Investment Act funds in accordance with Section 128 and 132 of PL 105-220 and OAR 151-020-0020 "Allocation to Subrecipients" Section (1)(a) and (b). These funds shall be used in accordance with the following allocation:

(A) 15% of the annual allocation shall be held for the Governor's Strategic Reserve,

(B) 20% of the annual allocation shall be used for Statewide Initiatives, and

(C) 65% of the annual allocation shall be distributed to the 15 Workforce Regions identified in ORS 660.315.

(b) The Regional Fund will be apportioned so that 60% is distributed based on Economic Drivers and 40% based on Equitable Foundation. Data on these factors shall be prepared annually by the Research division of the Employment Department.

(A) The 60% will be added to each region's foundation, based on the region's percentage of covered private establishments, and the region's percentage of covered private sector labor force.

(B) The 40% foundation will be divided into 15 equal shares among the 15 workforce regions.

(c) CCWD shall contract with the selected fiscal agent in each workforce area to distribute, on a cost reimbursement basis, the regional fund identified above.

(d) The amount of funds set-aside for the Employer Workforce Training Fund for subsequent years shall be determined by the Oregon Workforce Investment Board (OWIB) through an annual review of EWTF outcomes, regional needs and economic conditions.

#### (4) Use of funds — Regional Fund Focus

(a) Eligible uses: The EWTF shall be used at the regional level for job-attached training for incumbent, private sector workers.

(b) Emphasis areas for training projects: Emphasis areas will be used in the regions to focus their work and screen projects to determine which are the most advantageous economically to the region and the state. Projects that address more than one emphasis areas will have the greatest priority for funding. Emphasis areas are:

(A) Companies in clusters formed around traded-sectors;

(B) Training in occupations or skills where shortage exists in region or state;

(C) Training in skills necessary to permit companies to advance their technological capabilities or enhance their productivity.

(D) Multiple employer, worker or industry association-led projects, while still allowing single employer projects;

(E) Projects that make a conscious attempt to utilize existing curricula/training programs/resources, when available, and develop new curricula only when it will not duplicate other work;

(F) Training of workers who are paid wages that meet or exceed the median hourly wage in the county in which they are trained, or result in wage gain or career ladder development;

(G) Training that leads to industry certification or industry skill standards.

(c) Capacity-building activities that are part of a specific training project, such as conducting needs assessments with employers, designing and developing curricula, or developing and delivering post-training evaluation, are considered eligible activities to be funded within the context of a training project.

(d) Recapture Clause: Any WRT that does not make a satisfactory commitment to using the funds for their desired outcomes will be subject to the recapture policy during the first or subsequent year of effort.

(A) First year: any WRT that has not made contractual commitments for at least 75% of its funds within six months after certification of its Workforce Response Team shall develop a plan for expending resources by the end of the fiscal year or shall return the funds to the state for distribution to other regions demonstrating excess need.

(B) Subsequent years: any region that has not made contractual commitments for at least 50% of its funds by January 15th shall submit a plan to the Governor's Policy Advisor for Labor, Revenue and Workforce for expending resources by the end of the fiscal year or shall return the funds to the state for distribution to other regions demonstrating excess need.

(e) Ineligible expenditures. No funds may be used for:

(A) Training of public sector employees;

(B) Recruitment of non-Oregon-based businesses or workers;

(C) Wages for trainees;

(D) Purchase of equipment;

(E) Businesses that are relocating existing jobs from one location to another in or outside the state. Companies that locate in Oregon or relocate workers from their original location outside the state will be eligible for training funds after the workers to be trained have been paid employees in Oregon for 120 days.

(F) Any expenditure strictly prohibited in the relevant OMB Circular establishing cost principles.

(f) Contract Size — There is no minimum or maximum contract size for regional and/or state projects. Regional Workforce Response Teams will have discretion in the award of contracts and will make appropriate investments to leverage resources and maximize program outcomes and performance measures. The Governor will determine the appropriate size for statewide contracts.

(g) Employer Match — Entities that receive contracts from the EWTF for projects must provide non-governmental matching funds or third-party in-kind contributions to the project that equal or exceed the amount of the contract. An entity's non-Federal contribution may be provided in cash or third-party in kind, fairly evaluated, and shall only be used in a manner that is consistent with the purpose of this rule and in accordance with federal definitions found in 29 CFR Part 95.23 and 29 CFR Part 97.24.

(5) Use of funds — Statewide funds and Opportunity Areas:

(a) Statewide funds are for the purpose of solving unique challenges or engaging in unique opportunities in the state with regard to its workforce development system. Statewide funds will only be used if the challenge or opportunity cannot be addressed with other system resources (e.g., Title 1B, Wagner-Peyser, Title II). Statewide funds will be focused in opportunity areas:

(A) Opportunities to address major skill gaps in specific occupations/industry across the state and have an impact in at least five workforce regions.

Example: health care — expand statewide capacity to train in one or two high demand health occupations by removing barriers, improving articulation, or expanding class offerings, scheduling, etc.

(B) Opportunities to build capacity statewide in a traded-sector industry. Example: build skill panels in several regions for biomedical or metals or food processing; identify their training needs; utilize or develop curricula; position industry/employer consortia to qualify for training funds at regional level in future years.

(C) Opportunities that implement cross-industry, transferable skills training projects statewide.

Example: Scale the manufacturing skills standard project (in 8/8 reading materials) or implement OCKED IT Road Map project that would develop capacity for regional and on-line development of IT skills across industries statewide or develop vocational ESL/language proficiency project.

(D) Opportunities to replicate a successful project(s) previously funded by the Current Worker Grant Program and expand to more regions and/or to a statewide scale.

Example: Secondary Wood Products Training System (31 companies, multiple community colleges).

# ADMINISTRATIVE RULES

(E) Opportunities to develop alternative training delivery systems that provide just-in-time training, training in remote areas, or training designed around the needs of businesses and workers (evenings, shortened schedules, sequential modules rather than academic schedules).

Example: develop improved access to on-line training, implement Career Pathways project in several regions.

(b) The Oregon Workforce Investment Board will seek or identify proposals based on OWIB strategic plan priorities.

(c) OWIB will elect projects within opportunity areas and recommend projects and funding amounts to the Governor.

(6) Fiscal Agent Responsibilities:

(a) The organization or entity serving as the fiscal agent selected by the WRT must be a legal entity to which a sub award of Federal funds may be made, and is accountable to CCWD for the use of the funds provided. As designated fiscal agent, the organization or entity is required to perform the following activities:

(A) To receive EWT funds, the organization serving as the fiscal agent must delegate decision making authority to the WRT.

(B) In conjunction with the WRT, the fiscal agent shares responsibility for programmatic decision-making,

(C) Has responsibility for adherence to applicable federal program compliance requirements (for example, the regulations)

(D) Uses the federal funds to carry out contracts as opposed to providing goods or services for a program.

(b) The entity must have an administrative and financial management system which complies with the appropriate standards stipulated in either 29 CFR Part 97 or part 95. The standards cover:

(A) Financial reporting

(B) Accounting records

(C) Internal control

(D) Budget control

(E) Allowable costs

(F) Procurement (including code of conduct)

(G) Source Documentation and

(H) Cash Management

(c) The entity must have the capability to report the financial results of the WIA programs in accordance with the requirements set forth by the Secretary of Labor and State policy of Financial Status Reports. Recipients are required to report accrued expenditures separately for each source of funds cumulatively from the inception of each contract.

(d) Every recipient and subrecipient organization that expends \$300,000 or more in federal financial assistance funds (received from all Federal sources combined) during its fiscal year to operate one or more programs must undergo an audit. The State may have the right to require a certified financial report for any entity that receives less than \$300,000 in Federal financial assistance funds.

(e) The State as the awarding entity may review the adequacy of the administrative and financial management system of the designated fiscal agent as part of a pre-award review or at any time subsequent to award to assure these standards are met.

(7) Performance and reporting requirements

(a) The Workforce Response team shall report on the following measures quarterly, for each project for each quarter and cumulative by project to date:

(A) Number of jobs created

(B) Number of jobs retained

(C) Certification Rate for those in training resulting in certification

(D) Amount and percentage of private sector match (leverage)

(E) Cycle time: from receipt of completed application to approval (goal of 30 days)

(F) Number trained, number completing training

(b) The Workforce Response team shall submit a final project report for each training project. The report shall provide final cumulative totals for the above performance measures and in addition will contain the following anecdotal performance information provided by the companies involved in the projects. This information will be provided as appropriate for the project; not all measures will apply to all projects.

(A) Increase in the percent of the company budget allocated to training/capacity building activities,

(B) Increase in productivity as measured by the following:

(i) Percent of reduction in the amount of rework or production waste gained as a result of the training or capacity-building activity.

(ii) Saved operating cost as result of QA or technology-related training

(iii) Decrease in product cycle time

(C) Curriculum shared or training replicated,

(D) Increase in competitiveness of company, and/or

(E) Increase in capital investment (new investment in equipment or facilities)

(c) CCWD shall provide guidance and templates for performance and financial reporting.

(d) Teams shall assure that for each training project, informed consent for release of Social Security Numbers be obtained from workers participating in the training. The informed consent language and format shall be that approved by the Oregon Attorney General for such purposes. The social security numbers of all workers participating in approved training programs with signed releases on file shall be reported to CCWD.

(e) The following performance information shall be tracked by CCWD for each project and for the program as a whole using information provided in the above reports.

(A) Met or exceeded median private sector hourly wage by county,

(B) Wage increase,

(C) Job retention,

(D) Reduction of turnover rate in company,

(E) Return on training investment: Cost per training completion,

(F) Return on training investment: ROI measure to be developed,

(G) Percent of workforce trained in region/industry

(f) CCWD shall prepare an annual report to the OWIB on expenditures and outcomes of the Employer Workforce Training Fund.

Statutory Authority: 660.318

Statutes Implemented: None

Hist.: DCCWD 7-2003(Temp), f. & cert. ef. 11-20-03 thru 5-12-04

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

**Adm. Order No.:** BCD 19-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 918-440-0015, 918-440-0040, 918-440-0050, 918-674-0025, 918-674-0033

**Subject:** Makes editorial and housekeeping changes to rules following three-year rule review.

**Rules Coordinator:** Louann P. Rahmig—(503) 373-7438

### 918-440-0015

#### Refrigeration Installer Certification

All persons engaged in brazing or welding related to the installation, alteration or repair of refrigeration piping systems not regulated by the Oregon Boiler and Pressure Vessel Program under OAR chapter 918, division 225, shall be certified in accordance with the requirements of this rule.

(1) The minimum requirement for persons engaged in brazing or welding of refrigeration piping systems is a current and valid certification issued upon completion of a class by a division-approved certifying organization in brazing or welding in accordance with either:

(a) **Section IX, Welding and Brazing Qualifications of the American Society of Mechanical Engineers publication, 2001 ASME Boiler and Pressure Vessel Code;** or

(b) **American Welding Society publication AWS B2.2-91, Standard for Brazing Procedure and Performance Qualification.**

(2) Refrigeration systems installed in dwelling units regulated under the **One and Two Family Dwelling Specialty Code** are exempt from this rule.

(3) All refrigeration piping system requirements not regulated by OAR 918-225-0310, are subject to the **Oregon Mechanical Specialty Code**.

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

Stat. Auth.: ORS 455.020 & 455.720

Stats. Implemented: ORS 455.020 & 455.720

Hist.: BCD 34-2000, f. 12-27-00, cert. ef. 7-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04

### 918-440-0040

#### Amendments to the Oregon Mechanical Specialty Code

The **Mechanical Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized Mechanical Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8. Amendments adopted are placed in this rule, showing the division reference, the date the board took formal action, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

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

Stat. Auth.: ORS 455.030

Stats. Implemented: ORS 455.110



# ADMINISTRATIVE RULES

Hist.: BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04

## Department of Consumer and Business Services, Division of Finance and Corporate Securities Chapter 441

### 918-440-0050

#### Mechanical Permit Fees

(1) Effective July 1, 1999, the Building Codes Division fees for administration of the **Oregon Mechanical Specialty Code** are found in **Table 1-A**. These fees are based on 130 percent of **Table 3-A** of the 1979 edition of the Uniform Mechanical Code as published by the International Conference of Building Officials, as authorized in ORS 455.210 and amended by Senate Bill 287 enacted by the 1999 Legislative Session.

(2) Amend **Table 1-A** Mechanical Permit fees as follows:

(3) Plan review fees shall be those fees specified in Section 106.5.4 of the State of Oregon, **Mechanical Specialty Code** as adopted in OAR 918-440-0010.

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

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

Stat. Auth.: ORS 455.020 & 455.210

Stats. Implemented: 1999 OL, Ch. 432

Hist.: BCD 8-1999(Temp), f. & cert. ef. 7-1-99 thru 12-27-99; BCD 11-1999, f. 9-7-99, cert. ef. 10-1-99; BCD 15-1999, f. & cert. ef. 10-6-99 thru 4-2-00; BCD 5-2000, f. 3-9-00, cert. ef. 4-1-00; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04

### 918-674-0025

#### Plumbing Exception

In addition to the **Oregon Plumbing Specialty Code** and the **Oregon One and Two Family Dwelling Specialty Code**, prefabricated structures that are entirely self-contained by the use of holding tanks and that are not intended to be connected to a public water supply or sewer shall be designed to meet the requirements of **Sections 7.5.5.2, 7.5.5.3, 7.5.6.1, 7.5.6.2, 7.6.11** and **7.6.12** of the **American National Standards Institute ANSI Publication A119.2/NFPA A119.2, 2002 Edition**. All other portions of the plumbing system shall comply with the **Oregon Plumbing Specialty Code** or the **Oregon One and Two Family Dwelling Specialty Code**.

**NOTE:** The Oregon Health Division may have additional plumbing requirements to those mentioned in these rules, the **Oregon Plumbing Specialty Code** or the **Oregon One and Two Family Dwelling Specialty Code**.

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

Stat. Auth.: ORS 455.030, 455.100 & 455.110

Stats. Implemented: ORS 455.110

Hist.: BCD 20-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04

### 918-674-0033

#### Specific Use Structures

(1) When it can be demonstrated that compliance with strict requirements of the **Oregon Structural Specialty Code** or the **Oregon One and Two Family Dwelling Specialty Code** are impractical and the intent and purpose of the code can still be met without causing structural failure or risk of fire in employee protection only structures, equipment protection only structures, recreational use structures and food service structures, the requirements of the code may be modified by the building official charged with administration of the prefabricated structures program.

(2) All new or converted food service structures shall provide required fire-resistive construction and suppression equipment including the structural elements necessary for any mechanical installations.

(3) The Division may waive the formal plan review process required in the **Oregon Structural Specialty Code** or the **Oregon One and Two Family Dwelling Specialty Code** for specific use structures if the plans are prepared by an Oregon registered architect or engineer and it is found that the nature of the work applied for is such that plan review is not necessary to obtain minimum compliance with the code.

(4) If the Division determines the work in a specific use structure is not of a highly technical nature and there is no unreasonable risk to life and safety, plans required by the **Oregon Structural Specialty Code** or the **Oregon One and Two Family Dwelling Specialty Code** may be prepared by a person who is not an Oregon registered architect or engineer.

(5) Specific use structures shall be exempt from the exterior envelope requirements of **Section 1312** of the **Oregon Structural Specialty Code** provided the roof/ceiling assembly meets the prescriptive requirements of the code and the center of non-bullet-resistant window glass has a minimum U-factor of .35.

(6) Equipment protection only structures shall be exempt from all of the envelope requirements of **Section 1312** of the **Oregon Structural Specialty Code**.

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

Stat. Auth.: ORS 455.010, 455.100 & 455.110

Stats. Implemented: ORS 455.110

Hist.: BCD 20-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 19-2003, f. 12-15-03, cert. ef. 1-1-04

**Adm. Order No.:** FCS 2-2003(Temp)

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-26-03 thru 5-21-04

**Notice Publication Date:**

**Rules Adopted:** 441-049-1001, 441-065-0001, 441-175-0002

**Rules Amended:** 441-035-0045, 441-049-1021, 441-049-1031, 441-049-1041, 441-049-1051, 441-065-0015, 441-065-0020, 441-065-0035, 441-065-0170, 441-065-0180, 441-065-0270, 441-075-0020, 441-095-0030, 441-175-0015, 441-175-0060, 441-175-0080, 441-175-0085, 441-175-0100, 441-175-0120, 441-175-0130, 441-175-0160, 441-175-0165, 441-175-0171

**Subject:** The new rules set fees for notice filing of federal covered securities, registration of securities, and licensing or notice filing for firms and individuals conducting broker-dealer and investment adviser businesses. The amendments revise or delete conflicting provisions concerning fees previously charged.

**Rules Coordinator:** Berri Leslie—(503) 947-7478

### 441-035-0045

#### Solicitation of Interest for Offering of Securities Pursuant to SEC Regulation A or OAR 441-065-0225

(1) An offer, but not a sale, of a security made by or on behalf of an issuer for the sole purpose of soliciting an indication of interest in receiving a prospectus (or its equivalent) for such security is exempt from ORS 59.055 if all of the following conditions are satisfied:

(a) The issuer is or will be a business entity organized under the laws of one of the states or possessions of the United States or one of the provinces or territories of Canada, is engaged in or proposes to engage in a business other than petroleum exploration or production or mining or other extractive industries and is not a "blank check company," as such term is defined in OAR 441-045-0010(2);

(b) The offerer intends to register the security in this state and conduct its offering pursuant to either Regulation A, as promulgated by the Securities and Exchange Commission, or OAR 441-065-0225;

(c) At least 10 business days prior to the initial solicitation of interest under this rule, the offerer files with the Director:

(A) A completed solicitation of interest application on a form prescribed by the Director along with any other materials to be used to conduct solicitations of interest, including, but not limited to, the script of any broadcast to be made and a copy of any notice to be published;

(B) The minimum registration fee as set in OAR 441-065-0001;

(C) A completed Form U-4 (salesperson application available from the Securities Section) for at least one, but no more than five, issuer salespersons (each such salesperson must be a bona fide officer, director or employee of the issuer); and

(D) A salesperson licensing fee as set in OAR 441-175-0002 for each salesperson.

(d) At least five business days prior to usage, the offerer files with the Director any amendments to the foregoing materials or additional materials to be used to conduct solicitations of interest, except for materials provided to a particular offeree pursuant to a request by that offeree;

(e) No Solicitation of Interest Form, script, advertisement or other material which the offerer has been notified by the Director not to distribute is used to solicit indications of interest;

(f) Except for scripted broadcasts and published notices, the offerer does not communicate with any offeree about the contemplated offering unless the offeree is provided with the most current Solicitation of Interest Form at or before the time of the communication or within five days from the communication;

(g) During the solicitation of interest period, the offerer does not solicit or accept money or a commitment to purchase securities;

(h) No sale is made until at least seven days after delivery to the purchaser of a final prospectus, or in those instances in which delivery of a preliminary prospectus is allowed hereunder, a preliminary prospectus;

(i) The offerer does not know, and in the exercise of reasonable care, could not know that the issuer or any of the issuer's officers, directors, ten percent shareholders or promoters:

(A) Has filed a registration statement which is the subject of a currently effective registration stop order entered pursuant to any federal or state securities law within five years prior to the filing of the Solicitation of Interest Form.

# ADMINISTRATIVE RULES

(B) Has been convicted within five years prior to the filing of the Solicitation of Interest Form of any felony or misdemeanor in connection with the offer, purchase or sale of any security or any felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud.

(C) Is currently subject to any federal or state administrative enforcement order or judgment entered by any state securities administrator or the Securities and Exchange Commission within five years prior to the filing of the Solicitation of Interest Form or is subject to any federal or state administrative enforcement order or judgment entered within five years prior to the filing of the Solicitation of Interest Form in which fraud or deceit, including, but not limited to, making untrue statements of material facts and omitting to state material facts, was found.

(D) Is subject to any federal or state administrative enforcement order or judgment which prohibits, denies, or revokes the use of any exemption from registration in connection with the offer, purchase or sale of securities.

(E) Is currently subject to any order, judgment, or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction permanently restraining or enjoining, such party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with the state entered within five years prior to the filing of the Solicitation of Interest Form.

(F) The prohibitions listed in paragraphs (A) through (E) of this subsection shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against such person or if the broker-dealer employing such party is licensed in this state and the Form B-D filed with this state discloses the order, conviction, judgment or decree relating to such person. No person disqualified under this subsection may act in a capacity other than that for which the person is licensed. Any disqualification caused by this action is automatically waived if the agency which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.

(2) A failure to comply with any condition of section (1) of this rule will not result in the loss of the exemption from the requirements of ORS 59.055 for any offer to a particular individual or entity if the offerer shows:

(a) The failure to comply did not pertain to a condition directly intended to protect that particular individual or entity;

(b) The failure to comply was insignificant with respect to the offering as a whole; and

(c) A good faith and reasonable attempt was made to comply with all applicable conditions of section (1). Where an exemption is established only through reliance upon this section (2), the failure to comply shall nonetheless be actionable as a violation of the Act by the Director under ORS 59.245 and 59.255 and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction.

(3) The offerer shall comply with the requirements set forth below. Failure to comply will not result in the loss of the exemption from the requirements of ORS 59.055, but shall be a violation of the Oregon Securities Law, be actionable by the Director under ORS 59.245 and 59.255, and constitute grounds for denying, withdrawing or conditioning the exemption pursuant to ORS 59.045 as to a specific security or transaction:

(a) Any published notice or script for broadcast must contain at least the identity of the chief executive officer of the issuer, a brief and general description of its business and products, and the following legends:

(A) THIS IS A SOLICITATION OF INTEREST ONLY. NO MONEY OR OTHER CONSIDERATION IS BEING SOLICITED AND NONE WILL BE ACCEPTED;

(B) NO SALES OF THE SECURITIES WILL BE MADE OR COMMITMENT TO PURCHASE ACCEPTED UNTIL DELIVERY OF AN OFFERING CIRCULAR THAT INCLUDES COMPLETE INFORMATION ABOUT THE ISSUER AND THE OFFERING;

(C) AN INDICATION OF INTEREST MADE BY A PROSPECTIVE INVESTOR INVOLVES NO OBLIGATION OR COMMITMENT OF ANY KIND; and

(D) THIS OFFER IS BEING MADE PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE FEDERAL AND STATE SECURITIES LAWS. NO SALE MAY BE MADE UNTIL THE OFFERING STATEMENT IS QUALIFIED BY THE SEC, IF APPLICABLE, AND IS REGISTERED IN THIS STATE.

(b) All communications with prospective investors made in reliance on this rule must cease after a registration statement is filed in this state, and

no sale may be made until at least 20 calendar days after the last communication made in reliance on this rule.

(4) The Director may waive any condition of this exemption in writing, upon application by the offerer and cause having been shown. Neither compliance nor attempted compliance with this rule, nor the absence of any objection or order by the Director with respect to any offer of securities undertaken pursuant to this rule, shall be deemed to be a waiver of any condition of the rule or deemed to be a confirmation by the Director of the availability of this rule.

(5) Offers made in reliance on this rule will not result in a violation of ORS 59.055 by virtue of being integrated with subsequent offers or sales of securities unless such subsequent offers and sales would be integrated under federal securities laws.

(6) Issuers on whose behalf indications of interest are solicited under this rule may not make offers or sales in reliance on ORS 59.025(7), 59.035(5), 59.035(12) or OAR 441-035-0050 until six months after the last communication with a prospective investor made pursuant to this rule.

Stat. Auth.: ORS 59.025(4) & 59.035(11)

Stats. Implemented: ORS 59.025(4), 59.035(11), 59.035(15) & 59.285

Hist.: FCS 10-1994, f. & cert. ef. 10-3-94; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-049-1001

### Fees for Federal Covered Securities Notice Filings

Pursuant to ORS 59.049, the Director sets the following fees for notice filings for federal covered securities:

(1) For an investment company, other than a unit investment trust, an initial and renewal notice filing fee of \$500 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(2) For a unit investment trust notice filing, an initial fee of \$270 per portfolio and a renewal fee of \$225 per portfolio. Issuers may submit filings containing multiple portfolios, provided the portfolios are identified in the Form NF and correct fees are paid.

(3) For a notice filing for offerings to qualified purchasers, or of federally exempt securities or federally exempt transactions pursuant to section 18(b)(3) or (4), other than section 18(b)(4)(D), of the Securities Act of 1933, as amended, initial and renewal fees of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,025.

(4) For a Regulation D Rule 506 offering notice filing, a fee of \$225. No renewal notice filing or fee is required.

Stat. Auth.: ORS 59.049

Stats. Implemented: ORS 59.049

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-049-1021

### General Provisions Applicable to Notice Filing Rules

(1) Address. All notice filings and payment of fees under the Notice Filing Rules shall be directed to the State of Oregon, Department of Consumer and Business Services, Division of Finance and Corporate Securities, 350 Winter Street NE Room 410, Salem, Oregon 97301-3881. At such time as filings can be received electronically by the Director, filings may be made electronically.

(2) Fees. Filing fees are set out in OAR 441-049-1001.

(3) Additional information. Notwithstanding the filing requirements in the Notice Filing Rules, the Director may request additional information, documentation or both. The request shall not exceed the information or documentation required by the SEC to be filed in connection with that offering.

(4) Salespersons. No information or documentation need be filed concerning broker-dealers or salespersons other than the information to be supplied on Form D or Form NF. No license is required for persons not otherwise licensed in Oregon as broker-dealers or salespersons who are engaged in executing transactions in federal covered securities.

(5) Initial Filings. Notice and fees submitted as an initial filing shall become effective on the later of the date the notice is received by the Director or date specified by the notice filer in accordance with 59.049(1), (2), or (3). The notice for Regulation D Rule 506 filings shall be indefinite. The notice for all other federal covered securities shall continue for one year from the effective date. The notice may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice.

(6) Renewal Filings.

(a) Notice form.

(A) A person seeking renewal shall provide the same form and materials required for the initial filing or most recent renewal. The renewal, if received prior to the annual anniversary date of the initial filing, shall become effective on the anniversary date and shall continue for one year

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from that date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice;

(B) Notices submitted for renewals and received after the anniversary date shall become effective on the date received. A late renewal shall be accompanied by a letter from or on behalf of the notice filer indicating whether any sales were made in this state after the expiration date. The renewal may be withdrawn if the correct fees are not received by the Director within 10 business days of the receipt of the notice. A late renewal may be treated as an initial filing.

(b) Aggregate offering amount. A renewal notice may be submitted for any aggregate offering amount of securities provided appropriate fees are submitted. A renewal is not limited to unsold portions of previously noticed aggregate offering amounts.

(c) Fees. A person seeking renewal shall submit the appropriate fees set out in OAR 441-049-1001.

(7) Acknowledgment of filing. Upon receipt of an initial filing or renewal, the Director shall provide written acknowledgment of the filing to the person submitting the request for the filing. An inadvertent failure by the Director to acknowledge the filing shall not invalidate the filing.

(8) Options, warrants or similar rights to purchase securities. Options, warrants or similar rights to purchase securities that are part of an offering under the Notice Filing Rules, constitute a continuous offering of the underlying securities during the exercise period and require the notice filing to be continually renewed as relevant. Disclosure materials shall be kept continuously current throughout the exercise period.

Stat. Auth.: ORS 59.049 & 59.285  
Stats. Implemented: ORS 59.049  
Hist.: Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-049-1031

### Investment Company Notice Filing

(1) An investment company notice filing shall comply with this rule.

(2) The notice required by ORS 59.049 shall:

(a) Identify the portfolios offered through the same SEC registration; and

(b) Subject to section (3) of this rule, be filed on NASAA Form NF.

(3) In lieu of the notice provided in section (2) of this rule, if the issuer follows ORS 59.049(1), and files a copy of its registration statement as filed with the SEC, the issuer shall advise the Director of the number of portfolios covered by the registration statement and pay fees as provided in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-049-1041

### Offering to Qualified Purchaser, Federally Exempt Securities and Federally Exempt Transactions

An issuer offering a security that is a covered security under section 18(b)(3) or (4), other than 18(b)(4)(D), of the Securities Act of 1933, as amended, shall:

(1) File a written notice of such offering identifying the issuer and seller if other than the issuer; and

(2) Pay a fee as set in OAR 441-049-1001.

Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-049-1051

### Rule 506 Offerings

A person offering a covered security under section 18(b)(4)(D) shall:

(1) File a notice on **SEC Form D** not later than 15 days after the first sale of securities subject to the notice in Oregon; and

(2) Pay a fee as set in OAR 441-049-1001.

[ED. NOTE: Forms referenced are available from the agency.]  
Stat. Auth.: ORS 59.049 & 59.085  
Stats. Implemented: ORS 59.049  
Hist.: FCS 3-1998, f. & cert. ef. 7-2-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0001

### Fees for Registration of Securities

Pursuant to ORS 59.065, the Director sets the following fees for registration of securities:

(1) For initial registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(2) For renewal of a current registration, a fee of 1/10 of 1% of the amount offered in Oregon, with a minimum fee of \$200 and a maximum fee of \$1,500.

(3) To increase the aggregate offering amount of a current registration, a fee calculated for registration of the desired aggregate offering amount less fees previously paid for the current registration, but not less than \$100. Amending the aggregate offering amount does not extend the expiration date of the current registration.

Stat. Auth.: ORS 59.065  
Stats. Implemented: ORS 59.065, 59.070  
Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0015

### When Registration Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the registration of securities under ORS 59.065 and OAR 441, division 65.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that the fees are insufficient;

(b) Documents required by the rules in OAR 441, division 65 have not been submitted by the applicant;

(c) Additional information requested by the Director as permitted by the rules in OAR 441, division 65 has not been submitted to the Director by the applicant; or

(d) Changes to disclosure documents requested by the Director have not been submitted to the Director by the applicant.

(3) An application for registration of securities is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

(4) Fees paid in connection with an abandoned registration shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285  
Stats. Implemented: ORS 59.065  
Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0020

### Registration by Qualification

(1) Eligibility. Any issuer, owner, licensed broker-dealer, licensed mortgage broker, or any other person on whose behalf an offering is to be made may apply to register or renew by qualification.

(2) Application. An applicant for registration by qualification must use **Form U-1** (developed by the North American Securities Administrators Association, Inc.). The application must be complete and accompanied by the following documents as applicable:

(a) One copy of the registration statement filed with the Securities and Exchange Commission;

(b) One copy of the most recent prospectus;

(c) The underwriting agreement, agreement among underwriters, and selected dealers' agreement;

(d) Copies, including all amendments, of the issuer's articles of incorporation, certificate of limited partnership, or charter;

(e) Issuer's bylaws as amended to date;

(f) Other contracts or documents of a material nature including option or warrant plans, proceeds escrow agreements, stock escrow agreements, key employment contracts, leases, patent opinions, preliminary title reports, and loan commitment letters;

(g) Counsel's opinion as to the legality of the securities to be issued and counsel's consent to use the opinion;

(h) Other experts' opinions or reports and consent to use the opinions;

(i) A specimen of the security including any restrictions on its transfer;

(j) Proposed advertising material except material described in Rules 134, 134a, 135, or 135a adopted under the Securities Act of 1933, as amended;

(k) Financial statements as defined in OAR 441-011-0040;

(l) A **Form U-4** application and a filing fee as set in OAR 441-175-0002 for each salesperson if the offering will not be made through a licensed broker-dealer; and

(m) A registration fee as set in OAR 441-065-0001.

(3) Post application information. Every applicant or registrant by qualification must:

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(a) Advise the Director prior to registration in Oregon of any material change in any information contained in the application or in any documents submitted with or as a part of the application;

(b) File within two business days after filing with the Securities and Exchange Commission:

(A) Any amendments to the federal registration statement designating the changed, revised, or added material or information; and

(B) The final prospectus and any further amendments or supplements thereto.

(c) File within 14 days of the date of registration the final prospectus, if not filed with the Securities and Exchange Commission;

(d) Notify the Director within two business days of receipt of:

(A) Any stop order, order of denial, order to show cause, order of suspension or revocation, injunction, or restraining order, or similar order entered or issued by any state or other regulatory authority or by any court concerning the securities covered by the application or other securities of the issuer currently being offered to the public; and

(B) Notice of effectiveness of the registration by the Securities and Exchange Commission.

(e) Notify the Director at least two business days prior to the effectiveness of the registration with the Securities and Exchange Commission of:

(A) Any requests by the issuer or applicant to any other state or regulatory authority for permission to withdraw any application to register the securities described in the application; and

(B) All states in which applications have been filed where the issuer or applicant has received notice from the state authority that the application does not comply with state requirements and the applicant or issuer cannot or does not intend to comply with such requirements.

(f) Furnish promptly all additional information and documents with respect to the issuer or the securities covered by the application as the Director requests.

(4) Registration. Registration is effective on the issuance of an order of registration.

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

Stat. Auth.: ORS 59

Stats. Implemented: ORS 59.065

Hist.: FCS 5-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 5-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0050.2; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0035

### Registration by Multijurisdictional Coordination

(1) Securities for which a registration statement has been filed under the Securities Act of 1933 on Securities and Exchange Commission Forms F-7, F-8, F-9 or F-10 in connection with the same offering may be registered by multijurisdictional coordination.

(2) A registration statement filed with the Director under this rule shall contain the following information and be accompanied by the following documents as applicable:

(a) An appropriate registration fee as set in OAR 441-065-0001;

(b) An executed registration application on Form U-1;

(c) One copy of the latest form of prospectus filed under the Securities Act of 1933;

(d) If the Director requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(e) An undertaking to forward all amendments to the federal registration statement, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(3) A registration statement under this rule automatically becomes effective at the moment the federal registration becomes effective if all the following conditions are satisfied:

(a) No order is in effect or proceeding is pending pursuant to ORS 59.105;

(b) The application for registration and all required documents have been on file with the Director for seven calendar days or such shorter period as the Director permits by rule or otherwise; and

(c) A statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions have been on file for two full business days or such shorter period as the Director permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the Director by telephone or otherwise of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting

and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the Director may institute proceedings to suspend or revoke the registration pursuant to ORS 59.105.

(4) If the federal registration statement becomes effective before all the conditions specified in section (3) of this rule are satisfied, and those pending conditions are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the Director of the date when the federal registration statement is expected to become effective, the Director shall promptly advise the registrant by telephone or otherwise, at the registrant's expense, whether all the conditions are satisfied and whether the Director then contemplates the institution of a proceeding pursuant to ORS 59.105. This advice by the Director does not preclude the institution of such a proceeding at any time.

(5) A registration under this rule remains effective for a period of 12 months from the initial date of effectiveness unless earlier terminated by the registrant or the Director. A registrant may renew a registration under this rule by meeting the requirements of this rule.

(6) For purposes of this rule, financial statements and financial information which have been prepared in accordance with Canadian generally accepted accounting principles, consistently applied, and which have been accepted by the Securities and Exchange Commission for inclusion in Form F-7, F-8, F-9 or F-10, with or without reconciliation to United States generally accepted accounting principles, consistently applied, will be accepted.

(7) Any person, not otherwise licensed in Oregon, who is a bona fide officer, director or employee of an issuer whose securities are registered pursuant to this rule and who is not otherwise compensated in connection with the sale of the registered securities, is exempt from the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

(8) Any person, not otherwise licensed in Oregon, who serves as a dealer manager for an exchange offer of securities which have been registered pursuant to this rule and who does not perform any active solicitation in this state, is exempt from the licensing requirements of OAR chapter 441, division 175 pursuant to OAR 441-175-0020 through 441-175-0040.

Stat. Auth.: ORS 59.015, 59.065 & 59.285

Stats. Implemented: ORS 59.065

Hist.: FCS 4-1991, f. & cert. ef. 8-23-91; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0170

### Registration Procedures for "Regulation D" and Similar Type Offerings

(1) An application to register securities filed pursuant to OAR 441-065-0220 (small offerings not exceeding \$500,000 including under SEC Rule 504) shall include the following:

(a) A completed Form 440-2013 (a form for the registration of limited or non-public offerings);

(b) A copy of the written disclosures required by OAR 441-065-0100(3);

(c) A registration fee as set in OAR 441-065-0001;

(d) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 and a per person license fee as set in OAR 441-175-0002; and

(e) Any additional or supplementary materials requested by the Director.

(2) An application to register securities filed pursuant to OAR 441-065-0225 (small corporate offerings not exceeding \$1,000,000 including under SEC Rule 504) shall include the following:

(a) A completed **Form U-7** (a uniform disclosure document for small corporate offerings) including the following exhibits, to the extent applicable:

(A) Form of underwriting or selling agency agreement;

(B) Issuer's articles of incorporation or other charter documents and all amendments thereto;

(C) Issuer's bylaws, as amended to date;

(D) Copy of any resolutions by the issuer's board of directors setting forth terms and provisions of capital stock to be issued;

(E) Any indenture, form of note or other contractual provision containing terms of notes or other debt, or of options, warrants or rights to be offered;

(F) Specimen of security to be offered (including any legend restricting resale);

(G) Copy of all advertising or other materials directed to or to be furnished investors in the offering;

(H) Form of escrow agreement for escrow of proceeds;

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(I) Consent to inclusion in Form U-7 Disclosure Document of accountant's report;

(J) Consent to inclusion in Form U-7 Disclosure Document of tax advisor's opinion or description of tax consequences;

(K) Consent to inclusion in Form U-7 Disclosure Document of any evaluation of litigation or administrative action by counsel;

(L) Form of any Subscription Agreement for the purchase of the securities;

(M) Opinion of counsel that the securities to be sold in the offering have been duly authorized and when issued upon payment of the offering price will be legally and validly issued, fully paid and nonassessable and binding on the issuer in accordance with their terms;

(N) Schedule of residence street addresses of the issuer's officers, directors and principal stockholders;

(O) Work sheets showing computations of responses to Questions 6, 7(a), 8(a), 8(b) and 17(b) of **Form U-7** Disclosure Document; and

(P) Any additional or supplementary materials requested by the Director.

(b) A registration fee as set in OAR 441-065-0001; and

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on Form U-4 and a per person license fee as set in OAR 441-175-0002.

(3) Amendments to Small Corporate Registrations under section (2). If a material change occurs concerning the issuer or the offering while the offering is effective in this state:

(a) The **Form U-7** Disclosure Document shall be amended to make the disclosures accurate and complete;

(b) The amended Form U-7 showing additions and deletions shall be filed with the Director for approval;

(c) The offering shall be suspended in this state until approval is received from the Director to proceed with the offering; and

(d) The registrant shall report the status of the offering in this state and file a plan for dealing with present purchasers in this state.

(4) An application to register securities filed pursuant to OAR 441-065-0230 (limited offering for offerings not exceeding \$5,000,000 including under SEC Rule 505) shall include the following:

(a) A completed **Form 440-2013** (a form for the registration of limited or non-public offerings);

(b) A registration fee in accordance with OAR 441-065-0001;

(c) Unless the offering is being sold through a licensed broker-dealer or by a person exempt from the licensing requirements of ORS 59.165, at least one completed salesperson application on **Form U-4** (available from the Securities Section) and a per person license fee in accordance with OAR 441-175-0002; and

(d) Any additional or supplementary materials requested by the Director.

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

Stat. Auth.: ORS 59.065 & 59.235

Stats. Implemented: ORS 59.065

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0055; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 7-1994, f. & cert. ef. 5-13-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0180

### Licensing of Salespersons

(1) General License Requirements. Offers and sales of offerings registered pursuant to OAR 441-065-0220, 441-065-0225 or 441-065-0230 may only be made by licensed broker-dealers, licensed salespersons or persons excluded by rule pursuant to OAR 441-175-0020 through 441-175-0040.

(2) Issuer Salespersons; Licensing Conditions. The following special licensing conditions are applicable to salespersons licensed to an issuer:

(a) An issuer may license up to five persons as issuer salespersons;

(b) Issuer salespersons must be bona fide officers, directors or employees of the issuer;

(c) Issuer salespersons are exempt from examination requirements and are not required to file a surety bond or an irrevocable letter of credit;

(d) An issuer salesperson shall not be simultaneously licensed to two or more employers; and

(e) The issuer and salespersons shall comply with OAR 441-175-0120.

(3) Issuer Salespersons; Licensing Procedures. An issuer shall submit to the Director a complete application to license each salesperson, including:

(a) A completed Form U-4 (salesperson application); and

(b) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

Stat. Auth.: ORS 59.165 & 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 9-1982(Temp), f. 4-7-82, ef. 4-15-82; CC 11-1982, f. 8-11-82, ef. 10-10-82; FCS 11-1988(Temp), f. & cert. ef. 6-2-88; Renumbered from 815-036-0060; FCS 15-1988, f. & ef. 11-21-88; FCS 4-1992, f. & cert. ef. 10-1-92; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-065-0270

### Compensatory Benefit Plans and Contracts

(1) Creation of Classification.

(a) The Director creates a classification of transaction in securities by an issuer designated as a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701).

(b) An issuer of a compensatory benefit plan offering that is exempt under SEC Rule 701 (17 CFR 230.701) may use this registration rule.

(2) Application to Register. The issuer shall submit:

(a) A completed Form U-1 (Application to Register Securities), except documents required under section 8 of Form U-1;

(b) A registration fee in accordance with OAR 441-065-0001;

(c) At least one completed Application to License a Salesperson on Form U-4 and license fee as set in OAR 441-175-0002. The salesperson must be a bona fide affiliate of the issuer, its parent or majority-owned subsidiary, and must either:

(A) Be an officer, director, general partner or trustee of the issuer, its parent or majority-owned subsidiary; or

(B) Have significant involvement in the administration of the benefit plan or contract.

(d) The following information:

(A) Type of business organization;

(B) Full title of plan or description of contracts;

(C) Type of plan;

(D) Affirmation that the offering is exempt from federal registration pursuant to SEC Rule 701; and

(E) Aggregate offering price of securities to be offered or sold pursuant to this application.

(e) An election regarding expiration date of an Order of Registration pursuant to section (5) of this rule; and

(f) Any supplementary materials requested by the Director.

(3) Discrete Offering. Subject to the inclusion of certain offers and sales of securities pursuant to OAR 441-065-0060 through 441-065-0230 or notice filing, offers and sales of securities registered pursuant to this rule shall be deemed to be part of a single, discrete offering and shall not be subject to integration with any other offer or sale by the issuer, whether registered pursuant to other provisions of OAR chapter 441, division 65 or otherwise exempt from the registration requirements of ORS 59.055.

(4) Review of Application. An application for registration pursuant to this rule shall be subject to the authority of the Director, pursuant to ORS 59.075, to deny registration or, pursuant to ORS 59.085 and section (8) of this rule, to impose conditions on registration.

(5) Order of Registration. Renewal. An initial Order of Registration, if issued, shall, at the election of the registrant, expire 30 days following the end of the issuer's fiscal year, otherwise, one year after the date of issuance. The election must be made at the time application is made pursuant to section (3) of this rule. An application may be submitted for renewal. An Order of Renewal, if issued, shall expire one year after the date of issuance.

(6) Conditions of Registration. The following conditions shall be imposed upon every Order of Registration or Renewal issued pursuant to this rule:

(a) The issuer, its parent or majority-owned subsidiary shall provide each participant in a compensatory benefit plan with a copy of such plan, and a copy of a written contract relating to compensation shall be provided to the parties; and

(b) This registration shall be effective only while the federal exemption under 17 CFR 230.701 is available to the issuer for this offering.

(7) Order of Registration. Continued Effectiveness. An issuer may rely on this rule with respect to offers made pursuant to this rule prior to the issuer becoming subject to the reporting requirements of Section (13) or (15)(d) of the Securities Exchange Act of 1934 (15 USC 78a et seq.), and sales consummating such offers may be made thereafter in reliance upon this rule and an effective Order of Registration or Renewal.

(8) Full Disclosure. This rule shall not be construed as waiving or modifying the provisions of the Oregon Securities Law relating to disclosure of material information to investors.

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

Stat. Auth.: ORS 59.065 & 59.285

Stats. Implemented: ORS 59.065 & 59.285

Hist.: FCS 3-1991, f. & cert. ef. 8-23-91; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

# ADMINISTRATIVE RULES

## 441-075-0020

### Specific Renewal Procedures

An application for renewal must meet the following requirements:

(1) **Timely Application.** In order to prevent an automatic expiration of an order of registration or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of registration or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(2) **Incomplete Applications.** Incomplete applications will not be processed.

(3) **Application Form.** An applicant for renewal shall use the same application form used for the initial registration application or most recent renewal.

(4) **Aggregate Offering Amount.** A renewal application may be submitted for any aggregate offering amount of securities. An applicant is not limited to renewing unsold portions of previously authorized aggregate offering amounts.

(5) **Fees.** An applicant for renewal shall submit the appropriate fees as established pursuant to OAR 441-065-0001.

(6) **Prospectus.** An applicant for renewal of an offering, other than a compensatory benefit plan registered under OAR 441-065-0270, shall file one copy of the most recent prospectus including supplements.

(7) **Financial Statements.** If financial statements are not submitted as part of the prospectus or offering document, the applicant for renewal of an offering other than a compensatory benefit plan registered under OAR 441-065-0270 shall file one copy of the most recent annual financial statements, including a balance sheet, statement of income or operations, statement of cash flows, and all accompanying footnotes. The annual financial statements must be current within 135 days of filing the application for renewal, or interim financial statements current within 135 days must also be submitted.

(8) **Additional Documents.** An applicant for renewal shall promptly furnish all additional information and documents with respect to the issuer or the securities covered by the renewal application as the Director requests.

(9) **Salesperson Applications.** If the offering is not being sold by a licensed broker-dealer, the applicant for renewal shall submit a U-4 salesperson application for each person who will sell securities on behalf of the issuer and the appropriate fees as established pursuant to OAR 441-175-0002. The requirements for issuer salesperson licensing are set forth in OAR 441-175-0120(11).

(10) **Order of Renewal.** An order of renewal will be issued by the Director upon receipt and processing of a complete application, unless the Director determines that the application should be denied pursuant to ORS 59.105. An order of renewal will be effective for a period of 12 months from the date of issuance.

Stat. Auth.: ORS 59.075 & 59.285

Stats. Implemented: ORS 59.065 & 59.075

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-095-0030

### Fairness Hearing Procedures

(1) The Director may decline to accept the filing of a plan pursuant to ORS 59.095 if the proponent of the plan is unable to establish a nexus with Oregon. That nexus must be established by showing:

(a) That the proponent of the plan is an entity with headquarters in Oregon;

(b) That the entity to be acquired or merged has its headquarters in Oregon; or

(c) That a minimum of 50% of the securities, claims or property interests to be exchanged are owned by persons who reside in Oregon.

(2) The proponent of the plan shall file:

(a) A Form U-1 registering all securities to be issued by the proponent;

(b) A copy of the merger agreement between the parties;

(c) A copy of the information statement to be submitted to the holders of the securities, claims or property interests to be exchanged;

(d) A copy of the Articles of Formation of the acquiring entity;

(e) A Form U-4 for each agent of the issuer, or the name and Central Registration Depository number of the broker-dealer to execute the securities transactions; and

(f) A filing fee for the total offering amount calculated pursuant to OAR 441-065-0001 and a fee in the amount set in OAR 441-175-0002 for each Form U-4 being filed.

(3) Following a preliminary review by the Director and resolution, if necessary, of any fairness or procedure issues raised by the Director, 30 days notice of the fairness hearing shall be given to all holders of the secu-

rities, claims or property interests to be exchanged. The proponent may request a shorter notice period of not less than 10 days, which request may not be unreasonably denied by the Director, provided the proponent demonstrates that all holders of the securities, claims or property interests to be exchanged:

(a) Are accredited investors as defined in OAR 441-035-0010; or

(b) Have been directly involved in the development of the plan, merger or acquisition negotiations.

(4)(a) The fairness hearing shall be conducted as an other than contested case pursuant to ORS Chapter 183 by a hearings officer designated by the Director at a location in Oregon designated by the hearings officer. With the consent of both parties to the merger or acquisition, the hearing may be conducted by telephone conference.

(b) The hearings officer may permit testimony of counsel, all interested parties to the exchange, and any holder of securities, claims or property interests to be exchanged who wishes to make a statement or raise questions. Any interested party who is unable to attend the hearing shall be permitted to participate by telephone or in writing.

(5) Any order issued concerning the plan of the proponent shall be dated effective as of the date of the hearing, unless issues were raised at the hearing which must be resolved, in which event the order shall be dated on the date when all such issues are satisfactorily resolved.

(6) The order issued shall make specific findings as to whether the plan is fair, just and equitable and free from fraud; and

(a) Approve the request as proposed by the proponent;

(b) Approve the request with conditions, limitation, or restrictions imposed by the Director; or

(c) Deny the request, provided the Director made findings that the plan is unfair, unjust or inequitable or not free from fraud. Notice of any denial issued under this subsection shall be provided by the Director, at the expense of the proponent, to all persons who were entitled to receive or who did receive notice of the hearing.

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

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.095

Hist.: FCS 12-2001, f. 12-27-01, cert. ef. 1-1-02; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0002

### Fees for Licensing or Notice Filing of Firms and Individuals

Pursuant to ORS 59.175, the Director sets the following fees for licensing or notice filing of firms and individuals:

(1) For a broker-dealer, an initial license fee of \$250 and a renewal license fee of \$200;

(2) For a state investment adviser, an initial license fee of \$200 and a renewal license fee of \$200;

(3) For a federal covered investment adviser, an initial notice filing fee of \$200 and a renewal notice filing fee of \$200;

(4) For a broker-dealer salesperson, an initial license fee of \$50 and a renewal license fee of \$50;

(5) For an investment adviser representative, an initial license fee of \$50 and a renewal license fee of \$50;

(6) For an agent of an issuer, an initial license fee of \$50 and a renewal license fee of \$50; and

(7) For a filing for use of a trade name or an assumed business name, a one time fee of \$50.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.175

Hist.: FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0015

### When Licensing Application Deemed Abandoned

(1) For purposes of this rule, the term "application" includes all documents, information and fees prescribed for the licensing of broker-dealers, state investment advisers, salespersons, or investment adviser representatives under ORS 59.175 and OAR 441, Division 175.

(2) An application shall be deemed deficient when:

(a) Insufficient fees have been paid and the Director has notified the applicant that fees are insufficient;

(b) Documents required by the rules in OAR 441, Division 175 have not been submitted by the applicant; or

(c) Additional information requested by the Director as permitted by the rules in OAR 441, Division 175 has not been submitted to the Director by the applicant.

(3) An application for licensing is deemed abandoned if:

(a) The application has been on file for a minimum of six (6) months;

(b) The application is deficient; and

(c) The applicant has failed to respond to the Director's written notice of warning of abandonment within thirty (30) calendar days of the date of warning.

# ADMINISTRATIVE RULES

(4) Fees paid in connection with an abandoned licensing application shall not be refunded.

(5) An applicant whose application has been abandoned may reapply by submitting a new application including new fees.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0060

### Licensing Rule Implementing, 1997 Oregon Laws Chapter 772 and the National Markets Improvement Act of 1996

(1) Broker Dealers subject to section 15 of the Securities Exchange Act of 1934. A licensed broker-dealer that is subject to section 15 of the Securities Exchange Act of 1934, as amended, referred to as a "NASD broker dealer," is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0080(1) Licensing of Broker-Dealers and 441-175-0110 Surety Bond; Letter of Credit.

(2) Investment Advisers.

(a) Federal Covered Investment Adviser. A federal covered investment adviser that makes a notice filing under ORS 59.165(7) and section (4) of this rule does not have to comply with OAR 441-175-0100 Applications for Licensing of Investment Advisers and 441-175-0110 Surety Bond; Letter of Credit.

(b) Out-of-State State Investment Adviser. A state investment adviser who has a principal place of business in a state other than this state and complies with that state's bonding or net capital requirements is not required to comply with the corporate surety bond, irrevocable letter of credit or net capital requirements for licensing in this state in OAR 441-175-0100 and 441-175-0110.

(c) An out-of-state state investment adviser that is not exempt under the "de minimis" exemption of ORS 59.015(20)(b)(J) must license in this state and can only operate in this state through an investment adviser representative licensed in this state.

(3) Surety bonds currently in effect in Oregon filed by a broker-dealer, federal covered investment adviser or out-of-state state investment adviser that no longer has to file a bond or letter of credit under ORS 59.175 and this rule shall continue in effect until canceled. However, the liability on the bond or letter of credit continues for six years following its cancellation.

(4) Notice filing by Federal Covered Investment Adviser.

(a) Notice filing by a federal covered investment adviser will be accepted by the Director through IARD using form ADV (Uniform Application for Investment Adviser Registration adopted by the SEC (17 C. F. R. 279.1 (1996) as modified in 2000) and shall include the fee required by OAR 441-175-0002.

(b) The renewal of the notice filing for a federal covered investment adviser will be accepted by the Director through IARD and shall include the fee required under OAR 441-175-0002.

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

Stat. Auth.: ORS 59.165 & 59.285

Stats. Implemented: ORS 59.165

Hist.: CC 1-1987, f. & cert. ef. 2-4-87; FCS 7-1987(Temp), f. 9-24-87, ef. 9-28-87; FCS 9-1987(Temp), f. & cert. ef. 10-9-87; FCS 6-1988, f. 3-22-88, cert. ef. 3-25-88; Renumbered from 815-030-0067; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 2-1998, f. & cert. ef. 4-30-98; FCS 4-1998, f. & cert. ef. 8-5-98; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0080

### Applications for Licensing of Broker-Dealers

(1) An applicant for licensing as a NASD broker-dealer must submit:

(a) To the NASD/CRD:

(A) A completed **Form BD** (broker-dealer application available from the Securities Section);

(B) A broker-dealer licensing fee as set in OAR 441-175-0002;

(C) At least one completed **Form U-4** (salesperson application available from the Securities Section) pursuant to OAR 441-175-0130. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer; and

(D) A salesperson licensing fee for each salesperson as set in OAR 441-175-0002.

(b) To the Securities Section:

(A) The name and CRD number of the salesperson whose application has been filed with the CRD;

(B) The name of the person or persons designated as supervisor for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change; and

(C) A completed **Form 440-2302** (a consent form available from the Securities Section), allowing the Securities Section access to all records of the NASD with respect to the applicant or licensee, including all Form BD filings, all financial information, all files relating to complaints, investigations, all disciplinary proceedings involving the applicant or licensee and all other persons for whom reports are required under **Form BD**. After initial licensing, materials filed with the NASD are deemed filed with the Securities Section.

(2) An applicant for licensing as a non-NASD broker-dealer must submit to the Securities Section:

(a) A completed **Form BD** (broker-dealer application available from the Securities Section);

(b) A broker-dealer licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (salesperson application available from the Securities Section) pursuant to OAR 441-175-0120. All licensed broker-dealers must have at least one salesperson licensed continuously throughout the licensing period of the broker-dealer;

(d) A salesperson licensing fee of for each salesperson as set in OAR 441-175-0002; and

(e) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Securities Section within 30 days following the change.

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

Stat. Auth.: ORS 59.175, 59.195 & 59.285

Stats. Implemented: ORS 59.165, 59.175, 59.185, 59.195 & 59.285

Hist.: 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 815-030-0067.2; FCS 16-1988(Temp), f. & cert. ef. 11-21-88; FCS 5-1989, f. & cert. ef. 5-17-89; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 7-2000, f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0085

### Limited Licensing of Canadian Broker-Dealers and Salespersons

(1) A broker-dealer that is resident in Canada and has no office or other physical presence in this state may, provided the broker-dealer is licensed in accordance with this rule, effect transactions in securities with or for, or induce or attempt to induce the purchase or sale of any security by,

(a) A person from Canada who is temporarily resident in this state, with whom the Canadian broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(b) A person from Canada who is resident in this state, whose transactions are in a self-directed tax advantaged retirement plan in Canada of which the person is the holder or contributor.

(2) A salesperson who will be representing a Canadian broker-dealer licensed under this rule may, provided the agent is licensed in accordance with this rule, effect transactions in securities in this state as permitted for the broker-dealer in section (1) of this rule.

(3) A Canadian broker-dealer may license under this rule provided that it:

(a) Files an application in the form required by the jurisdiction in which it has its head office;

(b) Is registered as a broker or dealer in good standing in the jurisdiction from which it is effecting transactions in this state and files evidence thereof; and

(c) Is a member of a self-regulatory organization or stock exchange in Canada.

(4) A salesperson who will be representing a Canadian broker-dealer licensed under this rule in effecting transactions in securities in this state may license under this rule provided that he or she:

(a) Files an application in the form required by the jurisdiction in which the broker-dealer has its head office; and

(b) Is registered in good standing in the jurisdiction from which he or she is effecting transactions into this state and files evidence thereof.

(5) If no denial order is in effect and no proceeding is pending under ORS 59.205, licensing becomes effective on the 30th day after an application is filed, unless earlier made effective, and expires on December 31 of every year.

(6) A Canadian broker-dealer licensed under this rule shall:

(a) Maintain its provincial or territorial registration and its membership in a self-regulatory organization or stock exchange in good standing;

(b) Provide the Director upon request with its books and records relating to its business in this state as a broker-dealer;

(c) Inform the Director forthwith of any criminal action taken against it or of any finding or sanction imposed on the broker-dealer as a result of any self-regulatory or regulatory action involving fraud, theft, deceit, misrepresentation or similar conduct; and disclose to its clients in the state that the broker-dealer and its salespersons are not subject to the full regulatory provisions in the Oregon Securities Law.

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(7) A salesperson of a Canadian broker-dealer licensed under this rule shall:

(a) Maintain his or her provincial or territorial registration in good standing;

(b) Inform the Director forthwith of any criminal action, taken against him or her, or of any finding or sanction imposed on the salesperson as a result of any self-regulatory or regulatory action involving fraud, theft, misrepresentation or similar conduct.

(8)(a) Renewal applications for Canadian broker-dealers and salespersons under this rule must be filed by January 1 of each calendar year following the date of original licensing.

(b) Renewal applications may be made by filing the most recent renewal application, if any, filed in the jurisdiction in which the broker-dealer has its head office, or if no such renewal application is required, the most recent application filed pursuant to subsection (3)(a) or (4)(a) of this rule, as the case may be.

(9) Every applicant for licensing or renewal licensing under this rule shall pay the applicable non-refundable fee for broker-dealers and agents as set in OAR 441-175-0002.

(10) A Canadian broker-dealer or salesperson licensed under this rule may only effect transactions in this state as permitted in sections (1) or (2) of this rule with or through:

(a) The issuers of the securities involved in the transactions;

(b) Other broker-dealers;

(c) Banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts, or other financial institutions or institutional buyers, whether acting for themselves or as trustees; or

(d) As otherwise permitted pursuant to the Oregon Securities Law.

(11) A Canadian broker-dealer or agent licensed under this rule and acting in accordance with the limitations set out in section (10) is exempt from all of the requirements of the Oregon Securities Law, except the anti-fraud provisions and the requirements set out in this rule. Such Canadian broker-dealer or salesperson may only have its notice filing under this rule denied, suspended or revoked for a breach of the anti-fraud provisions in ORS 59.135 or the requirements in this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.175

Hist.: FCS 5-2001, f. & cert. ef. 6-7-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0100

### Applications for Licensing of Investment Advisers

(1) An applicant for licensing as a state investment adviser may apply through IARD or with the Director.

(2) An applicant applying through IARD must submit:

(a) To the IARD:

(A) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(B) An investment adviser licensing fee as set in OAR 441-175-0002;

(C) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section). All licensed state investment advisers must have at least one representative licensed continuously throughout the licensing period of the investment adviser; and

(D) A licensing fee for each investment adviser representative as set in OAR 441-175-0002.

(b) To the Director:

(A) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(B) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Director within 30 days following the change;

(C) Financial statements if the person is an Oregon based state investment adviser applicant. All financial statements must be prepared by an "independent accountant," as that term is defined pursuant to OAR 441-175-0010(6), and shall include the financial statements described in paragraphs (3)(h)(A)-(D) of this rule;

(D) For Oregon based state investment advisers, a copy of any proposed client contracts; and

(E) Fees and any form or portion of any form which cannot be submitted through IARD.

(3) An applicant applying with the Director must submit:

(a) A completed **Form ADV**, including Parts 1 and 2 of Form ADV;

(b) A state investment adviser licensing fee as set in OAR 441-175-0002;

(c) At least one completed **Form U-4** (Uniform Application for Securities Industry Registration or Transfer available from the Securities Section) pursuant to OAR 441-175-0120. All licensed state investment

advisers must have at least one investment adviser representative licensed continuously throughout the licensing period of the investment adviser;

(d) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(e) A surety bond or letter of credit pursuant to OAR 441-175-0110 if the person is an Oregon based state investment adviser applicant;

(f) For Oregon based state investment advisers, a copy of any proposed client contracts;

(g) The name of the person or persons designated as supervisors for purposes of OAR 441-205-0210. When a new supervisor is designated, this change must be filed with the Director within 30 days following the change; and

(h) Financial statements if the person is an Oregon based state investment adviser applicant. All financial statements must be prepared by an "independent accountant," as that term is defined pursuant to OAR 441-175-0010(6), and shall include the following:

(A) For such investment adviser who has or will have custody of client funds or securities or requires or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, an audited balance sheet;

(B) For all other such investment advisers, a reviewed or compiled balance sheet;

(C) The financial statements must be submitted for the last two fiscal years. If an application is made less than 90 days after the end of the applicant's fiscal year, the financial statements shall be for the two most recent fiscal years, not including the most recently completed fiscal year. For persons with less than two years of operations, the same financial statements must be submitted for the period of operations; and

(D) If the year-end financial statements are dated more than 90 days from the completed application, interim financial statements within 90 days must accompany the application.

(4) All applicants must comply with the provisions of OAR 441-175-0070.

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

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1) & 59.205(2)

Hist.: 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 815-030-0067.4; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 8-1994, f.

& cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS

2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0120

### Licensing of Salespersons or Representatives to Non-NASD Broker-Dealers, State or Federal Covered Investment Advisers, Issuers and Owners of Securities

(1) For purposes of ORS 59.175, all salespersons or investment adviser representatives, except salespersons desiring to work for a NASD broker-dealer, must be licensed as provided in this rule.

(2) A non-NASD broker-dealer, an issuer, or an owner of securities must submit to the Director a complete application to license a salesperson including:

(a) A completed Form U-4 (available from the Securities Section);

(b) A licensing fee for each salesperson as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examinations pursuant to section (5), if required for licensing under this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on Form 440-2131, as provided in section (10) of this rule.

(3) A state or federal covered investment adviser must submit to the IARD, if the adviser files with the IARD and the IARD is capable of accepting the application, and otherwise to the Director:

(a) A completed Form U-4 (available on IARD or from the Securities Section);

(b) A licensing fee for each investment adviser representative as set in OAR 441-175-0002;

(c) Official notice of a passing score of the appropriate examination, if required for licensing under section (6) of this rule; and

(d) If employed by more than one broker-dealer or state or federal covered investment adviser, an undertaking, on Form 440-2131, as provided in section (10) of this rule.

(4) The following salespersons or investment adviser representatives are exempt from the examination requirements of section (5) or (6) of this rule:

(a) Salespersons or investment adviser representatives who have been licensed at any time in Oregon during the two years immediately prior to filing an application for licensing and whose current application is for the same type of license;



# ADMINISTRATIVE RULES

(b) Salespersons licensed to an issuer or owner of securities where the securities have been registered pursuant to ORS 59.065 and OAR chapter 441, division 65; and

(c) Salespersons or investment adviser representatives licensed in any jurisdiction during the two years immediately prior to filing an application for licensing in Oregon. For salespersons, this exemption is limited to the extent a salesperson has previously taken and passed the examinations required by section (5) of this rule.

(5) A salesperson to a non-NASD broker-dealer, or an issuer or owner of securities, who is not exempt from the examination requirements pursuant to section (4) 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, 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.

(6)(a) An investment adviser representative to a state or federal covered investment adviser, who is not exempt from the examination requirements pursuant to section (4) or subsection (6)(b) of this rule, is required to pass the examinations in one of the following paragraphs:

(A) If the applicant has passed the S-7 (Uniform Securities Agent State Law Examination), then either the S-65 (Uniform Investment Adviser Law Examination) if taken prior to January 1, 2000 or S-66 (Uniform Combined State Law Examination) if taken after January 1, 2000; or

(B) The S-65 (Uniform Investment Adviser Law Examination) if taken after January 1, 2000.

(b) The examinations in subsection (6)(a) shall be waived for an individual who currently holds one of the following professional designations:

(A) Chartered Financial Analyst (CFA) granted by the Association for Investment Management and Research;

(B) Certified Financial Planner (CFP) issued by the Certified Financial Planner Board of Standards, Inc.;

(C) Chartered Financial Consultant (ChFC) awarded by The American College, Bryn Mawr, Pennsylvania;

(D) Chartered Investment Counselor (CIC) granted by the Investment Counsel Association of America;

(E) Personal Financial Specialist (PFS) administered by the American Institute of Certified Public Accountants; or

(F) Such other professional designation as the Director may by order recognize.

(7) Limited licensed salespersons or investment adviser representatives may only effect transactions in or provide investment advice concerning securities for which their license is issued.

(8) 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.

(9) 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.

(10)(a) A person may be licensed simultaneously in this state as a salesperson with more than one broker-dealer or as an investment adviser representative with a state or federal covered investment adviser if all employers enter into an undertaking on Form 440-2131 (a dual licensing application available from the Securities Section). The undertaking shall contain the following provisions:

(A) The effective date of the salespersons or investment adviser representatives employment with the respective employers;

(B) Consent by each employer to the employment of the salesperson or investment adviser representative 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 person during the period of employment which violates the Oregon Securities Law. This agreement will continue until written notice is given to the Director of the termination of the employment relationship; and

(D) An agreement that each employer will license the salesperson or investment adviser representative with the Director and pay the applicable fees.

(b) No undertaking is required where:

(A) The salesperson is employed by one or more issuers registered under the Investment Company Act of 1940 under common management or control; or

(B) The employer, a single entity, is licensed or has filed notice in Oregon as both a broker-dealer and a state or federal covered investment adviser.

(C) Any changes in employment by a salesperson or investment adviser representative which would result in requiring an undertaking or changing the existing undertaking must be immediately filed on a new undertaking form with the Director.

(11) Where a salesperson desires to work for an issuer or owner of securities:

(a) The salesperson must be a bona fide officer, director or employee of the issuer or owner. No salesperson may be licensed to more than one issuer or owner of securities simultaneously. No person described in this subsection may be licensed to another issuer or owner of securities until two years from the date of the original licensing or last renewal of the prior offering. However, salespersons licensed to a single issuer to sell a continuing issue may be renewed. A waiver of this subsection may be requested from the Director as provided in OAR 441-011-0020;

(b) Persons not otherwise licensed, who are selling securities of an issuer for which notice has been filed pursuant to ORS 59.049(1) or 59.049(2), do not have to meet the requirements of subsection (a) of this section.

(12) Once the requirements of this rule are met, the Director shall issue a license, which may be conditioned or restricted pursuant to OAR 441-225-0030, for the salesperson or investment adviser representative unless the Director determines that licensing should be denied on one or more grounds as set forth in ORS 59.205 to 59.225.

(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) License Expiration. A salesperson or investment adviser representative license issued pursuant to this rule automatically expires without further action of the Director as follows:

(a) The license of an issuers or owners salesperson expires when the securities are no longer authorized for sale;

(b) The license of every salesperson or investment adviser representative licensed to a broker-dealer or state or federal covered investment adviser expires on the same date that the license of the broker-dealer or state investment adviser or the notice filing of the federal covered investment adviser expires.

Stat. Auth.: ORS 59.175

Stats. Implemented: ORS 59.165 & 59.175

Hist.: CC 13, f. 9-19-73, ef. 10-1-73; CC 16, f. 5-13-74, ef. 6-11-74; Renumbered from 815-030-0165.2; CC 9-1986(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 815-030-0070; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 5-1999, f. & cert. ef. 12-23-99; FCS 13-2000, f. & cert. ef. 11-6-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 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 for each salesperson as set in OAR 441-175-0002; 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

(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, mortgage banker, mortgage broker, 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 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

## 441-175-0160

### Renewal of NASD Broker-Dealer and Salesperson Licenses

(1) The licenses of a NASD broker-dealer and all affiliated salespersons expire on December 31, unless otherwise renewed pursuant to this rule.

(2) To renew a license, a NASD broker-dealer must submit the following items:

(a) To the NASD/CRD:

(A) A broker-dealer renewal fee as set in OAR 441-175-0002; and

(B) A salesperson renewal fee as set in OAR 441-175-0002 for each salesperson to be renewed.

(b) To the Securities Section, 350 Winter Street NE, Room 410, Salem, OR, 97301-3881, the name of the designated supervisor.

(3) Failure to file a complete renewal application prior to December 31 shall result in termination of the broker-dealer license and all affiliated salesperson licenses as of December 31.

(4) If a NASD broker-dealer satisfies the Director that failure to file a complete renewal application prior to December 31 was due to inadvertent oversight and, the NASD broker-dealer does complete the renewal application by January 31, the Director shall reinstate the effected licenses.

Stat. Auth.: ORS 59.185 & 59.285

Stats. Implemented: ORS 59.185

Hist.: CC 7-1986(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 815-030-0074; FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; Administrative Correction 12-4-97; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0165

### Renewal of the Licenses of Non-NASD Broker-Dealers or State Investment Advisers, and Their Salespersons or Investment Adviser Representatives

(1) The license of a non-NASD broker-dealer or state investment adviser (employer), and the licenses of their salespersons or investment adviser representatives, expire 12 months following the date of original licensing or last renewal of the license of the employer unless otherwise renewed pursuant to this rule. Provided, however, that any license of a state investment adviser or investment adviser representative who has filed an application through IARD will expire on December 31 of each year unless renewed through IARD.

(2) Timely Application. In order to prevent automatic expiration of an order of licensing or renewal, an applicant for renewal should file a complete application no less than 30 days prior to the expiration date of the current order of licensing or renewal. Applications not timely filed will be processed, but no assurance can be given that an order of renewal will be issued prior to expiration of a previous order.

(3) Incomplete Applications. Incomplete applications will not be processed.

(4) To renew a license, a state or federal covered investment adviser which has previously licensed through IARD must submit the following items to the IARD, to the extent the IARD is capable of accepting those items, and otherwise to the Director:

(a) An employer renewal fee as set in OAR 441-175-0002;

(b) A renewal fee as set in OAR 441-175-002 for each licensed investment adviser representative;

(c) Any amendments to Form ADV or Form U-4, pursuant to OAR 441-175-0105, which have not previously been submitted.

(5) To renew a license, a non-NASD broker-dealer or state investment adviser which has not previously licensed through IARD must submit the following items to the Director:

(a) A non-NASD broker-dealer or state investment adviser renewal form;

(b) An amended Form BD or ADV, pursuant to OAR 441-175-0105, if there have been material changes since the most recent filing of the appropriate form;

(c) The name of the person who is the supervisor of the employer's operations. When a new supervisor is appointed, the employer must file the change with the Director;

(d) A salesperson or investment adviser representative renewal form for each salesperson or investment adviser representative to be renewed, signed by both the salesperson or investment adviser representative and the employer;

(e) An employer renewal fee as set in OAR 441-175-0002, except as provided in section (7) of this rule;

(f) A salesperson or investment adviser representative renewal fee as set in OAR 441-175-0002 for each salesperson or investment adviser representative to be renewed, except as provided in section (7) of this rule; and

# ADMINISTRATIVE RULES

(g) For an Oregon based state investment adviser, financial information as set forth in section (6) of this rule.

(6) An applicant for renewal as an Oregon based state investment adviser must submit the following financial information:

(a) If the investment adviser has or will have custody of client funds or securities, or will require payment of advisory fees six months or more in advance and in excess of \$500 per client, the latest annual balance sheet which must be audited by an "independent accountant," as defined pursuant to OAR 441-175-0010(6);

(b) For all other investment advisers, the latest annual balance sheet which may be audited, reviewed or compiled, prepared by an "independent accountant," as defined pursuant to OAR 441-175-0010(6); and

(c) If the latest annual balance sheet and statement of income or operations is not current within 90 days of renewal, an interim balance sheet must be submitted.

(7) Any federal or state investment adviser transitioning onto IARD shall pay a prorated renewal fee for the employer and any previously licensed investment adviser representative in the year of the transition calculated from the month the existing notice filing or license expires, as shown in the following table: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 59.175(1), 59.205(2) & 59.285

Stats. Implemented: ORS 59.175(1), 59.185 & 59.205

Hist.: FCS 1-1992, f. 1-31-92, cert. ef. 2-1-92; FCS 2-1994, f. & cert. ef. 1-7-94; FCS 8-1994, f. & cert. ef. 6-1-94; FCS 7-2000; f. & cert. ef. 6-2-00; FCS 9-2001, f. & cert. ef. 9-28-01; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

## 441-175-0171

### Use of Trade Name or Assumed Business Name

(1) Each person holding a license or applying for a license issued under ORS 59.005 to 59.370, who desires to operate under a trade name or an assumed business name must submit the following to the Director for each name to be used:

(a) A completed application, with an original signature, on a form approved by the Director; and

(b) A non-refundable filing fee as set in OAR 441-175-0002.

(2) An order issued by the Director authorizing the licensee to operate under the trade name or assumed business name shall remain in effect until the order is:

(a) Suspended or revoked pursuant to ORS 59.205; or

(b) Cancelled pursuant to ORS 59.225.

(3)(a) Any person using a trade name or assumed business name pursuant to an order issued by the Director must, within 30 days after any change of information, notify the Director in writing of any change in address, contact name, phone number or fax number.

(b) Any person making a change in the trade name or assumed business name must submit a new notice and filing fee as provided in Section (1) of this rule.

Stat. Auth.: ORS 59.285

Stats. Implemented: ORS 59.015(8), 59.175(7) & 59.175(8)

Hist.: FCS 2-1999, f. & cert. ef. 11-8-99; FCS 2-2003(Temp), f. & cert. ef. 11-26-03 thru 5-21-04

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## Department of Consumer and Business Services, Insurance Division Chapter 836

**Adm. Order No.:** ID 5-2003(Temp)

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-26-03 thru 5-15-04

**Notice Publication Date:**

**Rules Adopted:** 836-031-0855

**Subject:** This temporary rulemaking implements legislation enacted in 2003 (section 2, chapter 568, Oregon Laws 2003), which requires that when insurers that belong to the Oregon Insurance Guaranty Association (OIGA) are each assessed by the OIGA in order to settle claims against an insolvent insurer, each member insurer must recover the assessment through a recoupment assessment imposed on net direct written premiums.

**Rules Coordinator:** Sue Munson—(503) 947-7272

### 836-031-0855

#### Recoupment of Assessments by Oregon Insurance Guaranty Association

(1) This rule is adopted under the authority of ORS 731.244 and section 2, chapter 568, Oregon Laws 2003 (Enrolled House Bill 3051), for the purpose of implementing section 2, chapter 568, Oregon Laws 2003, relating to the recoupment by insurers of assessments made by the Oregon

Insurance Guaranty Association under ORS 734.570. For the purpose of this rule:

(a) "OIGA assessment" means the assessment imposed on an insurer by the Oregon Insurance Guaranty Association.

(b) "Recoupment assessment" means the assessment charged by the insurer to its policyholders.

(2) An insurer shall recoup an OIGA assessment from its policyholders on premiums written or renewed on or after the recoupment start date as provided in section (6) of this rule. The recoupment assessment shall be imposed on a pro-rata basis of net direct written premiums. For the purpose of this section, "net direct written premiums" are gross premiums, including policy and membership fees, less return premiums and premiums on policies not taken, as reported in column 1 of the Oregon State Page, Exhibit of Premium and Losses. An insurer may state the recoupment assessment to be charged to each policyholder in terms of a rate instead of a dollar amount and shall adjust the notice in section (5) of this rule as appropriate.

(3) An insurer may state the amount of the recoupment assessment in the premium statement on the declaration page of an insurance policy rather than on the premium billing statement if the premium billing statement clearly informs the policyholder that the recoupment assessment is so located on the declaration page.

(4) If an insurer does not issue a premium billing statement, the insurer must state the amount of the recoupment assessment on the declaration page, on a balance due notice or on a rate quote.

(5) An insurer shall include the following notice on or with the statement of recoupment assessment at the first time each year in which a recoupment assessment is made: Most insurers doing business in Oregon participate in the Oregon Insurance Guaranty Association. In the event an insurer fails, the Association settles unpaid claims on behalf of consumers. Oregon law requires that policies be surcharged directly to recover the costs of handling those claims. If your policy is surcharged, the term (Note: each insurer must insert here the descriptive term it uses to designate the surcharge) along with an indicated dollar amount will be displayed with the statement of your surcharge.

(6) An insurer shall begin recoupment of an OIGA assessment on a date that is on or after January 1 of the year following the year in which the OIGA assessment was imposed but not later than April 1 of that year, and shall continue the recoupment assessment for the 12-month period following that date. An insurer shall make a good faith effort to fully collect the OIGA assessment during that period and may adjust the amount of a recoupment assessment in the course of the period as needed to make the recoupment more accurate or to add any additional recoupment assessment required by subsequent OIGA assessments against the insurer. Any such adjustment shall apply to all policies from which a recoupment assessment is collected on and after the date of the adjustment.

(7) The minimum threshold below which a recoupment assessment need not be made is the amount at which the cost of recouping the OIGA assessment exceeds the amount to be recouped. When an insurer decides not to recoup an amount under this section, the insurer shall record the amount not recouped as an expense on the income statement of the insurer. An insurer may not later recoup any amount so recorded.

(8) Not later than June 1 of each year in which a 12-month recoupment assessment period established by an insurer under section (6) of this section is completed, the insurer shall submit to the Director, on a form prescribed by the Director, the annual certification required by section 2, chapter 568 Oregon Laws 2003, indicating the total recoupment assessed and recovered during that recoupment period.

(9) If the amount of recoupment assessments collected by an insurer within the 12-month period beginning on the date on which the insurer began the recoupment exceeds the total amount of the OIGA assessment against the insurer, the insurer shall do one of the following:

(a) Pay back the excess.

(b) Carry over the amount of the excess to the next 12-month period in which the insurer imposes a new recoupment assessment. The amount carried over shall be used to reduce the new recoupment assessment.

(10) If the amount of recoupment assessments collected by an insurer within the 12-month period beginning on the date on which the insurer began the recoupment is less than the total amount of the assessment against the insurer, the insurer shall carry over the amount of the insufficiency to the next 12-month period in which the insurer imposes a new recoupment assessment. The amount carried over shall be applied to increase the new recoupment assessment. If the insurer determines, however, that the cost of recouping the remaining amount exceeds the amount of the insufficiency, the insurer need not carry over the insufficiency. The insurer instead shall record the amount not recouped as an expense on the income statement of the insurer. An insurer may not later recoup any amount so recorded.

# ADMINISTRATIVE RULES

(11) An insurer may take all or any part of a recoupment charge owing from a policyholder from the first payment of premium by the policyholder.

Stat. Auth.: ORS 731.244 & 2003 OL 568(2)  
Stats. Implemented: 2003 OL 568(2)  
Hist.: ID 5-2003(Temp), f. & cert. ef. 11-26-03 thru 5-15-04

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**Adm. Order No.:** ID 6-2003  
**Filed with Sec. of State:** 12-3-2003  
**Certified to be Effective:** 12-3-03  
**Notice Publication Date:** 11-1-03

**Rules Amended:** 836-011-0000  
**Subject:** This rulemaking adopts the blanks and instructions established by the NAIC for annual statements and supplements for reporting years 2003 and 2004.

**Rules Coordinator:** Sue Munson—(503) 947-7272

## 836-011-0000

### Annual Statement Blank and Instructions

(1) For the purpose of complying with ORS 731.574, every authorized insurer, including every health care service contractor, shall file its financial statement required by ORS 731.574:

(a) For the 2003 reporting year on the annual statement blank approved in October 2001 for the 2003 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(b) For the 2004 reporting year on the annual statement blank approved in October 2002 for the 2004 reporting year by the National Association of Insurance Commissioners, for the type or types of insurance transacted by the insurer.

(2) Every authorized insurer, including every health care service contractor, shall complete its annual statement blank under section (1) of this rule as follows:

(a) For the 2003 reporting year, according to the applicable instructions printed July 2002 by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(b) For the 2004 reporting year, according to the applicable instructions printed July 2003 by the National Association of Insurance Commissioners, for completing the blank, as required by ORS 731.574.

(3) Every authorized insurer, including every health care service contractor, shall file each annual statement supplement as follows:

(a) For the 2003 reporting year, as required by the applicable instructions printed July 2002 by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(b) For the 2004 reporting year, as required by the applicable instructions printed July 2003 by the National Association of Insurance Commissioners, and shall complete the supplement according to those instructions.

(4) This rule is adopted under the authority of ORS 731.244, 731.574 and 733.210 for the purpose of implementing ORS 731.574 and 733.210.

Stat. Auth.: ORS 731.244, ORS 731.574 & ORS 733.210  
Stats. Implemented: ORS 731.574 & ORS 733.210  
Hist.: ID 8-1993, f. & cert. ef. 9-23-93; ID 10-1994, f. & cert. ef. 12-14-94; ID 7-1995, f. & cert. ef. 11-15-95; Renumbered from 836-013-0000; ID 4-1996, f. 2-28-96, cert. ef. 3-1-96; ID 16-1996, f. & cert. ef. 12-16-96; ID 11-1997, f. & cert. ef. 10-9-97; ID 16-1998, f. & cert. ef. 11-10-98; ID 5-1999, f. & cert. ef. 11-18-99; ID 1-2001, f. & cert. ef. 2-7-01; ID 4-2002, f. & cert. ef. 1-30-02; ID 6-2003, f. & cert. ef. 12-3-03

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**Adm. Order No.:** ID 7-2003  
**Filed with Sec. of State:** 12-3-2003  
**Certified to be Effective:** 1-1-04  
**Notice Publication Date:** 10-1-03

**Rules Amended:** 836-042-0045  
**Subject:** This rulemaking amends the rule that prescribes a uniform statistical plan for workers' compensation insurance as required by ORS 737.225(4), in order to adopt the updated January 1, 2004 edition of actuarial pension tables. This rule amendment takes effect January 1, 2004.

**Rules Coordinator:** Sue Munson—(503)

## 836-042-0045

### Uniform Workers' Compensation Statistical Plan

(1) The Unit Report Expanded (URE) Workers Compensation Statistical Plan, Edition of July 1, 2001 filed by the National Council on Compensation Insurance and approved by the Director to become effective

January 1, 2002 is prescribed as the statistical plan for workers' compensation insurance. The January 1, 2004 edition of Part 8, Pension Tables, of the NCCI URE Workers Compensation Statistical Plan is prescribed as the pension tables effective in this state January 1, 2004.

(2) The State Accident Insurance Fund Corporation and each insurer transacting workers' compensation insurance in this state shall report statistics for such business to the workers' compensation rating organization of which it is a member according to the statistical plan prescribed by section (1) of this rule.

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

Stat. Auth.: ORS 731.244 & ORS 737.225  
Stats. Implemented: ORS 737.225  
Hist.: IC 3-1982, f. 1-27-82, ef. 7-1-82; IC 10-1982, f. 6-23-82, ef. 7-1-82; IC 2-1983, f. 3-16-83, ef. 4-1-83; IC 5-1983, f. 6-30-83, ef. 7-1-83; IC 4-1984, f. 9-28-84, ef. 10-1-84; ID 2-1998, f. & cert. ef. 2-6-98; ID 15-2001, f. 12-19-01, cert. ef. 1-1-02; ID 7-2003, f. 12-3-03 cert. ef. 1-1-04

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**Adm. Order No.:** ID 8-2003  
**Filed with Sec. of State:** 12-12-2003  
**Certified to be Effective:** 12-19-03  
**Notice Publication Date:** 11-1-03

**Rules Amended:** 836-009-0007, 836-071-0180

**Subject:** This rulemaking permanently adopts temporary rules establishing new examination fees that reflect the costs of the examination services for which the Director has contracted with a licensing vendor. The new contract took effect July 1, 2003. The amendments to OAR 836-009-0007 and 836-071-0180, which were first filed with the Secretary of State on June 26, 2002 and took effect initially on July 1, 2002, are readopted in order to correct procedural errors in their initial adoption.

Copies of this rule can be accessed on our website at [www.oregoninsurance.org](http://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

## 836-009-0007

### Fees

(1) The following fees apply to certificates of authority:

(a) The fee for application for a certificate of authority to transact insurance as an insurer is \$2,500. The fee for application as a domestic insurer must be paid when application for a permit to organize as a domestic insurer is made. Otherwise, the fee must be paid when the application for the certificate is made;

(b) The fee for annual continuation of a certificate of authority issued under subsection (a) of this section is \$1,500;

(c) The fee for reinstatement of a certificate of authority is \$100.

(2) The fees in this section apply to examinations for licenses for agents, adjusters and insurance consultants. The fees are as follows:

(A) Examination fees:

(A) Agent, property and casualty insurance or life and health insurance — \$80;

(B) Agent, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$70;

(C) Surplus lines agent — \$70;

(D) Adjuster, general lines insurance or life and health insurance — \$80;

(E) Adjuster, health insurance or any single other line designated by rule — \$70;

(F) Consultant, life and health insurance or general lines insurance — \$80;

(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$70;

(b) Reexamination fees, to be charged when the applicant retakes an examination:

(A) Agent, property and casualty insurance or life and health insurance — \$80;

(B) Agent, property insurance only, casualty insurance only, personal lines insurance only, life insurance only or health insurance only — \$70;

(C) Surplus lines agent — \$70;

(D) Adjuster, general lines insurance or life and health insurance — \$80;

(E) Adjuster, health insurance or any single other line designated by rule — \$70;

(F) Consultant, life and health insurance or general lines insurance — \$80;

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(G) Consultant, life insurance only, health insurance only or any other single line designated by rule — \$70;

(c) The fee for failing to keep an examination appointment or for canceling an examination appointment, if cancellation is made after noon of the third working day before an examination appointment, is \$40. This fee is in addition to the fee for a subsequent examination.

(d) For purposes of the fees charged under subsections (a) and (b) of this section:

(A) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line; and

(B) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who holds a license that is endorsed to transact casualty insurance need not obtain a separate endorsement to transact personal lines insurance.

(3) The following fees apply to application for licenses for agents, adjusters and insurance consultants:

- (a) Resident agent — \$30;
- (b) Nonresident agent — \$30;
- (c) Adjuster — \$30;
- (d) Insurance consultant — \$30.

(4) The following fees apply to issuance of licenses for agents, adjusters and insurance consultants:

- (a) Resident agent — \$45;
- (b) Nonresident agent — \$45;
- (c) Adjuster — \$45;
- (d) Insurance consultant — \$45.

(5) The examination fee under section (2) of this rule must be paid to the examination vendor. The application fee under section (3) of this rule and the license issuance fee under section (4) of this rule must be paid at the same time. There is no refund of the application and examination fees. Refund of the license issuance fee is governed by section (14) of this rule.

(6) The fees established in this section apply to the renewal of licenses for agents, adjusters and insurance consultants. A license shall expire on the last day of the month in which the second anniversary of the initial issuance date occurs, and on the second anniversary following each renewal thereafter. The fees are as follows:

- (a) Resident agent — \$45;
- (b) Nonresident agent — \$45;
- (c) Adjuster — \$45;
- (d) Insurance consultant — \$45.

(7) The applicable fee under sections (3) and (4) of this rule shall be paid for each category of insurance business appearing on a license.

(8) The following fees apply to certificates of registration for legal expense organizations:

- (a) Application for a certificate of registration — \$350;
- (b) Renewal of certificate of registration — \$350. The fee under this subsection shall be paid annually.

(9) Annual registration of a foreign risk retention group — \$350. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(10) Annual registration of a purchasing group — \$100. The fee under this section shall be paid at the time of initial registration and annually thereafter.

(11) The license for a rating organization — \$180. The fee under this section shall be paid at the time of initial licensing and triennially thereafter.

(12) The fee for filing a statement by an acquiring party under ORS 732.521 for the purpose of acquiring a controlling interest in an insurer (a "Form A" filing as prescribed in OAR 836-027-0100) is \$50 per hour of Division staff time spent on reviewing the statement, with a minimum fee of \$5,000.

(13) The Fire Marshal shall pay \$50,000 each year for services provided by the Department in the collection of gross premium taxes on insurance covering the peril of fire under ORS 731.820.

(14) Fees paid as required under this rule are not refundable except as provided in this section. If the Director determines that an amount paid exceeds the amount legally due and payable to the Department and the amount of the overpayment is less than \$20, the Department shall refund the amount only upon receipt of a written request from the payer or the representative of the payer. A fee paid for a license under section (4) of this rule is refundable if the license applicant fails the examination or if the license is otherwise not issued to the applicant.

(15) The amendments to section (2)(a), (b) and (d) of this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002, are re-adopted with the operative date of July 1, 2002, and those same amendments to section (2)(a) and (b) of this rule are repealed effective July 1, 2003.

Stat. Auth.: ORS 293.445, 731.244, 731.804 & 744.037

Stats. Implemented: ORS 731.804, 744.001, 744.002, 744.004, 744.007, 744.066, 744.069, 744.075, 744.528, 744.531, 744.535, 744.619 & 744.621  
Hist.: ID 6-1989(Temp), f. & cert. ef. 7-3-89; ID 14-1989, f. 12-12-89, cert. ef. 1-1-90; ID 21-1990, f. & cert. ef. 12-18-90; ID 4-1991, f. & cert. ef. 4-25-91; ID 8-1991, f. & cert. ef. 10-21-91; ID 7-1993, f. & cert. ef. 9-3-93; ID 16-1997, f. 11-25-97, cert. ef. 1-1-98; ID 6-1999, f. 12-13-99, cert. ef. 1-1-00; ID 14-2000, f. 12-27-00, cert. ef. 1-1-01; ID 13-2001, f. 11-16-01, cert. ef. 1-1-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 8-12-10-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03

## 836-071-0180

### Agent Pre-Examination Requirements

(1) An applicant for a license as an agent may take an examination for the license only if the applicant first qualifies for the examination by:

(a) Satisfying preexamination training requirements of section (2) of this rule and the training requirement of section (10) of this rule; or

(b) Satisfying the experience requirements of section (6) of this rule and the training requirement of section (10) of this rule.

(2) An applicant may qualify for the examination by taking preexamination training meeting the requirements of section (3) of this rule according to either of the following methods:

(a) Attendance at classroom lectures supervised and conducted by an instructor; or

(b) Attendance at the showing or playing of a previously videotaped or audiotaped lecture, if student check-in and check-out are supervised and a course instructor is present or available to answer student questions.

(3) Preexamination training shall consist of not less than:

(a) 20 hours in basic principles of property insurance, for authority to transact property insurance;

(b) 20 hours in basic principles of casualty insurance, for authority to transact casualty insurance;

(c) 20 hours in basic principles of personal lines insurance, for authority to transact personal lines insurance;

(d) 30 hours in basic principles of life insurance, for authority to transact life insurance; and

(e) 12 hours in basic principles of health insurance, for authority to transact health insurance.

(4) For the purposes of sections (2) and (3) of this rule:

(a) One hour of training shall consist of not less than 50 minutes of instruction.

(b) Surety is included in the casualty insurance line and marine and transportation insurance may be included in the property insurance line or the casualty insurance line.

(c) The personal lines line is a subcategory of the casualty insurance line. Consequently, a person who obtains training for a license to transact casualty insurance need not obtain separate or additional training to transact personal lines insurance.

(5) An applicant may not satisfy the training requirements established in this rule by unsupervised training or by self-study.

(6) An applicant may satisfy experience requirements for the examination by either of the methods described in this section. As provided in section (7) of this rule, an applicant may substitute successful completion of coursework to obtain an industry recognized designation for all or part of the experience requirements. The methods for satisfying experience requirements are as follows:

(a) Obtaining and showing proof of three years of verifiable experience as an unlicensed person performing the duties and activities described in OAR 836-071-0280(1) or (2) in the class or classes of insurance for which application is made, but only if any part of the experience has occurred within two years of the date of application for the agent license in this state; and

(b) Obtaining and showing proof of three years of licensure as a resident agent or insurance broker in another state, a province of Canada or Mexico:

(A) If the applicant has been so licensed within two years of the date of application for the agent license in this state; and

(B) If the applicant is not otherwise exempt from taking the examination under ORS 744.067.

(7) An applicant may substitute successful completion of coursework required for obtaining an industry-recognized designation described in this section for all or a part of the number of years of experience required under section (6) of this rule in the class or classes of insurance for which application was made. The following are the designations, the amount of experience for which the coursework may be substituted and the class or classes of insurance to which the coursework may apply:

(a) Accredited Advisor in Insurance (AAI) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

(b) Accredited Customer Service Representative (ACSR) designation of the Independent Insurance Agents Association: Two years' experience credit/general lines;

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(c) Associate in Risk Management (ARM) designation of the American Institute of Property and Liability Underwriters, Inc.: Three years' experience credit/general lines;

(d) Certified Insurance Counselor (CIC) designation of the Society of Certified Insurance Counselors: Three years' experience credit/general lines;

(e) Certified Professional Service Representative (CPSR) designation of the Professional Insurance Agents Association: Two years' experience credit/general lines;

(f) Registered Health Underwriter (RHU) designation of the National Association of Health Underwriters in partnership with Northeastern University: Three years' experience credit/health;

(g) Any registered program that fulfills the educational requirement leading to the CFP/Certified Financial Planner certification awarded by the Certified Financial Planner Board of Standards, Inc.: Three years' experience credit/life lines;

(h) Life Underwriters Training Council (LUTCF) designation of the Life Underwriters Training Council: Three years' experience credit/life and health lines;

(i) Chartered Financial Consultant (ChFC) designation of the American College of Life Underwriter: Three years' experience life and health lines;

(j) Fellow Life Manager Institute (FLMI) designation: Three years' experience life and health lines;

(k) Certified Professional Insurance Women (CPIW) designation: Two years' property and casualty lines; and

(l) An industry designation determined by the Director, by virtue of the coursework, to provide experience at least comparable to experience obtained by coursework for an industry designation specifically referred to in this section.

(8) Pretraining experience claimed under section (6) of this rule is verifiable only if:

(a) The applicant's employer submits to the Division a completed Division Qualification Form that includes a description of all the pretraining experience claimed by the applicant; and

(b) The Division is able to contact the employer to verify the information contained in the Qualification Form.

(9) Proof of completion of a training course for an industry designation under section (7) of this rule must be evidenced by a certificate of completion or notice of a passing examination score by the organization sponsoring the training.

(10) Each applicant for a license as an agent must obtain not less than eight hours of training in the Oregon Insurance Code and administrative rules.

(11) The amendments to this rule that were filed in ID 15-2002 with the Secretary of State on June 26, 2002 to become effective on July 1, 2002 are re-adopted with the operative date of July 1, 2002.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 744.058, 744.064 & 744.067

Hist.: ID 3-1990, f. & cert. ef. 1-19-90; ID 6-1994, f. & cert. ef. 5-20-94; ID 9-2002, f. & cert. ef. 3-18-02; ID 15-2002, f. 6-26-02, cert. ef. 7-1-02; ID 4-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 8 12-10-03; ID 8-2003, f. 12-12-03, cert. ef. 12-19-03

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

**Adm. Order No.:** OSHA 6-2003

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-26-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 437-001-0015, 437-001-0096, 437-001-0171, 437-001-0203, 437-001-0265, 437-001-0270, 437-001-0430, 437-001-0700, 437-001-0765

**Subject:** Federal OSHA published amendments to its Recordkeeping standard in the December 17, 2002, and June 30, 2003, Federal Registers. Oregon OSHA has adopted these federal amendments to remain as effective as federal OSHA standards. This rulemaking makes the changes federal OSHA has in place, as well as several reference corrections and clarification amendments.

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

### 437-001-0015

#### Definitions

The following definitions shall apply to OAR 437, unless the context requires otherwise:

(1) Abatement — Action by an employer to comply with a cited violation of the Oregon Safe Employment Act.

(2) Accepted Disabling Claims — Claims accepted for disabling occupational injuries or illnesses only. A disabling injury or illness entitles the worker to compensation for disability or fatality. This type of claim excludes temporary total disability suffered during the first three calendar days after the employee leaves work as a result of the injury unless the worker is an inpatient in a hospital.

(3) Accepted Disabling Claims Rate — The ratio of accepted disabling claims to annual average employment, times 100. Claims and employment figures are based upon the best knowledge of the Department at the time the rate is calculated (ADCR = Number of claims times 100 divided by the number of employees).

(4) Act — The Oregon Safe Employment Act (ORS 654.001 to 654.295, 654.750 to 654.780, and 654.991).

(5) Administrator — The Administrator of the Oregon Occupational Safety and Health Division (OR-OSHA).

(6) Affected employee — An employee who, in the course and scope of employment, may be or may have been exposed to a condition or practice described in a citation, order, application for an extension date or variance.

(7) Agent of the employer — The manager, superintendent, foreperson or other person in charge or control of all or part of the place of employment.

(8) Appeal — A written request for a hearing in which to contest a citation, notice or order issued by the Division. Unless the context otherwise requires, any writing which clearly contests, objects to or seeks relief from a Division citation, notice or order shall be construed as an appeal.

(9) Audiometric Zero — The lowest sound pressure level that the average, young adult with normal hearing can hear.

(10) Board — The Workers' Compensation Board created by ORS 656.712.

(11) Catastrophe — An accident in which two or more employees are fatally injured, or three or more employees are admitted to a hospital or an equivalent medical facility.

(12) Citation — A document issued by the Division pursuant to ORS 654.071 to cite a violation. A citation may include a notice of penalty and a correction order.

(13) Complaint — A written or oral report from an employee, employee representative or other person that an occupational safety or health violation may exist at a place of employment. A complaint may be classified as one of the following:

(a) Imminent danger;

(b) Serious;

(c) Other than serious.

(14) Compliance Officer — A designated Division employee whose responsibility is to conduct inspections or investigations to identify possible violations and hazards and to propose citations, penalties and correction dates, and to assist employers and employees with information to correct violations and hazards.

(15) Comprehensive Consultation — is a consultation to cover the entire establishment and entails a physical hazard assessment evaluation, reviews of records, written programs and the employer's illness and injury prevention plan. Comprehensive consultations include a written report by the provider including findings, recommendations, and the guidance necessary to resolve the problems noted in the report.

(16) Consultant — A designated Division employee whose responsibility is to provide a full range of occupational safety and health assistance including, but not limited to, providing employers, employees and other agency staff with information, advice and recommendations on maintaining safe employment or a place of employment; on correcting violations or hazards; and on applicable occupational safety and health rules, techniques, devices, methods, practices and development of safety and health programs.

(17) Correction order — A written Division order which directs a person to stop a violation within a given period of time. The term also includes a Red Warning Notice issued pursuant to OAR 437-001-0096.

(18) Days Away, Restricted, or Transferred (DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (DART rate = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

(19) Decibel (dB) — Unit of measurement of sound level. For purposes of this rule, decibels refer to the combined average of the readings at 2000, 3000, and 4000 Hz on the audiogram.

(20) Department — The Department of Consumer and Business Services.

(21) Director — The Director of the Department of Consumer and Business Services, or the Director's designee.

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(22) Division — The Oregon Occupational Safety and Health (OR-OSHA) Division of the Department of Consumer and Business Services.

(23) Emphasis Program — A special program that targets Division activity to industries that, according to national or state data, have a high potential for serious injuries or illnesses.

(24) Employee — Any individual who is currently employed or formerly employed, including a minor whether lawfully or unlawfully employed, who engages to furnish services for a remuneration, financial or otherwise, subject to the direction and control of an employer, and includes salaried, elected and appointed officials of the state, state agencies, counties, cities, school districts and other public corporations, or any individual who is provided with workers compensation coverage as a subject worker pursuant to ORS Chapter 656, whether by operation of law or by election.

(25) Employee exposure record — A record of monitoring or measuring which contains a qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

(26) Employee medical record — A record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(a) The results of medical examinations and tests;

(b) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(c) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

(27) Employee representative — A bargaining unit representative, or an individual selected by employees, who serves as their spokesperson.

(28) Employer — Any person who has one or more employees, or any sole proprietor or member of a partnership who elects workers compensation coverage as a subject worker pursuant to ORS 656.128.

(29) Employer representative — An individual selected by the employer, to serve as spokesperson or, in the absence of a selected spokesperson, the person in charge of the place of employment at the time of the inspection.

(30) Environmental Exposure Sampling — Sampling of the work place environment, performed for a variety of reasons including, identification of contaminants present and their sources, determination of worker exposures and checking the effectiveness of controls.

(31) Establishment — An establishment is a single physical location doing business or offering services or with industrial operations. For activities where employees do not work at a single physical location, such as construction; transportation; communications, electric, gas and sanitary services; and similar operations, the establishment is the main or branch offices, terminals, stations, etc. that either supervise such activities or are the base from which personnel carry out these activities.

(a) One location/multiple establishments. Normally, one business location has only one establishment. Under limited conditions, two or more separate businesses that share a single location are separate establishments. An employer may divide one location into two or more establishments only when:

(A) Each of the establishments represents a distinctly separate business;

(B) Each business is engaged in a different economic activity;

(C) No one industry description in the Standard Industrial Classification Manual (1987) applies to the joint activities of the establishments; and

(D) Separate reports are routinely prepared for each establishment on the number of employees, their wages and salaries, sales or receipts, and other business information. For example, if an employer operates a construction company at the same location as a lumber yard, each business can be a separate establishment.

(b) Multiple locations/one establishment. Only under certain conditions. An employer may combine two or more physical locations into a single establishment only when:

(A) The employer operates the locations as a single business operation under common management;

(B) The locations are all near each other; and

(C) The employer keeps one set of business records for all the locations, such as records on the number of employees, their wages and salaries, sales or receipts, and other kinds of business information. For example, one manufacturing establishment might include the main plant, a warehouse a few blocks away, and an administrative services building across the street.

(c) Telecommuting from home. For employees who telecommute from home, the employee's home is not a business establishment, do not

keep a separate 300 Log. Link employees who telecommute to one of your establishments under 437-001-0700(15)(c).

(32) Farm operation — Any operation involved in the growing or harvesting of crops or the raising of livestock or poultry.

(33) Filed — A document shall be deemed to have been filed on the date of postmark if mailed or on the date of receipt if transmitted to OR-OSHA, DCBS, or the WCB by other means.

(34) First aid — Any one-time treatment and subsequent observation of minor scratches, cuts, burns, splinters or similar injuries which do not ordinarily require medical care. Such one-time treatment and subsequent observation is considered first aid even though provided by a physician or registered professional personnel.

(35) Fixed place of employment — The entire facility maintained by an employer at one general location, regardless of the size or number of departments or buildings in the facility. For the purpose of determining repeat violations fixed place of employment includes employers or owners engaged in construction activity who will be at a single worksite continuously for more than 24 months.

(36) Hazard — A condition, practice or act which could result in an injury or illness to an employee.

(37) Health Hazard — Health hazards mean carcinogens, lead, silica, toxic metals and fumes, vapors or gases, toxic or highly corrosive liquids or chemicals, chemical sensitizers, pesticides, fungicides, solvents, biological agents and harmful physical stress agents.

(38) Imminent danger — A condition, practice or act which exists in any place of employment and could reasonably be expected to cause death or serious physical harm immediately.

(39) Injury or illness — An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Record injuries and illnesses only if they are new, work-related cases that meet one or more of the recording criteria.)

(40) Inspection — An official examination of a place of employment by a Compliance Officer to determine if an employer is in compliance with the Act. An inspection may be classified as:

(a) Programmed.

(A) Routine inspection — An inspection of a place of employment which is made based principally on that place of employment's record of workers' compensation claims or Standard Industrial Classification and number of employees;

(i) Emphasis inspection — An inspection made in response to a national or state Emphasis Program.

(B) Periodic inspection — An inspection made because of a time-related factor, including, but not limited to, intermittent or seasonal employment activity;

(C) Area inspection — An inspection made because of a geographic factor;

(D) Random inspection — An inspection scheduled and conducted pursuant to written neutral administrative standards.

(b) Unprogrammed.

(A) Follow-up inspection — An inspection made to determine if a previously cited violation has been corrected or after a request for an extension, a stay of correction time or a variance has been denied;

(B) Complaint inspection — An inspection made in response to a complaint;

(C) Accident investigation — A systematic appraisal of an accident sequence to determine causal factors, corrective actions and preventative measures; and

(D) Referral inspection — An inspection made in response to a referral.

(41) Letter of Corrective Action — A letter stating the corrective action(s) taken by the employer to comply with the violation(s) that were not corrected at the time of the inspection.

(42) Lost workdays — The actual number of days after, but not including, the day of injury or illness during which the employee would have worked, but could not perform all or any part of his/her normal assignment during all or any part of the employee's next regular workday or shift because of the occupational injury or illness.

(43) Lost Workday Cases Incidence Rate (LWDCIR) (Also see DART) — The number of lost workday injury and illness cases experienced by 100 full-time workers (LWDCIR = Number of lost workday cases times 200,000 divided by the number of employee hours worked).

(44) Medical treatment — Treatment administered by a physician or by registered professional personnel under the standing orders of a physician. Medical treatment does not include first aid treatment even though provided by a physician or registered professional personnel, nor does it

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include treatment ordinarily considered diagnostic or preventative in nature.

(45) Owner — Every person having ownership, control or custody of any place of employment or of the construction, repair or maintenance of any place of employment.

(46) Person — 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 or subdivisions.

(47) Personal exposure samples — Measurement of contaminants or physical agents to characterize the environment in the breathing or hearing zone of individual workers in order to evaluate their specific work exposures. Personal samplers are placed on the worker to obtain either one continuous sample covering a portion of the workday or consecutive samples covering a stated time period.

(48) Physician or Other Licensed Health Care Professional — A physician or other licensed health care professional is an individual whose legally permitted scope of practice (i.e., license, registration, or certification) allows them to independently perform, or be delegated the responsibility to perform, the activities described by this regulation.

(49) Place of employment — Includes every place, whether fixed or movable, whether indoors or out or underground, and the premises and structures appurtenant thereto, where either temporarily or permanently an employee works or is intended to work and every place where there is carried on any process, operation or activity related, either directly or indirectly, to an employer's industry, trade, business or occupation, including a labor camp provided by an employer for his/her employees or by another person engaged in providing living quarters or shelters for employees, but place of employment does not include any place where the only employment involves nonsubject workers employed in or about a private home. Any corporate farm where the only employment involves the farm's family members, including parents, spouses, sisters, brothers, daughters, sons, daughters-in-law, nieces, nephews or grandchildren.

(50) Record — Any recorded information regardless of its physical form or character.

(51) Recordable occupational injuries or illnesses — Any occupational injuries or illnesses which result in:

(a) Fatalities, regardless of the time between the injury and death, or the length of the illness;

(b) Lost workday cases, other than fatalities, that prevent the employee from performing his/her normal assignment during any part of the employee's next regular, or any subsequent workday or shift; or

(c) Non-fatal cases, without lost workdays which result in transfer to another job or termination of employment, or require medical treatment (other than first aid), or involve loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illnesses which are reported to the employer but are not classified as fatalities or lost workday cases.

(52) Referral — A notification made to the responsible agency of safety or health violations observed by a Division employee, other federal, state or local government representatives, or the media.

(53) Rule — Any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedures or practice requirements of the agency and is adopted according to the Administrative Procedure Act. The term includes the amendment or repeal of a prior rule, but does not include, unless a hearing is required by statute, internal management directives, regulations or statements which do not substantially affect the interests of the public.

(54) Scheduling List — An electronic or paper list of places of employment or employers scheduled for inspection. Lists can be in electronic form, paper form or both.

(55) Serious physical harm:

(a) Injuries that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body. Examples of such injuries are amputations, fractures (both simple and compound) of bones, cuts involving significant bleeding or extensive suturing, disabling burns, concussions, internal injuries, and other cases of comparable severity.

(b) Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting, either temporarily or permanently, the normal function of a part of the body, even though the effects may be cured by halting exposure to the cause or by medical treatment. Examples of such illnesses are cancer, pneumoconiosis, narcosis, or occupational infections (caused by biological agents), and other cases of comparable severity.

(56) Standard Industrial Classification (SIC) — A classification system developed by the Office of Statistical Standards, Executive Office of

the President/Office of Management and Budget, for use in classifying establishments by the type of activity in which they are engaged. Each establishment is assigned an industry code for its major activity, which is determined by the value of receipts or revenue for services rendered or products produced, or in some cases by the employment or payroll. The 1987 edition of the SIC manual is used for coding.

(57) Standard Threshold Shift (STS) — A change in hearing threshold relative to the baseline audiogram of an average of 10 dB or more in either ear.

(58) Substantial failure to comply — When an employer engaged in the production of crops intended for human consumption fails to provide acceptable and accessible toilet facilities, handwashing facilities or drinking water, and that failure exposes affected workers to a serious hazard likely to result in an injury or illness.

(59) Suspended penalty — A penalty which is determined but not assessed.

(60) Variance — The written authority given by the Division to an employer permitting the use of a specific alternative means or method to comply with the intent of a rule. Specific types of variances are:

(a) Permanent — A variance that remains in effect until modified or revoked in accordance with OAR 437-001-0430;

(b) Temporary — A variance granted for a stated period of time to permit the employer to achieve compliance with a new rule;

(c) Research — A variance granted for a stated period of time to allow industrial or governmental research designed to demonstrate or validate new and improved safety or health techniques or products; and

(d) Interim order — The temporary authority for an employer to use an alternative means or method by which the employer effectively safeguards the safety and health of employees until final action can be taken on the variance request.

(61) Violation — The breach of a person's duty to comply with an Oregon occupational safety or health statute, regulation, rule, standard or order.

(a) Specific classifications of violations are:

(A) Serious violation — A violation in which there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in a place of employment unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation;

(B) Other than serious violation — A violation which is other than a serious or minimal violation; and

(C) Minimal violation — A violation which does not have a direct or immediate relationship to the safety or health of employees.

(b) Specific types of the above classifications are:

(A) Willful violation — a violation that is committed knowingly by an employer or supervisory employee who, having a free will or choice, intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, standard or order.

(B) Unabated violation — A violation that has not been fully corrected by the date ordered.

(C) Repeat violation:

(i) An employer's second or subsequent violation of the requirements of the same statute, regulation, rule, standard or order.

(ii) Subsequent violations shall not be considered to be a repeat when more than 36 months have elapsed and the violation has not reoccurred.

(iii) In these rules, Repeat, Repeated and Repeatedly are used as synonyms.

(D) First-instance violation — An employer's first violation of a particular statute, regulation, rule, standard or order.

(E) Egregious — Those conditions which normally constitute a flagrant violation of the OSEAct or OR-OSHA standards or regulations such that each instance of the violation is cited separately.

(c) Combined violation — Multiple violations of the same statute, regulation, rule, standard or order within an establishment which have been combined as one violation to indicate an overall lack of compliance with a safety or health statute, regulation, rule, standard or order.

(d) Grouped violation — Multiple violations of different statutes, regulations, rules, standards or orders, within an establishment which have been combined as one violation to indicate an increase in the severity of the violation.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 – 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD, 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 9-1983, f. & ef. 11-15-83; WCD 2-1984, f. 3-2-84, ef. 3-15-84; WCD 12-1984, f. 9-20-84, ef. 11-1-84; WCD 9-1986, f. 10-7-86, ef. 12-1-86; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 10-1990(Temp), f. & cert. ef. 5-31-90; OSHA 24-1990, F. & cert. ef. 10-10-90; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-1994, f. & cert. ef. 9-30-94; OSHA 2-1996, f. & cert.



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ef. 6-13-96; OSHA 5-1998, f. & cert. ef. 10-15-98; OSHA 7-1999, f. & cert. ef. 7-15-99; OSHA 11-1999(Temp), f. & cert. ef. 10-20-99 thru 4-14-00; OSHA 4-2000, f. 4-14-00, cert. ef. 4-15-00; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0096

### Red Warning Notice

(1) The Red Warning Notice shall be authorized by either the Director, Administrator, Manager of Enforcement, or Field Office Supervisors. For purposes of this rule, a Camp Closure Notice is a Red Warning Notice.

(2) When action is necessary to preclude or eliminate exposure of employees to a condition which, if such exposure occurred or continued, would constitute a violation of any statute or of any lawful regulation, rule, standard or order, affecting employee safety or health at a place of employment, a Compliance Officer shall obtain permission to post a Red Warning Notice. The notice shall be posted in plain view of any person likely to use the place of employment, machine, device, apparatus or equipment that constitutes the hazard.

(3) Any place of employment, machine, device, apparatus or equipment on which a Red Warning Notice has been posted shall not be operated or used by any person until:

- (a) The condition has been made safe and healthful; and
- (b) The Red Warning Notice has been removed by the Division; however,

(c) Nothing in this section prohibits an employer from using any place of employment, or operating any machine, device, apparatus or equipment, exclusively for the purpose of remedying the violation, pursuant to the instructions on the Red Warning Notice.

(4) No person shall deface or destroy a Red Warning Notice, or remove it without authorization from the Division.

(5) The Red Warning Notice will be removed after:

- (a) Notification from the employer that the condition has been corrected; and
- (b) A follow-up inspection or other information confirms that the condition has been corrected.

(6) Any person who violates or directs another to violate OAR 437-001-0096(3) or (4) shall be assessed a civil penalty of not less than \$100 and not more than \$5000 for each such violation.

(7) Any employer who violates or directs an employee to violate OAR 437-001-0096(3), and the violation is determined to be a willful violation, may be assessed a civil penalty of not less than \$5,000 and not more than \$70,000.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0171

### Determination of Penalty — Failure to Register a Farm Labor Camp/Facility

If an operator, employer or contractor fails to register a Farm Labor Camp or facility with Oregon OSHA as required in Division 4/J, 437-004-1120(5)(b), a penalty of not less than \$250 nor more than \$7,000, shall be assessed.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 315.164, 658.750, 658.755, 658.780, 658.785, 658.805, 658.810 & 658.825

Hist.: OSHA 9-1995, f. & cert. ef. 11-29-95; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0203

### Determination of Penalty — Relating to Violations Which Have No Probability and Severity

(1) Safety and Health Protection on the Job Poster. If the employer has not displayed the poster, a minimum penalty of \$100 may be assessed.

(2) Annual Summary — If an employer fails to post the summary portion of the OSHA 300 Form no later than February 1 of the year following the year covered by the records and keep it posted until April 30 in accordance with 437-001-0700(17)(d)(A), a minimum penalty of \$200 may be assessed.

(3) Citation — If an employer fails to post the citation after receipt, a minimum penalty of \$200 may be assessed.

(4) OSHA 300 and DCBS 801 Forms — If the employer does not maintain the Log and Summary of Occupational Injuries and Illnesses, OSHA 300 Form, and the Supplementary Record, DCBS Form 801 or equivalent, a minimum penalty of \$100 may be assessed for each OSHA form not maintained.

(5) Access to Records — If the employer fails upon request to provide records for inspection and copying by any authorized representative of OR-

OSHA or by any employee, former employee, or authorized representative of employees, a minimum penalty of \$100 may be assessed for each form not made available.

(6) Flush Toilets/Warm Water Hand Washing Facilities — If an employer fails to provide flush toilets or warm water hand washing facilities on a construction site according to OAR 437-003-0020 in 437, division 3, Construction, a penalty of not less than \$200, nor more than \$2,500, shall be assessed.

(7) Safety Committees — If an employer fails to establish a safety committee as required by OAR 437-001-0765 in 437, division 1, General Provisions, a minimum penalty of \$100 shall be assessed.

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

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.086

Hist.: APD 6-1987, f. 12-23-87, ef. 1-1-88; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 10-1995, f. & cert. ef. 11-29-95; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0265

### Amendment, Reissue or Withdrawal of Citation

(1) When the Division identifies an error or errors in the citation, the Administrator may, for good cause, amend, reissue or withdraw a citation provided:

(a) Such action will not reduce the occupational safety and health protection of affected employees;

(b) No appeal has been filed with the Board to contest the citation;

(c) The time for filing an appeal has not expired; and

(d) The employee representative, if any, has been notified of the proposed amendment.

(2) The employer receiving an amendment or withdrawal shall post the document as required by OAR 437-001-0275(2).

(3) An amendment or withdrawal of an appealed citation or order shall be made in accordance with the Board's rules (OAR 438) for contested cases. The administrator shall notify the employee representative of any proposed settlement or withdrawal made according to OAR 438.

(4) Any withdrawal, or amendment of an appealed citation that reduces the penalty or extends the correction times of an alleged serious or willful violation shall not be made without written approval of the Director.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0270

### Discretion if There is No Timely Appeal

(1) The Director may refer a matter arising under this rule to the Hearings Division of the Board for a hearing before a referee, who will provide the Director with proposed findings and recommendations. Persons whose rights may be affected, including affected employees, shall be given reasonable notice of such a hearing and an opportunity to participate as parties.

(2) To prevent a manifest injustice, the Administrator, at the Administrator's own discretion or upon request from the Division or an adversely affected person, may vacate or amend a Division citation, notice or order.

(3) If the Administrator proposes to vacate or amend a Division citation, notice or order, an opportunity to be heard will be given to persons, including affected employees, whose rights may be affected.

(4) All requests for reconsideration based on a manifest injustice shall contain a statement indicating the following:

(a) The request has been posted as required by OAR 437-001-0275(2);

(b) The request has been served on the authorized representative of affected employees, if appropriate;

(c) The date the request was posted or service was made; and

(d) All affected employees have been advised of their right to comment.

(5) No decision shall be made on a manifest injustice request until ten days after the date of posting or service.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 6-1982, f. 6-28-82, ef. 8-1-82; WCD 3-1983, f. 1-31-83, ef. 2-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 7-1992, f. 7-31-92, cert. ef. 10-1-92; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0430

### Modification or Revocation of a Variance

(1) A variance may be modified or revoked after it has been in effect six months or longer upon:

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(a) Request from the employer, an affected employee or an employee representative which may be in writing, the request shall contain:

- (A) The name and address of the applicant;
- (B) A description of the relief which is sought;
- (C) A statement setting forth with particularity the grounds for relief;
- (D) If the applicant is an employer, a certification that the applicant has informed affected employees of the application by:

(i) Giving a copy thereof to their authorized representative;

(ii) Posting at the place or places where notices to employees are normally posted, a statement giving a summary of the application and specifying where a copy of the full application may be examined (or, in lieu of the summary, posting the application itself); and

(iii) Other appropriate means.

(E) If the applicant is an affected employee, a certification that a copy of the application has been furnished to the employer; and

(F) Any request for a hearing, as provided for in these rules.

(b) Notification and confirmation that the alternative methods or safeguards required by the variance are not fully complied with; or

(c) A Division review.

(2) The Division shall publish the proposed modification or revocation for one day in at least one daily newspaper with general circulation throughout Oregon. Exception: A revocation based on a company being out of business or no longer needed does not need to be published. The notice shall include:

(a) The name of applicant;

(b) The rule, also identified by number, from which the variance had been granted;

(c) A brief description of the variance and why relief is sought;

(d) Notice of opportunity for public comment and hearing and that a request for hearing shall be made within 20 days of publication;

(e) Information on how interested persons may learn of the Division's decision on the variance; and

(f) The address of the Division office from which further information may be obtained.

(3) The Division may conduct an on-site review of the equipment or processes involved in the proposed, revoked or modified variance.

(4) The employer and affected employees shall be advised in writing of modification or revocation of the variance. The modification or revocation order shall state:

(a) The name and address of the employer;

(b) The address and location of the place of employment involved;

(c) The rule, identified by number, from which the variance was granted;

(d) The type of variance issued;

(e) The reasons for modification or revocation of the variance; and

(f) The employer's and affected employees appeal rights.

(5) Any request for a hearing shall be made within 20 days of publication and shall include a short and plain statement of:

(a) How the proposed modification or revocation would affect the requesting party; and

(b) What the requesting party would seek to show on the subjects or issues involved.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCB 8-1975, f. 8-5-75, ef. 9-1-75; WCD 5-1978, f. 6-22-78, ef. 8-15-78; WCD 4-1981, f. 5-22-81, ef. 7-1-81; WCD 6-1982, f. 6-28-82, ef. 8-1-82; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0700

### Recordkeeping and Reporting

(1) Purpose. This rule requires employers to record and report work-related fatalities, injuries and illnesses.

**Note:** Recording or reporting a work-related injury, illness, or fatality does not assign fault to anybody, does not prove the violation of an OSHA rule, nor establish the employee's eligibility for workers' compensation or other benefits.

(2) Scope. This standard covers all employers covered by the Oregon Safe Employment Act. However, most employers do not have to keep OR-OSHA injury and illness records unless the Director informs them in writing that they must keep records. For example, employers with 10 or fewer employees and business establishments in certain industry classifications are partially exempt from keeping OR-OSHA injury and illness records.

(3) Partial Exemptions.

(a) If your company never had more than ten (10) employees during the last calendar year, you do not need to keep OR-OSHA injury and illness records unless the Director informs you in writing that you must keep records. However, all employers covered by the Oregon Safe Employment Act must report to OR-OSHA any workplace fatality, the hospitalization of three or more employees, or overnight hospitalizations. (See (21) below)

(A) The partial exemption for size is based on the number of employees in the entire company.

(b) If your company had more than ten (10) employees at any time during the last calendar year, you must keep OR-OSHA injury and illness records unless your business is in a specific low hazard retail, service, finance, insurance or real estate industry in Table 1. If so, you do not need to keep OR-OSHA injury and illness records unless the government asks you to keep the records under 437-001-0700(23).

(c) If one or more of your company's establishments are classified in a nonexempt industry, you must keep OR-OSHA injury and illness records for all of such establishments unless your company is partially exempted because of size under 437-001-0700(3)(a). If a company has several business establishments engaged in different classes of business activities, some of the company's establishments may be required to keep records, while others may be exempt.

(4) Alternate or Duplicate Records. If you create records to comply with another government agency's injury and illness recordkeeping requirements, those records meet OR-OSHA's recordkeeping requirements if OR-OSHA accepts the other agency's records under a memorandum of understanding with that agency, or if the other agency's records contain the same information as this standard requires you to record. Contact your nearest OR-OSHA office for help in determining if your records meet OR-OSHA's requirements. **Table 1** — Partially Exempt Industries Table 1 [Table not included. See ED. NOTE.]

(5) Recording Criteria and Forms. This describes the work-related injuries and illnesses that an employer must enter on the OR-OSHA records and explains the OR-OSHA forms that employers must use to record work-related fatalities, injuries, and illnesses.

(a) Each employer required to keep records of fatalities, injuries, and illnesses must record each fatality, injury and illness that:

(A) Is work-related; and

(B) Is a new case; and

(C) Meets one or more of the general recording criteria of OAR 437-001-0700(8) or the application to specific cases of OAR 437-001-0700(9) through (13). **Table 2** — Related rules [Table not included. See ED. NOTE.] The decision tree for recording work-related injuries and illnesses below shows the steps involved in making this determination. Flow chart.

(6) Work Related. An injury or illness is work-related if an event or exposure in the work environment either caused or contributed to the resulting condition or significantly aggravated a pre-existing injury or illness. You presume work-relatedness for injuries and illnesses resulting from events or exposures occurring in the work environment, unless an exception in **Table 3** specifically applies. [Table not included. See ED. NOTE.]

**NOTE:** OR-OSHA defines the work environment as the establishment and other locations where one or more employees work or are present as a condition of their employment. The work environment includes not only physical locations, but also the equipment or materials used by the employee during the course of their work. Injuries occurring during travel are work related if the employee was engaged in work activities in the interest of the employer and it is not one of the exceptions in **Table 4**. If it is not obvious where the precipitating event occurred you must evaluate the employee's work duties and environment to decide whether events or exposures in the work environment either caused or contributed to the condition or significantly aggravated a pre-existing condition. [Table not included. See ED. NOTE.]

(a) A pre-existing injury or illness is significantly aggravated when an event or exposure in the work environment results in any of the following:

(A) Death, provided that the pre-existing injury or illness would likely not have resulted in death but for the occupational event or exposure.

(B) Loss of consciousness, provided that the preexisting injury or illness would likely not have resulted in loss of consciousness but for the occupational event or exposure.

(C) One or more days away from work, or days of restricted work, or days of job transfer that otherwise would not have occurred but for the occupational event or exposure.

(D) Medical treatment in a case where no medical treatment was needed for the injury or illness before the workplace event or exposure, or a change in medical treatment was necessitated by the workplace event or exposure. [Table not included. See ED. NOTE.]

(b) Work at home. Injuries and illnesses that occur while an employee works at home, including work in a home office, is work-related if the injury or illness relates directly to the work rather than to the general home environment or setting.

(7) New Cases. An injury or illness is a "new case" if:

(a) The employee has no previous recorded injury or illness of the same type that affects the same part of the body, or

(b) The employee previously had a recorded injury or illness of the same type that affected the same part of the body but recovered completely (all signs and symptoms disappeared) from the previous injury or illness

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and an event or exposure in the work environment caused the signs or symptoms to reappear.

(A) For occupational illnesses where the signs or symptoms may recur or continue in the absence of a workplace exposure, record the case only once. Examples include occupational cancer, asbestosis, byssinosis and silicosis.

**NOTE:** You are not required to seek the advice of a physician or other licensed health care professional. If you do seek such advice, you must follow their recommendation about whether the case is a new case or a recurrence.

(8) General Recording Criteria. An injury or illness meets the general recording criteria, and is recordable, if it results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness. You must record a case if it involves a significant injury or illness diagnosed by a physician or other licensed health care professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.

**NOTE:** OR-OSHA believes that most significant injuries and illnesses will result in one of the events listed below. However, there are some significant injuries, such as a punctured eardrum or a fractured toe or rib, for which neither medical treatment nor work restrictions may be recommended. In addition, there are some significant progressive diseases, such as byssinosis, silicosis, and some types of cancer, for which medical treatment or work restrictions may not be recommended at the time of diagnosis but are likely to be recommended as the disease progresses. Cancer, chronic irreversible diseases, fractured or cracked bones, and punctured eardrums are generally considered significant injuries and illnesses, and must be recorded at the initial diagnosis even if medical treatment or work restrictions are not recommended, or are postponed, in a particular case.

(a) You must record an injury or illness that results in death by entering a check mark on the OSHA 300 Log in the space for cases resulting in death. You must also report any work-related fatality to OR-OSHA within eight (8) hours.

(b) When an injury or illness involves one or more days away from work, you must record the injury or illness on the OSHA 300 Log with a check mark in the space for cases involving days away and an entry of the number of calendar days away from work in the number of days column. If the employee is out for an extended period of time, you must enter an estimate of the days that the employee will be away, and update the day count when the actual number of days is known.

(A) Begin counting days away on the day after the injury occurred or the illness began.

(B) End the count of days away from work on the date the physician or other licensed health care professional recommends that the employee return to work. This applies regardless of whether the employee returns earlier or later than recommended. If there is no recommendation from the physician or licensed health care professional, enter the actual number of days the employee is off work.

(C) You must count the number of calendar days the employee was unable to work as a result of the injury or illness, regardless of whether or not the employee was scheduled to work on those day(s). Include weekend days, holidays, vacation days or other days off in the total number of days recorded if the employee would not have been able to work on those days because of a work-related injury or illness.

(D) You may stop tracking of the number of calendar days away from work once the total reaches 180 days away from work and/or days of job transfer or restriction. Entering 180 in the total days away column is adequate.

(E) If the employee leaves your company for a reason unrelated to the injury or illness, such as retirement, a plant closing, or to take another job, you may stop counting days away from work or days of restriction/job transfer. If the employee leaves your company because of the injury or illness, you must estimate the total number of days away or days of restriction/job transfer and enter the day count on the 300 Log.

(F) You must enter the number of calendar days away for the injury or illness on the OSHA 300 Log that you prepare for the year in which the incident occurred. If the time off extends into a new year, estimate the number of days for that year and add that amount to the days from the year of occurrence. Do not split the days between years and enter amounts on the logs for two different years. Use this number to calculate the total for the annual summary, and then update the initial log entry later when the day count is known or reaches the 180-day cap.

(c) When an injury or illness involves restricted work or job transfer but does not involve death or days away from work, you must record the injury or illness on the OSHA 300 Log by placing a check mark in the space for job transfer or restriction and an entry of the number of restricted or transferred days in the restricted workdays column.

(A) Restricted work occurs when, as the result of a work-related injury or illness:

(i) You keep the employee from performing one or more of the routine functions of their job, or from working the full day that they would otherwise work; or

(ii) A physician or other licensed health care professional recommends that the employee not perform one or more of the routine functions of their job, or not work the full workday that they would otherwise work.

**NOTE:** For recordkeeping purposes, an employee's routine functions are those work activities the employee regularly performs at least once per week.

(iii) A recommended work restriction is recordable only if it affects one or more of the employee's routine job functions. To determine whether this is the case, you must evaluate the restriction in light of the routine functions of the injured or ill employee's job.

(iv) A partial day of work is recorded as a day of job transfer or restriction for recordkeeping purposes, except for the day on which the injury occurred or the illness began.

(v) Record job transfer and restricted work cases in the same box on the OSHA 300 Log.

(vi) You count days of job transfer or restriction in the same way you count days away from work. The only difference is that, if you permanently assign the injured or ill employee to a job modified or permanently changed to eliminate the routine functions the employee was restricted from performing, you may stop the day count when the modification or change is permanent. You must count at least one day of restricted work or job transfer for such cases.

(d) If a work-related injury or illness results in medical treatment beyond first aid, you must record it on the OSHA 300 Log. If the employee received medical treatment but remained at work without transfer or restriction and the injury or illness did not involve death, one or more days away from work, one or more days of restricted work, or one or more days of job transfer, you enter a check mark in the box for other recordable cases.

**NOTE:** You must record the case even if the injured or ill employee does not follow the physician or other licensed health care professional's recommendation.

(A) "Medical treatment" is the management and care of a patient to combat disease or disorder. For this rule, medical treatment does not include:

(i) Visits to a physician or other licensed health care professional solely for observation or counseling;

(ii) The conduct of diagnostic procedures, such as x-rays and blood tests, including the administration of prescription medications solely for diagnostic purposes (e.g., eye drops to dilate pupils); or

(iii) "First aid" as in (B) below.

(B) First Aid is: [Table not included. See ED. NOTE.]

(e) You must record a work-related injury or illness if the worker becomes unconscious, regardless of the length of time they remain unconscious.

(f) Work-related cases involving cancer, chronic irreversible disease, a fractured or cracked bone, or a punctured eardrum must always be recorded under the general criteria at the time of occurrence.

(9) Needlestick and Sharps Injury Recording Criteria.

(a) When an injury is diagnosed later as an infectious bloodborne disease, you must update the classification on the 300 log to reflect the new status or classification.

(b) You must record all work-related needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material (as defined by OAR 437-002-1910.1030). You must enter the case on the OSHA 300 Log as an injury. To protect the employee's privacy, do not enter the employee's name on the OSHA 300 Log (see the requirements for privacy cases in OAR 437-001-0700(14)(a) through (14)(i)).

(10) Medical Removal Recording Criteria. If another OR-OSHA standard requires the medical removal of an employee, you must record the case on the OSHA 300 Log.

(a) You must enter each medical removal case on the OSHA 300 Log as either a case involving days away from work or a case involving restricted work activity, depending on how you decide to comply with the medical removal requirement. If the medical removal is the result of a chemical exposure, you must enter the case on the OSHA 300 Log by checking the "poisoning" column.

(A) If the case involves voluntary medical removal before reaching the medical removal levels required by an OR-OSHA standard, do not record the case on the OSHA 300 Log.

(11) Occupational Hearing Loss Recording Criteria.

(a) Hearing loss must be recorded on the OSHA 300 Log by checking the hearing loss column when:

(A) An annual audiogram reveals a Standard Threshold Shift (STS) in either or both ears; and

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(B) The hearing level in the same ear is 25 dB above audiometric zero.

(b) In determining whether an STS has occurred, you may correct for the age of the employee. Use the appropriate table in **Appendix A** to determine the age adjustment. If the STS is 10 dB or more after the age correction, it still meets the criteria for recordability.

(c) If you retest the employee's hearing within 30 days of the first test, and the retest does not confirm the recordable STS, you are not required to record the hearing loss case on the OSHA 300 Log. If the retest confirms the recordable STS, you must record the hearing loss case within seven (7) calendar days of the retest. If subsequent audiometric testing performed under the testing requirements of the noise standard (OAR 437-002-1910.95) indicates that an STS is not persistent, you may erase, delete, or line-out the recorded entry.

(d) If a physician or other licensed health care professional determines that the hearing loss is not work-related or has not been significantly aggravated by occupational noise exposure, the case is not work-related. Do not record it on the OSHA 300 Log.

(12) Tuberculosis Reporting Criteria. If any of your employees has an occupational exposure to anyone with a known case of active tuberculosis (TB), and that employee subsequently develops a tuberculosis infection, as evidenced by a positive skin test or diagnosis by a physician or other licensed health care professional, you must record the case on the OSHA 300 Log by checking the "respiratory condition" column.

(a) Do not record a pre-employment positive skin test because the exposure was not in your workplace.

(b) Line out or erase a recorded case if you prove that:

(A) The worker lives in a household with a person diagnosed with active TB;

(B) The Public Health Department identifies the worker as a contact of an individual with a case of active TB unrelated to the workplace; or

(C) A medical investigation shows that the employee's infection was caused by exposure to TB away from work, or proves that the case was not related to the workplace TB exposure.

(13) Removed.

(14) Forms. You must use OSHA 300, 300-A, and DCBS Form 801 or equivalent forms, for recordable injuries and illnesses. The OSHA 300 form is the Log of Work-Related Injuries and Illnesses, the 300-A is the Summary of Work-Related Injuries and Illnesses, and the DCBS Form 801 or equivalent is the Worker's and Employer's Report of Occupational Injury or Disease.

(a) Even if you are exempt from recordkeeping, you must have at each establishment, a copy of DCBS Form 801 or equivalent for each occupational injury or illness that may result in a compensable claim.

(b) You must enter information about your business at the top of the OSHA 300 Log, enter a one or two line description for each recordable injury or illness, and summarize this information on the OSHA 300-A at the end of the year.

(c) You must complete a DCBS Form 801 or equivalent form, for each recordable injury or illness entered on the OSHA 300 Log.

(d) You must enter each recordable injury or illness on the OSHA 300 Log and DCBS Form 801 or equivalent within seven (7) calendar days of receiving information that a recordable injury or illness has occurred.

(e) An equivalent form is one that has the same information, is as readable and understandable, and is completed using the same instructions as the OSHA form it replaces. Many employers use an insurance form instead of the **DCBS Form 801**, or supplement an insurance form by adding any additional information required by OSHA.

(f) Use a computer to keep your records if it can produce equivalent forms when needed.

(g) If you have a "privacy concern case," do not enter the employee's name on the OSHA 300 Log. Instead, enter "privacy case" in the space normally used for the employee's name. This will protect the privacy of the injured or ill employee when another employee, a former employee, or an authorized employee representative has access to the OSHA 300 Log. You must keep a separate, confidential list of the case numbers and employee names for your privacy concern cases so you can update the cases and provide the information to the government if asked to do so.

(h) The following injuries or illnesses are privacy concern cases:

(A) An injury or illness to an intimate body part or the reproductive system;

(B) An injury or illness resulting from a sexual assault;

(C) Mental illnesses;

(D) HIV infection, hepatitis, or tuberculosis;

(E) Needlestick injuries and cuts from sharp objects contaminated with another person's blood or other potentially infectious material; and

(F) Other illnesses, if the employee voluntarily requests that his or her name not be entered on the log.

**NOTE:** This is a complete list of all injuries and illnesses that are privacy concern cases.

(i) If you reasonably believe that information describing the privacy concern case may be personally identifiable even though the employee's name is omitted, use discretion in describing the injury or illness on both the OSHA 300 and DCBS 801 Forms. You must enter enough information to identify the cause of the incident and the general severity of the injury or illness, but you do not need to include details of an intimate or private nature. For example, describe a sexual assault case as "injury from assault," or an injury to a reproductive organ could be described as "lower abdominal injury".

(j) If you voluntarily disclose the forms to persons other than government representatives, employees, former employees or authorized representatives, you must remove or hide the employees' names and other personally identifying information, except for the following cases:

(A) To an auditor or consultant hired by the employer to evaluate the safety and health program;

(B) To the extent necessary for processing a claim for workers' compensation or other insurance benefits; or

(C) To a public health authority or law enforcement agency for uses and disclosures for which consent, an authorization, or opportunity to agree or object is not required under Department of Health and Human Services Standards for Privacy of Individually Identifiable Health Information, 45 CFR.164.512.

(15) Multiple Business Establishments. You must keep a separate OSHA 300 Log for each establishment that you expect to operate for one year or longer.

(a) You may keep one OSHA 300 Log that covers all of your short-term establishments. You may also include the short-term establishments' recordable injuries and illnesses on an OSHA 300 Log that covers short-term establishments for individual company divisions or geographic regions.

(b) You may keep the records for an establishment at your headquarters or other central location if you can:

(A) Transmit information about the injuries and illnesses from the establishment to the central location within seven (7) calendar days of receiving information that a recordable injury or illness has occurred; and

(B) Produce and send the records from the central location to the establishment within the time frames required by OAR 437-001-0700(20) and 437-001-0700(22) when you are required to provide records to a government representative, employees, former employees or employee representatives.

(c) You must link each employee with one of your establishments, for recordkeeping purposes. You must record the injury and illness on the OSHA 300 Log of the injured or ill employee's establishment, or on an OSHA 300 Log that covers that employee's short-term establishment.

(d) If the injury or illness occurs at one of your establishments, you must record the injury or illness on the OSHA 300 Log of the establishment where the injury or illness occurred. If the employee is injured or becomes ill and is not at one of your establishments, you must record the case on the OSHA 300 Log at the establishment where the employee normally works.

(16) Covered Employees. You must record on the OSHA 300 Log the recordable injuries and illnesses of all employees on your payroll, whether they are labor, executive, hourly, salary, part-time, seasonal, or migrant workers. You also must record the recordable injuries and illnesses that occur to employees who are not on your payroll if you supervise these employees on a day-to-day basis. If your business is organized as a sole proprietorship or partnership, the owner or partners are not considered employees for recordkeeping purposes.

(a) Record the injuries and illnesses to workers from temporary help agencies or employee leasing services only if you supervise these employees on a day-to-day basis.

(b) If a contractor's employee is under the day-to-day supervision of the contractor, the contractor is responsible for recording the injury or illness. If you supervise the contractor employee's work on a day-to-day basis, you must record the injury or illness.

(c) You and the temporary help service, employee leasing service, personnel supply service, or contractor should coordinate your efforts to make sure that each injury and illness is recorded only once: either on your OSHA 300 Log (if you provide day-to-day supervision) or on the other employer's OSHA 300 Log (if that company provides day-to-day supervision).

(17) Annual Summary. At the end of each calendar year, you must:

(a) Review the OSHA 300 Log to verify that the entries are complete and accurate, and correct any problems;

(b) Use the OSHA 300A or equivalent form to create an annual summary of injuries and illnesses from the OSHA 300 Log;

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(c) Certify that one of the following examined the OSHA 300 log and believe, based on knowledge of the process by which the information was recorded, that it is correct and complete.

(A) The highest ranking manager at the location where the log is compiled.

(B) If there is no management at the compiling location, any manager with jurisdiction over that location.

(d) You must post a copy of the annual summary in each establishment in a conspicuous place or places where notices to employees are customarily posted. You must ensure that the posted annual summary is not altered, defaced or covered by other material.

(A) You must post the summary no later than February 1 of the year following the year covered by the records and keep it posted until April 30.

(18) Paperwork Retention and Updating. You must save the OSHA 300 Log, the privacy case list (if any), the annual summary, and the DCBS Form 801 or equivalent forms for five (5) years following the end of the calendar year that they cover.

(a) During the storage period, you must update your stored OSHA 300 Logs to include newly discovered recordable injuries or illnesses and to show any changes that have occurred in the classification of previously recorded injuries and illnesses. If the description or outcome of a case changes, you must remove or line out the original entry and enter the new information.

(b) You must save your copies of the old OSHA 200 and 801 forms for five years following the year to which they relate and continue to provide access to the data as if these forms were the new forms. You do not need to update your old 200 and 801 forms.

**NOTE:** For more information on retention of medical and exposure records, see OAR 437-002-1910.1020.

(19) Change of Business Ownership. If your business changes ownership, you must record and report work-related injuries and illnesses only for the time you owned the establishment. You must transfer the records to the new owner. The new owner must save all records of the establishment kept by the prior owner, but need not update or correct the records of the prior owner.

(20) Employee Involvement. You must involve your employees and their representatives in the recordkeeping system.

(a) Inform each employee of how they are to report an injury or illness to you.

(b) Provide limited access to your injury and illness records for your employees and their representatives.

(A) Your employees, former employees, their personal representatives, and their authorized collective bargaining representatives have the right to access the OSHA injury and illness records, with some limitations, as below.

(i) A personal representative is anybody designated in writing by the employee or former employee. It also is the legal representative of a deceased or legally incapacitated employee.

(c) When an employee, former employee, personal representative, or authorized employee representative asks for copies of your current or stored OSHA 300 Log(s) for an establishment the employee or former employee has worked in, you must give the requester a copy of the relevant OSHA 300 Log(s) by the end of the next business day.

(A) You must leave the names on the 300 Log. However, to protect the privacy of injured and ill employees, do not record the employee's name on the OSHA 300 Log for certain "privacy concern cases".

(d) When an employee, former employee, or personal representative asks for a copy of the DCBS Form 801 or equivalent describing an injury or illness to that employee or former employee, you must give the requester a copy of the DCBS Form 801 or equivalent containing that information by the end of the next business day.

(e) When an authorized employee representative asks for copies of the DCBS Form 801 or equivalent for an establishment where the agent represents employees under a collective bargaining agreement, you must give copies of those forms to the authorized employee representative within 7 calendar days. You are only required to give the authorized employee representative information from the releasable part of the DCBS Form 801 or equivalent section titled "Tell us about the case" or a similar section. You must remove all other information from the copy of the DCBS Form 801 or equivalent form that you give to the authorized employee representative.

(f) You may not charge for these copies the first time. However, if one of the designated persons asks for additional copies, you may assess a reasonable charge for retrieving and copying the records.

(21) Reporting Fatalities and Hospitalizations to Oregon OSHA. You must report the following to Oregon OSHA at 1-800-922-2689 or 503-378-3272 within the given time limits:

(a) Fatalities — 8 hours after occurrence or employer knowledge

(b) Catastrophe — 8 hours after occurrence or employer knowledge

**NOTE:** You must report a fatality caused by a heart attack at work. The

local OR-OSHA field office safety or health manager will decide whether to investigate the incident, depending on the circumstances of the heart attack. Report the following to the nearest Oregon OSHA field office (Portland, Salem, Bend, Eugene or Medford).

(c) Overnight Hospitalization — 24 hours after occurrence or employer knowledge

**NOTE:** Oregon OSHA Field Office locations, telephone and Fax numbers are: Chart.

**NOTE:** Overnight hospitalization if for medical treatment only. Hospitalization for observation is not reportable, nor is emergency room treatment. See the definitions section for "catastrophe".

**NOTE:** Do not report injuries resulting from motor vehicle accidents that happen on public streets, roads or highways unless it is in a construction work zone.

**NOTE:** Report a fatality only if it occurs within thirty (30) days of the accident.

(22) Providing Records to Government Representatives. When an authorized government representative asks for the records you keep in compliance with this standard, you must provide copies of the records within four (4) business hours.

(a) Authorized government representatives are:

(A) A representative of the Oregon Department of Consumer and Business Services.

(B) A representative of the Secretary of Labor conducting an inspection or investigation under the Act.

(C) A representative of the Secretary of Health and Human Services (including the National Institute for Occupational Safety and Health — NIOSH) conducting an investigation under Section 20(b) of the Act.

(23) Requests from the Bureau of Labor Statistics or DCBS. If you receive a Survey of Occupational Injuries and Illnesses Form from the Bureau of Labor Statistics (BLS), or a BLS designee, or a request for data from the Oregon Department of Consumer and Business Services, you must promptly complete the form and return it following the instructions on the survey form.

(24) Prohibition against discrimination. Oregon Revised Statute 654.062(5) prohibits discrimination against an employee for reporting a work-related fatality, injury or illness. It also protects the employee who files a safety and health complaint, asks for access to this rule, records, or otherwise exercises any rights afforded by law or rule.

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

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

Stats. Implemented: ORS ORS 654.001 - 654.295

Hist.: WCB 19-1974, f. 6-5-74, ef. 7-1-74; WCD 7-1979, f. 8-20-79, ef. 9-1-79; WCD 4-1981, f. 5-22-81, ef. 7-1-81; APD 7-1988, f. 6-17-88, ef. 7-1-74; OSHA 11-2001, f. 9-14-01, cert. ef. 1-1-02; OSHA 2-2002, f. & cert. ef. 3-12-02; OSHA 7-2002, f. & cert. ef. 11-15-02; OSHA 6-2003, f. & cert. ef. 11-26-03

## 437-001-0765

### Rules for Workplace Safety Committees

(1) Purpose. The purpose of a safety committee is to bring workers and management together in a non-adversarial, cooperative effort to promote safety and health in each workplace. A safety committee assists the employer and makes recommendations for change.

(2) General.

(a) Every public or private employer of 11 or more employees shall establish and administer a safety committee.

(b) Every public or private employer of 10 or fewer employees shall establish and administer a safety committee if the employer:

(A) Has a Lost Workday Case Incidence Rate (LWDCIR) in the top 10 percent of all rates for the employers in the same industry; or

(B) The employer is not an agricultural employer and the workers' compensation premium classification assigned to the greatest portion of the payroll for the employer has a premium rate in the top 25 percent of premium rates for all classes as approved by the Director pursuant to ORS 737.320(3).

(c) In making the determination of employment levels under sections (a) and (b) of this rule, the employer shall count all permanent, contract, temporary, and/or seasonal workers under the employer's direction and control, and shall base the number on peak employment.

(d) Temporary services employers and labor contractors shall establish safety committees based upon the total number of workers over which the employer or contractor exercises direction and control.

(e) Employers who hire only seasonal workers shall meet the intent of these rules by holding crew safety meetings prior to the commencement of work at each job site. Such meetings shall promote discussions of safety and health issues. All workers shall be informed of their rights to report workplace hazards, and shall be encouraged to make such reports during the meetings.

(f) Employers in the logging industry may meet the intent of these rules by complying with OAR 437, division 7, Forest Activities.

(3) Locations.

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(a) Safety committees shall be established at each of the employer's primary places of employment. For the purpose of these rules, a primary place of employment shall mean a major economic unit at a single geographic location, comprised of a building, group of buildings, and all surrounding facilities (Examples of primary places of employment would include a pulp or lumber mill, a manufacturing plant, a hospital complex, bank, a farm/ranch, a school district, or a state agency.) As a primary place of employment the location would have both management and workers present, would have control over a portion of a budget, and would have the ability to take action on the majority of the recommendations made by a safety committee.

(b) An employer's auxiliary, mobile, or satellite locations, such as would be found in construction operations, trucking, branch or field offices, sales operations, or highly mobile activities, may be combined into a single, centralized committee. This centralized committee shall represent the safety and health concerns of all the locations.

(c) In addition to locating safety committees at each primary place of employment, an employer with work locations which include fire service activities shall establish a Fire Service Safety Committee as required by OAR 437-002-0182(7) in 437, division 2/L, Oregon Rules for Fire Fighters.

(4) Innovation. Upon application, the division may approve safety committees which are innovative or differ in form or function, when such committees meet the intent of these rules.

## (5) Safety Committee Formation and Membership.

(a) The safety committees required by OAR 437-001-0765(2) shall:

(A) Be composed of an equal number of employer and employee representatives. Employee representatives shall be volunteers or shall be elected by their peers unless there is a provision in their collective bargaining agreement that addresses the selection of employee representatives. When agreed upon by workers and management, the number of employees on the committee may be greater than the number of employer representatives. Seasonal workers shall not be counted for the purpose of determining the number of members who will serve on the committee.

(B) Consist of:

(i) No fewer than two members for each employer with twenty or less employees, or

(ii) No fewer than four members for each employer with more than twenty employees.

(C) Have a chairperson elected by the committee members.

(b) Employee representatives attending safety committee meetings required by OAR 437-001-0765(2) or participating in safety committee instruction or training required by OAR 437-001-0765(7) shall be compensated by the employer at the regular hourly wage.

(c) Employee representatives shall serve a continuous term of at least one (1) year. Length of membership shall be alternated or staggered so that at least one experienced member is always serving on the committee.

(d) Reasonable efforts shall be made to ensure that committee members are representative of the major work activities of the firm.

## (6) Safety Committee Duties and Functions.

(a) Management commitment to workplace health and safety.

(A) The committee shall develop a written agenda for conducting safety committee meetings. The agenda shall prescribe the order in which committee business will be addressed during the meeting.

(B) The safety committee shall hold regular meetings at least once a month except months when quarterly workplace safety inspections are made. This does not exclude other months from safety committee meetings if more frequent safety inspections are conducted.

(C) Quarterly safety committee meetings may be substituted for monthly meetings where the committee's sole area of responsibility involves low hazard work environments such as offices.

(D) Small farms of five or fewer full time employees may substitute quarterly meetings for monthly meetings during the farms' off season. The off season shall mean that period of time when only routine farm upkeep is being done.

(b) Written records.

(A) Minutes shall be made of each meeting which the employer shall review and maintain for three years for inspection by the Division. Copies of minutes shall be posted or made available for all employees and shall be sent to each committee member.

(B) All reports, evaluations, and recommendations of the safety committee shall be made a part of the minutes of the safety committee meeting.

(C) A reasonable time limit shall be established for the employer to respond in writing to all safety committee recommendations.

(c) Employee involvement.

(A) The committee shall establish a system to allow the members to obtain safety-related suggestions, reports of hazards, or other information directly from all persons involved in the operations of the workplace. The

information obtained shall be reviewed at the next safety committee meeting, and shall be recorded in the minutes for review and necessary action by the employer.

(d) Hazard assessment and control.

(A) The safety committee shall assist the employer in evaluating the employer's accident and illness prevention program, and shall make written recommendations to improve the program where applicable. Additionally, the safety committee shall:

(i) Establish procedures for workplace inspections by the safety committee inspection team to locate and identify safety and health hazards;

(ii) Conduct workplace inspections at least quarterly; and

(iii) Recommend to the employer how to eliminate hazards and unsafe work practices in the workplace;

(B) The inspection team shall include employer and employee representatives and shall document in writing the location and identity of the hazards and make recommendations to the employer regarding correction of the hazards.

(C) Quarterly inspections of satellite locations shall be conducted by the committee team or by a person designated at the location.

(D) Mobile work sites or locations and activities which do not lend themselves to a quarterly schedule shall be inspected by a designated person as often as Oregon occupational safety and health rules require and/or the committee determines is necessary.

(E) The person designated to carry out inspection activities at the locations identified in sections (C) and (D) of this rule shall be selected by the employer and shall receive training in hazard identification in the workplace.

(e) Safety and health planning. The safety committee shall establish procedures for the review of all safety and health inspection reports made by the committee. Based on the results of the review, the committee shall make recommendations for improvement of the employer's accident and illness prevention program.

(f) Accountability. The safety committee shall evaluate the employer's accountability system and make recommendations to implement supervisor and employee accountability for safety and health.

(g) Accident investigation. The safety committee shall establish procedures for investigating all safety-related incidents including injury accidents, illnesses and deaths. This rule shall not be construed to require the committee to conduct the investigations.

## (7) Safety and Health Training and Instruction.

(a) The following items shall be discussed with all safety committee members:

(A) Safety committee purpose and operation;

(B) OAR 437-001-0760 through 437-001-0765 and their application; and

(C) Methods of conducting safety committee meetings.

(b) Committee members shall have ready access to applicable Oregon Occupational Safety and Health Codes which apply to the particular establishment and verbal instructions regarding their use.

(c) All safety committee members shall receive training based upon the type of business activity. At a minimum, members shall receive training regarding:

(A) Hazard identification in the workplace; and

(B) Principles regarding effective accident and incident investigations.

(8) Effective Date. The effective date for OAR 437-001-0765 is March 1, 1991.

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

Stats. Implemented: ORS 654.176

Hist.: WCD 10-1982, f. & ef. 7-30-82; OSHA 12-1990(Temp), f. & cert. ef. 6-18-90; OSHA 28-1990, f. 12-18-90, cert. ef. 3-1-91; OSHA 6-1994, f. & cert. ef. 9-30-94; Renumbered from 437-040-0044, 437-040-0045, 437-040-0046, 437-040-0047, 437-040-0048 & 437-040-0049; OSHA 10-1995, f. & cert. ef. 11-29-95; OSHA 8-2001, f. & cert. ef. 7-13-01; OSHA 6-2003, f. & cert. ef. 11-26-03

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**Notice Publication Date:** 10-1-03

**Rules Amended:** 437-002-0220, 437-003-0001

**Subject:** Federal OSHA published in the June 2, 2003, Federal Register a technical amendment that affects Oregon's Divisions 2/N and 3/O. This technical amendment deletes a Powered Industrial Truck standard covering the use of powered industrial trucks to lift per-

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sonnel. It was deleted because it was invalidly promulgated from a non-mandatory provision of a national consensus standard.

Oregon OSHA deleted paragraph 1910.178(m)(12) from Division 2/N, Powered Industrial Trucks, and an identical paragraph applicable to construction work, 1926.602(c)(1)(viii) from Division 3/O. Oregon OSHA's OAR 437-002-0027(4), Personnel Platforms, still applies in general industry, and OAR 437-003-0094 applies in construction.

These standards address similar hazards as the repealed federal standards. Oregon OSHA will propose to remove similar language in Division 4, Agriculture, when agriculture standards are open next year. The actual text is in Division 4/N, 437-004-1700(9)(g)(A) through (C).

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-002-0220

### 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 1910**, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below: Materials Handling and Storage

(1) **29 CFR 1910.176** Handling materials — general, published 6/27/74, Federal Register, vol. 39, p. 23052; amended 10/24/78, FR vol. 43, p. 49749.

(2) **29 CFR 1910.177** Servicing of Multi-Piece and Single Piece Rim Wheels; published 1/29/80, Federal Register, vol. 45, no. 20, pp. 6713-6716; amended 2/3/84, FR vol. 49, no. 24, pp. 4350-5352; amended 9/8/88, FR vol. 53, no. 174, pg. 34737; amended 3/7/96, FR vol. 61, no. 46, p. 9239; amended by AO 12-2001, reference change in Appendix B, f. and ef. 10/26/01.

(3) **29 CFR 1910.178** Powered industrial trucks, published 6/27/74, Federal Register, vol. 39, p. 23052; amended 5/28/75, FR vol. 40, p. 23073; 10/24/78, FR vol. 43, p. 49749; 2/10/84, FR vol. 49, p. 5322; 4/12/88, FR vol. 53, p. 12122; 8/6/90, FR vol. 55, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9239; 12/1/98, FR vol. 63, no. 230, p. 66270; amended by AO 12-2001, Oregon note added, f. and ef. 10/26/01; 6/2/03, FR vol 68, no. 105, pg. 32637.

(4) **29 CFR 1910.179** Overhead and gantry cranes, published 10/18/72, Federal Register, vol. 37, p. 22102; amended 6/1/73, FR vol. 38, p. 14373; 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 9/29/86, FR vol. 51, p. 34561; 4/12/88, FR vol. 53, p. 12122; 8/6/90, FR vol. 55, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9239.

(5) **29 CFR 1910.180** Crawler, locomotive and truck cranes, published 4/27/74, Federal Register, vol. 39, p. 23502; amended 2/10/84, FR vol. 49, p. 5323; 9/29/86, FR vol. 51, p. 35561; 4/12/88, FR vol. 53, p. 12122; 8/6/90, FR vol. 55, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9239.

(6) **29 CFR 1910.181** Derricks, published 10/18/72, Federal Register, vol. 37, p. 22120; amended 6/1/73, FR vol. 38, p. 14373; 10/24/78, FR vol. 43, p. 49750; 2/10/84, FR vol. 49, p. 5323; 9/29/86, FR vol. 51, p. 34561; 4/12/88, FR vol. 53, p. 12122; 8/6/90, FR vol. 55, p. 32015; 3/7/96, FR vol. 61, no. 46, p. 9240.

(7) **29 CFR 1910.182** Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(8) **29 CFR 1910.183** Helicopters, published 6/27/75, Federal Register, vol. 40, p. 27369; amended 7/28/75, FR vol. 40, p. 31598; 3/30/76, FR vol. 41, p. 13353; 6/18/98, FR vol. 63, no. 117, p. 33467.

(9) **29 CFR 1910.184** Slings, published 6/27/75, Federal Register, vol. 40, p. 27369; amended 7/28/75, FR vol. 40, p. 31598; 3/30/76, FR vol. 41, p. 13353; 6/30/93, FR vol. 58, no. 124, p. 35309; 3/7/96, FR vol. 61, no. 46, p. 9240.

(10) **29 CFR 1910.189** Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

(11) **29 CFR 1910.190** Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9240.

**NOTE:** These rules are on file at the Oregon Occupational Safety and Health Division, Department of Consumer and Business Services, and the United States Government Printing Office.

Stat. Auth.: ORS 654.025(2) & 656.726(3)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 13-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 7-2003, f. & cert. ef. 12-5-03

## 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 fol-

lowing 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.

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(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.

(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 Methyleneedianiline (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)



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- (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.
- (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.

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- (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.
- (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.
- (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.
- (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.
- (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.
- (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 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.
- (t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with 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.
- (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.

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(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

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## Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

**Adm. Order No.:** WCB 3-2003

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

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 438-006-0064, 438-015-0110

**Subject:** Permanent amendments to Rules of Practice and Procedures under the Workers' Compensation Law to implement statutory amendments related to prehearing procedures for claims for compensation involving more than one potentially responsible employer or insurer (ORS 656.262(16) (2003), ORS 656.283(4)(b) (2003), OAR 438-006-0064) and assessed attorney fees in cases involving ORS 656.262(11)(a) (2003) (OAR 438-015-0110).

**Rules Coordinator:** Vicky Scott—(503) 378-3308

### 438-006-0064

#### Prehearing Matters Regarding Multiple Employer/Insurer Cases

(1) In cases where the initially scheduled hearing has been postponed because of the need to join one or more potentially responsible employers or insurers, the parties shall participate in any prehearing conferences that the assigned Administrative Law Judge determines are required to expedite the hearing.

(2) The assigned Administrative Law Judge is authorized to:

(a) Establish a prehearing schedule for investigation of the claim, including but not limited to the interviewing of the claimant;

(b) Make prehearing rulings necessary to promote full discovery and completion of the medical record required for determination of the issues arising from the claim; and

(c) Specify what is required of the claimant to meet the obligation to reasonably cooperate with the investigation of claims.

(3) The Administrative Law Judge shall reschedule the postponed hearing as expeditiously as possible after all potentially responsible employers and insurers have been joined in the proceeding and the medical record is fully developed.

(4) For purposes of this rule, "parties" includes the claimant, the employer(s) and insurer(s) already joined in the proceeding, and potentially responsible employers or insurers not yet joined. Participation in prehearing conferences under this rule may be through the parties' legal representatives.

Stat. Auth.: ORS 656.726(5), 656.283, 656.388

Stats. Implemented: ORS 656, 656.262(11)(a) & (16), 656.283(4)(b), 656.726(5)

Hist.: WCB 3-2003, f. 12-12-03 cert. ef. 1-1-04

### 438-015-0110

#### Attorney Fees in Cases Involving ORS 656.262(11)(a)

If the Director, an Administrative Law Judge, the Board, or the Court find that the insurer or self-insured employer unreasonably delayed or unreasonably refused to pay compensation, or unreasonably delayed acceptance or denial of a claim, an assessed attorney fee shall be awarded in a reasonable amount that:

(1) Is proportionate to the benefit to the claimant;

(2) Takes into consideration the factors set forth in OAR 438-015-0010(4), giving primary consideration to the results achieved and to the time devoted to the case; and

(3) Does not exceed \$2,000, absent a showing of extraordinary circumstances.

Stat. Auth.: ORS 656.726(5), 656.283, 656.388

Stats. Implemented: ORS 656, 656.262(11)(a) & (16), 656.283(4)(b), 656.726(5)

Hist.: WCB 3-2003, f. 12-12-03 cert. ef. 1-1-04

# ADMINISTRATIVE RULES

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

**Adm. Order No.:** WCD 12-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 1-1-04

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**Rules Adopted:** 436-050-0165, 436-050-0480

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**Rules Repealed:** 436-050-0020, 436-050-0150(T), 436-050-0160(T), 436-050-0165(T), 436-080-0050

**Subject:** These rules have been amended in part to reflect Senate Bill 233's changes to ORS 656. The time frame for appeal of a proposed order or proposed assessment of civil penalty will no longer be 60 days following the party's receipt of notice, but instead 60 days from the date the order is mailed by the department. SB 233 also eliminated claim closure penalties for non-complying employers and changed the notification requirements for termination of guaranty contracts. In addition, these rules include a number of "housekeeping" amendments and supersede temporary OAR 436-050 rules indicated above after "REPEAL." These rules:

- Repeal specific requirements affecting service of orders by the director.
- Reduce data reporting requirements for industry codes.
- Eliminate certain requirements to report coverage elections and cancellation of elections.
- Explain the notice and reporting requirements regarding the insurer's termination of guaranty contracts.
- State that active self-insurance certification remains in effect if a guaranty contract has been filed.
- Require notification of workers and other parties at least 10 days prior to changing claims processing locations.
- Require insurers and self-insured employers to keep documentation of dates payments are mailed.
- Require submission of audited financial statements by self-insured employers under certain conditions.
- Provide that an irrevocable standby letter of credit may be accepted by the director as an alternative to a surety bond as a security deposit. This provision has been in effect under authority of temporary rules effective 7/18/03.
- Provide that government securities, certificates of deposit, or time deposit accounts will not be accepted as new or replacement security deposits by self-insured employers effective January 1, 2004; require self-insured employers with existing securities of this type to complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.
- Provide that excess insurance coverage must be specific on a per occurrence basis, and that such coverage may include aggregate excess insurance.
- Incorporate annual reporting requirements for self-insured employers formerly published only in Bulletin 209.
- Require that future claim liability estimates or annual incurred losses include losses incurred but not reported.

- Require that a new self-insured employer's deposit is not less than the amount of the approved self-insured employer retention level for the employer's excess workers' compensation insurance.

- Require that each entity included under a self-insurance certification enter into an agreement making the entity jointly and severally liable for payment of compensation and moneys due.

- Require that self-insured employer groups maintain coverage records relating to each member.

- Prohibit a worker leasing company from providing workers' compensation coverage to another leasing company.

- Provide for assessment of civil penalties against worker leasing companies or prospective leasing companies that fail to meet the requirements of relevant rules. Provide penalty matrixes for worker leasing companies that violate these rules and for companies that operate as worker leasing companies without a license

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail fred.h.bruyns@state.or.us.

Rules are available on the internet: <http://www.oregonwcd.org/policy/rules/rules.html#permrules>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

### 436-045-0008

#### Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing shall be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: ORS 656.704, 656.726(3) & 656.745

Stats. Implemented: ORS 656.236, 656.289, 656.625, 656.704, 656.726(8), 656.745

Hist.: WCD 8-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1990 (Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 27-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 13-1997, f. 12-4-97, cert. ef. 1-1-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

### 436-050-0003

#### Applicability of Rules

(1) These rules are effective January 1, 2004, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.

(b) ORS 656.029 — Independent contractor status.

(c) ORS 656.126 — Coverage while temporarily in or out of state.

(d) ORS 656.407 — Qualifications of insured employers.

(e) ORS 656.419 — Guaranty contracts.

(f) ORS 656.423 — Cancellation of coverage by employer.

(g) ORS 656.427 — Termination of guaranty contract or surety bond liability by insurer.

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(h) ORS 656.430 — Certification of self-insured employer.

(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.

(j) ORS 656.443 — Procedure upon default by employer.

(k) ORS 656.447 — Sanctions against insurer for failure to comply with contracts, orders or rules.

(l) ORS 656.455 — Records location and inspection.

(m) ORS 656.745 — Civil penalties.

(n) ORS 656.850 and 656.855 — Worker-leasing companies.

(o) ORS 731.475 — Insurer's in-state location.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, 731.475

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0005

### Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Audited Financial Statement" means a financial statement audited by an outside accounting firm.

(2) "Board" means the Workers' Compensation Board of the Department of Consumer and Business Services.

(3) "Client" means a person to whom workers are provided under contract and for a fee on a temporary or leased basis.

(4) "Complete Records" means:

(a) Written records that segregate and show specifically for each employer the amounts due from the employer and paid by the insurer or self-insured employer for premiums for insurance coverage, premium assessments, and any other moneys due the director;

(b) Written records of claims for compensation made under ORS chapter 656; and

(c) Written records of guaranty contracts issued as required by ORS chapter 656.

(5) "Controlling Person" means an officer or director of a corporation offering worker-leasing services, a shareholder holding 10 percent or more of the voting stock of a corporation offering worker-leasing services, or a partner of a partnership offering worker-leasing services; or an individual who possesses, directly or indirectly, the power to direct or cause the direction of the management or policies of a company offering worker-leasing services through the ownership of voting securities, by contract or otherwise.

(6) "Days" means calendar days unless otherwise specified.

(7) "Default" means failure of an employer, insurer or self-insured employer to pay the moneys due the director under ORS 656.506, 656.612 and 656.614 at such intervals as the director shall direct.

(8) "Department" means the Department of Consumer and Business Services.

(9) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter, unless the context requires otherwise.

(10) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(11) "Double Coverage" means more than one guaranty contract is on file with the director for the same period of time.

(12) "Fiscal Year" means the twelve-month period beginning July 1 and ending June 30.

(13) "Governmental Subdivision" means cities, counties, special districts defined in ORS 198.010, intergovernmental agencies created under ORS 225.050, school districts as defined in ORS 255.005, public housing authorities created under ORS chapter 456 or regional council of governments created under ORS chapter 190.

(14) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(15) "Insurer" means a guaranty contract insurer.

(16) "Leased Worker" means any worker provided by a worker-leasing company on other than a "temporary basis" as described in OAR 436-050-0420.

(17) "Person" means an individual, partnerships, corporations, joint ventures, limited liability companies, associations, government agencies,

sole proprietorships, or other business entities allowed to do business in the State of Oregon.

(18) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(19) "Process Claims" and its variations is the determination of compensability and management of compensation by an Oregon certified claims examiner. Although determining compensability and managing compensation must be done from within this state pursuant to ORS 731.475 and this definition, the act of making payment may be done from out-of-state as directed from the Oregon place of business.

(20) "Reinstatement" means the continuation of workers' compensation insurance coverage without a gap under a guaranty contract.

(21) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(22) "Self-Insured Employer Group" means five (5) or more employers certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407 and OAR 436-050-0260 through 436-050-0340.

(23) "State" means the State of Oregon.

(24) "Worker-Leasing Company" means a "person," as described in section (17) of this rule, who provides workers, by contract and for a fee, as established in ORS 656.850.

(25) "Written" and its variations means that which is expressed in writing, including electronic transmission.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCB 2-1976(Admin)(Temp), f. & ef. 4-12-76; WCB 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 1-1983(Admin), f. 6-30-83, ef. 7-1-83; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0005; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0006

### Administration of Rules

Any orders issued by the division in carrying out the director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto, are considered orders of the director.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0010; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0008

### Administrative Review and Contested Cases

(1) Any party as defined by ORS 656.005, including an Assigned Claims Agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS Chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS Chapter 656.

(2) Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by sending a written request to the Workers' Compensation Division's administrator within 60 days after the order was mailed.

(3) A hearing will not be granted if the request:

(a) fails to state the specific grounds for which the party contests the proposed order or assessment; or

(b) is mailed or delivered to the administrator more than 60 days after the order was mailed.

(4) Any party as described in section (1) aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review by hearing before the director as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(l). When the matter qualifies for review as a contested case, the process for review shall be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the action or order is

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contested and is received by the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing shall be conducted by the Office of Administrative Hearings.

(c) Any order in a contested case issued by another person on behalf of the director is a proposed order subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(5) Any party described in section (1) aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters shall be as follows:

(a) The request for administrative review shall be made in writing to the administrator of the Workers' Compensation Division within 90 days of the action. No administrative review shall be granted unless the request specifies the grounds upon which the action is contested and is received by the administrator within 90 days of the contested action unless the director or his designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) The review, including whether the request is timely and appropriate, may be conducted by the administrator, or the administrator's designee, on behalf of the director.

(c) In the course of said review, the person conducting the review may request or allow such input or information from the parties as he or she deems to be helpful.

(d) The determination by the person conducting the review will specify whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before the director pursuant to ORS Chapter 183.

(e) Any request for a contested case hearing before the director regarding a review determination made pursuant to this section must comply with the procedures provided in section (4) above.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745

Stats. Implemented: ORS 656.254, 656.735, 656.740 (section 9, chapter 170, Oregon Laws 2003), 656.745, and 656.750; Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0998, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-87; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0040

### Responsibility for Providing Coverage When a Contract is Awarded

(1) In the operation of ORS 656.029 a subject employer who fails to comply with ORS 656.017 is a "noncomplying employer" as defined by ORS 656.005.

(2) For the purposes of this rule:

(a) "Assistance of others" means one or more individuals directly and immediately aiding in a common undertaking.

(b) "Normal and customary part or process of the person's trade or business" refers to the day-to-day activities or operations which are necessary to successfully carry out the business or trade.

(3) Pursuant to ORS 656.037, a person contracting to pay remuneration for professional real estate activity as defined in ORS chapter 696 to a qualified real estate broker or qualified principal real estate broker, as defined in ORS 316.209, is not an employer of the qualified broker.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.029 & 656.037

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0052; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02

## 436-050-0050

### Corporate Officers, Partnerships; Limited Liability Company Members; Subjectivity

(1) Pursuant to ORS 656.027, a corporation, limited liability company, or partnership must elect in writing to its insurer to provide workers' compensation coverage for otherwise nonsubject workers. Such election must be made at the inception of a coverage policy and remain in effect until a revised written designation is given to the insurer. A self-insured employer must file the election with the director. If an entity does not file its initial election, or is not in compliance pursuant to ORS 656.017 and 656.407, then those exempt individuals shall be determined in the following order:

(a) For a corporation:

(A) President;

(B) Secretary, if any;

(C) Vice President, if any;

(D) Secretary/Treasurer, if any;

(E) Treasurer, if any;

(F) All other officers, if any.

(b) For a limited liability company or partners of a partnership:

(A) The member or partner with the largest ownership interest;

(B) The next largest ownership interest.

(c) If there is more than one person or the ownership interest is the same in any of the offices listed in subsections (a) and (b) of this rule, the sequence of those persons will be determined by whose birthday falls earlier in a year.

(2) Noncomplying corporations, noncomplying limited liability companies, or noncomplying partnerships, regardless of the number of employees, are limited to two exempt officers, members, or partners to be determined in accordance with section (1) of this rule.

(3) For purposes of clarifying terms used in ORS 656.027:

(a) "Commercial harvest of timber" means all commercial activities relating to harvest of timber from a parcel of property including, but not limited to, road building, marking of trees to be cut, timber falling, slash removal, and transportation of timber to the location where it will be processed into lumber or other products.

(b) "Director" means a person elected or appointed to a corporation's board of directors in accordance with its articles of incorporation or bylaws.

(c) "Eligible officer" means a corporate officer who is also a director of the corporation and who has a substantial ownership interest in the corporation.

(d) "Eligible partner" or "eligible member" means a partner or member who has substantial ownership in the business entity.

(e) "Noncomplying" means an employing legal entity of subject workers which is in violation of ORS 656.017(1).

(f) "Substantial ownership" means a percentage of ownership equal to or greater than the average percentage of ownership of all owners or ten percent, whichever is less.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.126, 656.027

Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0065, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 8-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0055

### Extraterritorial Coverage

(1) Criteria to be used in determining whether a worker is temporarily in or out of state pursuant to ORS 656.126 may include, but are not limited to:

(a) The extent to which the worker's work within the state is of a temporary duration;

(b) The intent of the employer in regard to the worker's employment status;

(c) The understanding of the worker in regard to the employment status with the employer;

(d) The permanent location of the employer and its permanent facilities;

(e) The circumstances and directives surrounding the worker's work assignment;

(f) The state laws and regulations to which the employer is otherwise subject;

(g) The residence of the worker;

(h) The extent to which the employer's work in the state is of a temporary duration, established by a beginning date and expected ending date of the employer's work; and

(i) Other information relevant to the determination.

(2) Within 30 days after coverage of an Oregon employer is effective, the insurer providing the coverage shall notify the employer in writing of the provisions of ORS 656.126 and this rule.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.126

Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0060

### Guaranty Contract Filing Requirements; Evidence of Authority

(1) Every guaranty contract issued by an insurer pursuant to ORS 656.419 shall:

(a) Contain information pursuant to, and be filed in accordance with, ORS 656.419 and this rule.

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(b) Be in writing and shall include the employer FEIN or other federal tax reporting number; legal name of the employer; type of ownership; primary nature of business; employer mailing address; employer principal place of business address; specific insurer providing coverage; policy number; effective date of coverage; insurer representative signature; and statement of assumption of liability pursuant to ORS 656.419(1).

(c) Be submitted in a form and format prescribed by the director; and  
(d) Be completed in its entirety prior to submission to the director.

(2) A National Council on Compensation Insurance (NCCI) classification code satisfies the required nature of business description in which an employer is engaged or proposes to engage.

(3) Incomplete, illegible, or incorrect guaranty contracts received by the director may not be considered filed.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.419 & 656.427

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 1-1983(Admin), f. 6-30-83, ef. 7-1-83; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0100; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0080

### Personal Elections

(1) When a person makes an election under ORS 656.039, 656.128 or 656.140, the insurer must give the director notice of the election and of cancellation of the election. The election notice may be included as a "flag" type notice in a guaranty contract filing but should not include specific names for whom election is made. Specifics of an election of coverage for persons defined as nonsubject workers or not defined as subject workers must be filed with the insurer, or in the case of self insurance with the director, by written notice identifying by position held or by specific name which otherwise nonsubject worker is being made subject by the election.

(2) A personal election made under ORS 656.140 may be canceled by giving written notice to the insurer as provided by ORS 656.128.

Stat. Auth.: ORS 656.704 & 656.726(3)

Stats. Implemented: ORS 656.039, 128 & ORS 656.140

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0110; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0090

### Notice to the Director of Change of Name or Address of Insured Employer

Notice to the director of change of name or address as required by ORS 656.419, shall be given by filing in a form and format, or manner as prescribed by the director, a guaranty contract endorsement with the director as evidence of the change. A change of address includes:

(1) A change in the employer's mailing address, or  
(2) A change in the employer's principal place of business in Oregon.

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

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.419

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0115; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0100

### Cancellation of Coverage by Employer; Reinstatement of Guaranty Contract; Carrier Liability

(1) An employer may cancel coverage with an insurer pursuant to ORS 656.423. An employer's cancellation of coverage with an insurer does not terminate a guaranty contract. Liability of an insurer under a guaranty contract under this chapter is terminated by an insurer taking action pursuant to ORS 656.427.

(2) An insurer may terminate liability on its guaranty contract or surety bond by giving the employer and director notice of termination in accordance with ORS 656.427 and this rule.

(3) Notice to the employer for terminating an insurer's guaranty contract filed with the director must be in writing and must state the effective date of termination. The termination is effective:

(a) If terminated for reasons other than in subsection (b) of this section, not less than 30 days after the insurer mails notice to the employer; or

(b) If terminated because the insurer decides not to offer insurance to employers within a specific premium category, not sooner than 90 days after the insurer mails notice to the employer.

(4) The insurer bears the burden of proof establishing that a termination notice was mailed to an employer. The notice and proof of mailing must be made available in Oregon upon request.

(5) Notice to the director of termination of a guaranty contract can be provided separately under OAR 436-160 or under this rule; or in a list if filing by hard copy submission under this rule. The notice under this rule must:

(a) Be in writing;

(b) Clearly identify the insurer;

(c) Include the employer(s) legal name; Federal Employer Identification Number (FEIN) or other tax reporting number; and the effective date of termination; and

(d) Be mailed or delivered to the director within seven calendar days after the effective date of the termination.

(6) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

(7) A guaranty contract termination notice may be rescinded and the guaranty contract reinstated if there will not be a lapse in the employer's coverage. If there is a lapse in the employer's coverage and the insurer reestablishes a policy for the employer, the insurer must file a new guaranty contract which reports the effective date of the new coverage.

(8) Pursuant to ORS 656.427(5), an employer may give notice to the insurer seeking continued coverage. The notice must be given before the effective date of the insurer guaranty contract termination and must be in writing. The notice must at least include a statement that other coverage has not been obtained and that the employer intends to become insured under the plan as established in ORS 656.730. Further application by the employer is not required. Pursuant to ORS 656.427(5), the insurer so notified must then insure continuing coverage and may take the additional steps to transfer the risk to the plan.

(9) If two or more guaranty contracts are in effect for one employer for the same time period, the insurer filing the employer's most recent arrangement for coverage shall have responsibility for processing claims occurring during the time period.

(10) If a guaranty contract is in effect and an active self insurance certification is on file with the director for the same employer for the same time period, the self insured employer shall have the responsibility of processing claims occurring during the time period as arranged under the self insurance certification.

Stat. Auth.: ORS 656.704 & ORS 656.726(4)

Stats. Implemented: ORS 656.423, 656.427 (sections 3 & 5, ch. 170, OL 2003)

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0120; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0110

### Notice of Insurer's Place of Business in State; Coverage Records Insurer Must Keep in Oregon

(1) Every insurer that is authorized to issue workers' compensation coverage to subject employers as required by ORS Chapter 656 shall give the director notice of the location, mailing address, telephone number, and any other contact information in this state where the insurer processes claims and keeps written records of claims and guaranty contracts as required by ORS 731.475. While the insurer may have more than one location in this state, the information provided to the director must reasonably lead an inquirer to a person who can respond to inquiries as to guaranty contract information and to access an in-state Oregon certified claims examiner who can respond within a reasonable time to specific claims processing inquiries. A response time of forty-eight (48) hours or less not including weekends or legal holidays would satisfy a reasonable expectation.

(2) Notice under section (1) of this rule shall be filed with the director within 30 days after the insurer becomes authorized and starts writing workers' compensation insurance policies for Oregon subject employers.

(3) If an insurer elects to use a service company to satisfy the purposes of ORS 731.475 with respect to all or any portion of its business, the insurer shall, prior to its effective date, file with the division a copy of the agreement between the insurer and each company, and shall give the division notice of the location and mailing address of each service company.

(4) For the purpose of this section, those activities conducted at designated in-state location(s) and by the authorized representative(s) of the insurer shall include, but not be limited to:

(a) Processing claims and responding to specific claims processing inquiries;

(b) Keeping of records in a written form, not necessarily original form, and making those records available upon request;

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- (c) Accommodating in-state periodic audits of the director; and
- (d) Providing copies of guaranty contracts, related information, and responding to inquiries to resolve coverage issues.

(5) If its place of business or that of a service company elected in lieu of an in-state place of business is changed, the insurer shall notify the director of the new location, mailing address, telephone number, and any other contact information of the place of business at least 30 days prior to the effective date of the change.

(6) When an insurer changes claims processing locations, service companies, or self-administration, the insurer must provide at least 10 days prior notice to workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor. The insurer must also notify the director of which claims will be transferred. The notice to the director must include:

(a) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(b) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(7) Records every insurer is required to keep in this state include all the written records of the insurer that show its insured employers have complied with ORS 656.017, including the records described by OAR 436-050-0120.

Stat. Auth.: ORS 731.475, 656.704, & 656.726(4)  
Stats. Implemented: ORS 731.475

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 6-1984(Admin), f. & ef. 9-14-84; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0205; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0120

### Records Insurers Must Keep in Oregon; Removal and Disposition

(1) The records of claims for compensation that each insurer is required to keep in this state include:

(a) Written records used and relied upon in processing claims; and

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.

(2) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(3) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(4) When a denied claim is found to be compensable, the records of such claim are thereafter subject to section (3) of this rule.

(5) Claims records may be destroyed when all potential for benefits to the injured worker is gone.

(6) The records relating to guaranty contracts that insurers are required to keep in the state include:

(a) A written record of each guaranty contract, termination, cancellation, reinstatement, and endorsement issued under the Workers' Compensation Law;

(b) Written records of premiums due and premiums collected by the insurer from its insured employers as a result of coverage issued under the Workers' Compensation Law; and

(c) Written records of all money due and all such money collected from insured employers for the director and required to be remitted to the director.

(7) If all remittances have been made, guaranty contract records may be disposed of after the end of three full calendar years following the calendar year in which the guaranty contract terminates.

Stat. Auth.: ORS 731.475, 656.704 & 656.726(4)  
Stats. Implemented: ORS 731.475

Hist.: WCB 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0215; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0150

### Qualifications of a Self-Insured Employer

(1) An employer shall qualify as a self-insured employer by:

(a) Establishing proof that the employer has an adequate staff qualified to process claims;

(b) Establishing proof of the financial ability to make certain the prompt payment of all compensation and other payments due under ORS 656;

(c) Obtaining excess insurance coverage in the amounts approved by the director; and

(d) Being registered and authorized to do business in this state pursuant to ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable.

(2) An employer shall establish proof of an adequate staff qualified to process claims by:

(a) Employing and retaining at each claims processing location, at least one person that is qualified in accordance with OAR 436-055-0070 and is actually involved in the claims processing function; or

(b) Contracting the services of one or more service companies that employ at each claims processing location in this state, at least one person qualified in accordance with OAR 436-055-0070 and that is actually involved in the self-insured employer's claims processing.

(3) An employer shall establish proof of financial ability by providing a security deposit that the director determines is acceptable in accordance with OAR 436-050-0165, and in an amount as determined in accordance with OAR 436-050-0180.

(4) Failure of a certified self-insured employer to maintain the qualifications required in this rule shall result in revocation of the employer's self-insured certification. The employer will be given 30 days written notice of the intent to revoke the self-insured certification, to be effective 30 days from the date of receipt of the revocation notice. If the employer complies with the qualification requirements within the 30-day period, the revocation will be canceled and the certification will remain in effect.

Stat. Auth.: ORS 656.407, 656.704, & 656.726(4)  
Stats. Implemented: ORS 656.407

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0305; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 8-2003(Temp), f. & cert. ef. 7-18-03 thru 1-13-04; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0160

### Application for Certification as a Self-Insured Employer

(1) An employer applying for certification as a self-insured employer must submit the following information:

(a) An application in a form and format prescribed by the director to become a self-insured employer;

(b) Proof of the employer's claims processing ability by employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or by contracting with a service company that will have at least one person qualified in accordance with OAR 436-055-0070, that will be processing the employer's claims in this state, pursuant to ORS 656.455(1);

(c) The employer's audited financial statements or audited annual reports for the last three fiscal or calendar years. If the audited financial statements of a parent company are provided in lieu of statements for the employer, the director will not authorize the individual employer to be self-insured under its own program, unless a parental company guarantee can be obtained. Otherwise, it will be necessary for the parent company to be the self-insured employer or to separately insure the employer. In the context of this section, a parent company is a legal entity which owns a majority interest in the employer, or owns a majority interest in another entity or succession of entities which owns a majority interest in the employer;

(d) The employer's most recently promulgated experience rating modification worksheet and supporting documentation. Applicants with prior Oregon experience who do not submit this data will be assigned a 1.50 experience rating modification pending receipt of the data. All those without prior Oregon experience will be assigned a 1.00 experience rating modification;

(e) The type, retention and limitation levels of excess workers' compensation insurance the employer is planning to obtain as required by OAR 436-050-0170;

(f) If applicable, within 30 days after the date of certification, a service agreement between the employer and service company that has been signed by both parties. The agreement shall also contain the location, mailing address, telephone number, and any other contact information of the service company;

(g) Evidence from a surety bond company, admitted to do surety business in this state, that they will issue a surety bond for the employer, as



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Principal, and the Oregon Department of Consumer and Business Services, Workers' Compensation Division, as Obligee; or evidence from a qualified bank that they will issue an irrevocable standby letter of credit for the employer with the Oregon Department of Consumer and Business Services, as the beneficiary;

(h) Evidence of an occupational safety and health loss control program in accordance with OAR 437-001 as required by ORS 656.430(10); and

(i) Evidence of authorization to do business in this state pursuant to ORS chapters 58, 60, 62, 63, 65, 67, 70, and 648, as applicable.

(2) Within 30 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer that the request for certification as a self-insured employer is denied and the reason therefore; or, that the employer is qualified as a self-insured employer. If the employer qualifies as a self-insured employer, the notice shall include:

(a) The type and the amount of the security deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance; or

(c) The type, retention and limitation levels of excess insurance required.

(3) If approved, the certification of self-insurance will be issued upon receipt of the security deposit and the appropriate excess insurance binder.

(4) Unless a later date is specified by the applicant, the effective date of certification will be the first day of the month following the date the requirements of section (3) of this rule are met.

(5) Notwithstanding subsection (1)(c) of this rule, an employer making application may submit certified financial statements in lieu of audited financial statements or annual reports. However, the director may require the employer to submit audited financial statements if the certified financial statements submitted are insufficient to evaluate the employer's financial status.

Stat. Auth.: ORS 656.407, 656.430, 656.455 & 656.726

Stats. Implemented: ORS 656.430

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0310; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 8-2003(Temp), f. & cert. ef. 7-18-03 thru 1-13-04; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0165

### Security Deposit Requirements

(1) For the purposes of this rule:

(a) "Employer" includes employer groups

(b) "Self-insured employer" includes self-insured employer groups; and

(c) "ISLOC" means irrevocable standby letter of credit.

(2) An employer is required to provide a security deposit that is acceptable to the director, to establish proof of its financial ability, and to be qualified and certified as a self-insured employer or to be certified as a self-insured employer group. In accordance with ORS 656.407, a surety bond or an irrevocable standby letter of credit (ISLOC) may be accepted for the required security deposit if it complies with the following conditions and requirements:

(a) An ISLOC may be approved by the director as all or part of the security deposit. The director may approve the ISLOC if the issuing bank and the ISLOC meet the requirements of this rule:

(A) The ISLOC shall be issued by or confirmed by an Oregon state chartered bank from which funds will be immediately payable on demand or a federally chartered bank that has an Oregon branch office, from which funds will be immediately payable on demand. The bank issuing an ISLOC shall have at the time of issuance a credit rating as set forth below:

(i) An "Aaa", "Aa", or "A" long term certificate of deposit (CD) rating in the current monthly edition of "Moody's Statistical Handbook" prepared by Moody's Investors Service Inc., New York; or

(ii) An "AAA", "AA" or "A" long term certificate of deposit (CD) rating in the current quarterly edition or monthly supplement of "Financial Institutions Ratings" prepared by Standard & Poors Corporation, New York.

(B) Federally chartered instrumentalities of the United States operating under authority of the Farm Credit Act of 1971 as amended, are acceptable without rating.

(C) An ISLOC issued by a bank that does not meet the credit rating set forth in paragraph (A) at the time of issuance shall only be accepted with a confirming ISLOC issued by an Oregon state chartered bank or federally chartered bank with an Oregon branch office meeting the credit criteria of paragraph (A). The confirming ISLOC shall state that the confirming bank is primarily obligated to pay on demand the full amount of the ISLOC

regardless of reimbursement from the bank whose ISLOC is being confirmed.

(D) The issuing bank must use the Irrevocable Standby Letter of Credit, Form 440-3640, issued by the director.

(E) The ISLOC will be automatically extended without amendment for an additional one (1) year from the expiry date, or any subsequent expiry date unless, at least 60 days before the expiry date, the director is notified in writing by registered mail or overnight delivery, that the bank has elected not to extend the ISLOC for another period.

(F) If the issuing bank or any confirming bank is closed at the time of expiry of the ISLOC for any reason that would prevent delivery of a demand notice during its normal hours of operation, the ISLOC will be automatically extended for a period of 30 days commencing on the next day of operation.

(G) The ISLOC can be called immediately if:

(i) The self-insured employer has defaulted in payment of its workers' compensation liabilities or obligations, or in payments due to the director under ORS 656;

(ii) The self-insured employer has filed for bankruptcy;

(iii) The self-insured employer has failed to renew or provide acceptable substitute security by fifteen (15) days prior to the expiry date of the ISLOC; or

(iv) The beneficiary has determined the existing security is deemed inadequate, that additional or replacement security must be provided by the self-insured employer, and that neither has been provided, notwithstanding written notice to the self-insured employer.

(H) The credit shall be available by presentation of the beneficiary's draft drawn at sight on the issuing bank, payable within three business days, when accompanied by one of the statements contained in 436-050-0165(2)(a)(G) signed by the director of the Department of Consumer and Business Services, or the administrator of the Workers' Compensation Division, or their designated authorized representative.

(I) The ISLOC is not subject to any qualifications or conditions by the issuing bank or confirming bank and is each bank's individual obligation, which is in no way contingent upon reimbursement.

(J) An ISLOC shall include a statement that the funds provided by the ISLOC are not construed to be an asset of the self-insurer and a statement that if legal proceedings are initiated by any party with respect to the payment of any ISLOC, it is agreed that such proceedings shall be subject to the jurisdiction of Oregon courts and Oregon Law.

(K) Payment of any amount under an ISLOC shall be made only by wire transfer in the name of the "Department of Consumer and Business Services In Trust For [the legal name of the certified self-insured employer]" to a department account, with the State Treasurer, at a designated bank.

(L) An ISLOC shall be subject to the International Standby Practices 1998 (ISP98), ICC Publication No. 590, which is hereby incorporated by reference, and a reference to this publication shall be included in the text of the ISLOC. ICC Publication 590 may be obtained from the International Chamber of Commerce.

(M) All bank charges for the ISLOC are for the account of the applicant.

(N) Any amendment to the ISLOC must be approved and accepted by the director before the amendment is effective.

(O) If a bank's rating subsequent to the issuance of the ISLOC falls below the acceptable rating level as set forth in paragraph (A), the self-insured employer shall be required within 60 days of the publication of the lower credit rating to:

(i) Replace the ISLOC with a new ISLOC issued by an Oregon state chartered bank or with a federally chartered bank with an Oregon branch office with an acceptable credit rating;

(ii) Confirm the ISLOC by an Oregon state chartered bank or a federally chartered bank with an Oregon branch office that has an acceptable credit rating; or

(iii) Replace the ISLOC with a policy of insurance or a surety bond of equal amount that is approved by the director, as substitute security for the ISLOC, if the policy of insurance or surety bond covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC.

(P) Each self-insured employer that submits an acceptable ISLOC as its security deposit, shall furnish a memorandum of understanding with the ISLOC, on the department's Form 440-3529, which affirms the self-insured employer's acceptance of all of the following requirements:

(i) An ISLOC is furnished to the director instead of a surety bond or other forms of security that may be determined to be acceptable for certification as a self-insured employer or for continuing as a certified self-insured employer;

(ii) The self-insured employer understands the ISLOC will be automatically extended without amendment for an additional one (1) year from

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the expiry date, or any subsequent expiry date, unless, at least 60 days before the expiry date the director is notified in writing by the bank that the irrevocable standby letter of credit will not be renewed;

(iii) The ISLOC may be replaced with an ISLOC or surety bond of equal amount or a policy of insurance that is accepted by the director as substitute security for the ISLOC, if the new ISLOC or surety bond or policy of insurance covers all workers' compensation liabilities and obligations that would have been covered by the ISLOC to be replaced;

(iv) The self-insured employer shall affirm that the ISLOC, in the amount required, is being offered with the understanding that the ISLOC can be called immediately, at the director's discretion, if the director receives notice that the ISLOC will not be renewed; if the self-insured employer fails to pay its workers' compensation liabilities, obligations or payments due to the director under ORS 656; or the self-insured employer files bankruptcy; or the self-insured employer fails to renew or provide acceptable substitute security by fifteen (15) days prior to the expiry date of the ISLOC; or the director has determined the existing security is deemed inadequate, that additional or replacement security must be provided by the self-insured employer and that neither has been provided, notwithstanding written notice to the self-insured employer; and

(v) If legal proceedings are initiated by any party with respect to payment of any ISLOC, then it is agreed that the proceedings shall be subject to the jurisdiction of Oregon courts and application of Oregon Law(s).

(b) A surety bond may be accepted by the director as a security deposit or substitute security deposit for an ISLOC, government securities, monies, or time deposits. A surety bond may be accepted as all or part of the security deposit. The director, in each particular case, will determine if the surety bond submitted is acceptable, if the issuing Surety is acceptable, and if its language and format are acceptable.

(A) The surety bond must be issued by a Surety company authorized to transact surety business in Oregon;

(B) Surety Bond Form 440-824 shall be used for all surety bonds;

(C) Surety bonds submitted for the self-insured employer's security deposit shall be continuous in form;

(D) Surety bonds may be terminated by the surety company by giving the director and the Principal written notice stating that on a date not less than thirty days after the date the notice is received by the director, such termination shall be effective. Such termination shall in no way limit the liability of the Surety for subsequent defaults of the Principal's liability and/or obligations incurred under ORS 656 prior to the effective date of such termination;

(E) Surety Bond Rider Form 440-1810 shall be used for all department required increases or authorized decreases in the penal sum of the surety bond. The surety bond rider is not effective until it is accepted by the department;

(F) Surety bonds and all riders to the surety bonds shall be executed by the surety company's attorney in fact and the attorney in fact's appointment and power of attorney must accompany all surety bonds and riders submitted. The power of attorney must authorize the attorney in fact to execute the surety bond in the amount of the penal sum of the bond;

(G) The liability of a surety company under its surety bond may only be discharged in the event that:

(i) The Principal files acceptable substitute security as the security deposit that is accepted by the director as substitute security for the surety bond to be released, covering all past, present, existing and potential liability of the Principal under ORS 656 and covering all the Surety's liability under the surety bond to be released, in an amount required by the director; and

(ii) The surety bond is released as documented in writing from the director or the administrator of the Workers' Compensation Division, or their designated authorized representative.

(iii) A policy of insurance or an ISLOC of equal amount that is acceptable by the director, may be accepted as substitute security for the surety bond, if the policy of insurance or ISLOC covers all workers' compensation liabilities and obligations that would have been covered by the surety bond.

(H) The surety company or its parent shall have and maintain an acceptable credit rating in accordance with the following:

(i) Standard and Poors Insurer Financial Strength Rating of A or better rating, or

(ii) A.M. Best Company, Financial Strength Rating of B+ or better rating.

(I) A surety bond shall be replaced by the self-insured employer with an acceptable type of security deposit, within 30 days, after notice from the department that the Surety has been placed in conservatorship, or is seized, or declares insolvency, or the current credit rating is below the ratings required in subsection (H).

(c) Government securities, certificates of deposit, or time deposit accounts that were accepted by the director as a self-insured employer's or a self-insured employer group's required security deposit prior to January 1, 2004, may remain as the security deposit until the maturity date of those investments. At that time, the government securities, certificates of deposit or time deposit accounts pledged to the department as security deposits must be replaced by a surety bond or ISLOC acceptable to the director. A self-insured employer that has government securities, certificates of deposit, or time deposit accounts as all or part of its security deposit shall complete a "Security Agreement and Notice to Intermediary," Form 440-4023, granting the department a security interest in and control over those financial assets.

(d) Government securities, certificates of deposit, or time deposit accounts will not be accepted as security deposits for certified self-insured employers who must increase their security deposit, or for employers whose self-insurance certification is granted subsequent to January 1, 2004.

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

Stat. Auth.: ORS 656.430, 656.704, 656.726(4)

Stats. Implemented: ORS 656.430

Hist.: WCD 8-2003(Temp), f. & cert. ef. 7-18-03 thru 1-13-04; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0170

### Excess Insurance Requirements

(1) A self-insured employer must have excess workers' compensation insurance coverage appropriate for the employer's potential liability under ORS 656.001 to 656.990 with an insurer authorized to do business in the state. The policy providing such coverage and any endorsements thereto must be filed with the director not later than 30 days after the date the coverage is effective.

(2) The excess insurance:

(a) Must include a provision for reimbursement to the director of all expenses paid by the director on behalf of the employer pursuant to ORS 656.614 and 656.443 in the same manner as if the director were the insured employer, subject to the policy limitations or amounts and limits of liability to the insured employer; and

(b) Coverage must be continuous and remain in effect from the date of certification until the certification is revoked or canceled; and

(c) Coverage must be specific on a per occurrence basis; and

(d) Coverage may include aggregate excess insurance.

(3) When an excess insurance policy is canceled by the excess insurer or the employer, a copy of such notice shall be filed with the director 30 days prior to the effective date of cancellation.

(4) Changes in the self-insured retention level and policy limits of the excess insurance require prior approval of the director. The director may require a reduction in the self-insured retention level or an increase in the policy limits. Those items considered in determining and approving the retention and limitation levels of the excess insurance will be the employer's:

(a) Financial status;

(b) Risk and exposure;

(c) Claim history; and

(d) The amount of the required security deposit.

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to reduce the self-insured retention level or increase the policy limitation or amounts and limits of liability of the excess insurance.

(6) Excess insurance obtained under this section does not relieve any self-insured employer from full responsibility for claims processing and the payment of compensation required under ORS 656 and these rules. Regardless of the types and amounts of excess coverage a self-insured employer shall not transfer claims to the excess insurer(s) for processing.

(7) If a self-insured employer fails to comply with the requirements of this section, the employer's certification as a self-insured will be revoked. The employer will be given written notice of such revocation which will be effective 30 days from receipt of such notice. If the required excess insurance is obtained within the 30 days, the revocation is canceled and certification remains in effect.

Stat. Auth.: ORS 656.430, 656.704, & 656.726(4)

Stats. Implemented: ORS 656.430

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0315; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0175

### Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer

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shall annually file, within 120 days of the employer's fiscal year end, an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. All financial statements and annual financial reports filed, as required by this section, shall be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true, accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Each self-insured employer shall submit an annual endorsement to their application for self-insurance in the form prescribed by the director. The endorsement shall be filed by March 1 of each year.

(3) Notwithstanding section (1) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(4) The self-insured employer shall report claim loss data necessary by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period, and must be valued as of January 1 of the current year. Reports must include:

- (i) Contract medical expenses;
- (ii) Total medical deductible;
- (iii) Number of claims for which the medical deductible is claimed;
- (iv) For claims with incurred losses of \$5,000 or less: total paid, outstanding reserves, and total incurred losses;
- (v) Number of claims with incurred losses of \$5,000 or less; and
- (vi) For each claim with incurred losses exceeding \$5,000: worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims, and must be valued as of January 1 of the current year. The report must include:

- (i) The worker's name, listed in alphabetical order;
- (ii) Date of injury;
- (iii) Claim number;
- (iv) Total paid;
- (v) Outstanding reserves; and
- (vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Handicapped Worker Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(b) The director will, by bulletin, provide guidelines for self-insured employers and their authorized representatives to use in submitting the required data.

(c) Each self-insured city or county that is exempted from the security deposit requirements in accordance with ORS 656.407(3) and OAR 436-050-0185 shall, in addition to the above, provide the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported.

(5) If a self-insured employer fails to comply with the requirements of sections (1), (2), (3) or (4) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase their deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties for up to \$250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification as a self-insured.

(6) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth.: ORS 656.407, 656.430, 656.704, & 656.726(4)

Stats. Implemented: ORS 656.407 & 656.430

Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0180

### Determination of Amount of Self-Insured Employer's Deposit; Effective Date of Order to Increase Deposit

(1) The deposit a self-insured employer is required by ORS 656.407 to maintain with the director shall be an amount not less than the greater of:

(a) \$100,000; or

(b) Future claim liability, including losses incurred but not reported (IBNR), a claims processing administrative cost, and the anticipated assessments payable to the director for the employer's next fiscal year; or

(c) The annual incurred losses for the self-insured's last fiscal year, including IBNR, a claims processing administrative cost, and anticipated assessments payable to the director for the employer's next fiscal year.

(2) Notwithstanding section (1) of this rule, if the employer is applying for self-insurance, the amount of the deposit shall not be less than the greater of:

(a) The anticipated assessments payable to the director for the employer's next fiscal year; plus an amount equal to 65 percent of the annual premium the employer would pay if carrier-insured using the applicable occupational base rate premium, as such rate is applied to the anticipated payroll of the employer's Oregon operations for the employer's next fiscal year; or

(b) \$300,000 plus \$30,000 additional for each \$100,000 the employer's net worth is below \$2 million; or

(c) The amount of the approved self-insured retention level for the employer's excess workers' compensation insurance.

(3) In determining the amount of deposit the director will take into consideration:

(a) Financial ability of the employer to pay compensation and other payments due;

(b) Employer's probable continuity of operation;

(c) Retention and limitation levels of the employer's excess insurance in relation to the employer's financial status; and

(d) Balance of the Self-Insured Employers Adjustment Reserve.

(4) Assessments payable to the director referred to in this section include moneys and assessments due pursuant to ORS 656.506, 656.612, and 656.614.

(5) A self-insured employer will be allowed a period, not to exceed 30 days, within which to comply with an order of the director to the employer to increase the amount of its deposit.

(6) "Claims processing administrative cost" shall be determined by developing a percentage rate to be applied against the employer's "unpaid losses." The rate will be based upon the information contained in Schedule P, Part ID of the Annual Statement for the previous calendar year as reported to the Insurance Commissioner by SAIF Corporation and the 20 private insurers who had the highest earned premium reported for the preceding calendar year. The rate will be computed annually to be effective for the subsequent fiscal year. The rate will be 105 percent of the median of ratios determined as follows for each of these insurers:

(a) "Loss Expenses Unpaid" for losses incurred in the latest eight years, divided by

(b) "Losses Unpaid" for losses incurred in the latest eight years.

(7) "Incurred but not reported" (IBNR) shall be calculated by applying a loss development factor against the employer's annual incurred losses. The loss development factor will be calculated annually by the director.

Stat. Auth.: ORS 656.407, 656.704, & 656.726(4)

Stats. Implemented: ORS 656.407

Hist.: WCB 2-1976(Admin)(Temp), f. & ef. 4-12-76; WCB 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0320; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0185

### Deposit Exemption for Self-Insured Cities and Counties, Qualifications, Application Procedures, Conditions and Requirements, Revocation and Requalification

(1) A self-insured city or county may make application to be exempt from the security deposit requirements of ORS 656.407(2). Pursuant to ORS 656.407(3), the requirements to qualify for exemption are as follows:

(a) The city or county must be a certified self-insured employer, not a member of a self-insured employer group, in compliance with ORS 656.407(2) and OAR 436-050-0180 as an independently self-insured employer for the three consecutive years immediately prior to making application for the exemption; and

(b) The city or county must have in effect a workers' compensation loss reserve account that is actuarially sound and that is adequately funded as determined by the annual audit under ORS 297.405 to 297.740 to pay all compensation to injured workers and amounts due the director pursuant to

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ORS Chapter 656. The workers' compensation loss reserve account shall also be dedicated to and expended only for payment of compensation and amounts due the director by the city or county under ORS Chapter 656.

(2) A written application requesting exemption from ORS 656.407(2) shall be submitted to the director no later than 45 days prior to the date the exemption is desired to become effective. The application shall include the following supporting documentation for review and approval:

(a) A copy of the city's or county's most recent annual audit as filed with the Secretary of State under ORS 297.405 to 297.740 that identifies the actuarially sound funded amount in the dedicated workers' compensation loss reserve if not previously filed as required by OAR 436-050-0175(1);

(b) A copy of the city's or county's current fiscal year's approved budget that states the budgeted amount for the funded workers' compensation loss reserve account;

(c) A resolution or ordinance passed by the city's or county's governing body that establishes an actuarially sound and adequately funded workers' compensation loss reserve account that dedicates the workers' compensation loss reserve account to and limits expenditures to only the payment of compensation and amounts due the director under ORS Chapter 656. The resolution shall also include the director's first lien and priority rights to the full amount of the workers' compensation loss reserve account required to pay the present discounted value of all present and future claims under ORS Chapter 656; and

(d) A statement giving the amount of the current reserves for present and future liabilities, the amount funded in the workers' compensation loss reserve account, the procedures, methods, and criteria used in the process of determining the amount funded in their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The statement shall include the city's or county's certification that the loss reserve account is actuarially sound and adequately funded if an actuarial study is not available.

(3) Within 45 days of receipt of all information required in section (2) of this rule, the director will review the application and supporting documentation and notify the city or county that the request for exemption under ORS 656.407(3) is approved or denied.

(a) If denied, the notice will provide the reasons for the denial, any requirements for reconsideration and the right to administrative review as provided by OAR 436-050-0008.

(b) If approved, the notice shall include:

(A) The confirmation of the effective date of exemption;

(B) Authorization for cancellation of any surety bond or ISLOC held as security pursuant to ORS 656.407(2) and OAR 436-050-0180; and

(C) Procedures for release of any government securities or time deposits held as security pursuant to ORS 656.407(2) and OAR 436-050-0180.

(4) Probable cause to believe the workers' compensation loss reserve account is not actuarially sound includes but is not limited to: The annual audited financial statement under ORS 297.405 to 297.740 not containing a statement by the auditor that the workers' compensation loss reserve account is adequately funded, or containing a disclaimer regarding the auditor's qualifications or ability to determine adequacy of the loss reserve account.

(5) A city or county that has been exempted from ORS 656.407(2) and desires to terminate its self-insurance certification or elects to discontinue maintaining an actuarially sound and adequately funded workers' compensation loss reserve shall:

(a) Submit written request to the director at least 60 days prior to: the desired effective date the self-insured certification is requested to be terminated; or the effective date that the qualifying workers' compensation loss reserve account is to be discontinued;

(b) If the self-insured certification is to be terminated, the request for termination shall comply with the requirements of OAR 436-050-0200. Prior to the effective date of termination the city or county shall provide a security deposit, as required by the director, in an amount determined pursuant to OAR 436-050-0180 and ORS 656.443; and

(c) If the city or county desires to remain self-insured the city or county shall requalify for self-insurance certification by depositing prior to the date the qualifying workers' compensation loss reserve account is to be discontinued, a security deposit as required by the director pursuant to ORS 656.407(2) and OAR 436-050-0180. Pursuant to ORS 656.407(3)(e) failure to deposit the required security deposit with the director prior to the date of discontinuance of the qualifying workers' compensation loss reserve account shall cause the city's or county's self-insurance certification to be automatically revoked as of that date.

Stat. Auth.: ORS 656.407, 656.704, & 656.726(4)

Stats. Implemented: ORS 656.407

Hist.: WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0190

### Using Self-Insured Employers Surety Deposit/Self-Insured Employers Adjustment Reserve

(1) In the event a self-insured employer fails to or is unable to make all payments due under ORS Chapter 656, the director shall, on behalf of the employer, assure continued payments in accordance with ORS 656.407, 656.443 and 656.614 and in such a manner as to ensure minimum delay in the processing of injured workers' claims.

(2) If a self-insured employer defaults and is being serviced by one or more service companies, the director will, on behalf of the employer, designate those service companies to continue processing claims in accordance with the contracts in effect. At least 90 days prior to the time the contract expires, the service company can submit a proposal to continue processing the claims. The director will consider such proposal along with other options which may include referral of the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(3) If a self-insured employer defaults and is self-administering, the director shall, on behalf of the employer, negotiate to have the employer's claims processed or may refer the claims for processing to an Assigned Claims Agent as secured under ORS 656.054.

(4) For the purposes of this rule:

(a) "Employer" includes employer groups.

(b) "Self-insured employer" includes self-insured employer groups.

Stat. Auth.: ORS 656.407, 656.704, & 656.726(4)

Stats. Implemented: ORS 656.407, 656.443 & 656.614

Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0322; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0195

### Requirements for Self-Insured Entity Changes

(1) If there is any change in the legal entity, changes in addresses, telephone numbers, and points of contact, or ownership changes, a self-insured employer shall notify the director in writing within 30 days after the change occurs.

(2) A self-insured employer shall submit requests to add or delete entities under its self-insured certification in the form and format, or manner, as prescribed by the director, and signed by an officer of the company. Each entity to be approved for inclusion in a self-insured employer's certification must enter into an agreement, signed by an officer of the entity being included in the self-insured employer's certification, making the entity jointly and severally liable for the payment of any compensation and moneys due to the director by the certified self-insured employer and/or any other entity included in the self-insured employer's certification.

(3) The director will determine, based on the information provided, the effect of the change on the deposit required and whether the entities can be combined for experience rating purposes.

(4) Failure to provide notification as required by this section may result in assessment of penalties and/or self-insurance certification revocation.

Stat. Auth.: ORS 656.407, 656.430, 656.704, & 656.726(3)

Stats. Implemented: ORS 656.407 & 656.430

Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0200

### Self-Insured Certification Cancellation; Revocation

(1) A certification to a self-insurer issued by the director remains in effect until:

(a) Revoked as provided by OAR 436-050-0150 through 436-050-0230 and ORS 656.440; or

(b) Canceled by the employer with the approval of the director.

(2) If a self-insured employer wishes to cancel certification as a self-insured, the employer shall make written request to the director. Such a request shall be submitted 60 days prior to the desired date of cancellation and include:

(a) What arrangements have been made to comply with ORS 656.017 if the employer continues to have one or more subject workers;

(b) What arrangements have been made to process present and future claims for which the employer is responsible;

(c) A statement of all present and future claims liabilities for all liabilities incurred during the period of self-insurance; and

(d) Any reports and/or moneys due the director pursuant to ORS 656.506, 656.612, and 656.614.

(3) The certification of a self-insured employer may be revoked if:

(a) The employer fails to comply with ORS 656.407 or 656.430 and the rules adopted pursuant thereto; or

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(b) The employer commits any violation for which a civil penalty could be assessed under ORS 656.745.

(4) Except as provided in OAR 436-050-0170(7), notice of certificate revocation will be issued in accordance with the provision of ORS 656.440.

Stat. Auth.: ORS 656.704 & 656.726(6)

Stats. Implemented: ORS 656.434 & 656.440

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0325; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0210

### Notice of Self-Insurer's Place of Business in State; Records Self-Insured Must Keep in Oregon

(1) Every employer certified as a self-insured employer shall give the director notice of location, mailing address, telephone number, and any other contact information of at least one location in this state where claims will be processed and claim records kept as well as other records as required by this rule and OAR 436-050-0220. The employer shall give notice of the location, mailing address, telephone number, and any other contact information upon application for certification.

(2) With the approval of the director, a self-insured employer may use one or more service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state. To obtain approval or to change or add service locations, the employer shall file with the director a copy of the agreement entered into between the employer and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company.

(3) If a self-insured employer or service company for a self-insured employer changes its place of business, the self-insured employer shall notify the director of the new location, mailing address, telephone number, and any other contact information 30 days prior to the effective date of the change.

(4) When a self-insured employer changes claims processing locations, service companies, or self-administration, the employer must provide at least 10 days prior notice to:

(a) Workers with open or active claims, their attorneys, and attending physicians. The notice must provide the name of a contact person, telephone number, and mailing address of the new claim processor;

(b) The director of which claims will be transferred. The notice must include:

(A) Contact information for both the sending processor and receiving processor of the claims to include a contact person, telephone number, mailing address, and physical address where the claims are to be processed; and

(B) A listing of the claims being transferred which identifies the sending processor's claim number, claimant name, claimant's social security number, and date of injury. The list should also include the employer's WCD number and WCD's claim number, if known.

(5) Written records every self-insured employer is required to keep in this state include, but are not limited to, the records described by OAR 436-050-0220.

(6) Notwithstanding section (1) of this rule, the director may approve up to two additional claims processing locations, if the self-insured employer can show:

(a) That meeting the requirements of section (1) of this rule will impose a financial or operational hardship on the employer;

(b) That such additional locations will result in improved claims processing performance of the employer; and

(c) That the auditing functions of the director can be met without unnecessary expense to the director.

(7) If, upon review of a self-insured employer's claims processing performance, the performance has not remained at the levels as described in OAR 436-060, approval for additional locations provided in section (6) shall be withdrawn.

(8) Notwithstanding section (1) of this rule, a self-insured employer may, with the prior approval of the director, make compensation payments from a single location other than the designated claims processing location. Approval of such a location may be revoked if at any time:

(a) Timeliness of compensation payment falls below the minimum standards as established in OAR 436-060;

(b) Written record of compensation payments is not available; or

(c) There is not sufficient written documentation to support the issuance of a check for compensation.

(9) Notwithstanding section (1) of this rule, a self-insured employer may, with prior approval of the director, have one additional location, in or out of state for maintaining payroll records pertaining to premium assessments and assessment/contributions.

Stat. Auth.: ORS 656.455, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.455

Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0330; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0220

### Records Self-Insured Employer Must Keep in Oregon; Period to be Retained, Removal and Disposition

(1) The written records self-insured employers are required to keep in this state to ensure compliance with ORS 656.506, 656.612, 656.614, and 656.622 include:

(a) A record of payroll by National Council on Compensation Insurance classification; and

(b) Complete records of all assessments, employer and employee contributions, and all such money due the director.

(2) The self-insured employer must maintain at a place of business in this state, those written records relating to their safety and health program as required by ORS 656.430(10) and in accordance with OAR 437-001.

(3) The records of claims for compensation that each self-insured employer is required to keep in this state include, but are not limited to:

(a) Written records used and relied upon in processing claims; and

(b) A written record of all payments made as a result of any claim including documentation of the date the payment was mailed. Documentation may be the actual mailing date, or an explanation of the time period between the date of issuance and mailing.

(4) Records of a denied claim may be removed from this state after all the appellate procedures have been exhausted and the denial has been affirmed by operation of law.

(5) Records of any claim for a compensable injury may be removed from this state after the expiration of the aggravation rights or not less than one year following the final payment of compensation, whichever is the last to occur.

(6) Notwithstanding sections (4) and (5) of this rule, if administrative or judicial review is requested, the claim records may not be removed from this state or disposed of until after either the review is concluded and the time for an appeal from such review has expired or at least one year after final payment of compensation has been made, whichever is the last to occur.

(7) During administrative or judicial review, if a denied claim is found to be compensable the records of such claim are thereafter subject to section (5) of this rule.

(8) Claim records may be destroyed when all potential for benefits to the injured worker is gone.

(9) Records retained as required by section (1) of this rule may be removed from the state or destroyed at the end of three full calendar years after the calendar year in which the money was remitted.

Stat. Auth.: ORS 656.455, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.455

Hist.: WCD 18-1975(Admin), f. 12-19-75, ef. 1-1-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0335; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0260

### Qualifications of a Self-Insured Employer Group

Five or more employers may qualify as a self-insured employer group if the employers as a group:

(1) Incorporate or are a cooperative pursuant to ORS Chapter 60, 62, or 65. If the group is a governmental subdivision, it must have formed a governmental entity as provided under ORS 190.003 to 190.110;

(2) Designate a board of trustees and an administrator;

(3) Demonstrate a combined net worth of \$1 million or more and have excess insurance with a retention of \$100,000 or more; or the combined net worth of the employers as a group may be less than \$1 million if the employers as a group obtain excess insurance with less than a \$100,000 retention, in which case the net worth required may be reduced by the same percentage the retention is reduced below \$100,000;

(4) Obtain excess insurance coverage of the type and amounts approved by the director;

(5) Demonstrate that accident prevention is likely to improve through self-insurance;

(6) Engage an adequate staff pursuant to OAR 436-055-0070 qualified to process claims;

(7) Develop a method approved by the director to notify the director of:

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(a) The commencement or termination of membership by employers in the group, and the effect thereof on the net worth of the employers in the group; and

(b) Whether an employer who terminates membership in the group continues to be a subject employer; and if the employer remains a subject employer what arrangements have been made to continue coverage;

(8) Establish a safety and health loss prevention program as required by OAR 437-001;

(9) Create a common claims fund approved by the director;

(10) Designate an entity within or for the group responsible for centralized claims processing, payroll records, safety requirements, recording and submitting assessments and contributions and making such other reports as the director may require. With the approval of the director, a self-insured employer group may use service companies as authorized by ORS 656.455 instead of establishing its own place of business in this state. To obtain approval or to change or add service locations, the employer group shall file with the director a copy of the agreement entered into between the employer group and each company, and shall give the director notice of the location, mailing address, telephone number, and any other contact information of each service company;

(11) Establish proof of financial ability by providing a security deposit that the director determines is acceptable in accordance with OAR 436-050-0165; and in an amount as determined in accordance with OAR 436-050-0180; and

(12) Comply with the requirements of OAR 436-050-0165, 436-050-0170, 436-050-0175, 436-050-0180, 436-050-195, 436-050-0200, 436-050-0205, 436-050-0210 and 436-050-0220. Failure to comply with these requirements will result in the actions prescribed in those rules.

(13) Every self-insured employer group shall maintain at least one place of business in this state where the employer processes claims, keeps written records of claims and other records as required by OAR 436-050-0210 to 436-050-0220.

(14) Failure of a certified self-insured employer group to maintain the qualifications required in this rule shall result in revocation of the self-insured employer group's certification. The group will be given 30 days written notice of the intent to revoke the self-insured certification, to be effective 30 days from the date of receipt of the revocation notice. If the self-insured employer group complies with the qualification requirements within the 30-day period, the revocation will be canceled and the certification will remain in effect.

Stat. Auth.: ORS 656.407, 656.430, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.407 & 656.430

Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0405; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0270

### Applying for Certification as a Self-Insured Employer Group: Private Employers

(1) Employers applying for certification as a self-insured employer group must submit:

(a) An application for the group applying for self-insurance in a form and format prescribed by the director;

(b) Proof in the form of a certificate from the Corporation Division showing the employer group as a corporation or cooperative;

(c) A copy of the bylaws or corporate minutes which include:

(A) Designation of specific individuals as trustees for the corporation or cooperative and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; and

(B) The criteria utilized by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;

(d) A current financial statement of each member making application which taken collectively shows the following:

(A) The combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained excess insurance coverage with less than a \$100,000 retention in which case the net worth will be reduced by the same percentage the retention is reduced below \$100,000; and

(B) Working capital in an amount establishing financial strength and liquidity of the business;

(e) An individual report by employer showing the employer's payroll by class and description and loss information for the last four calendar years;

(f) With the exception of governmental subdivisions, an agreement jointly and severally binding each member for the payment of any compensation and moneys due to the director by the group and/or any member of the group. The agreement shall be in a form and format prescribed by the director;

(g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(h) Proof of an adequate staff qualified to process claims by:

(A) Employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or

(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is qualified in accordance with OAR 436-055-0070 and is actually involved in the self-insured employer's claims processing. If one or more service companies are used, a service agreement between the employer group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted for approval of the director;

(i) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;

(j) A procedure for notifying the director of:

(A) The commencement or termination of employers within the group and the effect on the net worth of the group; and

(B) Arrangements made by an employer leaving the group to continue insurance coverage.

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300; and

(L) The type of security deposit the employer group wishes to provide, with appropriate justification.

(2) Notwithstanding subsection (1)(d) of this rule, the director may require an audited financial statement before considering an application by a group for self-insurance.

(3) Within 60 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the employer group that the request for certification as a self-insured employer group is denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of security deposit required;

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and

(c) The type, retention and limitation levels of excess insurance required.

(4) The certification of self-insurance will be issued upon receipt of the security deposit and the appropriate excess insurance binder.

(5) Unless a later date is specified by the applicant, the effective date of certification will be the first day of the month following the date the requirements of section (4) of this rule are met.

Stat. Auth.: ORS 656.407, 656.430, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.407 & 656.430

Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0410; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0280

### Applying for Certification as a Self-Insured Employer Group: Governmental Subdivisions

(1) Governmental subdivisions applying for certification as a self-insured employer group must submit:

(a) An application for the group applying for self-insurance in a form and format prescribed by the director;

(b) Proof that the governmental subdivisions have formed an inter-governmental entity as provided under ORS 190.003 to 190.110;

(c) An intergovernmental agreement which includes:

(A) Designation of specific individuals as trustees for the group and naming an administrator to administer the financial affairs of the group who, as obligee, shall furnish a fidelity bond with the group in an amount sufficient to protect the group against the misappropriation or misuse of any moneys or securities; and

(B) The criteria to be used by the trustees and administrator when approving applications for new membership and requests for withdrawal by members of the group;

(d) A current financial statement of each member making application which taken collectively shows the combined net worth of all members making application for coverage shall not be less than \$1 million unless the employers as a group have obtained aggregate excess insurance coverage

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with less than a \$100,000 retention in which case the net worth will be reduced by the same percentage the retention is reduced below \$100,000;

(e) An individual report by employer showing the governmental subdivision's payroll by class and description and loss information for the last four calendar years;

(f) A resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(g) Evidence of a safety and health loss prevention program designed to demonstrate that accident prevention will improve due to self-insurance;

(h) Proof of an adequate staff qualified to process claims by:

(A) Employing and retaining at each claims processing location, at least one person that is actually involved in the claims processing function and is qualified in accordance with OAR 436-055-0070; or

(B) Contracting the services of one or more service companies that employ, at each claims processing location, at least one person that is actually involved in the self-insured group's claims processing, that is certified in accordance with OAR 436-055-0070. If service companies are used, a service agreement between the group and each service company, that meets the requirements of OAR 436-050-0260(10), must be submitted;

(i) The type, retention and limitation levels of excess insurance the employers as a group are planning to obtain in accordance with OAR 436-050-0170;

(j) A procedure for notifying the director of:

(A) The commencement or termination of governmental subdivisions within the group and the effect on the net worth of the group; and

(B) Arrangements made by a governmental subdivision leaving the group to continue insurance coverage;

(k) A program whereby each employer within the group contributes to a common claims fund in accordance with OAR 436-050-0300; and

(L) The type and amount of security deposit the group wishes to provide, with appropriate justification. In no case shall the amount be less than \$300,000.

(2) Notwithstanding subsection (1)(d) of this rule, the director may require an audited or certified financial statement before considering an application by a group for self-insurance.

(3) Within 60 days of receipt of all information required in section (1) of this rule, the director will review the application and notify the group that the request for certification as a self-insured employer group is denied and the reason therefore; or, that the group is qualified as a self-insured employer group. The notice shall include:

(a) The amount of the security deposit required; and

(b) Approval of the type, retention and limitation levels of the excess insurance as determined pursuant to OAR 436-050-0170; and the type, retention and limitation levels of excess insurance required.

(4) The certification of self-insurance will be issued upon receipt of the security deposit, the appropriate excess insurance binder and if applicable, a service agreement between the employer and service company that has been signed by both parties.

(5) Unless a subsequent date is specified by the applicant, the effective date of certification will be the date the certification is issued.

Stat. Auth.: ORS 656.407, 656.430, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.430 & 656.407

Hist.: WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0290

### Commencement/Termination of Employers with a Self-Insured Employer Group; Effect on Net Worth; Extension of Coverage; Change in Entity; Change of Address; Recordkeeping

(1) Prospective new members of a self-insured employer group shall submit an application to the board of trustees, or its administrator. The trustees, or administrator, may approve the application for membership pursuant to the bylaws of the self-insured group. Once approved, the administrator or board of trustees shall submit to the director an endorsement, within 30 days of the effective date of membership, in a form and format as approved by the director which shall be accompanied by:

(a) A current financial statement of the employer applying;

(b) An agreement signed by the administrator of the self-insured group and the employer, making the employer jointly and severally liable for the payment of any compensation and moneys due to the director by the group and/or any member of the group; or, if a governmental subdivision self-insured group, a resolution by the governing body of each governmental subdivision binding it to be liable for the payment of any compensation and other amounts due to the director under ORS Chapter 656 incurred by that governmental subdivision during the period of group self-insurance;

(c) A statement showing the effect on the net worth of the group; and

(d) The employer's payroll by class and description and loss information for the last four fiscal or calendar years.

(2) Incomplete submissions or incorrectly completed endorsements to add new members received by the director will not be considered filed. Failure to file a correct and complete endorsement with the required supporting documentation within 30 days of the effective date of membership may result in the assessment of civil penalties.

(3) Individual members may elect to terminate their participation in a self-insured group or be subject to cancellation by the group pursuant to the bylaws of the group. Such cancellation or termination shall not be effective prior to approval by the director and only after the self-insured group has submitted the following information for review:

(a) A statement showing the effect of said termination on the net worth of the group;

(b) Evidence that the employer requesting termination has made alternate arrangements for coverage if the employer continues to employ; and

(c) The requested date of cancellation or termination.

(4) Upon receipt of the required information, the director may approve the cancellation or termination of the employer provided:

(a) Such cancellation or termination does not adversely affect the net worth of the group to the extent that the group would no longer qualify for a self-insured status; and

(b) Sufficient evidence has been presented to insure that the employer, if employing, retains workers' compensation coverage.

(5) Once approved, the group will be notified in writing of the effective date of cancellation or termination.

(6) An employer within a group shall, if there is a change in the employing legal entity, again apply for membership within the group, in accordance with this rule. A change in legal entity includes, but is not limited to:

(a) When a partner joins or leaves the partnership;

(b) When the employer is a sole proprietorship, partnership or corporation, and changes to a sole proprietorship, partnership or corporation; or

(c) When an employer sells an existing business to another person(s), except in the case of a corporation.

(7) An employer within a group shall, within 10 days after there is a change of address or assumed business name, notify the board of trustees, or administrator, of the change. The administrator or board of trustees shall, within 10 days, submit to the director an endorsement as notice of the change. A change of address includes, but is not limited to:

(a) Establishment of a new or additional location; or

(b) Termination of an existing location.

(8) The endorsement required by section (7) of this rule shall state specifically which location is being deleted and/or which is being added. It shall also identify the type of address, whether it is mailing, operating, or the principal place of business.

(9) The employer group is responsible for maintaining coverage records relating to each member, to include:

(a) The employer's application for membership in the group, with original signatures;

(b) The employer's liability agreement pursuant to OAR 436-050-0270(1)(f), or resolution pursuant to OAR 436-050-0280(1)(f), with original signatures;

(c) Cancellation or termination notices;

(d) Reinstatement applications and notices; and

(e) Records on the whereabouts of employers that have been canceled or have terminated their participation in the group.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.434 & 656.440

Hist.: WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from 436-051-0415; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0400

### Responsibility for Providing Coverage Under a Lease Arrangement

(1) Every worker-leasing company providing workers to a client shall satisfy the requirements of ORS 656.017 and 656.407.

(2) Every worker-leasing company providing leased workers to a client shall also provide workers' compensation insurance coverage for any subject workers of the client, unless the client has an active guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer. In the latter circumstance, the client's guaranty contract insurer or self-insured employer will be deemed to provide insurance coverage for all leased workers and subject workers of the client.

(3) If an insured client allows its guaranty contract to terminate or if a self-insured client, allows its certification to terminate and the client continues to employ subject workers or has leased workers, the client shall be

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considered a noncomplying employer unless the worker leasing company has made the filing with the director as provided in OAR 436-050-0410(1).

(4) A client can obtain leased workers from only one worker-leasing company at a time unless the client has an active guaranty contract on file with the director or is certified under ORS 656.430 as a self-insured employer.

(5) A worker leasing company shall not provide workers' compensation coverage for another worker leasing company.

Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855

Stats. Implemented: ORS 656.850 & 656.855

Hist.: WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 15-1994, f. 12-23-94, cert. ef. 2-1-95; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0440

### Qualifications, Applications, and Renewals for License as a Worker-Leasing Company

(1) Each applicant for initial license or renewal as a worker-leasing company shall:

(a) Be either an Oregon corporation or other legal entity registered with the Oregon Secretary of State, Corporations Division to conduct business in this state;

(b) Maintain workers' compensation coverage pursuant to ORS 656.017; and

(c) Pay the required licensing fee of \$1,250.

(2) Each applicant for initial license or renewal as a worker-leasing company must submit an application for license on Form 440-2466. The form and accompanying documentation must include:

(a) Legal name;

(b) Mailing address;

(c) In-state and out-of-state phone numbers;

(d) FEIN or other tax reporting number;

(e) Type of business;

(f) Physical address for Oregon principal place of business;

(g) Assumed business names;

(h) Name of workers' compensation insurer (or "self-insured") and policy number;

(i) WCD employer number, if any;

(j) Names and titles of authorized representatives, including the Oregon representative;

(k) List of controlling persons holding or controlling 10 percent or more interest in the company, including their names, titles, residence addresses, and dates of birth;

(l) A record of any present or prior worker leasing company services provided in any state and an explanation of those services;

(m) A letter of verification or good-standing from the controlling regulatory agency of those states in which a worker leasing license or certification is currently held;

(n) Verification of compliance with tax laws from Oregon Employment Department, Oregon Department of Revenue, and the Internal Revenue Service, using Attachments A, B, and C of Form 440-2466, the worker leasing license application;

(o) A record of any actions in which an essential element of the action involved fraud, theft, or embezzlement of monies on the part of the applicant or any controlling person; such actions may include:

(A) Criminal convictions;

(B) Lawsuits;

(C) Guilty pleas;

(D) Judgments; or

(E) Administrative actions;

(p) Full details regarding any action taken under subsection (o) of this section, including:

(A) The nature and dates of the action(s);

(B) Outcomes, sentences, and or conditions imposed;

(C) Name and location of the court or jurisdiction in which any proceedings were held or are pending, and the dates of the proceedings; and

(D) The designation and/or license number for any actions against a license;

(q) A plan of operation which demonstrates how the worker-leasing company will meet the requirements of ORS chapter 654, The Oregon Safe Employment Act, and collect the information necessary to establish each client's experience rating; and

(r) A notarized signature of an authorized representative of the applicant.

(3) Incomplete or incorrectly completed application packages will be rejected and returned to the applicant. The applicant will not be authorized to lease employees until the director has issued a license.

(4) Upon receipt of a completed application package, the application will be reviewed. The department may conduct a background investigation

of each individual applicant and controlling person. If the application is approved, the director will issue a license.

(5) Each license issued under these rules shall automatically expire two years after the date of issuance unless renewed by the licensee.

Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855

Stats. Implemented: ORS 656.850 & 656.855

Hist.: WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-050-0480

### Assessment of Civil Penalties

(1) The director may assess a civil penalty against an employer who fails to respond to requests for information and fails to meet the requirements of 436-050-0470. The matrix attached to these rules in **Appendix "A"** will be used in assessing these penalties. Assessment of a penalty does not relieve the employer of the obligation to provide a response.

(2) An employer failing to meet the requirements set forth in OAR 436-050-0410, 436-050-0450, and 436-050-0455, may be assessed a civil penalty based on the matrix in **Appendix "B"**, attached to these rules.

(3) An employer who is found to be operating a worker leasing company without having obtained a license or having failed to renew a license pursuant to ORS 656.850(2), may be assessed a civil penalty based on the matrix attached to these rules in **Appendix "C"**.

(4) For the purposes of ORS 656.850(2), a violation is defined as any month or part of a month in which an employer provides leased workers to a client without having first obtained a worker leasing license.

[ED. NOTE: The Appendix referenced is available from the agency.]

Stat Auth: ORS 656.704, 656.726(4), 656.850, 656.855

Stats. Implemented: ORS 656.850, 656.855

Hist.: WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-055-0008

### Administrative Review

(1) Any party aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003). The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(2) Any party aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review by hearing as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). Any party may request a contested case hearing as follows:

(a) The request for hearing must be mailed or delivered to the Administrator of the Workers' Compensation Division within 60 days of the action, the date of mailing, or other service of an order. The request must specify the grounds upon which the action or order is contested.

(b) The hearing shall be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(3) Any person aggrieved by an action taken pursuant to these rules by another person, except as described in sections (1) and (2), may request administrative review by the director as follows:

(a) The request for administrative review must be mailed or delivered to the Administrator of the Workers' Compensation Division within 90 days of the action. The request must specify the grounds upon which the action is contested.

(b) The review will be conducted by the director.

(c) The director will review the relevant information submitted by all parties.

(d) The director will issue an administrative order that specifies whether the determination constitutes a final order or whether an aggrieved party may request a contested case hearing before an Administrative Law Judge of the Office of Administrative Hearings pursuant to ORS 183.310 and the procedures provided in section (2).

Stat. Auth.: ORS 656.735(5) - (7), 656.745(4) & 656.726(3)

Stats. Implemented: ORS 656

Hist.: WCD 28-1990, f. 11-30-90, cert. ef. 1-1-91; WCD 15-1999, f. 12-21-99, cert. ef. 1-1-00; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04



# ADMINISTRATIVE RULES

## 436-060-0008

### Administrative Review

(1) Any party as defined by ORS 656.005, including an assigned claims agent as a designated processing agent pursuant to ORS 656.054, aggrieved by an action taken pursuant to these rules in which a worker's right to compensation or the amount thereof is directly in issue, may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS chapter 656 and the Board's Rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law except where otherwise provided in ORS chapter 656.

(2) Contested case hearings of Sanctions and Civil Penalties: Any party as described in section (1) aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The aggrieved person must file a hearing request with the Administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days of the mailing date of the proposed order or assessment.

(3) Contested cases before the Office of Administrative Hearings: Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (2), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

(4) Administrative review by the director or designee: Any party aggrieved by an action taken pursuant to these rules by another person except as described in sections (1) through (3) above may request administrative review by the division on behalf of the director. The process for administrative review of such matters will be as follows:

(a) The request for administrative review shall be made in writing to the Administrator of the Workers' Compensation Division within 90 days of the action. No administrative review will be granted unless the request specifies the grounds upon which the action is contested and is mailed or delivered to the administrator within 90 days of the contested action unless the director or the director's designee determines that there was good cause for delay or that substantial injustice may otherwise result.

(b) In the course of the review, the division may request or allow such input or information from the parties deemed to be helpful.

(c) The division's determination will specify whether it is a final order or whether an aggrieved party may request a contested case hearing before the Office of Administrative Hearings pursuant to ORS 183.310.

(d) The hearing request must comply with the procedures provided in section (3) above.

(5) Contested cases before the Hearings Division of the Workers' Compensation Board: A party may request a hearing before the Hearings Division of the Workers' Compensation Board on any action taken pursuant to these rules where a worker's right to compensation or the amount thereof is directly an issue in accordance with the provisions of ORS chapter 656.

Stat. Auth.: ORS 656.704, 656.726(4) & 656.745  
Stats. Implemented: ORS 656.245, 656.260, 656.704, 656.726(4), 656.740(1)  
Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78, WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0998, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-070-0008

### Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the director. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the director within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the director within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550. When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the director. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is received by the director within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by the an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order in a contested case issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.

Stat. Auth.: ORS 656.735 & 656.740  
Stats. Implemented: ORS 656.735 & 656.740, (sec. 9, ch. 170, OL 2003)  
Hist.: WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-075-0008

### Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: ORS 183.310 - 183.550, 656.740, 656.745 & 656.750  
Stats. Implemented: ORS 656.740 (sec. 9, ch. 170, OL 2003), 656.745, 656.750, 183.310 - 183.550  
Hist.: WCD 4-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 10-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 23-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 14-1997, f. 12-4-97, cert. ef. 1-1-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

# ADMINISTRATIVE RULES

## 436-080-0001

### Authority for Rules

These rules are promulgated under the director's authority contained in ORS 656.726 and 656.054.

Stat. Auth.: ORS 656

Stats. Implemented: ORS 656.054, 656.704, 656.726

Hist.: WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0006, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0002

### Purpose

It is the purpose of the director that under ORS 656.726(4) and 656.054 rules be established to ensure the requirements of ORS 656.017 are met. To meet that responsibility the director has delegated to the division the responsibility of ensuring the requirements of the statutes, rules, and bulletins of the department are complied with as they relate to employer coverage.

Stat. Auth.: ORS 656.054 & 656.726

Stats. Implemented: ORS 656.726

Hist.: WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0003

### Applicability of Rules

These rules are effective January 1, 2004 and carry out the provisions of:

(1) ORS 656.017 — Employer required to pay compensation and perform other obligations and duties.

(2) ORS 656.052 — Prohibition against employment without coverage; proposed order declaring noncomplying employer; effect of failure to comply.

(3) ORS 656.054 — Claim of injured worker of noncomplying employers; notice of proposed penalty; recovery of costs from noncomplying employer.

(4) ORS 656.735 — Civil penalty for noncomplying employers; amount; liability of corporate officers; effect of final order; penalty as preferred claim; disposition of moneys collected.

(5) ORS 656.740 — Review of proposed order declaring noncomplying employer, proposed assessment or civil penalty; insurer as party; hearing.

Stat. Auth.: ORS 656.054 & 656.726

Stats. Implemented: ORS 656.726

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0055, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 4-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 2-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0005

### Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Department" means the Department of Consumer and Business Services.

(2) "Director" means the director of the Department of Consumer and Business Services or the director's delegate.

(3) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(4) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656

Stats. Implemented: ORS 656.054, 656.704 & 656.726

Hist.: WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0008, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0006

### Administration of Rules

Any order issued by the division in carrying out the director's authority to enforce ORS chapter 656 and the rules adopted pursuant thereto is considered an order of the director.

Stat. Auth.: ORS 656.054 & 656.726

Stats. Implemented: ORS 656.052, 656.054 & 656.726

Hist.: WCB 4-1973(Temp), f. 12-6-73, ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0010, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0010

### Initiation of Proceedings; Issuance of Noncomplying Employer Order

If an employer has failed to comply with ORS 656.017, the division will investigate. If the division finds the employer is a subject employer that

has failed to file proof of qualification in the manner required by ORS 656.407, as either a carrier-insured employer or a self-insured employer, the division will issue a Proposed and Final Order declaring the employer to be a noncomplying employer, and assess a civil penalty pursuant to ORS 656.735(1) for violation of ORS 656.052.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.017, 656.052 & 656.735

Hist.: WCB 10-1970, f. & ef. 7-24-70; WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-84, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0015, 5-1-85; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0020

### When a Hearing on the Order is Not Requested

If the employer does not request a hearing on the order within the 60 days allowed by ORS 656.740, the division may request the Department of Justice to commence proceedings to enjoin the employer under ORS 656.052(3).

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, 656.735 & 656.740

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0020, 5-1-85; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0030

### When a Hearing on the Schedule is Requested

(1) A request for hearing on an order issued under OAR 436-080-0010 or 436-080-0040 must specify the grounds upon which the employer contests the order and must be mailed or delivered to the division within 60 calendar days after the mailing of the order.

(2) When a person who is served with an order timely files a request for a hearing, the division will forward the request and other pertinent information to the Hearings Division.

(3) A division officer or employee is authorized to appear (but not make legal argument) on behalf of the director in a hearing or in a class of hearings in which the Attorney General or the Deputy Attorney General has given written consent for such representation. A copy of the list of contested case hearings for which the Attorney General or the Deputy Attorney General has given consent is maintained by the division and the Department of Justice.

(4) "Legal argument" as used in ORS 183.452 and this rule has the same meaning as in the Attorney General's Model Rule of Procedure 137-003-0008(1)(c) and (d), which is hereby adopted by reference.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.052, 656.735 & 656.740

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0025, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 4-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0040

### Assessment of Civil Penalties Against Noncomplying Employer; Hearing on Proposed Assessment

(1) In accordance with ORS 656.735(1), the amount of penalty for a person's first violation of ORS 656.052(1) shall be the greater of \$1,000 or twice the premium the employer would have paid during the non-complying period if insurance had been provided.

(a) The division may reduce the amount of the penalty due, to 105% of the amount of premium the employer would have paid during the non-complying period if insurance had been provided if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to the division that it is no longer a subject employer or, if it is still a subject employer, that it has now complied with ORS 656.052(1);

(C) Provides adequate payroll information to enable the division to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.

(b) If 105% of the amount of premium the employer would have paid during the noncomplying period is less than \$500, the reduced penalty will be \$500.

(2) The amount of penalty, when assessed against the employer pursuant to ORS 656.735(2), shall be \$250 per day for each calendar day the employer has continued to violate ORS 656.052(1), commencing with the first day of such violation:

# ADMINISTRATIVE RULES

(a) The division may reduce the amount of the penalty due to 150% of the amount of premium the employer would have paid during the non-complying period if insurance had been provided if, prior to the penalty order becoming final, the employer:

(A) Agrees to not contest the penalty order;

(B) Provides evidence satisfactory to the division that it is no longer a subject employer or, if it is still a subject employer, that it has now complied with ORS 656.052(1);

(C) Provides adequate payroll information to enable the division to calculate the amount of premium the employer would have paid during the noncomplying period if insurance had been provided; and

(D) Makes arrangements satisfactory to the division for prompt payment of the reduced penalty amount.

(b) If 150% of the amount of premium the employer would have paid during the noncomplying period is equal to or greater than \$250 per calendar day of noncompliance, there will be no reduction of the penalty amount.

(c) If 150% of the amount of premium the employer would have paid during the noncomplying period is less than \$1000, the reduced penalty will be \$1000.

(3) For the purpose of this rule, "premium the employer would have paid during the noncomplying period" means:

(a) If payroll records are available, actual premium using the applicable occupational base rate premium applied to the payroll of the employer during the period of noncompliance; or

(b) If payroll records are not available, estimated premium based upon the number of workers employed during the noncomplying period times the average weekly wage as defined in ORS 656.005(1), using the applicable assigned risk base rated premium during the period of noncompliance.

(4) The division will mail or otherwise serve an order assessing a civil penalty, with a notice to the employer of rights under ORS 656.740.

(5) When a penalty order becomes final, the division will transfer the matter to the Business Administration Division of the department to collect the penalty.

Stat. Auth.: ORS 656.052, 656.726 & 656.735

Stats. Implemented: ORS 656.052, 656.735 & 656.740

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0030, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 8-1995(Temp), f. & cert. ef. 7-26-95; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0060

### When a Worker Files a Claim for an Injury

(1) When the division issues an order under OAR 436-080-0010 declaring an employer a noncomplying employer, and a subject worker has filed a claim for an injury sustained during the period of noncompliance while the worker was employed by such employer, the division will:

(a) Refer the claim with a copy of the order and the results of its investigation to the assigned claims agent for processing as required by ORS 656.054; and

(b) Inform the worker, the worker's representative, if represented, and the employer that the claim has been referred to the assigned claims agent;

(2) The notice to the employer will inform the employer of the right to object to the claim.

(3) If the employer wishes to object to the claim, the employer shall request a hearing. The request for hearing must be filed within 60 days from the date of the mailing of the Notice of Referral.

(4) When the assigned claims agent accepts or denies the claim, it shall notify the worker, employer, and the division of its action within the time provided by ORS 656.262.

(5) When the division finds that at the time of the injury, either the worker was not a subject worker or the employer was not a subject employer, the worker and employer shall be notified of such determination. The worker may request a hearing by filing a hearing request within 60 days after the mailing of the determination. The hearing request must be sent to the Workers' Compensation Division administrator. The worker and employer shall be parties to any such hearing, and will be notified by the Hearings Division of the time and place set for hearing.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.054

Hist.: WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1979(Admin), f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0040, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 26-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 8-1992(Temp), f. & cert. ef. 4-15-92; WCD 14-1992, f. & cert. ef. 10-13-92; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 9-1997(Temp), f. & cert. ef. 8-1-97; WCD 2-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0065

### Determination Of Assigned Claims Agent

(1) When selecting an assigned claims agent, the director will consider claims processing performance data collected by the division. That data and data provided by potential assigned claims agents will be used to determine which claims agent can deliver the most timely and appropriate benefits to injured workers and can best control claim costs and administrative costs. In addition, the director may use any other factors the director considers appropriate.

(2) If no qualified entity agrees to be an assigned claims agent, the director may require one or more of the three highest premium producing insurers to be assigned claims agents. In addition to the premium consideration, the criteria described in section (1) of this rule will be used to make that determination.

Stat. Auth.: ORS 656.054, 656.726

Stats. Implemented: ORS 656.054

Hist.: WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0070

### Reimbursement of Assigned Claims Agent for Claims Costs for Injured Workers of Noncomplying Employers

(1) When an assigned claims agent pays compensation to a claimant or incurs other costs on a claim referred to it under ORS 656.054, the assigned claims agent shall report the payment to the department as established by contract with the assigned claims agent. Any amounts received by the assigned claims agent and reported to the department under subsections (5) and (6) of this rule will be offset against such expenditures. Subject to section (3) of this rule, costs incurred by the assigned claims agent for which reimbursement will be allowed include:

(a) All compensation paid claimant.

(b) All expenses incurred for medical services.

(c) Attorney fees paid to the claimant in addition to any compensation, and sums assessed under ORS 656.382(3) and paid by the assigned claims agent, but not fees and sums paid under ORS 656.262(11) and 656.382(1).

(d) A reasonable amount for administrative costs at a rate proposed by the assigned claims agent and approved by the director prior to June 30 of each year. Late requests for increase on the rate of reimbursement, if approved, shall be effective on the date the request was received by the director.

(2) The department will review the request and issue the reimbursement out of the Workers' Benefit Fund.

(3) The department will conduct an annual audit of the noncomplying employer claim files processed by the assigned claims agent to validate the amount reimbursed pursuant to section (1) of this rule. Reimbursement shall not be allowed, if, upon such audit, any of the following are found to apply:

(a) Compensation has been paid as a result of untimely, inaccurate, or improper claims processing;

(b) Compensation has been paid negligently for treatment of any condition unrelated to the compensable condition;

(c) The compensability of an accepted claim is questionable and the rationale for acceptance has not been reasonably documented in accordance with generally accepted claims management procedures;

(d) The separate payments of compensation have not been documented in accordance with generally accepted accounting procedures; or

(e) The payments were made pursuant to a disposition agreement as provided by ORS 656.236 without the prior approval of the department.

(4) The assigned claims agent may appeal any disapproval of reimbursement made by the department under this rule pursuant to ORS 183.310 to 183.550 and as provided by OAR 436-080-0008.

(5) When a damage action is brought against a noncomplying employer or an action is brought against a third party by an employee of a noncomplying employer or the employee's beneficiaries, or by the assigned claims agent as the paying agency for such an employee, as authorized by ORS 656.576 to 656.595, the assigned claims agent shall report the commencement and termination of such action to the department. Thereafter, at the end of each calendar year, the assigned claims agent shall report the status of all such actions that are pending.

(6) When an action against an employer, or third party is settled or if damages are recovered, the assigned claims agent shall report within (30) days to the department the amount of the recovery retained by the assigned claims agent under ORS 656.593(1)(c).

(7) The Business Administration Division of the department is responsible for collecting from noncomplying employers those costs incurred by the Workers' Benefit Fund for which the assigned claims agent is entitled to reimbursement from the department under this rule. The Business Administration Division will inform each noncomplying employ-

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er of the liability under ORS 656.054(3) and keep the employer advised of costs incurred by the assigned claims agent.

Stat. Auth.: ORS 656.054, 656.726

Stats. Implemented: ORS 656.054

Hist.: WCB 10-1970, f. & ef. 7-24-70; WCB 4-1973(Temp), f. & ef. 12-6-73; WCB 4-1974, f. 2-13-74, ef. 3-11-74; WCB 15-1975, f. 9-22-75, ef. 10-11-75; WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0050, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 4-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-080-0080

### Collection of Subject Worker's Payment

(1) When the division finds the noncomplying employer has withheld monies from subject workers pursuant to ORS 656.506, it will collect such money from the noncomplying employer.

(2) The Business Administration Division is responsible for collecting from noncomplying employers those workers' payments not collected by the Workers' Compensation Division and referred to it by the Workers' Compensation Division.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.506

Hist.: WCD 5-1978(Admin), f. 3-31-78, ef. 4-1-78; Renumbered from 436-052-0051, 5-1-85; WCD 7-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 1-1996, f. 1-3-96, cert. ef. 1-5-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-085-0008

### Administrative Review

(1) Any party as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as defined by ORS 656.005 aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is received by the administrator within thirty (30) days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within thirty (30) days of issuance of the proposed order.

Stat. Auth.: ORS 656.506, 656.538, 656.612, 656.614 & 656.726(3)

Stats. Implemented: ORS 183.310 - 183.550, 656.740, 656.745, 656.750

Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-150-0008

### Administrative Review

(1) Any party as defined by ORS 656.005, and including the Oregon Insurance Guaranty Association, aggrieved by a proposed order or proposed assessment of civil penalty of the director or division issued pursuant to ORS 656.745 or 656.750 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740 (section 9, chapter 170, Oregon Laws 2003).

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing shall be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the Administrator of the Workers' Compensation Division by the aggrieved person within 60 days after the mailing date of the proposed order or assessment. No hearing will

be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Any party as described in section (1) of this rule, aggrieved by an action or order of the director or division pursuant to these rules, other than as described in section (1) of this rule, where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.550 as modified by these rules pursuant to ORS 183.315(1). When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the Administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an Administrative Law Judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: Sec. 6, Ch. 974, OL 2001 & ORS 656.726(4)

Stats. Implemented: ORS 656.445, 656.740 (sec. 9, ch. 170, OL 2003),

Hist.: WCD 12-2001, f. 12-7-01, cert. ef. 1-1-02; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0003

### Applicability of Rules

(1) These rules apply to workers' compensation related transactions filed with the director via electronic data interchange on or after January 1, 2004.

(2) The director may, unless otherwise obligated by statute, waive any procedural rules in this rule division as justice so requires.

Stat. Auth.: ORS 656.726(4)

Stat. Implemented: ORS 656.726(4)

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0310

### Proof of Coverage Electronic Filing Requirements

(1) The chart in Appendix "A" shows all proof of coverage data elements accepted via EDI in Oregon, and whether the data element is mandatory (M), conditional (C), or optional (O) for each transaction type.

(2) Unless otherwise provided in these rules, the data elements shall have the meaning provided in the data dictionary pursuant to OAR 436-160-0004.

(3) Transactions will be rejected if mandatory or required conditional data elements are omitted or submitted in a format that is not capable of being processed by the division's information processing system designated for proof of coverage transactions.

(4) Optional data element(s) in a transaction will be ignored if the optional data element is either omitted, or submitted in a format that is not capable of being processed by the division's information processing system designated for proof of coverage transactions.

(5) Unless otherwise provided in these rules, an insurer approved for production transmissions will transmit proof of coverage via EDI, and will not submit like paper documents to the director except as provided in OAR 436-160-0340.

Stat. Auth.: ORS 656.726(4)

Stat. Implemented: ORS 656.264

Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0320

### Proof of Coverage Acknowledgement

(1) The division will respond to transmissions submitted with either a transaction accepted or a transaction rejected acknowledgement.

(2) A transaction rejected acknowledgement will be sent for all transactions incapable of being processed by the division's information processing system, including, but not limited to:

(a) An omitted mandatory data element;

(b) An improperly populated data element field, e.g. numeric data element field is populated with alpha or alphanumeric data, or is not a valid value;

(c) Transactions or electronic records within the transaction which require matching and cannot be matched to the division's database;

(d) Illogical data in mandatory or required conditional field, e.g. termination date is before coverage effective date;

(e) Duplicate transmission or duplicate transaction within the transmission;

(f) Invalid triplicate code; or

(g) Illogical event sequence relationship between transactions, e.g. endorsement transaction submitted before a policy transaction is submitted.

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(3) A transaction accepted acknowledgement will be sent for all transactions that are in a format capable of being processed by the division's information processing system and are not rejected pursuant to section (2) of this rule.

(4) An insurer's obligation to file proof of coverage for the purposes of this rule is not satisfied unless the director acknowledges acceptance of the transaction.

Stat. Auth: ORS 656.726(4)  
Stat. Implemented: ORS 656.264  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0340

### Proof of Coverage Changes or Corrections

(1) Changes or corrections to proof of coverage information must be submitted pursuant to the standards referenced in OAR 436-160-0004.

(2) To report changes or corrections of an insured employer's name or address pursuant to ORS 656.419(4), or changes or corrections to other data elements, the insurer must transmit the appropriate transaction to specify what data is being changed or corrected.

(3) The insurer's policy number is used to assist in matching each transaction to the appropriate employer. When an insurer changes a policy number, the insurer must report that change with or prior to the next transaction submitted for that policy. Failure to report a change in the policy number will render future filings incapable of being processed by the division's information processing system and the insurer will receive a transaction rejected acknowledgement.

(4) If changing a partner name of an insured or employer does not change the entity, a new guaranty contract does not need to be filed.

(5) A transaction to change the effective date of coverage is capable of being processed by the division's information processing system only if the new date does not create a lapse in coverage. To report a change to the effective date of coverage which results in a lapse, the insurer must submit transactions to terminate the current guaranty contract and file a new guaranty contract.

(6) To add or delete coverage for corporate officers, members of a limited liability company, partners, sole proprietors or other non-subject workers, the insurer must file written notice to the director listing the individual names as required by ORS 656.419.

(7) Transactions to change the wrap-up indicator, business market, assignment date, and professional employer organization (worker leasing company) indicator are not capable of being processed by the division's information processing system.

Stat. Auth: ORS 656.726(4)  
Stat. Implemented: ORS 656.264, 656.419  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0350

### Guaranty Contract Filing Requirements

(1) For the purpose of these rules, an electronic guaranty contract consists of an executed trading partner agreement containing the guaranty described in subsection (2)(a) of this rule, and an accepted proof of coverage insured and employer electronic record.

(2) To file a guaranty contract via EDI, an insurer must do all of the following:

(a) Enter into a trading partner agreement with the director pursuant to OAR 436-160-0020 that contains a statement of assumption of liability and guaranty of payment pursuant to ORS 656.419(1);

(b) Transmit an electronic record of the proof of coverage data elements identified as mandatory or required conditional pursuant to OAR 436-160-0310, including a unique FEIN for each legally distinct employer included in the establishing document transaction; and

(c) Transmit an establishing document transaction: binder, new policy, renew policy, rewrite/reissue policy, reinstatement, add location, add employer, or add jurisdiction. A renew policy, add location, or add employer transaction will only establish a guaranty contract if the data elements have not previously been transmitted, the employer FEIN is not a duplicate per section (3) below, and coverage for that unique employer FEIN has not been previously established by the reporting carrier. A reinstatement transaction will only establish a new guaranty contract if there is a lapse in coverage and the requirements of ORS 656.419 and OAR 436-160-0350 are otherwise met.

(3) A duplicate FEIN or a FEIN previously reported under the same policy will be recorded as an additional employer location and/or an assumed business name, but will not establish an additional guaranty contract.

(4) Reinstatement, rewrite, and reissue transaction types must follow a cancellation transaction.

(5) If an employer elects to include any non-subject worker(s) under coverage pursuant to ORS 656.419(2)(d), or subsequently to exclude such

workers from coverage, the insurer must submit a transaction with a reason code for including or excluding a corporate officer, partner, member, sole proprietor, or any other person.

Stat. Auth: ORS 656.726(4)  
Stat. Implemented: ORS 656.419, 656.423, 656.427  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

## 436-160-0360

### Guaranty Contract Terminations

(1) For the purposes of EDI, to terminate a guaranty contract when an insurer receives written notice of cancellation of coverage from an employer pursuant to ORS 656.423, the insurer must:

(a) Provide notice to the director no more than seven calendar days after the effective date of termination by transmitting the transaction type for cancellation by insured or nonrenewal by insured. The "transaction effective date" will be used to report the effective date of termination pursuant to ORS 656.427;

(b) Retain the employer's written notice for inspection by the division; and

(c) Provide written notice to the employer pursuant to ORS 656.427(1) and (3).

(2) For the purposes of EDI, to terminate a guaranty contract for any other reason, the insurer must:

(a) Provide notice to the director no more than seven calendar days after the effective date of termination by transmitting the transaction type for cancellation or nonrenewal pursuant to section (5) below; and

(b) Provide written notice to the employer pursuant to ORS 656.427(1) and (3).

(3) The date of termination must be included in the written notice to the employer to terminate a guaranty contract. For the purposes of notice to the director, the transaction effective date is the termination effective date.

(4) A delete location transaction can be used to notify the director that one or more locations for an employer are no longer workplaces of the employer. This transaction does not meet the requirements of ORS 656.427 for notice of termination.

(5) If the intent of an insurer is to terminate guaranty contract liability for all insureds under a policy, the insurer must use a cancellation or nonrenewal transaction type and must report all covered employers.

(6) Delete jurisdiction transactions are not capable of being processed by the division's information processing system and will result in a transaction rejected acknowledgement being sent to the sender.

(7) Failure to provide timely notice to the director of termination of an insurer's guaranty contract may result in civil penalties pursuant to ORS 656.745.

Stat. Auth: ORS 656.726(4)  
Stat. Implemented: ORS 656.419, 656.423, 656.427  
Hist.: WCD 3-2003, f. 3-18-03, cert. ef. 4-1-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04

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**Adm. Order No.:** WCD 13-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

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**Rules Amended:** 436-060-0005, 436-060-0010, 436-060-0019, 436-060-0020, 436-060-0030, 436-060-0035, 436-060-0095, 436-060-0105, 436-060-0140, 436-060-0150

**Rules Suspended:** 436-060-0010(T), 436-060-0019(T), 436-060-0035(T)

**Subject:** These temporary rules supersede and supplement temporary rules that were effective September 22, 2003. The primary change affects temporary rule 0010. Senate Bill 914 eliminated the statutory requirement (in ORS 656.262(13)) to report every claim for disabling injury to the director within 21 days after the date the employer has notice or knowledge of the injury. SB 914 did not state a different reporting time frame. The director has authority under ORS 656.264 to prescribe reporting time frames, and after consulting with stakeholders and customers, has revised the time frame for providing the initial report of injury to the department to be within 14 days after the insurer's or self-insured employer's acceptance or denial of the claim.

Senate Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments, and a number of rules have been amended to refer to nurse practi-

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tioners to reflect their expanded role within the workers' compensation system.

Senate Bill 485, passed in 2001, provided that workers who held more than one job at the time of injury may have their earnings from the second job taken into account in calculating temporary disability benefits. In the 2003 Legislative Session, Senate Bill 914 clarified the department's duty to administer and pay the supplemental disability benefits when the insurer chooses not to do so. The Department of Consumer and Business Services will administer these benefits using an "assigned processing agent" if an insurer or self-insured employer chooses to have the department both administer and pay supplemental disability claims.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-060-0005

### Definitions

For the purpose of these rules unless the context requires otherwise:

(1) "Aggravation" means an actual worsening of the compensable condition(s) after the last award or arrangement of compensation, which is established by medical evidence supported by objective findings, and otherwise satisfies the statutory requirements of ORS 656.273.

(2) "Authorized nurse practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (§3, ch. 811, OL 2003) and OAR 436-010.

(3) "Designated Paying Agent" means the insurer temporarily ordered responsible to pay compensation for a compensable injury pursuant to ORS 656.307.

(4) "Director" or "director" means the Director of the Department of Consumer and Business Services or the director's designee for the matter, unless the context requires otherwise.

(5) "Disposition" or "claim disposition" means the written agreement as provided in ORS 656.236 in which a claimant agrees to release rights, or agrees to release an insurer or self-insured employer from obligations, under ORS 656.001 to 656.794, except for medical services, in an accepted claim. The term "compromise and release" has the same meaning.

(6) "Division" or "division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(7) "Employer" means a subject employer as defined in ORS 656.023.

(8) "Employment on call" means sporadic, unscheduled employment at the call of an employer without recourse if the worker is unavailable.

(9) "Health insurance," as defined under ORS 731.162, means all insurance against bodily injury, illness or disability, and the resultant expenses, except for workers' compensation coverage.

(10) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(11) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon; or, an employer or employer group which has been certified under ORS 656.430 that it meets the qualifications of a self-insured employer under ORS 656.407.

(12) "Lump sum" means the payment of all or any part of a permanent partial disability award in one payment.

(13) "Physical rehabilitation program" means any services, provided to an injured worker to prevent the injury from causing continuing disability.

(14) "Suspension of compensation" means:

(a) No temporary disability, permanent total disability or medical and related service benefits shall accrue or be payable during the period of suspension; and

(b) Vocational assistance and payment of permanent partial disability benefits shall be stayed during the period of suspension.

(15) "Third party administrator" is the contracted agent for an insurer, as defined by these rules, authorized to process claims and make payment of compensation on behalf of the insurer.

(16) "Written" and its variations mean that which is expressed in writing, including electronic transmission.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704 & 656.726(4)

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0005, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0010

### Reporting Requirements

(1) A subject employer shall accept notice of a claim for workers' compensation benefits from an injured worker or the worker's representative. The employer shall provide a copy of the "Worker's and Employer's Report of Occupational Injury or Disease," Form 440-801 (Form 801) or, an optional short form, the "Worker's Notice of Claim for Occupational Injury or Disease," Form 440-801W (Form 801W), to the worker immediately upon request; the form must be readily available for workers to report their injuries. Proper use of this form satisfies ORS 656.265.

(2) A "First Medical Report," Form 440-827 (Form 827), signed by the worker, is written notice of an accident which may involve a compensable injury under ORS 656.265. The signed Form 827 shall start the claim process, but shall not relieve the worker or employer of the responsibility of filing a Form 801 or Form 801W. If a worker reports a claim electronically, the insurer may require the worker to sign a medical release form, so the insurer can obtain medical records, pursuant to OAR 436-010-0240, necessary to process the claim.

(3) Employers, except self-insured employers, shall report the claim to their insurers no later than five days after notice or knowledge of any claim or accident which may result in a compensable injury. The employer's knowledge date is the earliest of: (a) the date the employer (any supervisor or manager) first knew of a claim; or (b) when enough facts exist to lead a reasonable employer to conclude that workers' compensation liability is a possibility. The report shall provide the information requested on the Form 801, and shall include, but not be limited to, the worker's name, address, and social security number, the employer's legal name and address, and the data specified by ORS 656.262 and 656.265.

(4) If an injured worker requires only first aid, no notice need be given the insurer, unless the worker chooses to file a claim. If a worker signs a Form 801 or Form 801W, the claim must be reported to the insurer. For the purpose of this section, "first aid" means any treatment provided by a person who does not require a license in order to provide the service. If the person must be licensed to legally provide the treatment or if a bill for the service will result, notice must be given to the insurer. When the worker requires only first aid and chooses not to file a claim, the employer shall maintain records showing the name of the worker, the date, nature of the injury and first aid provided for one year. These records shall be open to inspection by the director, or any party or its representative. If an employer subsequently learns that such an injury has resulted in medical services, disability or death, the date of that knowledge will be considered as the date on which the employer received notice or knowledge of the claim for the purposes of processing pursuant to ORS 656.262.

(5) The director may assess a civil penalty against an employer delinquent in reporting claims to its insurer in excess of ten percent of the employer's total claims during any quarter.

(6) An employer intentionally or repeatedly paying compensation in lieu of reporting to its insurer claims or accidents which may result in a compensable injury claim may be assessed a civil penalty by the director.

(7) The insurer shall process and file claims and reports required by the director in compliance with ORS chapter 656, WCD Administrative Rules, and WCD Bulletins. Such filings shall not be made by computer-printed forms, facsimile transmission (FAX), electronic data interchange (EDI), or other electronic means, unless specifically authorized by the director.

(8) When a claim is received and the insurer does not provide insurance coverage for the worker's employer on the date of injury, the insurer may check for other coverage or forward it to the director. The insurer shall do one or the other within three days of determining they did not provide coverage on the date of injury. If the insurer checks for coverage and coverage exists, the insurer shall send the claim to the correct insurer within the same three day period. If the insurer checks for coverage and coverage cannot be found, the insurer shall forward the claim to the director within the same three day period.

(9) The insurer or self-insured employer and third party administrator, if any, shall be identified on all insurer generated workers' compensation forms, including insurer name, third party administrator name (if applicable), address, and phone number of the location responsible for processing the claim.

(10) The insurer shall file all disabling claims with the director within 14 days of the insurer's initial decision to either accept or deny the claim. To meet this filing requirement, the Insurer's Report, Form 440-1502 (Form 1502) accompanied by the Form 801, or its electronic equivalent, is to be submitted to the director. However, when the Form 801 is not available within a time frame that would allow a timely filing, a Form 1502, accompanied by a signed Form 827 when available, will satisfy the initial reporting requirement. If the Form 801 is not submitted at the time of the initial filing of the claim, the Form 801 must be submitted within 30 days

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from the filing of the Form 1502. A Form 801 prepared by the insurer in place of obtaining the form from the employer/worker does not satisfy the filing requirement of the Form 801, unless the employer/worker cannot be located, or the form cannot be obtained from the employer/worker due to lack of cooperation, or the form is computer-printed based upon information obtained from the employer and worker. The insurer shall submit copies of all acceptance or denial notices not previously submitted to the director with the Form 1502. Form 1502 is used to report claim status and activity to the director.

(11) When submitting an initial compensability decision Form 1502, the insurer shall report:

- (a) The status of the claim;
- (b) Reason for filing;
- (c) Whether first payment of compensation was timely, if applicable;
- (d) Whether the claim was accepted or denied timely; and
- (e) Any Managed Care Organization (MCO) enrollment, and the date of enrollment, if applicable.

(12) The insurer shall file an additional Form 1502 with the director within 21 days of:

- (a) The date of any reopening of the claim;
- (b) Changes in the acceptance or disability status;
- (c) Any litigation order or insurer's decision that causes reopening of the claim or changes the acceptance or disability status;
- (d) MCO enrollment that occurs after the initial Form 1502 has been filed; or
- (e) The insurer's knowledge that a previous Form 1502 contained erroneous information.

(13) A nondisabling claim shall only be reported to the director if it is denied, in part or whole. It must be reported to the director within 14 days of the date of denial. A nondisabling claim which becomes disabling must be reported to the director within 21 days of the date of the status change.

(14) If the insurer voluntarily reopens a qualified claim pursuant to ORS 656.278, it shall file a Form 3501 with the director within 21 days of the date the insurer reopens the claim.

(15) The insurer shall report a new medical condition reopening on the Form 1502 if the claim cannot be closed within 21 days of the first to occur: acceptance of the new condition, or the insurer's knowledge that interim temporary disability compensation is due and payable.

(16) New condition claims that are ready to be closed within 21 days shall be reported on the "Insurer Notice of Closure Summary," Form 440-1503 (Form 1503) at the time the insurer closes the claim. The Form 1503 shall be accompanied by the "Modified Notice of Acceptance" and "Updated Notice of Acceptance at Closure" letter.

(17) If, after receiving a claim from a worker or from someone other than the worker on the worker's behalf, the insurer receives written communication from the worker stating the worker never intended to file a claim and wants the claim "withdrawn," the insurer shall submit a Form 1502 with a copy of the worker's communication to the director, if the claim had previously been reported.

(18) The director may issue a civil penalty against any insurer delinquent in reporting or in submitting Forms 801, 1502, 1503 or 1644 with a late or error ratio in excess of ten percent during any quarter. For the purposes of this section, a claim or form shall be deemed to have been reported or submitted timely according to the provisions of ORS 656.726(4).

(19) Insurers shall make an annual report to the director reporting attorney fees, attorney salaries, and all other costs of legal services paid pursuant to ORS chapter 656. The report shall be submitted on forms furnished by the director for that purpose. Reports for each calendar year shall be filed not later than March 1 of the following year.

(20) If an insurer elects to process and pay supplemental disability benefits, pursuant to ORS 656.210(5)(a), the insurer does not need to inform the director of their election. The insurer shall request reimbursement, pursuant to OAR 436-060-0500, by filing Form 3504 "Supplemental Disability Benefits Quarterly Reimbursement Request" with the director for any quarter during which they processed and paid supplemental disability benefits. If an insurer elects not to process and pay supplemental disability benefits, the insurer shall submit Form 3530, "Supplemental Disability Election Notification," to the director by February 1 of each year. The election remains in effect for all supplemental disability claims the insurer receives during that calendar year. The election is made by the insurer and applies to all third party administrators an insurer may use for processing claims.

(21) An insurer may change its election made under section (20):

- (a) Annually; and
- (b) Once after the division completes its first audit of supplemental disability payments made by the insurer.

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

Stat. Auth.: ORS 656.262, 656.264, 656.265(6), 656.704, 656.726(4), 656.745

Stats. Implemented: ORS 656.262(13), 656.264, 656.265, 656.704, 656.726(4) & sec. 3(5)(a), ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0100, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02, cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0019

### Determining and Paying the Three Day Waiting Period

(1) Pursuant to ORS 656.210 and 656.212, the three day waiting period is three consecutive calendar days beginning with the first day the worker loses time or wages from work as a result of the compensable injury, subject to the following:

(a) If the worker leaves work but returns and completes the work shift without loss of wages, that day shall not be considered the first day of the three day waiting period.

(b) If the worker leaves work but returns and completes the work shift and receives reduced wages, that day shall be considered the first day of the three day waiting period.

(c) If the worker does not complete the work shift, that day shall be considered the first day of the three day waiting period even if there is no loss of wages. For the purpose of this rule, an attending physician's or authorized nurse practitioner's authorization of temporary disability is not required to begin the waiting period; however, the waiting period would not be due and payable unless authorized.

(2) Pursuant to ORS 656.210(3), no disability payment is due the worker for temporary total disability suffered during the first three calendar days after the worker leaves work as a result of a compensable injury, unless the worker is totally disabled after the injury and the total disability continues for a period of 14 consecutive days or unless the worker is admitted as an inpatient to a hospital within 14 days of the first onset of total disability. For the purpose of this rule, admittance as an inpatient to a hospital can be any time following the date of the injury, but must be within 14 days of the first onset of total disability to waive the three day waiting period.

(3) If compensation is due and payable for the three day waiting period, the worker shall be paid for one-half day for the initial work day lost if the worker leaves the job during the first half of the shift and does not return to complete the shift. No compensation is due for the initial day of the waiting period if the worker leaves the job during the second half of the shift.

(4) If a worker is employed with varying days off or cyclic work schedules, the three day waiting period shall be determined using the work schedule of the week the worker begins losing time or wages as a result of the injury. If the worker is no longer employed with the employer at injury or does not have an established schedule when the worker begins losing time/wages, the three day waiting period and scheduled days off shall be based on the work schedule of the week the worker was injured.

Stat. Auth.: ORS 656.210, 656.212, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210 & 656.212

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0020

### Payment of Temporary Total Disability Compensation

(1) An employer may pay compensation under ORS 656.262(4) with the approval of the insurer pursuant to ORS 656.262(12). Making such payments does not constitute a waiver or transfer of the insurer's duty to determine the worker's entitlement to benefits, or responsibility for the claim to ensure timely benefit payments. The employer shall provide adequate payment documentation as the insurer may require to meet its responsibilities.

(2) Pursuant to ORS 656.005(30), no compensation is due and payable for any period of time in which the worker has withdrawn from the workforce. For the purpose of this rule, a worker who has withdrawn from the workforce, includes, but is not limited to:

(a) A worker who, prior to reopening under ORS 656.273 or 656.278, was not working and had not made reasonable efforts to obtain employment, unless such efforts would be futile as a result of the compensable injury.

(b) A worker who was a full time student for at least six months in the 52 weeks prior to injury elects to return to school full time, unless the worker can establish a prior customary pattern of working while attending school. For purposes of this subsection, "full time" is defined as twelve or more quarter hours or the equivalent.

(3) No compensation is due and payable for any period of time where the insurer has requested from the worker's attending physician or authorized nurse practitioner verification of the worker's inability to work and the

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physician or authorized nurse practitioner cannot verify it pursuant to ORS 656.262(4)(d), unless the worker has been unable to receive treatment for reasons beyond the worker's control. Before withholding compensation under this section, the insurer shall inquire of the worker whether a reason beyond the worker's control prevented the worker from receiving treatment. If no valid reason is found or the worker refuses to respond or cannot be located, the insurer shall document its file regarding those findings. The insurer shall provide the division a copy of the documentation within 20 days, if requested. If the attending physician or authorized nurse practitioner is unable to verify the worker's inability to work, the insurer may stop temporary disability payments and, in place of the scheduled payment, shall send the worker an explanation for stopping the temporary disability payments. When verification of temporary disability is received from the attending physician or authorized nurse practitioner, the insurer shall pay compensation within 14 days of receiving the verification of any authorized period of time loss, unless otherwise denied.

(4) Authorization from the attending physician or authorized nurse practitioner may be oral or written. The insurer at claim closure, or the division at reconsideration of the claim closure, may infer authorization from such medical records as a surgery report or hospitalization record that reasonably reflects an inability to work because of the compensable claim, or from a medical report or chart note generated at the time of, and indicating, the worker's inability to work. No compensation is due and payable after the worker's attending physician or authorized nurse practitioner ceases to authorize temporary disability or for any period of time not authorized by the attending physician or authorized nurse practitioner pursuant to ORS 656.262(4)(g).

(5) An insurer may suspend temporary disability benefits without authorization from the division pursuant to ORS 656.262(4)(e) when all of the following circumstances apply:

(a) The worker has missed a regularly scheduled appointment with the attending physician or authorized nurse practitioner;

(b) The insurer has sent a certified letter to the worker and a letter to the worker's attorney, at least ten days in advance of a rescheduled appointment, stating that the appointment has been rescheduled with the worker's attending physician or authorized nurse practitioner; stating the time and date of the appointment; and giving the following notice, in prominent or bold face type:

**"You must attend this appointment. If there is any reason you cannot attend, you must tell us before the date of the appointment. If you do not attend, your temporary disability benefits will be suspended without further notice, as provided by ORS 656.262(4)(e)."**

(c) The insurer verifies that the worker has missed the rescheduled appointment;

(d) The insurer sends a letter to the worker, the worker's attorney and the division giving the date of the regularly scheduled appointment that was missed, the date of the rescheduled appointment that was missed, the date of the letter being the day benefits are suspended, and the following notice, in prominent or bold face type:

**"Since you missed a regular appointment with your doctor, we arranged a rescheduled appointment. We notified you of the rescheduled appointment by certified mail and warned you that your benefits would be suspended if you failed to attend. Since you failed to attend the rescheduled appointment, your temporary disability benefits have been suspended. In order to resume your benefits, you must attend a rescheduled appointment with your doctor who must verify your continued inability to work."**

(6) If temporary disability benefits end because the insurer or employer speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result when no return to work was previously authorized and the worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work, the insurer shall document the facts, communicate the release to the worker by mail within 7 days and advise the worker of their reinstatement rights under ORS chapter 659A. The communication to the worker of the negotiated return to work release may be contained in an offer of modified employment.

(7) When concurrent temporary disability is due the worker as a result of two or more accepted claims, the insurers may petition the division to make a pro rata distribution of compensation due under ORS 656.210 and 656.212. The insurer shall provide a copy of the request to the worker, and the worker's attorney if represented. The division's pro rata order shall not apply to any periods of interim compensation payable pursuant to ORS 656.262 and also does not apply to benefits pursuant to ORS 656.214 and 656.245. Claims subject to the pro rata order approved by the division shall be closed pursuant to OAR 436-030 and ORS 656.268, when appropriate. The insurers shall not unilaterally prorate temporary disability without the approval of the division, except as provided in section (8) of this rule. The division may order one of the insurers to pay the entire amount of temporary disability due or make a pro rata distribution between two or more of

the insurers. The pro rata distribution ordered by the division shall be effective only for benefits due as of the date all claims involved are in an accepted status. The order pro rating compensation will not apply to periods where any claim involved is in a deferred status.

(8) When concurrent temporary disability is due the worker as a result of two or more accepted claims involving the same worker, the same employer and the same insurer, the insurer may make a pro rata distribution of compensation due under ORS 656.210 and 656.212 without an order by the division. The worker shall receive compensation at the highest temporary disability rate of the claims involved.

(9) If a closure pursuant to ORS 656.268 has been found to be premature and there was an open ended authorization of temporary disability at the time of closure, the insurer shall begin payments pursuant to ORS 656.262, including retroactive periods, and pay temporary disability for as long as authorization exists or until there are other lawful bases to terminate temporary disability.

(10) If a denied claim has been determined to be compensable, the insurer shall begin temporary disability payments pursuant to ORS 656.262, including retroactive periods, if the time loss authorization was open ended at the time of denial, and there are no other lawful bases to terminate temporary disability.

Stat. Auth.: ORS 656.210(2), 656.245, 656.262, 656.307(1)(c), 656.704, 656.726(4)  
Stats. Implemented: ORS 656.210, ORS 656.212, ORS 656.262, 656.307, ORS 656.704, 656.726(4) & sec. 1(30), ch. 865, OL 2001  
Hist.: WCB 12-1970, f. 9-21-70, ef. 10-25-70; 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0212, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; Former sec. (6), (7), (8), (9) & (10) Renumbered to 436-060-0025(1) - (10); WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 14-1996(Temp), f. & cert. ef. 5-31-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0030

### Payment of Temporary Partial Disability Compensation

(1) The amount of temporary partial disability compensation due a worker shall be determined by:

(a) Subtracting post-injury wage earnings by the worker from any kind of work from

(b) The wage used to compute the rate of compensation at the time of injury; then

(c) Dividing the difference by the wage earnings used in subsection (b) to arrive at the percentage of loss of wages; then

(d) Multiplying the current temporary total disability compensation rate by the percentage of loss of wages in subsection (c).

(2) Notwithstanding section (1), for workers whose rate of compensation is based on an assumed wage, "post-injury wage earnings" will be that proportion of the assumed wage which the hours worked during the period of temporary partial disability represent as a percentage of the hours worked prior to the injury.

(3) An insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) from the date an injured worker begins wage earning employment, prior to claim closure, unless the worker refuses modified work pursuant to ORS 656.268(4)(c)(A) through (F). If the worker is with a new employer and upon request of the insurer to provide wage information, it shall be the worker's responsibility to provide documented evidence of the amount of any wages being earned. Failure to do so shall be cause for the insurer to assume that post-injury wages are the same as or higher than the worker's wages at time of injury.

(4) For the purpose of section (5) of this rule:

(a) "Commute" means the lesser of the distance traveled from the worker's residence at the time of injury to the work site or the worker's residence at the time of the modified work offer to the work site;

(b) "Where the worker was injured" means the location where the worker customarily reported or worked at the time of injury; and

(c) "Temporary employees" has the same meaning as defined in OAR 436-050-0420.

(5) Pursuant to ORS 656.325(5)(a), an insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when an injured worker fails to begin wage earning employment, under the following conditions:

(a) The employer or insurer:

(A) Notifies the attending physician or authorized nurse practitioner of the physical tasks to be performed by the injured worker;

(B) Notifies the attending physician or authorized nurse practitioner of the location of the modified work offer; and



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(C) Asks the attending physician or authorized nurse practitioner if the worker can, as a result of the compensable injury, physically commute to and perform the job.

(b) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities and the commute is within the physical capacity of the worker; and

(c) The employer or insurer has confirmed the offer of employment in writing to the worker stating:

(A) The beginning time, date and place;

(B) The duration of the job, if known;

(C) The wages;

(D) An accurate description of the physical requirements of the job;

(E) That the attending physician or authorized nurse practitioner has found the job to be within the worker's capabilities and the commute within the worker's physical capacity;

(F) The worker's right to refuse the offer of employment without termination of temporary total disability if any of the following conditions apply:

(i) The offer is at a site more than 50 miles from where the worker was injured, unless the work site is less than 50 miles from the worker's residence, or the intent of the employer and worker at the time of hire or as established by the employment pattern prior to the injury was that the job involved multiple or mobile work sites and the worker could be assigned to any such site. Examples of such sites include, but are not limited to logging, trucking, construction workers, and temporary employees;

(ii) The offer is not with the employer at injury;

(iii) The offer is not at a work site of the employer at injury;

(iv) The offer is not consistent with existing written shift change policy or common practice of the employer at injury or aggravation; or

(v) The offer is not consistent with an existing shift change provision of an applicable union contract; and

(G) The following notice, in prominent or bold face type:

"If you refuse this offer of work for any of the reasons listed in this notice, you should write to the insurer or employer and tell them your reason(s) for refusing the job. If the insurer reduces or stops your temporary total disability and you disagree with that action, you have the right to request a hearing. To request a hearing you must send a letter objecting to the insurer's action(s) to the Worker's Compensation Board, 2601 25th Street SE, Suite 150, Salem, Oregon 97302-1282."

(6) Pursuant to ORS 656.325(5)(b), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job that would have been offered to the worker if the worker had not been terminated from employment for violation of work rules or other disciplinary reasons, under the following conditions:

(a) The employer has a written policy of offering modified work to injured workers;

(b) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(c) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks to be performed by the injured worker; and

(d) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(7) Pursuant to ORS 656.325(5)(c), the insurer shall cease paying temporary total disability compensation and start paying temporary partial disability compensation under section (1) as if the worker had begun the employment when the attending physician or authorized nurse practitioner approves employment in a modified job whether or not such a job is available if the worker is a person present in the United States in violation of federal immigration laws, under the following conditions:

(a) The insurer has written documentation of the hours available to work and the wages that would have been paid if the worker had returned to work in order to determine the amount of temporary partial disability compensation under section (1);

(b) The attending physician or authorized nurse practitioner has been notified by the employer or insurer of the physical tasks that would have been performed by the injured worker; and

(c) The attending physician or authorized nurse practitioner agrees the employment appears to be within the worker's capabilities.

(8) Temporary partial disability shall be paid at the full temporary total disability rate as of the date a modified job no longer exists or the job offer is withdrawn by the employer. This includes, but is not limited to, termination of temporary employment, layoff or plant closure. A worker who has been released to and doing modified work at the same wage as at

the time of injury from the onset of the claim shall be included in this section. For the purpose of this rule, when a worker who has been doing modified work quits the job or the employer terminates the worker for violation of work rules or other disciplinary reasons it is not a withdrawal of a job offer by the employer, but shall be considered the same as the worker refusing wage earning employment pursuant to ORS 656.325(5)(a). This section does not apply to those situations described in sections (5), (6), and (7) of this rule.

(9) When the worker's disability is partial only and temporary in character, temporary partial disability compensation pursuant to ORS 656.212 shall continue until:

(a) The attending physician or authorized nurse practitioner verifies that the worker can no longer perform the modified job and is again temporarily totally disabled;

(b) The compensation is terminated by order of the division or by claim closure by the insurer pursuant to ORS 656.268; or

(c) The compensation is lawfully suspended, withheld or terminated for any other reason.

(10) In determining failure on the part of the worker in section (5) and for purposes of subsection (1)(a), "post-injury wages" are the wages the worker could have earned by accepting a job offer, or actual wages earned, whichever is greater, and any unemployment, sick or vacation leave payments received.

(11) If temporary disability benefits end because the insurer or employer speaks by telephone with the attending physician or authorized nurse practitioner, or the attending physician's or authorized nurse practitioner's office, and negotiates a verbal release of the worker to return to any type of work as a result when no return to work was previously authorized and the worker has not already been informed of the release by the attending physician or authorized nurse practitioner or returned to work, the insurer shall document the facts, communicate the release to the worker by mail within 7 days and advise the worker of their reinstatement rights under ORS chapter 659A. The communication to the worker of the negotiated return to work release may be contained in an offer of modified employment.

(12) The insurer shall provide the injured worker and the worker's attorney a written notice of the reasons for changes in the compensation rate, and the method of computation, whenever a change is made.

Stat. Auth.: ORS 656.212, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.212, 656.325(5), 656.704, 656.726(2) & sec. 12(4)(c), ch. 865, OL 2001

Hist.: WCD 6-1978(Admin), f. & ef. 4-27-78; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0222, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 1-1994(Temp), f. & cert. ef. 3-1-94; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 10-1995(Temp), f. & cert. ef. 8-18-95; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0035

### Supplemental Disability for Workers with Multiple Jobs at the Time of Injury

(1) For the purpose of this rule:

(a) "Assigned processing agent" is the company or business whom the director has selected and authorized to process and pay supplemental disability benefits on behalf of the director, when the insurer has elected not to process and pay these benefits.

(b) "Primary job" means the job at which the injury occurred.

(c) "Secondary job" means any other job(s) held by the worker in Oregon subject employment at the time of injury.

(d) "Temporary disability" means wage loss replacement for the primary job.

(e) "Supplemental disability" means wage loss replacement for the secondary job(s) that exceeds the temporary disability, up to, but not exceeding, the maximum established by ORS 656.210.

(f) "Verifiable documentation" means check stubs or payroll records which include:

(A) Identification of the Oregon subject employer(s) and the time period of the date of injury to establish the worker held the secondary job, in addition to the primary job, at the time of injury; and

(B) Adequate information to calculate the average weekly wage in accordance with OAR 436-060-0025.

(g) "Insurer" includes third party administrator.

(2) The insurer shall establish the temporary disability rate by multiplying the weekly wages, determined pursuant to OAR 436-060-0025, from the primary employer by 66 2/3% (.6667). If the results meet or exceed the maximum temporary disability rate, the worker is not eligible for supplemental disability benefits.

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(3) Within five business days of receiving a claim on which the temporary disability rate does not meet or exceed the maximum rate, the insurer shall send a worker who identifies employment in addition to the primary job on the Form 801 a notice informing the worker of the date the insurer received the claim and the final date by which the insurer or the assigned processing agent must receive verifiable documentation to determine the worker's eligibility for supplemental disability. If the insurer has elected not to process and pay these benefits, the insurer shall copy the assigned processing agent with the notice to the worker. The notice shall contain the name, address, and telephone number of the assigned processing agent, and shall also clearly advise the worker that the verifiable documentation must be sent to the assigned processing agent.

(4) Within 14 days of receiving the worker's verifiable documentation, the insurer or the assigned processing agent shall determine the worker's eligibility for supplemental disability and shall communicate the decision to the worker and the worker's representative, if any, in writing. The written communication shall advise the worker why he/she is not eligible when that is the decision and how to appeal the decision, if the worker disagrees with the decision.

(5) A worker is eligible if:

(a) The worker was employed at the secondary job by an Oregon subject employer at the time of the injury,

(b) The worker provides verifiable documentation to the insurer or the assigned processing agent within 30 days of the insurer's receipt of the initial claim, and

(c) The worker's temporary disability rate from wages at the primary job does not meet or exceed the maximum rate under section (2) of this rule.

(6) The insurer or the assigned processing agent shall calculate supplemental disability for an eligible worker by adding all earnings the worker received from all subject employment, pursuant to ORS 656.210(2)(a)(B). In no case shall an eligible worker receive less compensation than would be paid if based solely on wages from the primary employer.

(7) If the temporary disability rate from the primary employer does not meet or exceed the maximum rate, the insurer or the assigned processing agent shall combine the weekly wages, determined pursuant to OAR 436-060-0025, for each employer and multiply by 66 2/3% (.6667) to establish the combined disability rate up to the maximum rate. This is the base amount on which the worker's combined benefits will be calculated.

(8) If the worker returns to modified work:

(a) At the primary job only, the insurer shall calculate the amount due from the primary job based only on the primary wages at injury and the primary post injury wages.

(b) At the secondary job only, the insurer or the assigned processing agent shall calculate the amount due from the secondary job based only on the secondary wages at injury and the secondary post injury wages.

(c) At both the primary and secondary job, the insurer shall calculate temporary partial disability based only on the primary wages at injury and the primary post injury wages; the insurer or the assigned processing agent shall calculate partial supplemental disability based only on the secondary wages at injury and the secondary post injury wages.

(9) If the worker receives post injury wages from the secondary job equal to or greater than the secondary wages at the time of injury, no supplemental disability is due.

(10) If the worker returns to a job not held at the time of the injury, the insurer or the assigned processing agent shall process supplemental disability under the same terms, conditions and limitations as OAR 436-060-0030.

(11) Except as otherwise provided in sections (2), (7), (8), and (9) of this rule, supplemental disability shall be due and processed under the same provisions, conditions, and limitations as would be applicable to temporary disability for the job at injury. Supplemental disability may be due on a non-disabling claim even if temporary disability is not due from the primary job. The non-disabling claim will not change to disabling status due to payment of supplemental disability. When supplemental disability payments cease on a non-disabling claim, the insurer or the assigned processing agent shall send the worker written notice advising the worker that their supplemental disability payments have stopped and of the worker's right to appeal that action to the Workers' Compensation Board within 60 days of the notice, if the worker disagrees.

(12) If the insurer has elected to process and pay supplemental disability pursuant to ORS 656.210(5)(a), the insurer shall determine the worker's on-going entitlement to supplemental disability and shall pay the worker supplemental disability simultaneously with any temporary disability due. Reimbursement for supplemental disability paid will be made pursuant to OAR 436-060-0500.

(13) If the insurer has elected not to process and pay supplemental disability, the assigned processing agent shall determine the worker's on-going entitlement to supplemental disability and shall pay the worker supplemental disability due once each 14 days.

(14) A worker who is eligible for supplemental disability under section (5) of this rule has an on-going responsibility to provide information and documentation to the insurer or the assigned processing agent, even if temporary disability is not due from the primary job.

(15) If the insurer has elected not to process and/or pay supplemental disability, the insurer and the assigned processing agent shall communicate and retain documentation of shared information, as necessary, to coordinate benefits due.

(16) Supplemental disability applies to occupational disease claims the same as injury claims. Supplemental disability benefits for an occupational disease shall be based on the worker's combined primary and secondary wages at the time there is medical verification the worker is unable to work because of the disability.

(17) When an insurer elects to pay supplemental disability pursuant to ORS 656.210(5)(a) and OAR 436-060-0010(20) and receive reimbursement pursuant to OAR 436-060-0500, the insurer shall maintain a record of supplemental disability paid to the worker, separate from temporary disability paid as a result of the job at injury.

(18) If a worker disagrees with the insurer's or the assigned processing agent's decision about the worker's eligibility for supplemental disability or the rate of supplemental disability, the worker may request a hearing before the Hearings Division of the Workers' Compensation Board. If the worker chooses to request a hearing on the insurer's decision concerning the worker's eligibility for supplemental disability, the worker must submit an appeal of the insurer's or the assigned processing agent's decision within 60 days of the notice in section (4) of this rule. Disputes that arise about the rate of supplemental disability may be resolved pursuant to OAR 436-060-0025(5) and may be submitted at any time. However, the insurer for the primary job is not required to contact the secondary job employer. The worker is responsible to provide any necessary documentation. By requesting resolution of the dispute under OAR 436-060-0025(5), the worker authorizes the Workers' Compensation Division to contact the secondary job employer to verify information provided by the worker to resolve the dispute.

Stat. Auth.: ORS 656.210, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.210, 656.325(5), 656.704, 656.726(4) & sec. 3(2)(a), ch. 865, OL 2001

Hist.: WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 6-2002(Temp), f. 4-22-02, cert. ef. 5-10-02 thru 11-5-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 9-2003(Temp), f. 8-29-03, cert. ef. 9-2-03 thru 2-28-04; WCD 11-2003(Temp), f. & cert. ef. 9-22-03 thru 2-28-03; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

### 436-060-0095

#### Medical Examinations; Suspension of Compensation; and Insurer Medical Examination Notice

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker shall have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension when the worker refuses or fails to submit to, or otherwise obstructs, a medical examination reasonably requested by the insurer or the director pursuant to ORS 656.325(1). Compensation will be suspended until the examination has been completed. The conditions of the examination shall be consistent with conditions described in OAR 436-010-0265. Any action of a friend or family member which obstructs the examination shall be considered an obstruction of the examination by the worker for the purpose of this rule. The division may determine whether special circumstances exist that would not warrant suspension of compensation for failure to attend or obstruction of the examination.

(2) The division will consider requests to authorize suspension of benefits on accepted claims, deferred claims and on denied claims in which the worker has appealed the insurer's denial.

(3) A worker shall submit to medical examinations reasonably requested by the insurer or the director. No more than three separate medical examinations may be requested by the insurer for each open period of a claim, except as provided under OAR 436-010. Examinations after the worker's claim is closed are subject to limitations in ORS 656.268(7).

(4) The insurer may contract with a third party to schedule insurer requested medical examinations. If the third party notifies the worker of a scheduled examination on behalf of the insurer, the appointment notice is required to be sent on the insurer's stationery and must conform with the requirements of OAR 436-060-0095(5).

(5) If an examination is scheduled by the insurer or by another party at the request of the insurer, the worker and the worker's attorney shall be simultaneously notified in writing of the scheduled medical examination

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pursuant to ORS 656.331. The notice shall be sent at least 10 days prior to the examination. The notice sent for each appointment, including those which have been rescheduled, shall contain the following:

- (a) The name of the examiner or facility;
- (b) A statement of the specific purpose for the examination and, identification of the medical specialties of the examiners;
- (c) The date, time and place of the examination;
- (d) The first and last name of the attending physician or authorized nurse practitioner and verification that the attending physician or authorized nurse practitioner was informed of the examination by, at least, a copy of the appointment notice, or a statement that there is no attending physician or authorized nurse practitioner, whichever is appropriate;
- (e) If applicable, confirmation that the director has approved the examination;

(f) That the reasonable cost of public transportation or use of a private vehicle will be reimbursed and that, when necessary, reasonable cost of child care, meals, lodging and other related services will be reimbursed. A request for reimbursement must be accompanied by a sales slip, receipt or other evidence necessary to support the request. Should an advance of these costs be necessary for attendance, a request for advancement shall be made in sufficient time to ensure a timely appearance;

(g) That an amount will be paid equivalent to net lost wages for the period during which it is necessary to be absent from work to attend the medical examination if benefits are not received under ORS 656.210(4) during the absence; and

(h) The following notice in prominent or bold face type:  
"You must attend this examination. If there is any reason you cannot attend, you must tell the insurer as soon as possible before the date of the examination. If you fail to attend or fail to cooperate, or do not have a good reason for not attending, your compensation benefits may be suspended in accordance with the workers' compensation law and rules, ORS 656.325 and OAR 436-060."

(6) Child care costs reimbursed at the rate prescribed by the State of Oregon Department of Human Services, comply with this rule.

(7) The request for suspension shall be sent to the division. A copy of the request, including all attachments, shall be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

(a) That the insurer requests suspension of benefits pursuant to ORS 656.325 and OAR 436-060-0095;

- (b) The claim status and any accepted or newly claimed conditions;
- (c) What specific actions of the worker prompted the request;
- (d) The dates of any prior insurer medical examinations the worker has attended in the current open period of the claim and the names of the examining physicians or facilities, or a statement that there have been no prior examinations, whichever is appropriate;

(e) A copy of any approvals given by the director, or a statement that no approval was necessary, whichever is appropriate;

(f) Any reasons given by the worker for failing to comply, whether or not the insurer considers the reasons invalid, or a statement that the worker has not given any reasons, whichever is appropriate;

(g) The date and with whom failure to comply was verified. Any written verification of the worker's refusal to attend the exam received by the insurer from the worker or the worker's representative will be sufficient documentation with which to request suspension;

(h) A copy of the letter required in section (5) and a copy of any written verification received under subsection (7)(g);

(i) Any other information which supports the request; and

(j) The following notice in prominent or bold face type:

"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits. If your claim has not yet been accepted, your future benefits, if any, will be jeopardized."

(8) If the division consents to suspend compensation, the suspension shall be effective from the date the worker fails to attend an examination or such other date the division deems appropriate until the date the worker undergoes an examination scheduled by the insurer or director. Any delay in requesting consent for suspension may result in authorization being denied or the date of authorization being modified.

(9) The insurer shall assist the worker in meeting requirements necessary for the resumption of compensation payments. When the worker has undergone the examination, the insurer shall verify the worker's participation and reinstate compensation effective the date of the worker's compliance.

(10) If the worker makes no effort to reinstate compensation in an accepted claim within 60 days of the date of the consent to suspend order, the insurer shall close the claim pursuant to OAR 436-030-0034(7).

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. Failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; \*WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; Renumbered from 436-060-0085(1),(2),(4); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0105

### Suspension of Compensation for Insanitary or Injurious Practices, Refusal of Treatment or Failure to Participate in Rehabilitation; Reduction of Benefits

(1) The division will suspend compensation by order under conditions set forth in this rule. The worker shall have the opportunity to dispute the suspension of compensation prior to issuance of the order. The worker is not entitled to compensation during or for the period of suspension pursuant to ORS 656.325(2) when the worker commits insanitary or injurious acts which imperil or retard recovery; refuses to submit to medical or surgical treatment reasonably required to promote recovery; or fails or refuses to participate in a physical rehabilitation program.

(2) The insurer shall demand in writing the worker either immediately cease actions which imperil or retard recovery or immediately begin to change the inappropriate behavior and participate in activities needed to help the worker recover from the injury. Such actions include insanitary or injurious practices, refusing essential medical or surgical treatment, or failing to participate in a physical rehabilitation program. Each time the insurer sends such a notice to the worker, the written demand shall contain the following information, and a copy shall be sent simultaneously to the worker's attorney:

(a) A description of the unacceptable actions;

(b) Why such conduct is inappropriate, including the fact that the conduct is harmful and/or retards the worker's recovery, as appropriate;

(c) The date by which the inappropriate actions must stop, or the date by which compliance is expected, including what the worker must specifically do to comply; and,

(d) The following notice of the consequences should the worker fail to correct the problem, in prominent or bold face type:

"If you continue to do insanitary or injurious acts beyond the date in this letter, or fail to consent to the medical or surgical treatment which is needed to help you recover from your injury, or fail to participate in physical rehabilitation needed to help you recover as much as possible from your injury, then we will request the suspension of your workers' compensation benefits. In addition, you may also have any permanent disability award reduced in accordance with ORS 656.325 and OAR 436-060."

(3) For the purposes of this rule, failure or refusal to accept medical treatment means the worker fails or refuses to remain under a physician's or authorized nurse practitioner's care or abide by a treatment regimen. A treatment regimen includes, but is not limited to a prescribed diet, exercise program, medication or other activity prescribed by the physician or authorized nurse practitioner which is designed to help the worker reach maximum recovery and become medically stationary.

(4) The insurer shall verify whether the worker complied with the request for cooperation on the date specified in section (2)(c). If the worker initially agrees to comply, or complies and then refuses or fails to continue doing so, the insurer is not required to send further notice before requesting suspension of compensation.

(5) The request for suspension shall be sent to the division. A copy of the request shall be sent simultaneously to the worker and the worker's attorney by registered or certified mail or by personal service as for a summons. The request shall include the following information:

(a) That the request for suspension is made in accordance with ORS 656.325 and OAR 436-060-0105;

(b) A description of the actions of the worker which prompted the request, including whether such actions continue;

(c) Any reasons offered by the worker to explain the behavior, or a statement that the worker has not provided any reasons, whichever is appropriate;

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(d) How, when and with whom the worker's failure or refusal was verified;

(e) A copy of the letter required in section (2);

(f) Any other relevant information including, but not limited to; chart notes, surgical or physical therapy recommendations/prescriptions, and all physician or authorized nurse practitioner recommendations; and

(g) The following notice in prominent or bold face type:

**"Notice to worker: If you think this request to suspend your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the division authorizes suspension of your compensation and you do not correct your unacceptable actions or show us a good reason why they should be considered acceptable, we will close your claim."**

(6) Any delay in obtaining confirmation or in requesting consent for suspension of compensation may result in authorization being denied or the date of authorization being modified by the date of actual confirmation or the date the request is received by the division.

(7) If the division concurs with the request, it shall issue an order suspending compensation from a date established under section (5) until the worker complies with the insurer's request for cooperation. Where the worker is suspended for a pattern of noncooperation, the division may require the worker to demonstrate cooperation before restoring compensation.

(8) The insurer shall monitor the claim to determine if and when the worker complies with the insurer's requests. When cooperation resumes, payment of compensation shall resume effective the date cooperation was resumed.

(9) The insurer shall make all reasonable efforts to assist the worker to restore benefits when the worker demonstrates the willingness to make such efforts.

(10) If the worker makes no effort to reinstate benefits within 60 days of the date of the consent order, the insurer shall close the claim pursuant to OAR 436-030-0034.

(11) If the division denies the insurer's request for suspension of compensation, it shall promptly notify the insurer of the reason for denial. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the insurer's request.

(12) The division may also take the following actions in regard to the suspension of compensation:

(a) Modify or set aside the order of consent before or after filing of a request for hearing.

(b) Order payment of compensation previously suspended where the division finds the suspension to have been made in error.

(c) Reevaluate the necessity of continuing a suspension.

(13) An order becomes final unless, within 60 days after the date of mailing of the order, a party files a request for hearing on the order with the Hearings Division of the Workers' Compensation Board.

(14) The director may reduce any benefits awarded the worker under ORS 656.268 when the worker has unreasonably failed to follow medical advice, or failed to participate in a physical rehabilitation or vocational assistance program prescribed for the worker under ORS Chapter 656 and OAR chapter 436. Such benefits shall be reduced by the amount of the increased disability reasonably attributable to the worker's failure to cooperate. When an insurer submits a request to reduce benefits under this section, the insurer shall:

(a) Specify the basis for the request;

(b) Include all supporting documentation;

(c) Send a copy of the request, including the supporting documentation, to the worker and the worker's representative, if any, by certified mail; and

(d) Include the following notice in prominent or bold face type:

**"Notice to worker: If you think this request to reduce your compensation is wrong, you should immediately write to the Workers' Compensation Division, 350 Winter Street NE, Salem, Oregon 97301-3879. Your letter must be mailed within 10 days of the date of this request. If the division grants this request, you may lose all or part of your benefits."**

(15) The division shall promptly make a decision on a request to reduce benefits and notify the parties of the decision. The insurer's failure to comply with one or more of the requirements addressed in this rule may be grounds for denial of the request to reduce benefits.

Stat. Auth.: ORS 656.325, 656.704 & 656.726(4)

Stats. Implemented: ORS 656.325, 656.704 & 656.726(4)

Hist.: WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; Renumbered from 436-060-0085(1),(2),(4),(5); WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2000, f. 12-22-00, cert. ef. 1-1-01; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0140

### Acceptance or Denial of a Claim

(1) The insurer is required to conduct a "reasonable" investigation based on all available information in ascertaining whether to deny a claim. A reasonable investigation is whatever steps a reasonably prudent person with knowledge of the legal standards for determining compensability would take in a good faith effort to ascertain the facts underlying a claim, giving due consideration to the cost of the investigation and the likely value of the claim.

(2) In determining whether an investigation is reasonable, the director will only look at information contained in the insurer's claim record at the time of denial. The insurer may not rely on any fact not documented in the claim record at the time of denial to establish that an investigation was reasonable.

(3) The insurer shall give the claimant written notice of acceptance or denial of a claim within:

(a) 90 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of written notice of an aggravation claim or written notice of a new medical condition claim for claims with a date of injury prior to January 1, 2002; or

(b) 60 days after the employer's notice or knowledge of an initial claim or the insurer's receipt of written notice of an aggravation claim or written notice of a new medical or omitted condition claim for claims with a date of injury on or after January 1, 2002.

(4) The director may assess a penalty against any insurer delinquent in accepting or denying a claim beyond the days required in (3) in excess of 5 percent of their total volume of reported disabling claims during any quarter.

(5) A notice of acceptance shall comply with ORS 656.262(6)(b) and the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438. It shall include a current mailing date, be addressed to the worker, and specify to the worker:

(a) What conditions are compensable;

(b) Whether the claim is disabling or nondisabling;

(c) Of the Expedited Claim Service, of hearing and aggravation rights concerning nondisabling injuries including the right to object to a decision that the injury is nondisabling by requesting the insurer review the status;

(d) Of the employment reinstatement rights and responsibilities under ORS chapter 659A;

(e) Of assistance available to employers from the Reemployment Assistance Program under ORS 656.622;

(f) That expenses personally paid for claim related expenses up to a maximum established rate shall be reimbursed by the insurer when requested in writing and accompanied by sales slips, receipts, or other reasonable written support, for meals, lodging, transportation, prescriptions and other related expenses;

(g) That if the worker believes a condition has been incorrectly omitted from the notice of acceptance, or the notice is otherwise deficient, the worker must first communicate the objection to the insurer in writing specifying either that the worker believes the condition has been incorrectly omitted or why the worker feels the notice is otherwise deficient; and

(h) That if the worker wants the insurer to accept a claim for a new medical condition, the worker must put the request in writing, clearly identify the condition as a new medical condition, and request formal written acceptance of the condition.

(6) The first acceptance issued on the claim shall contain the title "Initial Notice of Acceptance" near the top of the notice. Any notice of acceptance shall contain all accepted conditions at the time of the notice. Additionally, when reopening a claim, the notice of acceptance shall specify the condition(s) for which the claim is being reopened. ORS 656.262(6)(b)(F) requires the insurer to modify acceptance from time to time as medical or other information changes. An insurer shall issue a "Modified Notice of Acceptance" (MNOA) when they:

(A) Accept a new or omitted condition: (A) on a nondisabling claim, (B) while a disabling claim is open or (C) after claim closure;

(b) Accept an aggravation claim;

(c) Change the disabling status of the claim; or

(d) Amend a notice of acceptance.

(7) Notwithstanding OAR 436-060-0140(6)(d), to correct an omission or error in an "Updated Notice of Acceptance at Closure"(UNOA), pursuant to OAR 436-030-0015(1)(e), the insurer shall add the word "Corrected" to the UNOA.

(8) If a worker requests reclassification of the claim pursuant to ORS 656.277 and the insurer refuses to reclassify the claim, the insurer shall issue a "Refusal to Reclassify" notice to the worker and send a copy to the worker's legal representative, if any. The notice shall include the following statement in prominent or bold face type:

**If you disagree with this decision, you must appeal it within sixty (60) days of the**

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mailing of this notice or you will lose your right to appeal. You can appeal this decision by contacting the Workers' Compensation Division, Appellate Review Unit, at 350 Winter Street NE, Salem, Oregon 97301-3879 or at 503-947-7816.

(9) A notice of denial shall comply with the rules of Practice and Procedure for Contested Cases under the Workers' Compensation Law, OAR chapter 438, and shall:

(a) Specify the factual and legal reasons for the denial, including the worker's right to request a Worker Requested Medical Examination and a specific statement indicating if the denial was based in whole or part on an insurer medical examination, pursuant to ORS 656.325, with which the attending physician or authorized nurse practitioner did not concur; and

(b) Inform the worker of the Expedited Claim Service and of the worker's right to a hearing under ORS 656.283.

(c) If the denial is pursuant to ORS 656.262(15), it must inform the worker that for an appeal to be considered, the worker must request an expedited hearing pursuant to ORS 656.291.

(10) The insurer shall send notice of the denial to each provider of medical services and health insurance when compensability of any portion of a claim for medical services is denied. When compensability of the claim has been finally determined or when disposition of the claim has been made, the insurer shall notify each affected service provider of the results of the compensability determination or disposition. The notification shall include the results of the proceedings under ORS 656.236 or 656.289(4) and the amount of any settlement.

(11) The insurer shall pay compensation due pursuant to ORS 656.262 and 656.273 until the claim is denied, except where there is an issue concerning the timely filing of a notice of accident as provided in ORS 656.265(4). The employer may elect to pay compensation under this section in lieu of the insurer doing so. The insurer shall report to the division payments of compensation made by the employer as if the insurer had made the payment.

(12) Compensation payable to a worker or the worker's beneficiaries while a claim is pending acceptance or denial does not include the costs of medical benefits or burial.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.262(6), 656.704, 656.726(4) & sec. 7(6)(a) & 1(1)(b), ch. 865, OL 2001

Hist.: WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0305, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 12-1992, f. 6-12-92, cert. ef. 7-1-92; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 17-1996(Temp), f. 8-5-96, cert. ef. 8-12-96; WCD 21-1996, f. 10-18-96, cert. ef. 11-27-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

## 436-060-0150

### Timely Payment of Compensation

(1) Benefits are deemed paid when addressed to the last known address of the worker or beneficiary and deposited in the U.S. Mail or deposited in the worker's or beneficiary's account by approved electronic equivalent. Payments falling due on a weekend or legal holiday pursuant to ORS 187.010 and 187.020 may be paid on the last working day prior to or the first working day following the weekend or legal holiday. Subsequent payments may revert back to the payment schedule prior to the weekend or legal holiday.

(2) For the purpose of this rule, legal holidays in the State of Oregon are:

- (a) Each Sunday;
- (b) New Year's Day on January 1;
- (c) Martin Luther King, Jr.'s Birthday on the third Monday in January;
- (d) Presidents Day, for the purpose of commemorating Presidents Washington and Lincoln, on the third Monday in February;
- (e) Memorial Day on the last Monday in May;
- (f) Independence Day on July 4;
- (g) Labor Day on the first Monday in September;
- (h) Veterans Day on November 11;
- (i) Thanksgiving Day on the fourth Thursday in November; and
- (j) Christmas Day on December 25.

(k) Each time a holiday, other than Sunday, falls on Sunday, the succeeding Monday shall be a legal holiday. Each time a holiday falls on Saturday, the preceding Friday shall be a legal holiday.

(l) Additional legal holidays shall include every day appointed by the Governor as a legal holiday and every day appointed by the President of the United States as a day of mourning, rejoicing or other special observance only when the Governor also appoints that day as a holiday.

(3) First payment of time loss must be timely. An insurer's performance is in compliance when 80% of payments are timely. The director may assess a penalty against an insurer falling below these norms during any quarter.

(4) Compensation withheld pursuant to ORS 656.268(12) and (13), and 656.596(2), shall not be deemed untimely provided the insurer notifies the worker in writing why benefits are being withheld and the amount that must be offset before any further benefits are payable.

(5) Timely payment of temporary disability benefits means payment has been made no later than the 14th day after:

(a) The date of the employer's notice or knowledge of the claim, provided the attending physician or authorized nurse practitioner has authorized temporary disability. Temporary disability accrued prior to the date of the employer's notice or knowledge of the claim shall be due within 14 days of claim acceptance;

(b) The date the attending physician or authorized nurse practitioner authorizes temporary disability, if the authorization is more than 14 days after the date of the employer's notice or knowledge of the claim;

(c) The start of authorized vocational training pursuant to ORS 656.268(9), if the claim has previously been closed;

(d) The date the insurer has notice or knowledge of a medically verified inability to work due to an aggravation of the worker's condition under ORS 656.273. For the purpose of this subsection, compensation for authorized temporary disability is due and payable on a claim for aggravation, unless the claim is denied;

(e) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of temporary disability. If a reconsideration order has been appealed by the insurer, the appeal stays payment of temporary disability benefits except those which accrue from the date of the order, pursuant to ORS 656.313;

(f) The date of a notice of claim closure issued by the insurer which finds the worker entitled to temporary disability;

(g) The date a notice of closure is set aside as premature by a reconsideration order;

(h) The date any litigation authorizing retroactive temporary disability becomes final. Temporary disability accruing from the date of the order shall begin no later than the 14th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts, it is the date of the appellate judgment;

(i) The date the division refers a claim to the insurer for processing pursuant to ORS 656.029;

(j) The date the division refers a noncomplying employer claim to an assigned claims agent pursuant to ORS 656.054; or

(k) The date a claim disposition is disapproved by the Board, if temporary disability benefits are otherwise due;

(l) The date the division designates a paying agent pursuant to ORS 656.307;

(m) The date a claim is reclassified from non-disabling to disabling, if temporary disability is due and payable; and

(n) The date an insurer voluntarily rescinds a denial of a disabling claim.

(6) Temporary disability shall be paid to within seven days of the date of payment at least once each 14 days. When making payments as provided in OAR 436-060-0020(1), the employer may make subsequent payments of temporary disability concurrently with the payroll schedule of the employer, rather than at 14-day intervals.

(7) Permanent disability and fatal benefits shall be paid no later than the 30th day after:

(a) The date of a notice of claim closure issued by the insurer;

(b) The date of any litigation order which orders payment of permanent total disability or fatal benefits. Permanent total or fatal benefits accruing from the date of the order shall begin no later than the 30th day after the date the order is filed. For the purpose of this rule, the "date the order is filed" for litigation from the Workers' Compensation Board, is the signature date and from the courts it is the date of the appellate judgment;

(c) The date of any division order, including, but not limited to, a reconsideration order, which orders payment of compensation for permanent disability;

(d) The date any litigation authorizing permanent partial disability becomes final; or

(e) The date a claim disposition is disapproved by the Board, if permanent disability benefits are otherwise due.

(f) The date authorized training ends if the worker is medically stationary and any previous award remains unpaid, pursuant to ORS 656.268(9) and OAR 436-060-0040(2).

(8) Subsequent payments of permanent disability and fatal benefits are made in monthly sequence. The insurer may adjust monthly payment dates, but shall inform the beneficiary prior to making the adjustment. No payment period shall exceed one month without the division approval.

(9) The insurer shall notify the worker or beneficiary in writing when compensation is paid of the specific purpose of the payment, the time peri-

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od for which the payment is made and the reimbursable expenses. The insurer shall maintain records of compensation paid for each claim where benefits are due and payable. If the worker submits a request for reimbursement of multiple items and full reimbursement is not made, the insurer shall provide specific reasons for non-payment or reduction of each item.

(10) Payment of a Claim Disposition Agreement shall be made no later than the 14th day after the Board mails notice of its approval of the agreement to the parties, unless otherwise stated in the agreement.

(11) Pursuant to ORS 656.126(6), when Oregon compensation is more than the compensation under another law for the same injury or occupational disease, or compensation paid the worker under another law is recovered from the worker for the same injury or occupational disease, the insurer shall pay any unpaid compensation to the worker up to the amount required by the claim under Oregon law within 14 days of receipt of written documentation supporting the underpayment of Oregon compensation.

Stat. Auth.: ORS 656.704 & ORS 656.726(4)

Stats. Implemented: ORS 656.262(4), 656.268(9), 656.273, 656.278, 656.289, 656.307, 656.313, 656.704 & 656.726(4)

Hist.: WCB 9-1966, f. & ef. 11-14-66; WCD 1-1980(Admin), f. & ef. 1-11-80; WCD 6-1981(Admin), f. 12-23-81, ef. 1-1-82; WCD 8-1983(Admin), f. 12-29-83, ef. 1-1-84; Renumbered from 436-054-0310, 5-1-85; WCD 8-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 4-1987, f. 12-18-87, ef. 1-1-88; WCD 6-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 9-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 29-1990, f. 11-30-90, cert. ef. 12-26-90; WCD 1-1992, f. 1-3-92, cert. ef. 2-1-92; WCD 7-1994, f. 8-11-94, cert. ef. 8-28-94; WCD 5-1996, f. 2-6-96, cert. ef. 2-12-96; WCD 11-2001, f. 11-30-01, cert. ef. 1-1-02; WCD 10-2002, f. 10-2-02 cert. ef. 11-1-02; WCD 13-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 2-28-04

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**Adm. Order No.:** WCD 14-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

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**Notice Publication Date:**

**Rules Amended:** 436-001-0265, 436-009-0008, 436-009-0015, 436-009-0060, 436-009-0070, 436-009-0080, 436-010-0005, 436-010-0008, 436-010-0210, 436-010-0220, 436-010-0230, 436-010-0240, 436-010-0250, 436-010-0265, 436-010-0270, 436-010-0275, 436-010-0280, 436-010-0340, 436-015-0008, 436-015-0030, 436-015-0050, 436-015-0060, 436-015-0070, 436-015-0090, 436-030-0003, 436-030-0005, 436-030-0007, 436-030-0009, 436-030-0010, 436-030-0034, 436-030-0035, 436-030-0115, 436-030-0125, 436-030-0135, 436-030-0145, 436-030-0165, 436-030-0185, 436-120-0008

**Subject:** These temporary rules reflect changes in the law due to legislation passed by the 2003 Oregon Legislature:

Senate Bill 233 changes the time frame for appeal of a proposed order or proposed assessment of civil penalty from 60 days following the party's receipt of notice to 60 days from the date the order is mailed by the department. This change has been incorporated into OAR 436-010, 436-015, 436-030, and 436-120.

Senate Bill 285 allows an insurer or self-insured employer to contest its Notice of Closure in certain circumstances, and OAR 436-030 has been revised accordingly.

Senate Bill 620 requires payment of fees to workers' attorneys when a claimant prevails at the administrative level in certain medical and vocational disputes or when the attorney is instrumental in obtaining a settlement. This fee provision has been included in OAR 436-001, 436-009, 436-010, and 436-120.

House Bill 2305 addresses how medical records may be released, consistent with the federal Health Insurance Portability and Accountability Act, and OAR 436-010 has been revised to be consistent with chapter 429, OL 2003.

House Bill 3669 gives additional authority to nurse practitioners to treat injured workers and authorize temporary disability payments. OAR 436-009, 436-010, 436-015, and 436-030 have been amended to reflect this change. This bill was a result of legislative action after development of the legislative concepts by nurse practitioners and the Management Labor Advisory Committee.

**Rules Coordinator:** Fred Bruyns—(503) 947-7717

## 436-001-0265

### Attorney Fees

(1) In cases where the director is required to assess an attorney fee under ORS 656.385(1) (§2, ch. 756, OL 2003):

(a) The fee must be based on the factors listed in ORS 656.385(1) (§2, ch. 756, OL 2003).

(b) Absent a showing of extraordinary circumstances or unless otherwise agreed by the parties, the fee may not exceed \$2,000 nor fall outside the ranges provided in the following matrix: Estimated Results Achieved - Attorney Time Devoted: [Matrix not included. See ED. NOTE.]

(c) In cases under ORS 656.245, 656.260, or 656.327, the factors listed in OAR 436-010-0008(13) (temporary rule effective 1/1/04) may also be considered.

(d) In cases under ORS 656.340, the factors listed in OAR 436-120-0008(2) (temporary rule effective 1/1/04) may also be considered.

(2) Except as provided in section (3), in cases where the administrative law judge or director assesses an attorney fee, the following factors may also be considered:

(a) The complexity of the issue(s) involved;

(b) The quality of the legal representation;

(c) The value of the interest involved;

(d) The nature of the proceedings;

(e) The risk in a particular case that an attorney's efforts may go uncompensated;

(f) The assertion of frivolous issues or defenses;

(g) A statement of services, if submitted within seven days of the hearing date, unless the administrative law judge instructs otherwise; and

(h) Any other relevant consideration deemed appropriate by the administrative law judge or director.

(3) In cases under ORS 656.262(11) (§1, ch. 756, OL 2003) where the issue is solely the assessment and payment of a penalty and attorney fee, OAR 438-015-0110 applies.

(4) If an attorney fee has been assessed by an administrative law judge in a proposed order, the opposing parties may file written exceptions to the fee under OAR 436-001-0275.

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

Stat. Auth.: ORS 656.726(3)

Stats. Implemented: ORS 656.385, ORS 656.388 & ORS 656.704(2)

Hist.: WCD 6-1995(Temp), f. & cert. ef. 7-14-95; WCD 7-1996, f. & cert. ef. 2-12-96; WCD 8-1998, f. 8-10-98, cert. ef. 9-15-98; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-009-0008

### Administrative Review, Fee Disputes and Contested Cases

Administrative review before the director:

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical fees and non-payment of compensable medical bills. A party need not be represented to participate in the administrative review before the director except as provided in ORS chapter 183 and OAR chapter 436, division 001.

(b) Any party may request the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. If the dispute does not resolve through mediation, a director's order shall be issued.

(c) All issues pertaining to disagreement about medical fees or non-payment of bills within an MCO are subject to the provisions of ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting administrative review of the matter by the director. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. Administrative review by the director must be requested within 60 days of receipt of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. For purposes of this rule, the date the insurer should have known of the dispute is the date action

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on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) The director may, on the director's own motion, initiate a medical services review at any time.

(d) When there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties shall submit requests for administrative review to the director in the form and format prescribed by the director. The requesting party shall simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number.

(b) Specify the issues in dispute and the relief sought.

(c) Provide the specific dates of the unpaid disputed treatment.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original HCFA/CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that the involved parties have been provided a copy of the request for review and attached supporting documentation and, if known, that there is no issue of causation or compensability of the underlying claim or condition.

(4) The division shall investigate the matter upon which review was requested.

(a) The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party shall have 14 days to respond.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement.

(d) Pursuant to section (6) of this rule, within 30 days of the administrative order, any party may appeal to a contested case before the director.

(5) In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director shall award an attorney fee to be paid as provided in ORS 656.385 (§2, ch. 756, OL 2003) and described in OAR 436-010-0008 (temporary rules effective 1/1/2004).

(6) Contested cases before the director: Pursuant to 183.310 through 183.550, as modified by OAR chapter 436, division 001 and ORS 656.704(2), any party that disagrees with an action or order of the director pursuant to these rules, may request a contested case before the director. For purposes of these rules, "contested case" has the meaning prescribed in ORS 183.310(2) and OAR chapter 436 division 001. A party may appeal to the director as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested and include a copy of the order being appealed.

(b) The appeal must be filed within 30 days of the mailing date of the order or notice of action being appealed.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740 (§9, ch. 170, OL 2003), any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(15).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (6) of this rule, pursuant to these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (6) of this rule.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-89; (Former sections (3), (4), & (7) Renumbered to 436-010-0130); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0110; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-009-0015

### Limitations on Medical Billings

(1) An injured worker shall not be liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows:

(a) When the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treatment by non-attending physicians in excess of the 30 day/12 visit period as set forth in OAR 436-010-0210 or by authorized nurse practitioners in excess of the 90 day period as set forth in OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director pursuant to OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275; or

(e) When the injured worker seeks treatment after being notified that such treatment has been determined to be unscientific, unproven, outmoded, or experimental pursuant to OAR 436-010-0300.

(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3) of this rule.

(3) The preparation of a written treatment plan and the supplying of progress notes are integral parts of the fee for the medical service.

(4) No fee shall be paid for the completion of a work release form or completion of a PCE form where no tests are performed.

(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or the department or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070(10)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider shall be paid at 50 percent of the examination or testing fee. A medical arbiter may also receive payment for a file review as determined by the director.

(6) Pursuant to ORS 656.245(3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects.

(a) DMSO, except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG tests,

(d) Rolifing;

(e) Prolotherapy; and

(f) Thermography.

(7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written

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interpretation of the results, and documentation of time spent with the patient.

(9)(a) When a physician provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's office, such services shall be identified by CPT® codes and paid according to the fee schedule.

(b) When a worker is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission shall be considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment shall be considered part of the hospital services subject to the hospital fee schedule.

(10) Physician assistant or nurse practitioner fees shall be paid at the rate of 80 percent of a physician's allowable fee for a comparable service. The bills for services by these providers shall be marked with modifier "81." Chart notes shall document when medical services have been provided by a physician assistant or nurse practitioner.

(11) Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT® Codes such as 99080. Refer to specific code definitions in the CPT® for other applicable codes. The billing should include the actual time spent reviewing the records or reports.

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

Stat. Auth.: ORS 656.245, 656.252 & 656.254

Stats. Implemented: ORS 656.245, 656.252 & 656.254

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-009-0060

### Oregon Specific Code, Multidisciplinary Services

(1) Services provided by multidisciplinary programs not otherwise described by CPT® codes shall be billed under Oregon-Specific Codes.

(2) Treatment in a chronic pain management program, physical rehabilitation program, work hardening program, or a substance abuse program shall not be paid unless the program is accredited for that purpose by the CARF or the JCAHO.

(a) Organizations which have applied for CARF accreditation, but have not yet received such accreditation, may receive payment for multidisciplinary programs upon providing evidence to the insurer that an application for accreditation has been filed with and acknowledged by CARF. Such organizations may provide multidisciplinary services under this section for a period of up to 6 months from the date CARF provided notice to the organization that the accreditation process has been initiated, or until such time as CARF accreditation has been received or denied, whichever occurs first.

(b) Notwithstanding OAR 436-009-0010(4), program fees for services within a multidisciplinary program may be used based upon written pre-authorization from the insurer. Programs must identify the extent, frequency, and duration of services to be provided.

(c) All job site visits and ergonomic consultations must be preauthorized by the insurer.

(3) When an attending physician or authorized nurse practitioner approves a multidisciplinary treatment program for an injured worker, he or she must provide the insurer with a copy of the approved treatment program within 14 days of the beginning of the treatment program.

(4) Billings using the multidisciplinary codes must include copies of the treatment record which specifies the type of service rendered, the medical provider who provided the service, whether treatment was individualized or provided in a group session, and the amount of time treatment was rendered for each service billed.

(5) The table below lists the Oregon Specific Codes for Multidisciplinary Services. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-009-0070

### Oregon Specific Code, Other Services

(1) Copies of requested medical records shall be paid under OSC-R0001.

(2) A brief narrative by the attending physician or authorized nurse practitioner, including a summary of treatment to date and current status, and, if requested, brief answers to one to five specific questions related to

the attending physician's or authorized nurse practitioner's current or proposed treatment, shall be paid under OSC-N0001.

(3) A complex narrative by the attending physician or authorized nurse practitioner may include past history, history of present illness, attending physician's or authorized nurse practitioner's treatment to date, current status, impairment, prognosis, and medically stationary information, shall be paid under OSC-N0002.

(4) Fees for a PCE and a WCE shall be based upon the type of evaluation requested. The description of each level of evaluation and the maximum allowable payment shall be as follows:

(a) **FIRST LEVEL PCE:** This is a limited evaluation to measure the functional performance testing of a specific body part. This level requires not less than 45 minutes of actual patient contact. A first level PCE shall be paid under OSC-99196 which includes the evaluation and report. Additional 15-minute increments may be added for each additional body part to establish endurance (e.g. cardiovascular), or to project tolerances (e.g. repetitive motion). Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(b) **SECOND LEVEL PCE:** This is a PCE requested by the insurer, or attending physician or authorized nurse practitioner, to measure general residual functional capacity to perform work or provide other general evaluation information, including musculoskeletal evaluation. It may be used to establish Residual Functional Capacities for claim closure. This level requires not less than two hours of actual patient contact. The second level PCE shall be paid under OSC-99197 which includes the evaluation and report. Additional 15 minute increments (per additional body part) may be necessary to establish endurance (e.g., cardiovascular) or to project tolerances (e.g., repetitive motion). Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(c) **WCE:** This is a residual functional capacity evaluation with special emphasis on the ability to perform essential physical functions of the job based on specific job analysis. This level requires not less than 6 hours of actual patient contact. The primary purpose of this evaluation is to establish if a worker can return to work at a specific job(s). A WCE shall be paid under OSC-99198 which includes the evaluation and report.

(d) In addition, if requested, a musculoskeletal evaluation (e.g., ROM, strength, sensory, etc.) with up to 30 minutes of actual patient contact for the first body part may be added to a first level PCE, second level PCE or WCE. An additional 15 minutes may be requested for each additional body part tested. Musculoskeletal evaluation and each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(5) When an attorney requires a consultation with a medical provider, the medical provider shall bill under OSC-D0001.

(6) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel and deposition. Payment of the hourly rate may be limited to a customary fee charged by similar providers.

(7) When an insurer obtains an Insurer Medical Examination (IME), the medical service provider shall bill under OSC-D0003. This code shall be used for a report, file review or examination.

(8) The fee for interpretive services shall be billed under OSC-D0004.

(9) Fees for all arbiters and panel of arbiters used for director reviews pursuant to OAR 436-030-0165 shall be established by the director. This fee determination will be based on the complexity of the examination, the report requirements and the extent of the record review. The level of each category is determined by the director based on the individual complexities of each case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate factors.

(a) As determined by the director, a level 1 exam generally involves a basic medical exam with no complicating factors. A level 2 exam generally involves a moderately complex exam and may have complicating factors. A level 3 exam generally involves a very complex exam and may have several complicating factors. A limited exam generally involves a newly accepted condition, or some other partial exam. [Table not included. See ED. NOTE.]

(b) As determined by the director, a level 1 report generally includes standard questions. A level 2 report generally includes questions regarding complicating factors. A level 3 report generally includes questions regarding multiple complicating factors. [Table not included. See ED. NOTE.]

(c) As determined by the director, a level 1 file review generally includes review of a limited record. A level 2 file review generally includes review of an average record. A level 3 file review generally includes review of a large record or disability evaluation without an exam. A level 4 file review generally includes an extensive record. A level 5 file review generally includes an extensive record with unique factors. [Table not included. See ED. NOTE.]



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(d) The director shall notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review.

(e) If the director determines that a supplemental medical arbiter report is necessary to clarify information or address additional issues, an additional report fee may be established. The fee is based on the complexity of the supplemental report as determined by the director. The additional fees are established as follows: [Table not included. See ED. NOTE.]

(f) Prior to completion of the reconsideration process, the medical arbiter may request the director to redetermine the authorized fee by providing the director with rationale explaining why the physician believes the fee should be different than authorized.

(a) The director may authorize testing which shall be paid according to OAR 436-009.

(h) Should an advance of costs be necessary for the worker to attend a medical arbiter exam, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(10) A single physician selected pursuant to ORS 656.327 or 656.260, to review treatment, perform reasonable and appropriate tests, or examine the worker, and submit a report to the director shall be paid at an hourly rate up to a maximum of 4 hours for record review and examination.

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under OSC-P0003 for the report.

(b) Physicians selected pursuant to OAR 436-010-0008, to serve on a panel of physicians shall each receive payment based on an hourly rate up to a maximum of 4 hours for record review and panel examination. Each physician shall bill for the record review and panel examination under OSC-P0002. The panel member who prepares and submits the panel report shall receive an additional payment under OSC-P0003.

(c) The director may in a complex case requiring extensive review by a physician pre-authorize an additional fee. Complex case review shall be billed under OSC-P0004.

(d) If a worker fails to appear for a director required examination without providing the physician with at least 48 hours notice, each physician shall bill under OSC-P0005.

(e) Should an advance of costs be necessary for the worker to attend an exam under ORS 656.327 or 656.260, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(11) The fee for a Worker Requested Medical Examination shall be billed under OSC-W0001. This code shall be used for a report, file review, or examination.

(12) The table below lists the Oregon Specific Codes for Other Services. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-009-0080

### Durable Medical Equipment and Medical Supplies

(1) Fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME and other devices that are ordered and approved by the physician, at 85% of the manufacturer's suggested retail price (MSR).

(b) The DME provider shall be entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. Labor shall be paid at the provider's usual and customary rate.

(c) The provider may offer a service agreement at an additional cost.

(d) Rental of all compensable DME and other devices shall be billed at the provider's usual and customary rate. Within 90 days of the beginning

of the rental, the insurer shall be entitled to purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.

(2) Fees for all prosthetics as defined in OAR 436-010-0230 (12), orthotics, and other medical supplies shall be listed as 0.00.

(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

(c) Without approval from the insurer or director, hearing aids should not exceed \$5000.00 for a pair of hearing aids, or \$2500.00 for a single hearing aid.

(3) The worker shall have the right to select the service provider, except for claims enrolled in a managed care organization (MCO) where service providers are specified by the MCO contract.

(4) Except as provided in subsection (2)(c) of this rule, this rule shall not apply to a worker's direct purchase of DME and medical supplies, and shall not limit a worker's right to reimbursement for actual out-of-pocket expenses pursuant to OAR 436-009-0025.

(5) DME, medical supplies and other devices dispensed by a hospital (inpatient or outpatient) shall be billed pursuant to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0005

### Definitions

For the purpose of these rules, OAR 436-009, and 436-015, unless the context otherwise requires:

(1) "Administrative Review" means any decision making process of the director requested by a party aggrieved with an action taken pursuant to these rules except the contested case process described in OAR 436-001.

(2) "Attending Physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury or illness and who is:

(a) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or an oral surgeon licensed by the Oregon Board of Dentistry;

(b) A medical doctor, doctor of osteopathy, or oral surgeon practicing in and licensed under the laws of another state;

(c) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits, during that 30 day period, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon;

(d) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits during that 30 day period, whichever first occurs, a doctor or physician of chiropractic practicing and licensed under the laws of another state; or

(e) Any medical service provider authorized to be an attending physician in accordance with a managed care organization contract.

(3) "Authorized nurse practitioner" means a nurse practitioner authorized pursuant to ORS 656.245 (§3, ch. 811, OL 2003) to provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim, during that 90 day period. The authorized nurse practitioner may also authorize temporary disability benefits for a period of up to 60 days from the first nurse practitioner visit on the initial claim. Effective October 1, 2004, to be an authorized nurse practitioner, the nurse practitioner must certify to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director.

(4) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(5) "Contested Case" means a proceeding as defined in ORS 183.310(2) pursuant to OAR 436-001.

(6) "Coordinated Health Care Program" means an employer program providing for the coordination of a separate policy of group health insurance coverage with the medical portion of workers' compensation coverage, for some or all of the employer's workers, which provides the worker with health care benefits even if a worker's compensation claim is denied.

(7) "Current Procedural Terminology" or "CPT" means the Current Procedural Terminology codes and terminology most recently published by the American Medical Association unless otherwise specified in these rules.

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(8) "Customary Fee" means a fee that falls within the range of fees normally charged for a given service.

(9) "Days" means calendar days.

(10) "Direct control and supervision" means the physician is on the same premises, at the same time, as the person providing a medical service ordered by the physician. The physician can modify, terminate, extend, or take over the medical service at any time.

(11) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(12) "Eligible" means an injured worker who has filed a claim and is employed by an employer who is located in an MCO's authorized geographical service area, covered by an insurer who has a contract with that MCO. "Eligible" also includes a worker with an accepted claim having a date of injury prior to contract when that worker's employer later becomes covered by an MCO contract.

(13) "Enrolled" means an eligible injured worker has received notification from the insurer that the worker is being required to treat under the auspices of the MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(14) "First Chiropractic Visit" means a worker's first visit to a chiropractic physician on the initial claim.

(15) "Health Care Practitioner" has the same meaning as a "medical service provider."

(16) "HCFA form 2552" (Hospital Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(17) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(18) "Home Health Care" means medically necessary medical and medically related services provided in the injured worker's home environment. These services might include, but are not limited to, nursing care, medication administration, personal hygiene, or assistance with mobility and transportation.

(19) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(20) "Initial Claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(21) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(22) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(23) "Interim Medical Benefits" means those services provided pursuant to ORS 656.247 on initial claims with dates of injury on or after January 1, 2002 that are not denied within 14 days of the employer's notice of the claim.

(24) "Mailed or Mailing Date," for the purposes of determining timeliness pursuant to these rules, means the date a document is postmarked or, pursuant to ORS 84.043, the date an electronic record is sent.

(25) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(26) "Medical Evidence" includes, but is not limited to: expert written testimony; written statements; written opinions, sworn affidavits, and testimony of medical professionals; records, reports, documents, laboratory, x-ray and test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

(27) "Medical Service" means any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(28) "Medical Service Provider" means a person duly licensed to practice one or more of the healing arts.

(29) "Medical Provider" means a medical service provider, a hospital, medical clinic, or vendor of medical services.

(30) "Medical Treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(31) "Non-attending Physician" means a medical service provider who is not qualified to be an attending physician, or a chiropractor who no longer qualifies as an attending physician pursuant to ORS 656.005 and subsections (2)(c) and (2)(d) of this rule.

(32) "Outpatient" means a worker not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments which do not result in admission are also outpatient services.

(33) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(34) "Physical Capacity Evaluation" or "PCE" means an objective, directly observed, measurement of a worker's ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship's Functional Evaluation, and Functional Capacity Assessment shall be considered to have the same meaning as Physical Capacity Evaluation.

(35) "Physical Restorative Services" means those services prescribed by the attending physician or authorized nurse practitioner to address permanent loss of physical function due to hemiplegia, a spinal cord injury, or to address residuals of a severe head injury. Services are designed to restore and maintain the injured worker to the highest functional ability consistent with the worker's condition. Physical restorative services are not services to replace medical services usually prescribed during the course of recovery.

(36) "Report" means medical information transmitted in written form containing relevant subjective and/or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(37) "Residual Functional Capacity" means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the worker can perform each activity.

(38) "Specialist Physician" means a licensed physician who qualifies as an attending physician and who examines a worker at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, and/or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice and/or an opinion regarding the treatment being rendered, or considered, for a workers' compensable injury.

(39) "Usual Fee" means the fee charged the general public for a given service.

(40) "Work Capacity Evaluation" or "WCE" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening shall be considered to have the same meaning as Work Capacity Evaluation.

(41) "Work Hardening" means an individualized, medically prescribed and monitored, work oriented treatment process. The process involves the worker participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the worker to a specific job.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq. & 656.005

Hist.: WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0005, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 4-1986(Admin), f. 6-26-86, ef. 7-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0008

### Administrative Review and Contested Cases

(1) Administrative review before the director:

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(a) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all matters concerning medical services arising under ORS 656.245, 656.247, 656.260, and 656.327.

(b) A party need not be represented to participate in the administrative review before the director except as provided in ORS chapter 183 and OAR chapter 436, division 001.

(c) Any party may request that the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. Any mediated agreement may include an agreement on attorney fees, if any, to be paid to the claimant or claimant's attorney. If the dispute does not resolve through mediation, a director's order shall be issued.

(2) Administrative review and contested case processes for change of attending physician or authorized nurse practitioner issues are in OAR 436-010-0220; additional insurer medical examination (IMEs) matters are in OAR 436-010-0265; and fees and non-payment of compensable medical billings are described in OAR 436-009-0008.

(3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, the parties must first apply to the Hearings Division of the Workers' Compensation Board to resolve the compensability issues. After the compensability of the underlying claim is finally decided, any party may request director's review of appropriate medical issues within 30 days after the date the decision becomes final by operation of law.

(4) When there is a denial of the causal relationship between the medical service and the accepted condition or the underlying condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.

(5) All issues pertaining to disagreement about medical services within a Managed Care Organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the injured worker, are subject to the provisions of ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter by the director.

(6) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision under the MCO's internal dispute resolution process. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, whichever ever occurs last. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR 438 chapter, division 005.

(c) Disputes regarding elective surgery shall be processed in accordance with OAR 436-010-0250.

(d) The director may, on the director's own motion, initiate a medical services review at any time.

(e) Medical provider bills for treatment or services which are subject to director's review shall not be deemed payable pending the outcome of the review.

(7) Parties shall submit requests for administrative review to the director in the form and format provided in Bulletin 293. Unrepresented workers may seek help from the director in meeting the filing requirements. The requesting party shall simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number;

(b) Specify what issues are in dispute and specify with particularity the relief sought;

(c) Provide the specific dates of the unpaid disputed treatment.

(8) In addition to medical evidence relating to the medical services dispute, all parties may submit other relevant information, including but not

limited to, written factual information, sworn affidavits, and legal argument for incorporation into the record. Such information may also include time-written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute.

(9) When a request for administrative review is filed pursuant to ORS 656.247, 656.260, or 656.327, the insurer shall provide a record packet, without cost, to the director and all other parties or their representatives as follows:

(a) Except for disputes regarding interim medical benefits, the packet shall include certification that there is no issue of compensability of the underlying claim or condition. If there is a denial which has been reversed by the Hearings Division, the Board, or the Court of Appeals, a statement from the insurer regarding its intention, if known, to accept or appeal the decision.

(b) The packet shall include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical service in dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number shall be preceded by the designation "Ex." and pagination of the multiple page documents shall be designated by a hyphen followed by the page number. For example, page two of document ten shall be designated "Ex. 10-2." The index shall include the document numbers, description of each document, author, number of pages, and date of the document. The packet shall include the following notice in bold type:

**As required by OAR 436-010-0008, we hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order which could affect reimbursement for the disputed medical service(s).**

(c) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(d) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer shall provide the record within 14 days of the director's request in the form and format described in this rule.

(e) If the insurer fails to submit the record in the time and format specified in this rule, the director may penalize or sanction the insurer under OAR 436-010-0340.

(10) If the director determines a review by a physician is indicated to resolve the dispute, the director, in accordance with OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical examination as a step in the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review shall be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment is being reviewed.

(b) When a panel of physicians is selected, at least one panel member shall be a practitioner of the healing art and specialty, if practicable, of the medical service provider whose treatment is being reviewed.

(c) When such an examination of the worker is required, the director shall notify the appropriate parties of the date, time, and location of the examination. The physician or panel shall not be contacted directly by any party except as it relates to the examination date, time, location, and attendance. If the parties wish to have special questions addressed by the physician or panel, these questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The examination may include, but is not limited to:

(A) a review of all medical records and diagnostic tests submitted,

(B) an examination of the worker, and

(C) any necessary and reasonable medical tests.

(11) The director shall review the relevant information submitted by all parties and the observations and opinions of the reviewing physician(s).

(a) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the dispute.

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(b) If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order pursuant to ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical services dispute exists, the party may appeal the order to the Workers' Compensation Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.

(c) When a bona fide dispute exists, the director will issue an administrative order and provide notice of the record used in the review.

(A) The parties must file a request for a contested case hearing within 30 days from the issuance of an order pursuant to ORS 656.245, 656.260, or 656.327, or 60 days from the issuance of an order pursuant to ORS 656.247.

(B) The director may on the director's own motion reconsider any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the contested case order is issued.

(C) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.

(D) Any party requesting reconsideration or responding to a reconsideration request shall simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(12) If the director issues an order declaring an already rendered medical service inappropriate, or otherwise in violation of the statute or medical services rules, the worker is not obligated to pay for such medical service.

(13) In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director shall award an attorney fee to be paid by the insurer or self-insured employer, as provided in ORS 656.385 (§2, ch. 756, OL 2003). The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration shall be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix: [ED. NOTE: Tables referenced are available from the agency.]

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

(A) A current, valid retainer agreement, and

(B) A statement of hours spent on the case if greater than two hours. In the absence of such a statement, the director shall assume the time spent on the case was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to, the following:

(A) the fee allowed by the fee schedule provided in OAR 436-009;

(B) the overall cost of the medical treatment or service; or

(C) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(D) Where the dispute is between the insurer and medical provider over a medical fee, the presumed benefit to the worker is zero unless the fee could be billed to the worker under ORS chapter 656 and these rules if the insurer were found not liable to pay the medical provider.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director.

(d) In order to provide parties an opportunity to inform the director of agreements regarding attorney fee amounts or value of services, or submit statements of extraordinary circumstances or professional hours for consideration in determining the attorney fee, the director will provide the parties notice by phone or fax at least 3 business days in advance that an order or other written resolution of the dispute will be issued. Any statements provided to the director must simultaneously be provided to all other parties to the dispute.

(e) An assessed attorney fee shall be paid within 30 days of the date the order authorizing the fee becomes final.

(14) Contested cases before the director: Any party that disagrees with an action or order pursuant to this rule, may request a contested case hearing before the director as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested, and include a copy of the administrative order being appealed.

(b) The appeal must be received within 30 days of the mailing date of the order or notice of action being appealed.

(c) The hearing shall be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(d) In the review of orders issued pursuant to ORS 656.327(2), 656.260(14) and (16), and section 14, chapter 865, Oregon Laws 2001, no new medical evidence or issues shall be admitted at the contested case hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.

(e) For claims not enrolled in an MCO, disputes about whether a medical service after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c) and whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review by the director. If appealed, review at contested case hearing is not subject to the "no new medical evidence or issues rule" in subsection (13)(d) of this rule. However, if the disputed medical service is determined compensable under ORS 656.245(1)(c) or 656.245(3) all disputes and assertions about whether the compensable medical services are excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services are subject to the substantial evidence rule at contested case hearing.

(15) Contested case hearings of sanction and civil penalties: Under ORS 656.740 (§9, ch. 170, OL 2003), any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The request must be filed with the division within 60 days after the mailing date of the order or notice of assessment.

(c) The Division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and ORS chapter 183.

(16) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (15) of this rule, pursuant to these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within ninety (90) days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (13) of this rule.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331 & 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0210

### Who May Provide Medical Services and Authorize Timeloss

(1) Attending physicians and authorized nurse practitioners may authorize time loss and manage medical services subject to the limitations of these rules. However, an MCO may designate any medical service provider as an attending physician who may provide medical services to an enrolled worker in accordance with ORS 656.260.

(2) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO.

(3) Attending physicians and authorized nurse practitioners may prescribe treatment to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment to be carried out by persons not licensed to provide a medical service only when such treatment is rendered under the physician's direct control and supervision.

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Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(4) Physician assistants may provide compensable medical services for a period of 30 days from the date of injury or 12 visits on the initial claim, whichever occurs first. Thereafter, medical services provided are not compensable without authorization of an attending physician. Additionally, those physician assistants practicing in Type A, Type B, and Type C rural hospital areas as specified in ORS 656.245, may authorize the payment of temporary disability compensation for a period not to exceed 30 days from the date of first visit on the initial claim. Definitions of Type A, Type B, and Type C rural hospitals are contained in ORS 442.470.

(5) Nurse practitioners and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) A physician assistant, licensed under ORS 677.515, may provide services when the physician assistant is approved for practice by the Board of Medical Examiners.

(7) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer shall give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker shall clearly state the reason(s) for the denial which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice shall also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of OAR 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer shall immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical services to Oregon injured workers; and

(C) Billings for compensable services in excess of the maximum allowed under the fee schedule may not be paid by the insurer.

(8) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and shall notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification shall not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(9) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

Stat. Auth.:ORS 656.726(4)

Stats. Implemented: ORS 656.005(12), 656.245 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-000; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0220

### Choosing and Changing Medical Providers

(1) A newly selected attending physician, authorized nurse practitioner, or a specialist physician who becomes primarily responsible for the worker's care, shall notify the insurer not later than five days after the date of change or first treatment, using Form 827. An attending physician or authorized nurse practitioner:

(a) is primarily responsible for the worker's care;

(b) authorizes time loss;

(c) monitors ancillary care and specialized care; and

(d) is determined by the facts of the case and the actions of the physician, not whether a Form 827 is filed.

(2) The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers shall be based upon a written request of the

attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable. Fees for treatment by more than one physician at the same time are payable only when treatment is sufficiently different that separate medical skills are needed for proper treatment.

(3) The worker is allowed to change his or her attending physician or authorized nurse practitioner by choice two times after the initial choice. Referral by the attending physician or authorized nurse practitioner to another attending physician or authorized nurse practitioner, initiated by the worker, shall count in this calculation. The limitations of the worker's right to choose physicians or authorized nurse practitioners pursuant to this section begin with the date of injury and extend through the life of the claim. For purposes of this rule, the following are not considered changes of physician by choice of the worker:

(a) Emergency services by a physician;

(b) Examinations at the request of the insurer;

(c) Consultations or referrals for specialized treatment initiated by the attending physician or authorized nurse practitioner;

(d) Referrals to radiologists and pathologists for diagnostic studies;

(e) When workers are required to change physicians to receive compensable medical services, palliative care, or time loss authorization because their medical service provider is no longer qualified as an attending physician;

(f) Changes of attending physician required due to conditions beyond the worker's control. This could include, but not be limited to, when the physician terminates practice or leaves the area, when a physician is no longer willing to treat an injured worker, when the worker moves out of the area requiring more than a 50 mile commute to the physician, the 90 day period for treatment by an authorized nurse practitioner has expired or the nurse practitioner is required to refer the worker to an attending physician because of a possible worsening of the worker's condition following claim closure, and when a worker is subject to managed care and compelled to be treated inside an MCO;

(g) A Worker Requested Medical Examination; or

(h) Whether a worker has an attending physician or authorized nurse practitioner who works in a group setting/facility and the worker sees another group member due to team practice, coverage, or on-call routines.

(4) When a worker has made an initial choice of attending physician or authorized nurse practitioner and subsequently changed two times by choice or reaches the maximum number of changes established by the MCO, the insurer shall inform the worker by certified mail that any subsequent changes by choice must have the approval of the insurer or the director. If the insurer fails to provide such notice and the worker subsequently chooses another attending physician or authorized nurse practitioner, the insurer shall pay for compensable services rendered prior to notice to the worker. If an attending physician or authorized nurse practitioner begins treatment without being informed that the worker has been given the required notification, the insurer shall pay for appropriate services rendered prior to the time the insurer notifies the physician that further payment will not be made and informs the worker of the right to seek approval of the director.

(5)(a) If a worker not enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the limit established in section (3) of this rule, the worker must request approval from the insurer. Within 14 days of receipt of a request for a change of attending physician or a Form 827 indicating the worker is choosing to change his or her attending physician or authorized nurse practitioner, the insurer shall notify the worker in writing whether the change is approved. If the insurer objects to the change, the insurer shall advise the worker of the reasons, advise that the worker may request director approval, and provide the worker with Form 2332 (Worker's Request to Change Attending Physicians) to complete and submit to the director if the worker wishes to make the requested change.

(b) If a worker enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the changes allowed in the MCO contract or certified plan, the worker must request approval from the insurer. Within 14 days of receiving the change of attending physician request, the insurer shall notify the worker in writing whether the change is approved. If the insurer denies the change, the insurer shall provide the reasons and give notification that the worker may request dispute resolution through the MCO. If the MCO does not have a dispute resolution process for change of attending physician issues, the insurer shall give notification that the worker may request director approval and provide the worker with a copy of Form 2332.

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(6) Upon receipt of a worker's request for an additional change of attending physician or authorized nurse practitioner, the director may notify the parties and request additional information. Upon receipt of a written request from the director for additional information, the parties shall have 14 days to respond in writing.

(7) After receipt and review, the director will issue an order advising whether the change is approved. The change of attending physician or authorized nurse practitioner shall be approved if the change is due to circumstances beyond the worker's control as described in section (3) of this rule. On a case by case basis consideration may be given, but is not limited to, the following:

(a) Whether there is medical justification for a change, including whether the attending physician or authorized nurse practitioner can provide the type of treatment that is appropriate for the worker's condition.

(b) Whether the worker has moved to a new area and wants to establish an attending physician or authorized nurse practitioner closer to the worker's residence.

(c) Whether such a change will cause unnecessary travel costs and/or lost time from work.

(8) Any party that disagrees with the director's order may request a contested case hearing before the director, pursuant to ORS 183.310(2) and OAR 436-001, as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested and must include a copy of the order appealed.

(b) The appeal must be made within 30 days of the mailing date of the order.

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

Stat. Auth: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0401, 5-1-85; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0060; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0230

### Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker shall not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present. The worker has the right to refuse such attendance. The insurer shall retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment. Unless otherwise provided for by statute, or within utilization and treatment standards established by the director or MCO contract, treatment typically does not exceed 15 office visits by any and all attending physicians or authorized nurse practitioners in the first 60 days from first date of treatment, and two visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment.

(4) (a) Except as otherwise provided by the MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician shall not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and signed by the attending physician, authorized nurse practitioner, or specialist physician within 30 days of beginning treatment. The medical service provider shall provide an initial copy of the treatment plan to the attending physician, authorized nurse practitioner, or specialist physician and the insurer within seven days of beginning treatment. A copy of the treatment plan signed by the attending physician, authorized nurse practitioner, or specialist physician shall be provided to the insurer by the medical service provider within 30 days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided pursuant to ORS 656.245(2)(b)(A).

(b) Medical services prescribed by an attending physician or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist shall be subject to the treatment plan requirements set forth in subsection (4)(a) of this rule.

(c) Unless otherwise provided for within utilization and treatment standards prescribed by the director or MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment. The attending physician or authorized nurse practitioner shall document the need for services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, shall complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner shall notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior approval under the palliative care provisions of OAR 436-010-0290. A pharmacist or dispensing physician shall dispense generic drugs to injured workers in accordance with and pursuant to ORS 689.515. For the purposes of this rule, the worker shall be deemed the "purchaser" and may object to the substitution of a generic drug. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's office are not compensable.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original X-ray films shall be forwarded to the director or the insurer. Films shall be returned to the medical provider. A reasonable charge may be made for the costs of delivery of films. If a medical provider refuses to forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner shall justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury, is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eye glasses.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0040; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. &

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cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0240

### Reporting Requirements for Medical Providers

(1) The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, this authorization does not authorize the release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, or

(b) The release of HIV related information otherwise protected by ORS 433.045(3). HIV related information should only be released when a claim is made for HIV or AIDS or when such information is directly relevant to the claimed condition(s).

(2) Any physician, hospital, clinic, or other medical service provider, shall provide all relevant information to the director, the insurer or their representative upon presentation of a signed Form 801, 827, or 2476 (Release of Information). "Signature on file," printed on the worker's signature line of any authorized Release of Information prescribed by the director, is a valid medical release, provided the insurer maintains the signed original in accordance with OAR 436-010-0270. However, nothing in this rule shall prevent a medical provider from requiring a signed authorized Release of Information.

(3) When the worker has initiated a claim or wishes to initiate a claim, the worker and the first medical service provider on the initial claim shall complete the first medical report (Form 827) in every detail, to include the worker's name, address, and social security number (SSN), and information required by ORS 656.252 and 656.254. The medical service provider shall mail it to the proper insurer no later than 72 hours after the worker's first visit (Saturdays, Sundays, and holidays will not be counted in the 72-hour period).

(a) Diagnoses stated on Form 827 and all subsequent reports shall conform to terminology found in the International Classification of Disease-9-Clinical Manifestations (ICD-9-CM) or taught in accredited institutions of the licentiate's profession.

(b) The worker's SSN will be used by the director to carry out its duties under ORS chapter 656. The worker may voluntarily authorize additional use of the worker's SSN by various government agencies to carry out their statutory duties.

(4) All medical service providers shall notify the worker at the time of the first visit of the manner in which they can provide compensable medical services and authorize time loss. The worker shall also be notified that they may be personally liable for noncompensable medical services. Such notification should be made in writing or documented in the worker's chart notes.

(5) Attending physicians or authorized nurse practitioners shall, upon request from the insurer, submit verification of the worker's medical limitations related to the worker's ability to work, resulting from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return to work form, the insurer shall use Form 3245.

(6) Medical providers shall maintain records necessary to document the extent of services provided to injured workers.

(7) Progress reports are essential. When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days through the use of the physician's report, Form 827. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. Fees for such narrative reports shall be in accordance with OAR 436-009-0015(11), 436-009-0070(2) or (3), whichever applies

(8) Reports may be handwritten and include all relevant or requested information.

(9) All records shall be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(10) The medical provider shall respond within 14 days to the request for relevant medical records as specified in section (1) of this rule, progress reports, narrative reports, and any or all necessary records needed to review the efficacy of treatment, frequency, and necessity of care. The medical provider shall be reimbursed for copying documents in accordance with OAR 436-009-0070(1). If the medical provider fails to provide such information within fourteen (14) days of receiving a request sent by certified

mail, penalties under OAR 436-010-0340 or 436-015-0120 may be imposed.

(11) The attending physician or authorized nurse practitioner shall inform the insurer and the worker of the anticipated date of release to work, the anticipated date the worker will become medically stationary, the next appointment date, and the worker's medical limitations. To the extent any medical provider can determine these matters they must be included in each progress report. The insurer shall not consider the anticipated date of becoming medically stationary as a release to return to work.

(12) At the time the attending physician or authorized nurse practitioner declares the worker medically stationary, the attending physician or authorized nurse practitioner shall notify the worker, the insurer, and all other medical providers who are providing services to the worker. If the worker has been under the care of an authorized nurse practitioner, the authorized nurse practitioner must refer the worker to a qualified attending physician to complete a closing examination. The attending physician shall send a closing report to the insurer within 14 days of the examination in which the worker is declared medically stationary, except where a consulting physician examines the worker. The procedures and time frames for a consulting physician to perform the closing exam are provided in OAR 436-010-0280.

(13) The attending physician or authorized nurse practitioner shall advise the worker, and within five days provide the insurer with written notice, of the date the injured worker is released to return to regular or modified work. The physician or nurse shall not notify the insurer or employer of the worker's release to return to regular or modified work without first advising the worker.

(14) An injured worker's claim for aggravation must be filed on Form 827 and must be accompanied by a medical report from the attending physician supported by objective findings that can be used to determine whether the worker has suffered a worsened condition attributable to the compensable injury under the criteria contained in ORS 656.273. The attending physician, on the worker's behalf, shall submit within five days the claim for aggravation and the medical report directly to the insurer

(15) The attending physician, authorized nurse practitioner, or the MCO may request consultation regarding conditions related to an accepted claim. The attending physician, authorized nurse practitioner, or the MCO shall promptly notify the insurer of the request for consultation. This requirement does not apply to diagnostic studies performed by radiologists and pathologists. The attending physician, authorized nurse practitioner, or MCO shall provide the consultant with all relevant clinical information. The consultant shall submit a copy of the consultation report to the attending physician, authorized nurse practitioner, the MCO, and the insurer within 10 days of the date of the examination or chart review. No additional fee beyond the consultation fee is allowed for this report. MCO requested consultations that are initiated by the insurer, which include examination of the worker, shall be considered insurer medical examinations subject to the provisions of 436-010-0265.

(16) A medical service provider shall not unreasonably interfere with the right of the insurer, pursuant to OAR 436-010-0265(1), to obtain a medical examination of the worker by a physician of the insurer's choice.

(17) When an injured worker elects to change his or her attending physician or authorized nurse practitioner or is referred to a new physician who is qualified to be an attending physician or to an authorized nurse practitioner who becomes primarily responsible for the worker's care, the new attending physician or authorized nurse practitioner shall notify the insurer, using Form 827, not later than five days after the change or the date of first treatment. The new attending physician or authorized nurse practitioner shall request all available medical information, including information concerning previous temporary disability periods, from the previous attending physician, authorized nurse practitioner, or from the insurer. A previous attending physician or authorized nurse practitioner who fails to forward requested information within 14 days to the new attending physician or authorized nurse practitioner will be subject to penalties as provided by OAR 436-010-0340.

(18) Injured workers, or their representatives, are entitled to copies of all protected health information in the medical records. These records should ordinarily be available from the insurers, but may also be obtained from medical providers under the following conditions:

(a) A medical provider may charge the worker for copies in accordance with OAR 436-009-0070(1), but a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

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

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

(B) The provision of health care to the patient, and

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(C) The past, present, or future payment for the provision of health care to the patient.

(c) A worker or the worker's representative may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Upon request, the entire health information record in the possession of the medical provider will be provided to the worker or the worker's representative. This includes records from other healthcare providers, except that the following may be withheld:

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

(B) Psychotherapy notes,

(C) Information compiled for use in a civil, criminal or administration action or proceeding; and

(D) Other reasons specified by federal regulation.

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

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

Stat. Auth: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252, 656.254 & 656.273

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0250

### Elective Surgery

(1) "Elective Surgery" is surgery which may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

(2) Except as otherwise provided by the MCO, when the attending physician or surgeon upon referral by the attending physician or authorized nurse practitioner, believes elective surgery is needed to treat a compensable injury or illness, the attending physician or the surgeon shall give the insurer actual notice at least seven days prior to the date of the proposed surgery. Notification shall give the medical information that substantiates the need for surgery, and the approximate surgical date and place if known.

(3) When elective surgery is recommended, the insurer may require an independent consultation with a physician of the insurer's choice. The insurer shall notify the recommending physician, the worker and the worker's representative, within seven days of receipt of the notice of intent to perform surgery, whether or not a consultation is desired by submitting Form 440-3228 (Elective Surgery Notification) to the recommending physician. When requested, the consultation shall be completed within 28 days after notice to the attending physician.

(4)(a) Within seven days of the consultation, the insurer shall notify the recommending physician of the insurer's consultant's findings.

(b) When the insurer's consultant disagrees with the proposed surgery, the recommending physician and insurer shall endeavor to resolve any issues raised by the insurer's consultant's report. Where medically appropriate, the recommending physician, with the insurer's agreement to pay, shall obtain additional diagnostic testing, clarification reports or other information designed to assist them in their attempt to reach an agreement regarding the proposed surgery.

(c) The recommending physician shall provide written notice to the insurer, the worker and the worker's representative when further attempts to resolve the matter would be futile by signing Form 440-3228.

(5) If the insurer believes the proposed surgery is excessive, inappropriate, or ineffectual and cannot resolve the dispute with the recommending physician, the insurer shall request an administrative review by the director within 21 days of the notice provided in subsection(4)(c) of this rule. Failure of the insurer to timely respond to the physician's elective surgery request or to timely request administrative review pursuant to this rule shall bar the insurer from later disputing whether the surgery was excessive, inappropriate, or ineffectual.

(6) If the recommending physician and consultant disagree about the need for surgery, the insurer may inform the worker of the consultant's opinion. The decision whether to proceed with surgery remains with the attending physician, authorized nurse practitioner, and the worker.

(7) A recommending physician who prescribes or proceeds to perform elective surgery and fails to comply with the notification requirements in section (2) of this rule, may be subject to civil penalties as provided in ORS 656.254(3)(a) and OAR 436-010-0340.

(8) Surgery which must be performed promptly, i.e., before seven days, because the condition is life threatening or there is rapidly progressing deterioration or acute pain not manageable without surgical intervention, is not considered elective surgery. In such cases the attending physi-

cian or authorized nurse practitioner should endeavor to notify the insurer of the need for emergency surgery.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.260 & 656.327

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0501, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0070; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0265

### Insurer Medical Examinations (IME)

(1) The insurer may obtain three medical examinations of the worker by physicians of their choice for each opening of the claim. These examinations may be obtained prior to or after claim closure. A claim for aggravation, Board's Own Motion, or reopening of a claim where the worker becomes enrolled or actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726 permits a new series of three medical examinations. For purposes of this rule, "insurer medical examination" (IME) means any medical examination including a physical capacity or work capacity evaluation or consultation that includes an examination, except as provided in section (5) of this rule, that is requested by the insurer and completed by any medical service provider, other than the worker's attending physician. The examination may be conducted by one or more medical providers with different specialty qualifications, generally done at one location and completed within a 72-hour period. If the medical providers are not at one location, the examination is to be completed within a 72-hour period and at locations reasonably convenient to the worker.

(2) When the insurer has obtained the three medical examinations allowed under this rule and wishes to require the worker to attend an additional examination, the insurer shall first notify and request authorization from the director. Insurers that fail to first notify and request authorization from the director, may be assessed a civil penalty. The process for requesting such authorization shall be as follows:

(a) The insurer shall submit a request for such authorization to the director in a form and format as prescribed by the director in Bulletin 252 including, but not limited to, the reasons for an additional IME, the conditions to be evaluated, dates, times, places, and purposes of previous examinations, copies of previous IME notification letters to the worker, and any other information requested by the director. A copy of the request shall be provided to the worker and the worker's attorney; and

(b) The director will review the request and determine if additional information is necessary prior to issuing an order approving or disapproving the request. Upon receipt of a written request for additional information from the director, the parties shall have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(3) In determining whether to approve or deny the request for an additional IME, the director may give consideration, but is not limited, to the following:

(a) Whether an IME involving the same discipline(s) and/or review of the same condition has been completed within the past six months.

(b) Whether there has been a significant change in the worker's condition.

(c) Whether there is a new condition or compensable aspect introduced to the claim.

(d) Whether there is a conflict of medical opinion about a worker's treatment, impairment, stationary status, or other issue critical to claim processing/benefits.

(e) Whether the IME is requested to establish a preponderance for medically stationary status.

(f) Whether the IME is medically harmful to the worker.

(g) Whether the IME requested is for a condition for which the worker has sought treatment or the condition has been included in the compensable claim.

(4) Any party aggrieved by the director's order may request a hearing by the Hearings Division of the Workers' Compensation Board pursuant to ORS 656.283 and OAR chapter 438.

(5) For purposes of determining the number of insurer required examinations, any examinations scheduled but not completed are not counted as a statutory IME. The following examinations shall not be considered IMEs and do not require approval as outlined in section (2) of this rule:

(a) An examination conducted by or at the request or direction of the worker's attending physician or authorized nurse practitioner;

(b) An examination obtained at the request of the director;

(c) A consultation obtained in accordance with OAR 436-010-0250(3);



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(d) An examination of a permanently totally disabled worker required under ORS 656.206(5); and

(e) An examination by a consulting physician that has been arranged by the worker's attending physician or authorized nurse practitioner in accordance with OAR 436-010-0280.

(6) Examinations shall be at times and intervals reasonably convenient to the worker and shall not delay or interrupt proper treatment of the worker.

(7) When a worker is required to attend an examination by a physician of the insurer's choice, the insurer shall comply with the notification and reimbursement requirements contained in OAR 436-009-0025 and 436-060-0095.

(8) When scheduling an IME, the insurer shall provide Form 440-3227 (Invasive Medical Procedure Authorization) to the medical service provider.

(9) If a medical service provider intends to perform an invasive procedure as part of an IME, the worker shall sign Form 440-3227 and may refuse the procedure. For the purposes of this rule, an invasive procedure is a procedure in which the body is entered by a needle, tube, scope, or scalpel.

(10) The person conducting the examination shall determine the conditions under which the examination will be conducted. Subject to the physician's approval, the worker may use a video camera or tape recorder to record the examination. Also subject to the physician's approval, the worker may be accompanied by a family member or friend during the examination. If the physician does not approve a worker's request to record an examination or allow the worker to be so accompanied, the physician must document the reasons.

(11) Upon completion of the examination, the examining physician shall send a copy of the report to the insurer and attending physician or authorized nurse practitioner within seven days.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0270

### Insurer's Rights and Duties

(1) Insurers shall notify the injured worker in writing, immediately following receipt of notice or knowledge of a claim, of the manner in which they may receive medical services for compensable injuries.

(2) Insurers may obtain relevant medical records, using a computer-generated equivalent of Form 2476 (Release of Information), with "signature on file" printed on the worker's signature line, provided the insurer maintains a worker-signed original of the release form.

(3) In claims which have been denied and are on appeal, the insurer shall notify the medical provider and MCO, if any, within ten days of any change of status of the claim.

(4) Upon request, the insurer shall forward all relevant medical information to return-to-work specialists or vocational rehabilitation organizations.

(5) In disabling and non-disabling claims, immediately following notice or knowledge that the worker is medically stationary, insurers shall notify the injured worker and the attending physician or authorized nurse practitioner in writing which medical services remain compensable under the system. This notice must list all benefits the worker is entitled to receive under ORS 656.245(1)(c).

(6) When a medically stationary date is established by the insurer and is not based on the findings of an attending physician or authorized nurse practitioner, the insurer shall notify all medical service providers of the worker's medically stationary status. Applicable to all injuries occurring on or after October 23, 1999, the insurer shall be responsible for reimbursement to all medical service providers for services rendered until the insurer provides the notice to the attending physician or authorized nurse practitioner.

(7) Insurers shall reimburse workers for actual and reasonable costs for travel, prescriptions, and other claim related services paid by a worker in accordance with ORS 656.245(1)(e), 656.325, and 656.327.

(a) Reimbursement by the insurer to the worker for transportation costs to visit his or her attending physician may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate attending physician of the same specialty who is in a geographically closer medical community in relationship to the worker's home. If a worker seeks treatment from an authorized nurse practitioner, reimbursement by the insurer to the worker for transportation costs to visit his or her authorized nurse practitioner may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate

nurse practitioner of the same specialty who is in a geographically closer medical community in relationship to the worker's home. All medical practitioners within a metropolitan area are considered part of the same medical community and therefore are not considered geographically closer than any other physician in that metropolitan medical community for purposes of travel reimbursement.

(b) A worker who relocates within the State of Oregon may continue treating with the established attending physician or authorized nurse practitioner and be reimbursed transportation costs.

(c) Prior to limiting reimbursement under subsection (7)(a) of this rule, the insurer shall provide the worker a written explanation and a list of providers who can timely provide similar services within a reasonable traveling distance for the worker. The insurer shall inform the worker that treatment may continue with the established attending physician or authorized nurse practitioner; however, reimbursement of transportation costs may be limited as described.

(d) When the director decides travel reimbursement disputes at administrative review or contested case level, the determination will be based on principles of reasonableness and fairness within the context of the specific case circumstances as well as the spirit and intent of the law.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0801, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0100; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 436-010-0275

### Insurer's Duties Under MCO Contracts

(1) Insurers who enter into an MCO contract in accordance with OAR 436-015, shall notify the affected insured employers of the following:

(a) The names and addresses of the complete panel of MCO medical providers within the employer's GSA(s);

(b) The manner in which injured workers can receive compensable medical services within the MCO;

(c) The manner in which injured workers can receive compensable medical services by medical providers outside the MCO; and

(d) The geographical service area governed by the MCO.

(2) Insurers under contract with an MCO shall notify all newly insured employers in accordance with section (1) of this rule, prior to or on the effective date of coverage.

(3) At least 30 days prior to any significant changes to an MCO contract affecting injured worker benefits, the insurer shall notify in accordance with OAR 436-015-0035 all affected insured employers and injured workers of the manner in which injured workers will receive medical services.

(4) When the insurer is enrolling a worker in an MCO, the insurer shall simultaneously provide written notice to the worker, all medical service providers, and the MCO of enrollment. Any notification to the MCO or medical service provider required by this subsection may be given via electronic mail subject to the requirements for electronic transmissions described in OAR 436-010-0005(23). The notice shall:

(a) Notify the worker of the eligible attending physicians within the relevant MCO geographic service area and describe how the worker may obtain the names and addresses of the complete panel of MCO medical providers;

(b) Advise the worker of the manner in which the worker may receive medical services for compensable injuries within the MCO;

(c) Describe how the worker can receive compensable medical treatment from a primary care physician or authorized nurse practitioner qualified to provide services as described in OAR 436-015-0070, who is not a member of the MCO, including how to request qualification of their primary care physician or authorized nurse practitioner;

(d) Advise the worker of the right to choose the MCO when more than one MCO contract covers the worker's employer except when the employer provides a coordinated health care program as defined in OAR 436-010-0005(5);

(e) Provide the worker with the title, address and telephone number of the contact person at the MCO responsible for ensuring the timely resolution of complaints or disputes;

(f) Advise the worker of the time lines for appealing disputes beginning with the MCO's internal dispute resolution process through administrative review before the director, that disputes to the MCO must be in writing and filed within 30 days of the disputed action and with whom the dis-

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pute is to be filed, and that failure to request review to the MCO precludes further appeal; and

(g) Notify the MCO of any request by the worker for qualification of a primary care physician or authorized nurse practitioner.

(5) Insurers under contract with MCOs who enroll workers prior to claim acceptance shall inform the worker in writing that the insurer will pay as provided in ORS 656.248 for all reasonable and necessary medical services received by the worker that are not otherwise covered by health insurance, even if the claim is denied, until the worker receives actual notice of the denial or until three days after the denial is mailed, whichever occurs first.

(6) Insurers enrolling a worker who is not yet medically stationary and is required to change medical providers, shall notify the worker of the right to request review by the MCO if the worker believes the change would be medically detrimental.

(7) If, at the time of MCO enrollment, the worker's medical service provider is not a member of the MCO and does not qualify as a primary care physician or authorized nurse practitioner, the insurer shall notify the worker and medical service provider regarding provision of care under the MCO contract, including the provisions for continuity of care.

(8) When an insurer under contract with an MCO receives a dispute regarding a matter that is to be resolved through the MCO dispute resolution process and that dispute has not been simultaneously provided to the MCO, the insurer shall within 14 days:

(a) Send a copy of the dispute to the MCO; or

(b) If the MCO does not have a dispute resolution process for that issue, the insurer shall notify the parties in writing to seek administrative review before the director.

(9) The insurer must also notify the MCO of the name, address, and telephone number of the worker and, if represented, the name of the worker's attorney, and must keep the MCO informed of any changes.

(10) Insurers under contract with MCOs shall maintain records as requested including, but not limited to, a listing of all employer's covered by MCO contracts, their WCD employer numbers, the estimated number of employees governed by each MCO contract, a list of all injured workers enrolled in the MCO, and the effective dates of such enrollments.

Stat. Auth: ORS 656.726(4)

Stat. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-010-0280

### Determination of Impairment

(1) The attending physician or authorized nurse practitioner shall notify the insurer of the date on which the worker became medically stationary from the compensable injury or illness and whether or not the worker is released to any form of work. The medically stationary date should not be a projected date and should relate to an examination. Upon finding or notification that the worker is medically stationary, an authorized nurse practitioner shall refer the worker to a qualified attending physician to complete a closing examination.

(2) The attending physician shall perform a closing examination pursuant to OAR 436-030-0020(2) and submit the closing report within 14 days of the examination in which the worker was determined medically stationary, or shall arrange or request the insurer to arrange for the worker to be examined by a consulting physician for all or any part of the closing examination within five days of the examination in which the worker is declared medically stationary.

(3) A closing examination shall be performed when the attending physician is notified by the insurer that the worker's accepted injury is no longer the major contributing cause of the worker's condition and a denial has been issued. The attending physician shall submit a closing report within 14 days of the examination. If the attending physician refers the worker to a consulting physician for all or any part of the closing examination, the examination shall be scheduled within five days of the denial notification. Upon notification that the worker's accepted condition is no longer the major contributing cause of the worker's condition, an authorized nurse practitioner shall refer the worker to a qualified attending physician to complete a closing examination.

(4) Closing reports for examinations performed by a consulting physician pursuant to this rule shall be submitted to the attending physician within seven days of the examination. The attending physician must review the report and, within seven days of receipt of the report, concur in writing or provide a report to the insurer describing any finding/conclusion with which the attending physician disagrees.

(5) The insurer or the director may request an examination to determine the extent of impairment. The physician conducting the examination shall provide all objective findings of impairment pursuant to these rules and in accordance with OAR 436-035-0007.

(6) The closing examination report does not include any rating of impairment or disability, but describes impairment findings to be rated by either the insurer or the director. Physicians shall provide comments regarding the validity of the examination findings as they pertain to the accepted compensable conditions.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

(8) The attending physician shall specify the worker's residual functional capacity or refer the worker for completion of a second level PCE or WCE (as described in OAR 436-009-0070 (4) pursuant to the following:

(a) A PCE when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A WCE when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(9) When the worker's condition is not medically stationary and a denial has been issued because the worker's accepted injury is no longer the major contributing cause of the worker's condition, the physician shall estimate the worker's future impairment and residual functional capacity pursuant to OAR 436-035-0007(5).

Stat. Auth: ORS 656.726(4) & 656.245(2)(b)(B)

Stats. Implemented: ORS 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-010-0340

### Sanctions and Civil Penalties

(1) If the director finds any medical provider in violation of the medical reporting requirements established pursuant to ORS 656.245, 656.252, and 656.254(1), as found in OAR 436-009 and 436-010, the director may impose one or more of the following sanctions:

(a) Reprimand by the director;

(b) Non-payment, reduction or recovery of fees in part, or whole, for services rendered;

(c) Referral to the appropriate licensing board; or

(d) Civil penalty not to exceed \$1,000 for each occurrence. In determining the amount of penalty to be assessed, the director shall consider:

(A) The degree of harm inflicted on the worker or the insurer;

(B) Whether there have been previous violations; and

(C) Whether there is evidence of willful violations.

(2) The director may impose a penalty of forfeiture of fees and a fine not to exceed \$1,000 for each occurrence on any health care practitioner who, pursuant to ORS 656.254 and 656.327, has been found to:

(a) Fail to comply with the medical rules;

(b) Provide medical treatment that is excessive, inappropriate or ineffectual; or

(c) Engage in any conduct demonstrated to be dangerous to the health or safety of a worker.

(3) If the conduct as described in section (2) is found to be repeated and willful, the director may declare the practitioner ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years.

(4) A health care practitioner whose license has been suspended or revoked by the licensing board for violations of professional ethical standards may be declared ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years. A certified copy of the revocation or suspension order shall be prima facie justification for the director's order.

(5) If a financial penalty is imposed on the attending physician or authorized nurse practitioner for violation of these rules, no recovery of penalty fees may be sought from the worker.

(6) If an insurer or worker believes sanctions under sections (1) or (2) of this rule are appropriate, either may submit a complaint in writing to the director.

(7) If the director finds an insurer in violation of the notification provisions of OAR 436-010 limiting medical treatment, the director may order the insurer to reimburse any affected medical service providers for services rendered until the insurer complies with the notification requirement. Any penalty shall be limited to the amounts listed in section (8) of this rule.

(8) If the director finds any insurer in violation of OAR 436-009 or 436-010, or an order of the director, the insurer shall be subject to penalties

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pursuant to ORS 656.745 of not more than \$2000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, shall be considered a separate violation.

Stat. Auth.: ORS 656726(4)

Stats. Implemented: ORS 656.245, ORS 656.254 & ORS 656.745

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; Renumbered from 436-010-0110(3)(4) & (7); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0130; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0008

### Administrative Review

(1) Any party may request that the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. The request must be in writing. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, administrative review shall continue.

(2) Administrative review before the director: The process for administrative review of such matters shall be as follows:

(a) Any party that disagrees with an action taken by an MCO pursuant to these rules shall first use the dispute resolution process of the MCO.

(b) The aggrieved party shall file a written request for administrative review with the administrator of the Workers' Compensation Division within 60 days of the date the MCO issues a final decision under the MCO's dispute resolution process. If a party has been denied access to an MCO dispute resolution process because the complaint or dispute was not included in the MCO's dispute resolution process or because the MCO's dispute resolution process was not completed for reasons beyond a party's control, the party may request administrative review within 60 days of the failure of the MCO to issue a decision. The request must specify the grounds upon which the action is contested.

(c) The director shall create a documentary record sufficient for judicial review. The director may require and allow the parties to submit such input and information appropriate to complete the review.

(d) The director shall review the relevant information and issue an order. The order shall specify that it will become final and not subject to further review unless a written request for hearing is filed with the administrator within 30 days of the mailing date of the order.

(3) Contested cases before the director: Any party that disagrees with an order pursuant to this rule may request a contested case hearing before the director as follows:

(a) The party shall file a written request for a contested case hearing with the administrator of the Workers' Compensation Division within 30 days of the mailing date of the order. The request shall specify the grounds upon which the order is contested.

(b) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) In the review of orders issued pursuant to ORS 656.260(14) and (16), no new medical evidence or issues shall be admitted at the contested case hearing. In these reviews, administrative orders may be modified at hearing only if the administrative order is not supported by substantial evidence in the record or reflects an error of law. The dispute may be remanded to the MCO for further evidence taking, correction, or other necessary action if the director determines the record has been improperly, incompletely, or otherwise insufficiently developed.

(4) Contested case hearings of sanctions and civil penalties: Under ORS 656.740 (§9, ch. 170, OL 2003), any party that disagrees with a proposed order or proposed assessment of civil penalty issued by the director pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

(a) The party shall file a written request for a hearing with the administrator of the Workers' Compensation Division within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An administrative law judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and chapter 183.

(5) Hearings on the suspension or revocation of an MCO's certification:

(a) At a hearing on a notice of intent to suspend issued pursuant to OAR 436-015-0080(2), the MCO must show cause why it should be permitted to continue to provide services under these rules.

(A) If the director determines that the acts or omissions of the MCO justify suspension of the MCO's certification, the director may issue an order suspending the MCO for a period of time up to a maximum of one year or may initiate revocation proceedings pursuant to OAR 436-015-0080(5). If the director determines that the acts or omissions of the MCO do not justify suspension, the director shall issue an order withdrawing the notice.

(B) The order must be served upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(b) A revocation issued pursuant to OAR 436-015-0080(5) shall become effective within 10 days after service of such notice upon the MCO unless within such period of time the MCO corrects the grounds for revocation to the satisfaction of the director or files a written request for hearing with the administrator of the Workers' Compensation Division.

(A) If the MCO appeals, the administrator shall set a date for a hearing and shall give the MCO at least ten days notice of the time and place of the hearing. At hearing, the MCO shall show cause why it should be permitted to continue to provide services under these rules.

(B) Within thirty days after the hearing, the director shall issue an order affirming or withdrawing the revocation. The director shall serve a copy of the order upon the MCO as provided in OAR 436-015-0130.

(C) If the MCO disagrees with the order, it may request a contested case hearing before the director by filing a written request with the administrator within 60 days of the date of service of the order.

(D) The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(c) An emergency revocation issued pursuant to OAR 436-015-0080(7) is effective immediately. The MCO must file a request for contested case hearing within 60 days of the date of service of the order. The contested case hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

Stat. Auth.: ORS 183.310 - 183.550 & 656.726(4)

Stats. Implemented: ORS 656.260

Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; Administrative correction 6-13-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0030

### Applying for Certification

(1) A health care provider or group of medical service providers applying for certification as an MCO must submit to the director, within 120 days of the filing of the Notice of Intent to Form, the following:

(a) Four copies of an application which includes specific information indicating the manner in which the MCO will be able to meet the provisions of these rules;

(b) The MCO certification of incorporation and a copy of the MCO by-laws;

(c) A non-refundable fee of \$1,500 which will be deposited in the Department of Consumer and Business Services Fund; and

(d) The approved MCO plan.

(2) The MCO shall provide a description of the initial GSA. The GSA shall be designated by a listing of the postal zip codes in the service area.

(3) The MCO plan shall provide a description of the times, places, and manner of providing services under the plan adequate to ensure that workers governed by the MCO shall be able to:

(a) Access an MCO provider panel with a minimum of one attending physician within the MCO for every 1,000 workers covered by the plan;

(b) Receive initial treatment by an attending physician or authorized nurse practitioner within 24 hours of the MCO's knowledge of the need or a request for treatment;

(c) Receive initial treatment by an attending physician or authorized nurse practitioner in the MCO within 5 working days, subsequent to treatment by a physician outside the MCO;

(d) Receive treatment by an MCO physician in cases requiring emergency in-patient hospitalization;

(e) Receive information on a 24-hour basis regarding medical services available within the MCO which shall include the worker's right to receive emergency or urgent care, and the hours of regular MCO operation if assistance is needed to select an attending physician or answer other questions;

(f) Seek treatment from any category of medical service provider as defined in subsection (6)(a) of this rule and have a choice of at least 3 med-

## ADMINISTRATIVE RULES

ical service providers within each category. The worker shall also have at least 3 choices, as needed, of ancillary service providers including, but not limited to, physical therapists and psychologists. Treatment by all medical service providers including attending physicians will be governed by the MCO treatment standards and protocols;

(g) Access medical providers, including attending physicians, within a reasonable distance from the worker's place of employment, considering the normal patterns of travel. For purposes of this rule, 30 miles (one way) in urban areas and 60 miles (one way) in rural areas will be considered a reasonable distance;

(h) Receive treatment by a non-MCO medical service provider when the enrolled worker resides outside the MCO's geographical service area. Such workers may only select non-MCO providers if they practice closer to the worker's residence than an MCO provider of the same category and if they agree to the terms and conditions of the MCO;

(i) Receive services that meet quality, continuity, and other treatment standards which will provide all medical and health care services in a manner that is timely, effective, and convenient for the worker; and

(j) Receive specialized medical services the MCO is not otherwise able to provide. The application must include a description of the times, places, and manner of providing such specialized medical services.

(4) The MCO plan must provide a procedure which allows for workers to receive compensable medical treatment from a primary care physician or authorized nurse practitioner who is not a member of the MCO. The procedure must identify the criteria the MCO will use for approval or disapproval of such treatment, and provide written notice of the MCO physician qualification procedures to the worker.

(5) The MCO shall provide:

(a) Copies of contract agreement(s) or other documents signed by the MCO and each participating medical service provider/health care provider representative which verify membership; and

(b) A list of the names, addresses, and specialties of the individuals who will provide services under the managed care plan together with appropriate evidence of any licensing, registration or certification requirements for that individual to practice. This list shall indicate which medical service providers will act as attending physicians in each GSA within the MCO.

(6) The MCO plan shall provide:

(a) An adequate number of medical service providers from each provider category. For purposes of these rules, the categories include acupuncturist, chiropractor, dentist, naturopath, optometrist, osteopath, physician, and podiatrist, as listed in ORS 676.110. The requirements of this section must be met unless the MCO shows evidence that the minimum number is not available within a GSA.

(b) A process that allows workers to select a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (§3, ch. 811, OL 2003) and OAR 436-010. If the MCO has fewer than three authorized nurse practitioners from which workers can choose within a GSA, the MCO must allow workers to seek treatment outside the MCO from authorized nurse practitioners, consistent with the MCO's treatment and utilization standards and consistent with ORS 656.245(2)(b)(C) which limits the authorization of treatment of the worker by a nurse practitioner to 90 days and authorization of payment of temporary disability benefits for a period not to exceed 60 days from the date of the first visit on the initial claim. Such authorized nurse practitioners are not themselves bound by the MCO's treatment and utilization standards; however, workers are subject to those standards.

(c) A program which specifies the criteria for selection and de-selection of physicians and the process for peer review. The processes for terminating a physician and peer review shall provide for adequate notice and hearing rights for any physician.

(7) The MCO plan must provide adequate methods for monitoring and reviewing contract matters between its providers and the MCO to ensure appropriate treatment or to prevent inappropriate or excessive treatment including but not limited to:

(a) A program of peer review and utilization review to prevent inappropriate or excessive treatment including, but not limited to, the following:

(A) A pre-admission review program of elective admissions to the hospital and of elective surgeries.

(B) Individual case management programs, which identify ways to provide appropriate care for less money for cases which are likely to prove very costly, such as physical rehabilitation or psychiatric care.

(C) Physician profile analysis which may include such information as each physician's total charges, number and costs of related services provided, time loss of claimant, and total number of visits in relation to care provided by other physicians to patients with the same diagnosis. A physician's profile shall not be released to anyone outside the MCO without the physi-

cian's specific written consent except that the physician's profile shall be released to the director without the necessity of obtaining such consent.

(D) Concurrent review programs, which periodically review the worker's care after treatment has begun, to determine if continued care is medically necessary.

(E) Retrospective review programs, which examine the worker's care after treatment has ended, to determine if the treatment rendered was excessive or inappropriate.

(F) Second surgical opinion programs which allow workers to obtain the opinion of a second physician when elective surgery is recommended. Second surgical opinions must be required prior to repeat surgeries.

(b) A quality assurance program which includes, but is not limited to:

(A) A system for resolution and monitoring of problems and complaints which includes, but is not limited to, the problems and complaints of workers and medical service providers;

(B) Physician peer review which shall be conducted by a group designated by the MCO or the director and which must include, but is not limited to, members of the same healing art in which the physician practices;

(C) A standardized claimant medical recordkeeping system designed to facilitate entry of information into computerized databases for purposes of quality assurance.

(c) A program for monitoring and reviewing other contract matters that meets the requirements of ORS 656.260(4) and which are not covered under peer review, service utilization review, dispute resolution, and quality assurance.

(8) The MCO plan must include a procedure for internal dispute resolution to resolve complaints by enrolled injured workers, medical providers, and insurers in accordance with OAR 436-015-0110. The internal dispute resolution procedure shall include a provision allowing the waiver of the time period to appeal a decision to the MCO upon a showing of good cause.

(9) The MCO plan shall provide other programs that meet the requirements of ORS 656.260(4) including:

(a) A program involving cooperative efforts by the workers, the employer, the insurer, and the MCO to promote early return to work for enrolled injured workers; and

(b) A program involving cooperative efforts by the workers, the employer, and the MCO to promote workplace safety and health consultative and other services. The program shall include:

(A) Identification of how the MCO will promote such services.

(B) A method by which the MCO will report to the insurer within 30 days of knowledge of occupational injuries and illnesses involving serious physical harm as defined by OAR 437-001, occupational injury and illness trends as observed by the MCO, and any observations that indicate an injury or illness was caused by a lack of diligence of the employer.

(C) A method by which an MCO's knowledge of needed loss control services will be communicated to the insurer for determining the need for services as detailed in OAR 437-001.

(D) A provision that all notifications to the insurer from the MCO shall be considered as a request to the insurer for services as detailed in OAR 437-001.

(E) A provision that the MCO shall maintain complete files of all notifications for a period of 3 years following the date that notification was given by the MCO.

(10) The MCO shall establish one place of business in this state where the organization administers the plan, keeps membership records and other records as required by OAR 436-015-0050.

(11) The MCO plan must include a procedure for timely and accurate reporting to the director necessary information regarding medical and health care service costs and utilization in accordance with OAR 436-015-0040 and 436-010.

(12) The MCO shall designate an in-state communication liaison for the department and the insurers at the MCO's established in-state location. The responsibilities of the liaison shall include, but not be limited to:

(a) Coordinating and channeling all outgoing correspondence and medical bills;

(b) Unless otherwise provided by the MCO contract, providing centralized receipt and distribution of all reimbursements back to the MCO members and primary care physicians; and

(c) Serving as a member on the quality assurance committee.

(13) The MCO must provide satisfactory evidence of ability to meet the financial requirements necessary to ensure delivery of service in accordance with the plan.

(14) The MCO plan shall describe the reimbursement procedures for all services provided in accordance with the MCO plan. The members must comply with the following billing and report processing procedures:

(a) Submit all bills in accordance with the MCO contract with the insurer.

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(b) Submit all reports and related correspondence to the insurer's authorized claims processing location with copies to the MCO in-state communication liaison or as otherwise provided by the contract.

(15) The MCO plan shall provide a procedure within the MCO plan to provide financial incentives to reduce service costs and utilization without sacrificing the quality of service.

(16) The MCO plan must describe how the MCO will provide insurers with information that will inform workers of all choices of medical service providers within the plan and how workers can access those providers.

(17) Within 45 days of receipt of all information required for certification, the director shall notify the applicant of the effective date of the certification and the initial geographical service area of the MCO. If the certification is denied, the applicant will be provided with the reason therefore.

(18) The application for certification for an MCO shall not be approved if the MCO fails to meet the requirements of these rules.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0050

### Notice of Place of Business in State; Records MCO Must Keep in Oregon

(1) Every MCO shall give the division notice of one in-state location and mailing address where the MCO keeps records of the following:

(a) Updated membership listings of all MCO members;

(b) Records of any sanctions or punitive actions taken by the MCO against its members;

(c) Records of actions taken by the MCO's peer review committee;

(d) Records of utilization reviews performed in accordance with the requirements of utilization and treatment standards pursuant to ORS 656.260 showing cases reviewed, the issues involved, and the action taken;

(e) A profile analysis of each provider in the MCO listed by the International Classifications of Disease-9-Clinical Manifestations (ICD-9-CM) diagnosis;

(f) A record of those enrolled injured workers receiving treatment by non-panel primary care physicians or authorized nurse practitioners authorized to treat pursuant to OAR 436-015-0070; and

(g) All other records as necessary to ensure compliance with the certification requirements in accordance with OAR 436-015-0030.

(2) Records retained as required by section (1) of this rule must be maintained at the authorized in-state location for 3 full calendar years.

(3) If the MCO/insurer contract is canceled for any reason, all MCO records, as identified in section (1), relating to treatment provided to workers within the MCO must be forwarded to the insurer upon request. The records included in subsections (1)(b), (c), (d), and (e) of this rule are confidential in accordance with ORS 656.260(6) through (10).

(4) Individual MCO providers must maintain claimant medical records as provided by OAR 436-010-0240.

(5) Nothing in this section is intended to otherwise limit the number of locations the MCO may maintain to carry out the provisions of these rules.

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

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0060

### Commencement/Termination of Members

(1) Prospective new members of an MCO shall submit an application to the MCO. The directors, executive director, or administrator may approve the application for membership pursuant to the membership requirements of the MCO. The MCO shall verify that each new member meets all licensing, registration, and certification requirements necessary to practice in Oregon. If the MCO requires a membership fee, the fee shall be the same for every category of medical service provider. An MCO may not require membership fees or other MCO administrative fees to be paid by primary care physicians or authorized nurse practitioners who provide services under OAR 436-015-0070.

(2) Individual members may elect to terminate their participation in the MCO or be subject to cancellation by the MCO pursuant to the membership requirements of the MCO plan. Upon termination of a member, the MCO shall:

(a) Make alternate arrangements to provide continuing medical services for any affected injured workers under the plan.

(b) Replace any terminated member when necessary to maintain an adequate number of each category of medical service provider.

Stat. Auth.: ORS 656.726(3)  
Stats. Implemented: ORS 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0070

### Primary Care Physicians and Authorized Nurse Practitioners Who Are Not MCO Members

(1) The MCO shall authorize a physician who is not a member of the MCO to provide medical services to an enrolled worker if the physician qualifies as a primary care physician. For the purposes of this rule, the physician must:

(a) Qualify in accordance with ORS 656.005(12) as an attending physician and must be a general practitioner, a family practitioner, or an internal medicine specialist;

(b) Maintain the worker's medical records;

(c) Have a documented history of treatment of that worker;

(d) Agree to comply with all terms and conditions regarding services governed by the MCO. For purposes of this section, the phrase "all terms and conditions regarding services governed by the MCO" means MCO treatment standards, protocols, utilization review, peer review, dispute resolution, billing and reporting procedures, and fees for services in accordance with OAR 436-015-0090; and

(e) Agree to refer the worker to the MCO for specialized care, including physical therapy, to be furnished by another provider that the worker may require.

(2) The MCO shall authorize an authorized nurse practitioner who is not a member of the MCO to provide medical services to an enrolled worker, in the same manner as a primary care physician, if the authorized nurse practitioner meets the requirements of subsections (1)(b) through (e).

(3) The MCO cannot deny authorization of a primary care physician or authorized nurse practitioner based on past practices.

(4) The primary care physician or authorized nurse practitioner who is not a member of the MCO will be deemed to have maintained the worker's medical records and established a documented history of treatment, if the physician's or nurse practitioner's medical records show treatment has been provided to the worker prior to the date of injury. Additionally, if an injured worker has selected a primary care physician or authorized nurse practitioner through a private health plan, prior to the date of injury, the requirements of subsections (1)(b) and (c) shall be deemed to be met.

(5) Notwithstanding section (1), for those workers receiving their medical services from a facility which maintains a single medical record on the worker, but provides treatment by multiple primary care physicians or authorized nurse practitioners who are not MCO members, the requirements of sections (1) and (4) will be deemed to be met. In this situation, the worker shall select one physician or authorized nurse practitioner to treat the compensable injury as the primary care physician or authorized nurse practitioner.

(6) Any questions or disputes relating to the worker's selection of a primary care physician or authorized nurse practitioner who is not an MCO member shall be resolved pursuant to OAR 436-015-0110.

(7) Any disputes relating to a worker's non-MCO primary care physician's, non-MCO authorized nurse practitioner's, or other non-MCO physician's compliance with MCO standards and protocols shall be resolved pursuant to OAR 436-015-0110.

Stat. Auth.: ORS 656.726(4)  
Stats. Implemented: ORS 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-015-0090

### Charges and Fees

(1) Billings for medical services under an MCO shall be submitted in the form and format as prescribed in OAR 436-009. The payment of medical services may be less than, but shall not exceed, the maximum amounts allowed pursuant to OAR 436-009.

(2) Notwithstanding section (1) of this rule, fees paid for medical services provided by primary care physicians who are not MCO members shall not be less than fees paid to MCO providers for similar medical services. Fees paid to medical providers who are not under contract with the MCO, shall be subject to the provisions of OAR 436-009.

# ADMINISTRATIVE RULES

(3) Notwithstanding section (1) of this rule, fees paid for medical services provided by authorized nurse practitioners who are not MCO members, but authorized to provide medical services under OAR 436-015-0070(2), shall not be less than fees paid to nurse practitioners who are MCO members for similar medical services.

Stat. Auth.: ORS 656.726(3)  
Stats. Implemented: ORS 656.245 & 656.260  
Hist.: WCD 11-1990(Temp), f. 6-19-90, cert. ef. 7-1-90; WCD 33-1990, f. 12-12-90, cert. ef. 12-26-90; WCD 2-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 14-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 13-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 12-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0003

### Applicability of Rules

(1) Except as provided in section (3) of this rule, these rules apply to all accepted claims for workers' compensation benefits and all requests for reconsideration received by the department on or after the effective date of these rules.

(2) All orders issued by the division to carry out the statute and these rules are considered an order of the director.

(3) These rules take the place of the rules adopted on January 1, 2001, by Workers' Compensation Division Administrative Order 00-058, and carry out the provisions of ORS 656.005, 656.214, 656.262, 656.268, 656.273, 656.277, 656.278, 656.325, and section 22(3), chapter 865, Oregon Laws 2001.

(a) The provisions of OAR 436-030-0009, 030-0020, 030-0030, 030-0115 (except section (4)), 030-0125, 030-0135, 030-0145, 030-0155, 030-0165 (except subsection (9)(b)), 030-0175 and 030-0185 apply to all determinations or claims for workers who become medically stationary after July 1, 1990. For claims in which the worker became medically stationary prior to July 2, 1990 the provisions of OAR 436-030-0020, 030-0030, 030-0050 as contained in WCD Administrative Order 13-1987 shall apply.

(b) The provisions of OAR 436-030-0045 apply to requests for reclassification made on or after January 1, 2002.

(c) OAR 436-030-0017(1) applies to all requests for closure made on or after January 1, 2002.

(d) The provisions of OAR 436-030-0055(3)(c) and (4)(a) apply to all claims with dates of injury on or after January 1, 2002.

(e) The provisions of OAR 436-030-0115(4) and 436-030-0165(9)(b) apply to all claims closed on or after January 1, 2002.

(f) The changes to the following rules effective January 1, 2004, apply to all claims closed on or after January 1, 2004: OAR 436-030-0009, 030-0010, 030-0115, 030-0125, 030-0135, 030-0145, 030-0165, and 030-0185.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.262, 656.268, 656.277, 656.325, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0003, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1991(Temp), f. 8-20-91, cert. ef. 9-1-91; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 12-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 6-29-01; Administrative correction 11-20-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 4-2002, f. 4-5-02, cert. ef. 4-8-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0005

### Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions given in the Workers' Compensation Law and as follows:

(1) "Administrator" means the Administrator of the Workers' Compensation Division, Department of Consumer and Business Services, or the administrator's delegate for the matter.

(2) "Authorized Nurse Practitioner" means a nurse practitioner authorized to provide compensable medical services under ORS 656.245 (section 3, chapter 811, Oregon Laws 2003) and OAR 436-010.

(3) "Director" means the Director of the Department of Consumer and Business Services, or the director's delegate for the matter.

(4) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(5) "Insurer" means the State Accident Insurance Fund, or an insurer authorized under ORS Chapter 731 to transact workers' compensation insurance in Oregon, a self-insured employer or a self-insured employer group.

(6) "Mailed or Mailing Date," for the purposes of determining timeliness pursuant to these rules, means the date a document is postmarked. Requests submitted by electronic transmission (by facsimile or "fax") shall be considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests shall be considered mailed as of the date stamped or punched in by the Workers'

Compensation Division. Phone or in-person requests, where allowed under these rules, shall be considered mailed as of the date of the request.

(7) "Notice of Classification" means the insurer's written response, to a worker's request, which notifies the worker of the insurer's decision regarding the nondisabling status of a claim.

(8) "Notice of Closure" means a notice to the worker issued by the insurer to close an accepted disabling claim or to reduce permanent total disability to permanent partial disability.

(9) "Reconsideration" means review by the director of an insurer's Notice of Closure.

(10) "Statutory closure date" means the date the claim can be closed pursuant to ORS 656.268(1)(b) and (c).

(11) "Statutory appeal period" means the time frame for appealing a Notice of Closure or Order on Reconsideration.

(a) For closures where the worker is medically stationary prior to June 7, 1995, the appeal period is 180 days from the mailing date of the order.

(b) For closures where the worker is medically stationary on or after June 7, 1995, the appeal period is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented. The appeal period for an Order on Reconsideration is 30 days from the mailing date of the order.

(c) Former ORS 656.268(1)(a) and (b) became effective June 7, 1995. For workers whose claims are closed pursuant to that statute, the medically stationary date will be at some point in the future after June 7, 1995. Therefore, the appeal period for claims closed pursuant to former ORS 656.268(1)(a) and (b) is 60 days from the date the order is mailed to the worker and to the worker's attorney if the worker is represented.

(12) "Worksheet" means a summary of facts used to derive the awards stated in the Notice of Closure.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.005, 656.268, 656.726 & OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), 12-30-81, ef. 1-1-82; Renumbered from 436-065-0004, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0007

### Administrative Review

(1) Dispute Resolution Before the director:

(a) Notices of Closure issued by insurers are appealed to the director and processed in accordance with the reconsideration procedures described in OAR 436-030-0115 through 436-030-0185.

(b) Abating, withdrawing or amending an Order on Reconsideration: The director may abate, withdraw, and/or amend the Order on Reconsideration until a hearing is requested or the Order is final by operation of law.

(c) Notices of Classification issued by insurers are appealable by the worker to the director in accordance with ORS 656.273 and 656.277. A worker need not be represented in the administrative review process to make a request for review of the insurer's classification decision.

(A) The worker's request for review must be made to the director no later than the 60th day after the date the Notice of Classification is mailed.

(B) The insurer shall provide the director with the complete medical record used and all other relevant documents within 14 days of notification by the director of the request for review. The insurer may be subject to penalties under OAR 436-030-0580 for failure to provide the claim documents in a timely manner. The worker may also submit, within the same 14 days, any additional evidence the worker wishes the director to consider.

(C) When providing information to the director, the submitting party shall also provide copies to all other parties at the same time.

(D) After receiving the relevant documents, the director will issue an order. The parties will have 30 days from the date of the order to appeal to the Hearings Division of the Workers' Compensation Board.

(E) The director may reconsider, abate, or withdraw any order before a hearing on that order has been requested and before the order becomes final by operation of law.

(2) Cases brought before the Hearings Division of the Workers' Compensation Board:

(a) Orders on Reconsideration and Director's Review of Claim Classification are appealable to the Hearings Division of the Workers' Compensation Board as follows:

(A) The party must send the request for hearing in writing to the Hearings Division in accordance with ORS 656.283 and the rules of procedure adopted by the Workers' Compensation Board.

(B) Pursuant to OAR 436-030-0145(2) for claims medically stationary on or after June 7, 1995, for the purpose of filing such appeal, the time shall be 30 days from the mailing date of the Order.

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(C) Pursuant to OAR 436-030-0145(1) for claims medically stationary before June 7, 1995, for the purpose of filing such appeal, the time required to complete the reconsideration proceeding shall not be included in the time limit. The request for hearing must be filed within the statutory appeal period.

(b) A party may request a hearing before the Hearings Division of the Workers' Compensation Board on any other action taken pursuant to these rules where a worker's right to compensation or the amount thereof is directly an issue in accordance with the provisions of ORS Chapter 656.

(3) Contested Case Hearings of Sanctions and Civil Penalties: Under ORS 656.740 (§9, ch. 170, OL 2003), any party aggrieved by a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, 656.735, 656.745 or 656.750 may request a hearing by the Hearings Division as follows:

(a) The party must send the request for hearing in writing to the director within 60 days after the mailing date of the proposed order or assessment. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The Workers' Compensation Division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(c) An Administrative Law Judge from the Hearings Division, acting on behalf of the director, shall conduct the hearing in accordance with ORS 656.740 and Chapter 183.

(4) Director's Administrative Review of other actions: Except as covered under sections (1) through (3) of this rule, any party seeking an action or decision by the director or aggrieved by an action taken by any other party pursuant to these rules, may request administrative review by the director as follows:

(a) The party must send the request in writing to the director within 90 days of the disputed action and must specify the grounds upon which the action is taken, unless the director determines that there was good cause for delay or that substantial injustice may result otherwise.

(b) The director may require and allow such evidence as it deems appropriate to complete the review.

(c) A director's order will be issued and will specify if the order is final or if it may be appealed.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0009

### Appeals of Notices of Closure

If a worker or insurer disagrees with a Notice of Closure and the worker was determined medically stationary after July 1, 1990, or the worker is not medically stationary and the claim is closed pursuant to ORS 656.268(1)(b) or (c), the worker or insurer must first request a reconsideration by the director pursuant to these rules. If the worker was determined medically stationary on or before July 1, 1990, WCD Admin. Order 13-1987 rules apply.

Stat. Auth.: ORS 656.268, ORS 656.726, OL Ch. 332 & 1999 OL Ch. 313  
Stats. Implemented: ORS 656.268, ORS 656.726, OL Ch. 332 & 1999 OL Ch. 313  
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; Renumbered from 436-030-0020(3); WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0010

### Director Responsibility

(1) The director, when requested by a worker, is responsible for reviewing the disabling/non-disabling status of a claim.

(2) The director, when requested by a worker or insurer, is responsible for conducting the reconsideration proceeding when the worker or insurer is dissatisfied with a Notice of Closure, and assessing penalties and attorney fees where appropriate.

(3) Applicable to these rules, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.206, 656.210, 656.212, 656.214, 656.268, 656.277, 656.325, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 5-1975, f. 2-6-75, ef. 2-25-75; WCD 8-1978(Admin), f. 6-30-78, ef. 7-10-78; WCD 4-1980(Admin), f. 3-20-80, ef. 4-1-80; WCD 5-1981(Admin), f. 12-30-81, ef. 1-1-82; Renumbered from 436-065-0005, 5-1-85; WCD 13-1987, f. 12-18-87, ef. 1-1-88; WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0034

### Claim Closure When the Worker Is Not Medically Stationary

(1) A claim may be closed by the insurer when the worker is not medically stationary and when the worker has not sought medical care for a period in excess of 30 days, without the instruction or approval of the attending physician or authorized nurse practitioner, for reasons within the worker's control; and

(a) The insurer has notified the worker after the close of that 30-day period, by certified letter, that claim closure may result for failure to seek medical treatment for a period of 30 days. The notification letter shall inform the worker of the worker's responsibility to seek medical treatment in a timely manner, and shall inform the worker of the consequences for failing to do so, including claim closure.

(b) Workers shall be given 14 days from the mailing date to respond to the notification letter before any further action is taken by the insurer towards claim closure.

(2) When a worker fails to seek treatment for a period in excess of 30 days, the date the claim qualifies for closure shall be the latest (most chronologically recent) of the following which occurs prior to the closure:

(a) 30 days from the last treatment provided or authorized by the attending physician or authorized nurse practitioner;

(b) The date the attending physician or authorized nurse practitioner recommended a follow-up visit and the worker failed to attend for reasons within the worker's control;

(c) The date the worker returns to or is released to regular work if it is after the last examination date; or

(d) The date the insurer receives, prior to the 14th day after the notification letter was sent by certified mail, a written response from the worker regarding the notification letter and failure to treat.

(3) A claim may be closed when the worker is not medically stationary, and the worker fails to attend a mandatory closing examination for reasons within the worker's control; and

(a) The insurer has notified the worker, by certified letter, at least 10 days prior to the mandatory examination, that claim closure may result for failure to attend a mandatory closing examination. The notification letter shall inform the worker of the worker's responsibility to attend the mandatory closing examination and of the consequences for failing to do so.

(b) Workers have 7 days from the date of exam to demonstrate good cause for failing to attend, before any further action is taken by the insurer toward claim closure.

(c) Where the worker fails to attend a mandatory closing examination for reasons within the worker's control, the date the claim qualifies for closure shall be the date of the failed mandatory closing examination.

(d) Where a closing exam has been scheduled between a worker and attending physician directly, insurers may close pursuant to (1) of this section.

(4) A claim may be closed when the worker is not medically stationary, and a major contributing cause denial has been issued.

(a) The major contributing cause denial shall inform the worker that claim closure may result from the issuance of the denial and other information required by these rules.

(b) When a "major contributing cause" denial has been issued, the date the claim qualifies for closure shall be the date the insurer receives sufficient information to determine the extent of any permanent disability pursuant to OAR 436-035-0007(5) and 436-030-0020(2) or the date of the denial, whichever is later.

(5) The attending physician or authorized nurse practitioner shall be copied on all notification and denial letters applicable to this rule.

(6) When (1), (2) or (3) occur concurrently, the earliest date the claim qualifies for closure shall be used to close the claim and noted on the notice.

(7) When a suspension order, pursuant to OAR 436-060-0095 and 436-060-0105, has been issued by the Department, the date the claim qualifies for closure is the date of the suspension order.

(8) When a worker fails to seek treatment with an attending physician or authorized nurse practitioner as defined by ORS 656.005(12), the claim may be closed pursuant to sections (1) and (2) of this rule. All notices must clearly identify the reason for the closure is because of failure to treat with an attending physician or authorized nurse practitioner.

Stat. Auth.: ORS 656.262, 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0035

### Determining Medically Stationary Status

(1) A worker's compensable condition shall be determined to be medically stationary when the attending physician, authorized nurse practitioner, or a preponderance of medical opinion declares the worker either "med-

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ically stationary," "medically stable," or uses other language meaning the same thing.

(2) When there is a conflict in the medical opinions as to whether or not a worker's compensable condition is medically stationary, more weight shall be given to medical opinions that are based on the most accurate history, on the most objective findings, on sound medical principles, and clear and concise reasoning.

(3) Where there is not a preponderance of medical opinion stating a worker's compensable condition is or is not medically stationary, deference shall generally be given to the opinion of the attending physician. However, in cases where expert analysis is important, deference shall be given to the opinion of the physician with the greatest expertise in, and understanding of, the worker's condition.

(4) When there is a conflict as to the date upon which a worker's compensable condition became medically stationary, the following conditions shall govern the determination of the medically stationary date. The date a worker is medically stationary is the earliest date that a preponderance is established pursuant to sections (1) and (2) of this rule. The date of the examination, not the date of the report, controls the medically stationary date.

(5) The insurer shall request the attending physician's concurrence or comments when the attending physician arranges, or refers the worker for, a closing examination with another physician to determine the extent of impairment, or when the insurer refers a worker for an insurer medical examination. A concurrence with another physician's report is an agreement in every particular, including the medically stationary impression and date, unless the physician expressly states to the contrary and explains the reasons for disagreement. Concurrence shall not be presumed in the absence of the attending physician's response.

(6) A worker is medically stationary on the date of the examination when so specified by a physician. When a specific date is not indicated, a worker is presumed medically stationary on the date of the last examination, prior to the date of the medically stationary opinion. Physician projected medically stationary dates cannot be used to establish a medically stationary date.

(7) If the worker is incarcerated or confined in some other manner and unable to freely seek medical treatment, the insurer shall arrange for medical examinations to be completed at the facility where the worker is located or at some other location accessible to the worker.

Stat. Auth.: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Stats. Implemented: ORS 656.268, 656.726, OL Ch. 332 1995 & Ch. 313 1999  
Hist.: WCD 5-1990(Temp), f. 6-18-90, cert. ef. 7-1-90; WCD 31-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 5-1992, f. 1-17-92, cert. ef. 2-20-92; WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0115

### Reconsideration of Notices of Closure

(1) A worker or insurer may request reconsideration of a Notice of Closure by mailing or delivering the request to the director within the statutory appeal period as defined in OAR 436-030-0005(6) and (11). The reconsideration proceeding begins pursuant to OAR 436-030-0145(4).

(2) For the purpose of these rules, "reconsideration proceeding" means the procedure established to reconsider a Notice of Closure and does not include personal appearances by any of the parties to the claim or their representatives, unless requested by the director. All information to correct or clarify the record and any medical evidence regarding the worker's condition as of the time of claim closure that should have been but was not submitted by the attending physician or authorized nurse practitioner at the time of claim closure and all supporting documentation must be presented during the reconsideration proceeding. When the reconsideration proceeding is postponed because the worker's condition is not medically stationary under OAR 436-030-0165(9), medical evidence submitted may address the worker's condition after claim closure as long as the evidence satisfies the conditions of OAR 436-030-0145(5).

(3) All parties have an opportunity to submit documents to the record regarding the worker's status at the time of claim closure. Other factual information and written argument may be submitted for incorporation into the record pursuant to ORS 656.268(6) within the time frames outlined in OAR 436-030-0145. Such information may include, but is not limited to, responses to the documentation and written arguments, written statements and sworn affidavits from the parties.

(4) The worker may submit a deposition to the reconsideration record subject to ORS 656.268(6) and the following:

(a) The deposition must be limited to the testimony and cross-examination of a worker about the worker's condition at the time of claim closure.

(b) The deposition must be arranged by the worker and held during the reconsideration proceeding time frame unless a good cause reason is established. If a good cause reason is established, the time frame for holding the deposition may be extended but shall not extend beyond 30 days from the date of the Order on Reconsideration. The deposition must be held at a time and place that permits the insurer or self-insured employer the opportunity to cross-examine the worker.

(c) The insurer or self-insured employer must, within 30 days of receiving a bill for the deposition, pay the fee of the court reporter and the costs for the original transcript and its copies. An original transcript of the deposition shall be sent to the department and each party shall be sent a copy of the transcript.

(d) If the transcript is not completed and presented to the department prior to the deadline for issuing an Order on Reconsideration, the Order on Reconsideration may not be postponed to receive a deposition under this rule and the order will be issued based on the evidence in the record. However, the transcript may be received as evidence at a hearing for an appeal of the Order on Reconsideration.

(5) Only one reconsideration proceeding may be completed on each Notice of Closure and the director will do a complete review of that notice. Once the reconsideration proceeding is initiated, any additional issues must be raised and further evidence submitted within the time frames allowed for processing the reconsideration request. When the director requires additional information to complete the record, the reconsideration proceeding may be postponed pursuant to ORS 656.268(6).

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313  
Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313  
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0125

### Reconsideration Form and Format

(1) A request for reconsideration may be in the form and format the director provides by bulletin. A reconsideration request should include at least the following:

- (a) Worker's name;
- (b) Date of injury;
- (c) Date of the closure being appealed;
- (d) Any specific issues regarding the Notice of Closure;
- (e) The name of the worker's attorney;
- (f) The name of the insurer's attorney;
- (g) Any special language needs;
- (h) Whether there is disagreement with the specific impairment findings used to determine permanent disability at the time of claim closure;

(i) Any information and documentation deemed necessary to correct or clarify any part of the claim record believed to be erroneous; and

(j) Any medical evidence that should have been but was not submitted at the time of the claim closure including clarification or correction of the medical record based on the examination(s) at, before, or pertaining to claim closure.

(2) Upon receipt of a request for reconsideration, the director will send an acknowledgement letter to the worker and insurer with the date the request was received and when the reconsideration proceeding will begin under OAR 436-030-0145(4).

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313  
Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313  
Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0135

### Reconsideration Procedure

(1) When requesting reconsideration of a Notice of Closure,

(a) A worker may ask the director for assistance in completing the request for reconsideration. The director will notify the worker the proceeding may result in an increase or a decrease in entitlement to benefits.

(b) Once the reconsideration proceeding is initiated, the director will notify all parties of the reconsideration start date and of the timelines for submitting additional information to be included in the record. This acknowledgment letter shall include a certification that the letter has been mailed to the listed parties. The acknowledgment letter will notify the parties of the last date an Order on Reconsideration can be issued or the proceeding postponed, and the status of the request if the director fails to issue an Order on Reconsideration or postponement pursuant to the time limits specified in ORS 656.268(6).

(c) The request for reconsideration and all other information submitted to the director by any party during the reconsideration process must be copied to all interested parties. Failure to comply with this requirement will



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result in the information not being included as part of the record on reconsideration. The director may assist a worker in meeting this requirement.

(d) When a party does not discover until after the reconsideration order has issued that additional documents were not provided by the opposing party in accordance with this rule, the Order on Reconsideration may be abated and withdrawn to give the party an opportunity to respond to the new information.

(2) The insurer shall furnish within 10 working days of the beginning of the reconsideration proceeding all documents pertaining to the claim that have not been previously submitted to the director and the worker or the worker's representative. The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents in a timely manner.

(3) When a worker has received a lump sum payment, pursuant to ORS 656.230, of an award granted by a Notice of Closure, the director shall not consider the adequacy of that award in a reconsideration proceeding.

(4) The director will issue an order rescinding the Notice of Closure when the director finds, upon reconsideration:

(a) the claim was closed prematurely because the worker's accepted condition was not medically stationary and the claim did not qualify for closure pursuant to ORS 656.268(1)(a); or

(b) the claim was not closed in accordance with the requirements of ORS 656.268(1)(b) and (c) and OAR 436-030-0020.

(5) When a new condition is accepted after a prior claim closure, and the newly accepted condition is subsequently closed, the director and the parties may mutually agree to consolidate requests for review of the closures into one reconsideration proceeding, provided the director has jurisdiction and neither of the closures have become final by operation of law.

(6) The reconsideration order shall address issues raised by the parties and shall address compensation as follows:

(a) Compensation reduced in a reconsideration order shall be "in lieu of" any compensation awarded by the Notice of Closure.

(b) Additional compensation awarded in a reconsideration order shall be "in addition to" any compensation awarded by the Notice of Closure. The reconsideration order may award total compensation due less any compensation previously ordered.

(c) Any compensation affirmed in a reconsideration order shall be so stated.

(d) The dollar rate per degree of disability shall be listed.

(7) A copy of the reconsideration order will be sent to the worker, employer(s), insurer(s), worker's attorney if the worker is represented, and the insurer's attorney(s), if the insurer is represented.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0145

### Reconsideration Time Frames and Postponements

(1) For claims with a medically stationary date prior to June 7, 1995, the time required to complete the reconsideration proceeding pursuant to this rule shall not be included in the 180 days from the mailing date of the Notice of Closure to request a hearing.

(a) The 180-day time limit will be tolled upon receipt of the request for reconsideration from the mailing date of the request for reconsideration until the reconsideration request is either dismissed or an Order on Reconsideration is issued.

(b) The 180-day time limit will not be tolled when a request for reconsideration is withdrawn pursuant to OAR 436-030-0185.

(2) For claims with a medically stationary date, or date the claim statutorily qualifies for closure, on or after June 7, 1995, a worker's request for reconsideration shall be mailed within 60 days of the mailing date of the Notice of Closure. A request for hearing must be made within 30 days of the mailing date of the Order on Reconsideration.

(3) For claims closed on or after January 1, 2004, the insurer's request for reconsideration is limited to the findings used to rate impairment and must be mailed within seven days of the mailing date of the Notice of Closure.

(4) The reconsideration proceeding begins upon;

(a) the director's receipt of the worker's request for reconsideration, if the insurer has not previously requested reconsideration consistent with section (3) of this rule; or

(b) the 61st day after the closure of the claim, if the insurer has requested reconsideration consistent with section (3) of this rule; unless the director receives, within the appeal time frames in sections (1) and (2) of this rule, a request for reconsideration or a statement by the worker instructing the director to start the reconsideration proceeding.

(5) Ten working days after the date the reconsideration proceeding begins, the reconsideration request and all other appropriate information submitted by the parties shall become part of the record used in the reconsideration proceeding. The insurer may be subject to penalties under OAR 436-030-0175 for failure to provide the claim documents within ten working days without good cause.

(a) Evidence received or issues raised subsequent to the tenth working day deadline will be considered in the reconsideration proceeding to the extent practicable.

(b) Upon review of the record the director may request, in accordance with ORS 656.268(6), any additional information deemed necessary for the reconsideration and set appropriate time frames for response.

(c) When the reconsideration proceeding has been postponed in accordance with OAR 436-030-0165(9) because the worker's condition is not medically stationary, interim medical information that may be helpful to the director and the medical arbiter in assessing and describing the impairment due to the compensable condition(s) may be submitted at the time the parties notify the director that the medical arbiter can be scheduled. The director will determine whether the interim medical information is consistent with the provisions of ORS 656.268(6) and (7).

(d) Except as provided in section (6) of this rule, the director will either mail an Order on Reconsideration within 18 working days from the date the reconsideration proceeding begins or notify the parties that the reconsideration proceeding is postponed for not more than 60 additional days in accordance with the provisions of ORS 656.268(6).

(6) Pursuant to ORS 656.268(7), when the director provides notice the worker failed to attend the medical arbiter examination without good cause or failed to cooperate with the arbiter examination and suspends benefits, the reconsideration proceeding will be postponed for up to 60 additional days from the date the director determines and provides notice, to allow completion of the arbiter process.

(7) Pursuant to ORS 656.726(4)(f), the reconsideration proceeding may be stayed to determine whether temporary rules amending "the standards" are required to properly rate the worker's impairment. The director will notify the parties that the proceeding has been stayed for this purpose.

(8) When a Claim Disposition Agreement (CDA) is filed with the Workers' Compensation Board, the reconsideration proceeding is stayed until the CDA is either approved by a final order of the Board or the Board sets aside the disposition. The director will notify the parties that the proceeding has been stayed for this purpose.

(9) If the director fails to mail an Order on Reconsideration or a Notice of Postponement pursuant to the time frames specified in ORS 656.268(6), the reconsideration request is automatically deemed denied. The parties may immediately thereafter proceed as though the director had issued an Order on Reconsideration affirming the Notice of Closure. In accordance with section (1) of this rule, the counting of the 180-day time limit for requesting a hearing under former ORS 656.268(6)(b) shall resume on the date after the director should have issued an Order on Reconsideration.

(10) Notwithstanding any other provision regarding the reconsideration proceeding, the director may extend nonstatutory time frames to allow the parties sufficient time to present evidence and address their issues and concerns.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268, ORS 656.726(3)(f)(C) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0165

### Medical Arbiter Examination Process

(1) When a worker or insurer requests reconsideration and disagrees with the impairment findings used in rating the worker's disability at the time of claim closure, the director shall refer the claim to a medical arbiter or panel of arbiters.

(a) When the director determines that sufficient medical information is not available to rate disability, the director may refer the claim to a medical arbiter or panel of arbiters.

(b) The director will notify the parties within 18 working days from the date the reconsideration proceeding begins that a medical arbiter review will be scheduled.

(c) The costs related to record review, examinations, tests and reports of the medical arbiter shall be paid pursuant to OAR 436-009-0015, 436-009-0040, and 436-009-0070.

(2) The director shall select a medical arbiter physician or a panel of physicians in accordance with ORS 656.268(7)(d). Arbiters or panel members shall not include any medical service providers whose examination or treatment is the subject of the review.

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(a) Any party that objects to a physician on the basis that the physician is not qualified under ORS 656.005(12)(b) must notify the director prior to the examination of the specific objection. If the director determines that the physician is not qualified to be a medical arbiter on the specific case, an examination will be scheduled with a different physician. All costs related to the completion of the medical arbiter process in this rule shall be paid by the insurer.

(b) When the worker resides outside the state of Oregon, a medical arbiter examination may be scheduled out-of-state with a physician who is licensed within that state to provide medical services in the same manner as required by ORS 656.268(7).

(3) The medical arbiter or panel of medical arbiters shall perform a record review or examine the worker as requested by the director and perform such tests as may be reasonable and necessary to establish the worker's impairment. The director shall provide notice of the examination of the worker to all parties.

(a) Any issues the parties wish the medical arbiter or panel of medical arbiters to address must be submitted to the director within 10 working days after the date the reconsideration proceeding begins. Issues shall not be submitted to the medical arbiter or panel of medical arbiters directly by the parties. Only issues appropriate to the reconsideration proceeding will be submitted by the director to the medical arbiter or panel of medical arbiters.

(b) The medical arbiter or panel of medical arbiters shall address all questions raised by the director in the report.

(c) The director shall instruct the medical arbiter to provide copies of the arbiter report to the director, the worker or the worker's attorney, and the insurer(s) within five (5) working days after completion of the arbiter review. The cost of providing copies of such additional reports shall be reimbursed according to OAR 436-009-0070 and shall be paid by the insurer.

(4) The director shall notify the parties of the time and place of the medical arbiter examination. This notice shall also inform the worker that failure to attend the medical arbiter examination or to cooperate with the medical arbiter will result in suspension of all disability benefits effective on the date of the examination unless the worker establishes a "good cause" reason for missing the examination or for not cooperating with the arbiter. The appointment letter shall instruct the worker to call the director within 24 hours after failing to attend the examination to provide any "good cause" reason for missing the exam.

(a) Notice of the examination shall be considered adequate notice if the appointment letter is mailed to the last known address of the worker and to the worker's attorney if the worker is represented.

(b) For the purposes of this rule, non-cooperation includes, but is not limited to, refusal to complete any reasonable action necessary to evaluate the worker's impairment. However, it does not include circumstances such as a worker's inability to carry out any part of the examination due to excessive pain or when the physician reports the findings as medically invalid.

(c) Failure of the worker to respond within the time frames outlined in statute for completion of the reconsideration proceeding may be considered a failure to establish "good cause."

(5) If a worker misses the medical arbiter examination, the director shall determine whether or not there was a "good cause" reason for missing the examination.

(6) Upon determination that there was not a "good cause" reason for missing the examination, or that the worker failed to cooperate with the arbiter, the director will issue a notice to the worker that disability benefits are suspended and that the reconsideration proceeding is postponed up to an additional 60 days. A rescheduled examination will be made for the worker to complete the medical arbiter review within the additional 60-day postponement period.

(7) As addressed in the Order on Reconsideration, the suspension will be lifted if any of the following occurred during the additional 60-day postponement period:

(a) The worker established a "good cause" reason for missing or failing to cooperate with the examination;

(b) The request for reconsideration was withdrawn by the worker; or

(c) The worker attended and cooperated with a rescheduled arbiter examination.

(8) If none of the events which end the suspension pursuant to subsection (7) of this rule occurred prior to the expiration of the 60-day additional postponement, the director shall complete the reconsideration proceeding pursuant to ORS 656.268(7) and the Order on Reconsideration will order the suspension of benefits to remain in effect.

(9) When a medical arbiter examination is not medically appropriate because the worker's medical condition is not stationary and impairment cannot be accurately evaluated by the physician, the director will send a letter to the parties requesting consent to postpone the reconsideration proceeding.

(a) If the parties agree to the postponement, the reconsideration proceeding will be postponed until the worker's condition has medically resolved to allow for examination. The parties must notify the director when it is appropriate to schedule the medical arbiter examination.

(b) If the parties do not agree to the postponement, at the director's discretion either a medical arbiter examination or a medical arbiter record review may be obtained, or the director may issue an Order on Reconsideration based on the record available at claim closure and other evidence submitted in accordance with ORS 656.268(6).

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268 & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 11-1995(Temp), f. & cert. ef. 8-23-95; WCD 8-1996, f. 2-14-96, cert. ef. 2-17-96; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 10-2001, f. 11-16-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-030-0185

### Reconsideration: Settlements and Withdrawals

(1) Contested matters arising out of a claim closure may be resolved by mutual agreement of the parties at any time after the claim has been closed under ORS 656.268 but before that claim closure has become final by operation of law. If the parties have reached such an agreement prior to the completion of the reconsideration proceeding, the parties shall submit the stipulation agreement to the director for approval as part of the reconsideration proceeding. The Stipulation for review at the reconsideration proceeding must:

(a) Address only issues that pertain to a claim closure and cannot include any issues of compensability;

(b) List the body part(s) for which any award is made and shall recite all disability awarded in both degrees and percent of loss when permanent partial disability is part of the stipulated agreement. In the event there is any inconsistency between the stated degrees and percent of loss awarded in any stipulated agreement, the stated percent of loss shall be controlling.

(2) The director shall review the Stipulation and issue an order within 18 working days from receipt of the Stipulation by the director. Stipulations approved by the director are not appealable.

(3) When the stipulated agreement does not expressly resolve all issues relating to the claim closure, the Order on Reconsideration will include the Stipulation as well as a substantial determination of all remaining issues. In these claims, the 18 working day time frame may be postponed in the same manner as any reconsideration proceeding.

(4) If the Stipulation is not approved, the reconsideration proceeding will be postponed to allow the parties to:

(a) Address the disapproval, and/or

(b) To request that the director issue an Order on Reconsideration addressing the substantive issues.

(5) When the parties desire to enter into a stipulated agreement to resolve disputed issues relating to the claim closure but are unable to reach an agreement, the parties may request the assistance of the director to mediate an agreement.

(6) When the parties desire to enter a stipulated agreement that addresses issues including all matters being reconsidered as well as issues not before the reconsideration proceeding, and the parties do not want a reconsideration on the merits of the claim closure, they may advise the director of their resolution and request the director enter an Order on Reconsideration affirming the Notice of Closure. The request for an affirming order must be made prior to the date an Order on Reconsideration is issued and in accordance with the following procedure:

(a) A written request for an affirming reconsideration order must be made by certified mail and be signed by both parties or their representatives. The written request must also state that the parties waive their right to an arbiter review, and that all matters subject to the mandatory reconsideration process have been resolved. A copy of the proposed stipulated agreement must accompany the request.

(b) After the affirming Order on Reconsideration has issued, the parties will submit their stipulation to a referee of the Hearings Division, Workers' Compensation Board, for approval in accordance with the provisions of ORS 656.289 and the Board's rules of practice and procedure.

(c) An Order on Reconsideration issued pursuant to this rule is final and is subject to review pursuant to ORS 656.283.

(d) This provision does not apply to Claims Disposition Agreements filed pursuant to ORS 656.236.

(7) A worker requesting a reconsideration may withdraw the request for reconsideration if no additional information has been submitted by the other party(ies), no medical arbiter exam has occurred, and the insurer has not requested reconsideration pursuant to OAR 436-030-0145. If additional information has been submitted by the other party(ies), a medical arbiter exam has occurred, or the insurer has requested reconsideration, the reconsideration request will not be dismissed unless all parties agree.

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(8) If the insurer has requested reconsideration, either the worker or the insurer may initiate the withdrawal request but both must agree to the withdrawal.

(9) The director will issue an order dismissing the reconsideration under section (7) and (8) of this rule, when appropriate.

Stat. Auth.: ORS 656.726 & 1999 OL Ch. 313

Stats. Implemented: ORS 656.268(6) & 1999 OL Ch. 313

Hist.: WCD 12-1994, f. 11-18-94, cert. ef. 1-1-95; WCD 17-1997, f. 12-22-97, cert. ef. 1-15-98; WCD 9-2000, f. 11-13-00, cert. ef. 1-1-01; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

## 436-120-0008

### Administrative Review and Contested Cases

(1) Administrative review of vocational assistance matters: Under ORS 656.283(2) and 656.340(4), a worker wanting review of any vocational assistance matter must apply to the director for administrative review. Also, under ORS 656.340(11) and OAR 436-120-0320(10) when the worker and insurer are unable to agree on a vocational assistance provider, the insurer shall apply to the director for administrative review. Because effective vocational assistance is best realized in a nonadversarial environment, the first objective of the administrative review is to bring the parties to resolution through alternative dispute resolution procedures, including mediation conferences, whenever possible and appropriate. When a dispute is not resolved through mutual agreement or dismissal, the director shall close the record and issue a Director's Review and Order as described in subsections (f) and (g) of this section. A worker need not be represented to request or to participate in the administrative review process, which is as follows:

(a) The worker's request for review must be mailed or otherwise communicated to the department no later than the 60th day after the date the worker received written notice of the insurer's action; or, if the worker was represented at the time of the notice, within 60 days of the date the worker's representative received actual notice. Issues raised by the worker where written notice was not provided may be reviewed at the director's discretion.

(b) The worker, insurer, employer at injury, and vocational assistance provider shall supply needed information, attend conferences and meetings, and participate in the administrative review process as required by the director. Upon the director's request, any party to the dispute shall provide available information within 14 days of the request. The insurer shall promptly schedule, pay for, and submit to the director any medical or vocational tests, consultations, or reports required by the director. The worker, insurer, employer at injury, or vocational assistance provider shall simultaneously send copies to the other parties to the dispute when sending material to the director. If necessary, the director will assist an unrepresented worker in sending copies to the appropriate parties. Failure to comply with this subsection may result in the following:

(A) If the worker fails to comply without reasonable cause, the director may dismiss the administrative review as described in subsection (d); or, the director may decide the issue on the basis of available information.

(B) If the insurer, vocational assistance provider, or employer at injury fails to comply without reasonable cause, the director may decide the issue on the basis of available information.

(c) At the director's discretion, the director may issue an order of deferral to temporarily suspend administrative review. The order of deferral will specify the conditions under which the review will be resumed.

(d) The director may issue an order of dismissal under appropriate conditions.

(e) The director shall issue a letter of agreement when the parties resolve a dispute within the scope of these rules. Any agreement may include an agreement on attorney fees, if any, to be paid to the worker's attorney. The agreement will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may reconsider approval of the agreement upon the director's own motion or upon a motion by a party. The director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) One or both parties fail to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement of the review.

(f) After the parties have had the opportunity to present evidence, and any meetings or conferences deemed necessary by the director have been held, the director shall issue a final order, including the notice of record contents. The parties will have 60 days from the issuance of the order to request a contested case hearing before the director.

(g) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation

of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request for reconsideration must be mailed before the administrative order becomes final, or if appealed, before the contested case order is issued.

(h) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this rule and may respond to such evidence submitted by others.

(i) Any party requesting reconsideration or responding to a reconsideration request shall simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.

(j) A request for reconsideration does not stay the 60-day time period within which the parties must request a contested case hearing.

(2) Attorney fees: In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director shall award an attorney fee to be paid by the insurer or self-insured employer as provided in ORS 656.385 (§2, ch. 756, OL 2003). The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration shall be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following **matrix**: [Table not included. See ED. NOTE.]

(a) An attorney must submit the following to the director in order to be awarded an attorney fee:

(A) A current, valid retainer agreement

(B) A statement of hours spent on the case if greater than two hours. In the absence of such a statement, the director shall assume the time spent on the case was 1-2 hours.

(b) In determining the value of the results achieved, the director may consider, but is not limited to the following:

(A) Where there is a return-to-work plan that includes the disputed service(s), the assumed value is the cost of the disputed service(s) as projected in the plan;

(B) Where the service(s) have not been incorporated in an existing return-to-work plan, the assumed value is the actual or projected cost of the service(s) up to the amount allowed in the fee schedule provided in OAR 436-120-0720;

(C) For the purposes of applying the matrix, the value of an eligibility determination is assumed to be the maximum allowed in the fee schedule provided in OAR 436-120-0720 for completing an eligibility evaluation; the value of vocational assistance or a training plan, unless determined to be otherwise, is assumed to fall within the highest category provided in the above matrix; or

(D) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.

(c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director.

(d) In order to provide parties an opportunity to inform the director of agreements, or submit statements of extraordinary circumstances or professional hours for consideration in determining the attorney fee, the director will provide the parties notice by phone or fax at least 3 business days in advance that an order or other written resolution of the dispute will be issued. Any statements provided to the director must simultaneously be provided to all other parties to the dispute.

(e) An assessed attorney fee shall be paid within 30 days of the date the order authorizing the fee becomes final.

(3) Contested cases regarding the director's administrative review: Under ORS 656.283, orders issued under subsection (1) (f) of this rule and dismissals issued under subsection (1)(d) of this rule may be appealed to the director for a contested case hearing as follows:

(a) The party must send the request for hearing in writing to the administrator of the Workers' Compensation Division and shall simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the order is contested.

(b) The request must be received by the division within 60 days of the date of the order.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(4) Contested cases regarding jurisdiction or reimbursement of costs: Under ORS 183.310 through 183.550 and 656.704(2), a worker may appeal an order of dismissal based on lack of jurisdiction under subsection (1)(d) of this rule, or, under ORS 183.310 through 183.550 and 656.704(2), an

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insurer may appeal department denial of reimbursement for vocational assistance costs under OAR 436-120-0730, as follows:

(a) The party must send the request for hearing to the administrator of the Workers' Compensation Division. The party must also simultaneously send a copy of the request to the other party(ies). The request must specify the grounds upon which the denial is contested.

(b) The request must be received by the division no later than the 30th day after the party received the dismissal or written denial.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

(5) Contested case hearings of civil penalties: Under ORS 656.740 (§9, ch. 170, OL 2003) an insurer or an employer may appeal a proposed order or proposed assessment of civil penalty pursuant to ORS 656.745 and OAR 436-120-0900 as follows:

(a) The insurer or employer must send the request for hearing in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.

(b) The party must file the request with the division within 60 days after the mailing date of the notice of the proposed order or assessment.

(c) The division shall forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.

(d) The Hearings Division shall conduct the hearing in accordance with ORS 656.740 and chapter 183.

(6) Contested case hearings of sanctions and denials of certification or authorization by the director: Under ORS 183.310 through 183.550, an insurer sanctioned pursuant to ORS 656.447 and OAR 436-120-0900, a vocational assistance provider or certified individual sanctioned pursuant to ORS 656.340(9)(b) and OAR 436-120-0915, a vocational assistance provider denied authorization pursuant to ORS 656.340(9)(a) and OAR 436-120-0800, or an individual denied certification pursuant to ORS 656.340(9)(a) and OAR 436-120-0810 may appeal as follows:

(a) The party must send the request for administrative review in writing to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the action is contested.

(b) The request must be received by the division no later than the 60th day after the party received notification of the action, unless the director determines there was good cause for delay or that substantial injustice may otherwise result.

(c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.

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

Stat. Auth.: ORS 656.704(2) & 656.726(4)

Stats. Implemented: ORS 183.310 - 183.555, 656.283(2), 656.340, 656.447, 656.740, 656.745

Hist.: WCD 9-1982(Admin), f. 5-28-82, ef. 6-1-82; WCD 2-1983(Admin), f. & ef. 6-30-83; Renumbered from 436-061-0970, 5-1-85; WCD 5-1983(Admin), f. 12-14-83, ef. 1-1-84; Renumbered from 436-061-0191, 5-1-85; WCD 7-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 11-1987, f. 12-17-87, ef. 1-1-88; WCD 10-1994, f. 11-1-94, cert. ef. 1-1-95; Renumbered from 436-120-0210 & 436-120-0260; WCD 6-1996, f. 2-6-96, cert. ef. 3-1-96; WCD 23-1996, f. 12-13-96, cert. ef. 2-1-97; WCD 6-2000, f. 4-27-00, cert. ef. 6-1-00; WCD 4-2001, f. 4-13-01, cert. ef. 5-15-01; WCD 14-2001(Temp), f. 12-17-01, cert. ef. 1-2-02 thru 6-30-02; WCD 7-2002, f. 5-30-02, cert. ef. 7-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03

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## Department of Corrections Chapter 291

**Adm. Order No.:** DOC 16-2003

**Filed with Sec. of State:** 12-2-2003

**Certified to be Effective:** 12-2-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 291-064-0060

**Subject:** The department is amending this rule to clarify circumstances under which a treating practitioner may administer psychotropic medications without informed consent to an inmate in emergency circumstances.

**Rules Coordinator:** Carolyn Schnoor—(503) 945-0933

### 291-064-0060

#### Emergency Administration of Psychotropic Medications without Informed Consent

(1) An emergency that is sufficient to allow the administration of psychotropic medications without informed consent exists, if in the opinion of the treating practitioner, an inmate has a mental disorder and as a result of that disorder:

(a) Immediate administration of psychotropic medication is medically necessary to preserve the life or health of the inmate; or

(b) Immediate administration of psychotropic medication is medically necessary because the inmate's behavior creates a likelihood of serious physical injury to the inmate or others; or

(c) Immediate administration of psychotropic medication is medically necessary because the inmate has:

(A) Recently damaged property and caused physical injury to self or others; or

(B) Recently expressed and acted upon an intent to cause serious physical injury to self or others by damaging property; or

(C) Recently demonstrated behavior or thinking which, in examining the inmate's prior medical history, is associated with a pattern of behavior leading to such property damage or physical injury to self or others.

(2) If an emergency exists, the treating practitioner may administer psychotropic medications to an inmate without first obtaining the inmate's written informed consent provided:

(a) The specific nature of the emergency and all procedures used to cope with the emergency are fully documented in the inmate's treatment record; and

(b) An effort has been made to contact the legal guardian of a legally incapacitated inmate prior to the administration of psychotropic medications.

(c) If the treating practitioner is not a mental health prescriber, consultation with the chief medical officer or his/her designee shall occur within 12 hours of the emergency

(3) Within 72 hours after the emergency administration of psychotropic medications, the treating practitioner shall review the treatment plan and may implement a revised treatment plan.

(4) The administration of psychotropic medications in an emergency situation may not continue for more than 72 hours.

(5) If, in the opinion of the treating practitioner, involuntary administration of psychotropic medications beyond 72 hours is medically necessary, the treating practitioner must:

(a) Obtain the inmate's written informed consent, or

(b) Determine that good cause for recommending involuntary administration exists as provided in OAR 291-064-0070, and

(c) Refer the determination of good cause for review as provided in OAR 291-064-0080.

(6) Within seven days of a determination that good cause exists for involuntary administration of medications subsequent to an emergency, the independent examining physician shall review that determination as provided in OAR 291-064-0090 to 291-064-0120.

Stat. Auth.: ORS 179.040, 423.020, 423.030, 423.075 & 430.021

Stats. Implemented: ORS 179.040, 423.020, 423.030, 423.075 & 430.021

Hist.: CD 8-1995, f. 4-24-95, cert. ef. 5-1-95; DOC 9-2003(Temp), f. & cert. ef. 5-19-03 thru 11-15-03; Administrative correction 11-17-03; DOC 16-2003, f. & cert. ef. 12-2-03

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**Adm. Order No.:** DOC 17-2003

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

**Certified to be Effective:** 12-12-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 291-001-0020, 291-001-0025

**Rules Repealed:** 291-001-0070

**Subject:** These rule modifications are necessary to clarify that notice of proposed rulemaking action will only be given for permanent rules, and to align the rules with current needs and operations of the agency.

**Rules Coordinator:** Carolyn Schnoor—(503) 945-0933

### 291-001-0020

#### Notice of Proposed Rule

Prior to the adoption, amendment, or repeal of a permanent rule, the Department of Corrections shall give notice of the proposed adoption, amendment, or repeal:

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

(2) By mailing a copy of the notice to persons on the department's mailing list established pursuant to ORS 183.335(7) at least 28 days prior to the effective date;

(3) By mailing a copy of the notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

(4) By mailing a copy of the notice to the following persons, organizations, or publications at least 28 days prior to the effective date:

(a) Capitol Press Room;

(b) Associated Press (AP);

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(c) American Federation of State-County and Municipal Employees (AFSCME);

(d) Oregon Public Employees Union (OPEU);

(e) American Civil Liberties Union (ACLU);

(f) Public Defender's Office, Marion County;

(g) Oregon State Bar Association;

(h) Crime Victims United;

(i) Department of Corrections — Institution Legal Libraries; and

(j) Department of Corrections — Inmate Newsletters.

Stat. Auth.: ORS 183.335 & 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist.: CD 34-1980, f. & ef. 11-7-80; CD 3-1985(Temp), f. & ef. 4-26-85; CD 9-1985, f. & ef. 7-26-85; CD 2-1986(Temp), f. & ef. 1-31-86; CD 9-1986, f. & ef. 4-18-86; CD 1-1991, f. & cert. ef. 1-9-91; CD 5-1995, f. 2-22-95, cert. ef. 3-1-95; DOC 18-1999(Temp), f. & cert. ef. 10-28-99 thru 4-25-00; DOC 9-2000, f. & cert. ef. 4-14-00; DOC 17-2003, f. & cert. ef. 12-12-03

## 291-001-0025

### Model Rules of Procedure

Pursuant to the provisions of ORS 183.341 the Department of Corrections adopts the Attorney General's Uniform and Model Rules of Procedure Applicable to Rulemaking Functions effective October 3, 2001.

Stat. Auth.: ORS 183.335 & 183.341

Stats. Implemented: ORS 183.335 & 183.341

Hist.: CD 34-1980, f. & ef. 11-7-80; CD 3-1985(Temp), f. & ef. 4-26-85; CD 9-1985, f. & ef. 7-26-85; CD 2-1986(Temp), f. & ef. 1-31-86; CD 9-1986, f. & ef. 4-18-86; CD 1-1991, f. & cert. ef. 1-9-91; CD 5-1995, f. 2-22-95, cert. ef. 3-1-95; DOC 18-1999(Temp), f. & cert. ef. 10-28-99 thru 4-25-00; DOC 9-2000, f. & cert. ef. 4-14-00; DOC 17-2003, f. & cert. ef. 12-12-03

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## Department of Environmental Quality

### Chapter 340

**Adm. Order No.:** DEQ 17-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

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**Rules Amended:** 340-041-0001

**Rules Repealed:** 340-041-0006, 340-041-0026, 340-041-0034, 340-041-0120, 340-041-0202, 340-041-0205, 340-041-0215, 340-041-0242, 340-041-0245, 340-041-0255, 340-041-0270, 340-041-0282, 340-041-0285, 340-041-0295, 340-041-0322, 340-041-0325, 340-041-0335, 340-041-0362, 340-041-0365, 340-041-0375, 340-041-0385, 340-041-0442, 340-041-0445, 340-041-0455, 340-041-0470, 340-041-0482, 340-041-0485, 340-041-0495, 340-041-0522, 340-041-0525, 340-041-0535, 340-041-0562, 340-041-0565, 340-041-0575, 340-041-0580, 340-041-0602, 340-041-0605, 340-041-0615, 340-041-0642, 340-041-0645, 340-041-0655, 340-041-0682, 340-041-0765, 340-041-0775, 340-041-0802, 340-041-0805, 340-041-0815, 340-041-0842, 340-041-0845, 340-041-0855, 340-041-0882, 340-041-0885, 340-041-0895, 340-041-0922, 340-041-0925, 340-041-0935, 340-041-0962, 340-041-0965, 340-041-0975

**Rules Transferred:** 340-041-0027 to 340-041-0011, 340-041-0150 to 340-041-0019

**Subject:** Revised Oregon's water quality standards as follows:

- Revised the ambient water quality criteria for temperature;
- Revised the ambient water quality criteria for intergravel dissolved oxygen;
- Clarified specific applications of the antidegradation policy for surface waters;
- Added requirements for temperature mixing zones;
- Added definitions to support these revisions; and
- Reorganized Division 041.

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## 340-041-0001

### Preface

(1) The rules that follow, together with the applicable laws of the State of Oregon and the applicable regulations of the Environmental Quality Commission (the Commission), set forth Oregon's plans for management of the quality of public waters within the State of Oregon.

(2) Under this plan, the Department of Environmental Quality will continue to manage water quality by evaluating discharges and activities, whether existing or a new proposal, on a case-by-case basis, based on best information currently available and within the limiting framework of minimum standards, treatment criteria and policies which are set forth in the plan.

(3) The Commission recognizes that the deadlines for adoption of this plan prevented thorough involvement by local government in the development and review of the plan. Accordingly, the Department will review the contents of this plan with affected local governments and will use their comments and suggestions in preparing amendments for consideration by the Commission not later than December, 1977. At a minimum, the processes of coordination with local governments will consist of the following elements:

- Work with county coordinators to set up meetings to explain the plan to groups of local governments and solicit their comments;
- Provide copies of the plan and supporting documents to any affected local governments who have not already received them;
- Seek input from councils of governments;
- Upon request, visit local level governments to discuss the plan;
- Work with Statewide associations of local governments and others to inform local governments of the plan.

Stat. Auth.: ORS 468

Stats. Implemented: ORS 468.015, 468.035 & 468B.015

Hist.: DEQ 128, f. & ef. 1-21-77; DEQ 17-2003, f. & cert ef. 12-9-03

## 340-041-0002

### Definitions

Definitions applicable to all basins unless context requires otherwise:

(1) "401 Water Quality Certification" means a determination made by DEQ that a dredge and fill activity, private hydropower facility, or other federally licensed or permitted activity that may result in a discharge to waters of the State, has adequate terms and conditions to prevent an exceedance of water quality criteria. The federal permit in question may not be issued without this State determination in accordance with the Federal Clean Water section 401 (33 USC 1341).

(2) "Ambient Stream Temperature" means the stream temperature measured at a specific time and place. The selected location for measuring stream temperature must be representative of the stream in the vicinity of the point being measured.

(3) "Anthropogenic", when used to describe "sources" or "warming", means that which results from human activity;

(4) "Applicable Criteria" means the biologically-based temperature criteria set out in OAR 340-041-0028(4), the superseding cold water protection criteria as described in OAR 340-041-0028(12), or the superseding natural condition criteria as described in OAR 340-041-0028(8). In addition, the applicable criteria may also be site-specific criteria approved by U.S. EPA. A subbasin may have a combination of applicable temperature criteria derived from some or all of these numeric and narrative criteria.

(5) "Appropriate Reference Site or Region" means a site on the same water body, or within the same basin or ecoregion that has similar habitat conditions, and represents the water quality and biological community attainable within the areas of concern.

(6) "Aquatic Species" means any plants or animals that live at least part of their life cycle in waters of the State.

(7) "Basin" means a third field hydrologic unit as identified by the U.S. Geological Survey.

(8) "BOD" means 5-day 20°C Biochemical Oxygen Demand.

(9) "Cold-Water Aquatic Life" means aquatic organisms that are physiologically restricted to cold water, including but not limited to native

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salmon, steelhead, mountain whitefish, char (including bull trout), and trout.

(10) "Cold Water Refugia" means those portions of a water body where, or times during the diel temperature cycle when, the water temperature is at least 2 degrees Celsius colder than the daily maximum temperature of the adjacent well mixed flow of the water body.

(11) "Commission" means the Oregon Environmental Quality Commission.

(12) "Cool-Water Aquatic Life" means aquatic organisms that are physiologically restricted to cool waters, including but not limited to native sturgeon, pacific lamprey, suckers, chub, sculpins and certain species of cyprinids (minnows).

(13) "Core Cold Water Habitat Use" means waters that are expected to maintain temperatures within the range generally considered optimal for salmon and steelhead rearing, or that are suitable for bull trout migration, foraging and sub-adult rearing that occurs during the summer. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(14) "Critical Habitat" means those areas that support rare, threatened or endangered species, or serve as sensitive spawning and rearing areas for aquatic life as designated by the U.S. Fish and Wildlife Service or NOAA Fisheries pursuant to the Endangered Species Act (16 USC 1531).

(15) "Daily Mean" (dissolved oxygen) means the numeric average of an adequate number of data to describe the variation in dissolved oxygen concentration throughout a day, including daily maximums and minimums. For the purpose of calculating the mean, concentrations in excess of 100 percent of saturation are valued at the saturation concentration.

(16) "Department" or "DEQ" means the Oregon State Department of Environmental Quality.

(17) "Designated Beneficial Use" means the purpose or benefit to be derived from a water body, as designated by the Water Resources Department or the Commission.

(18) "DO" means dissolved oxygen.

(19) "Ecological Integrity" means the summation of chemical, physical and biological integrity capable of supporting and maintaining a balanced, integrated, adaptive community of organisms having a species composition, diversity, and functional organization comparable to that of the natural habitat of the region.

(20) "Erosion Control Plan" means a plan containing a list of best management practices to be applied during construction to control and limit soil erosion.

(21) "High Quality Waters" means those waters which meet or exceed those levels that are necessary to support the propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses.

(22) "Industrial Waste" means any liquid, gaseous, radioactive, or solid waste substance or a combination thereof resulting from any process of industry, manufacturing, trade, or business, or from the development or recovery of any natural resources.

(23) "In Lieu Fee" means a fee collected by a jurisdiction in lieu of requiring construction of on-site stormwater quality control facilities.

(24) "Intergavel Dissolved Oxygen" (IGDO) means the concentration of oxygen measured in the water within the stream bed gravels. Measurements should be taken within a limited time period, prior to emergence of fry.

(25) "Jurisdiction" means any city or county agency in the Tualatin River and Oswego Lake subbasin that regulates land development activities within its boundaries by approving plats, site plans or issuing permits for land development.

(26) "Land Development" means any human induced change to improved or unimproved real estate, including but not limited to construction, installation or expansion of a building or other structure, land division, drilling, and site alteration such as that due to land surface mining, dredging, grading, construction of earthen berms, paving, improvements for use as parking or storage, excavation or clearing.

(27) "Load Allocation (LA)" means the portion of a receiving water's loading capacity that is attributed either to one of its existing or future nonpoint sources of pollution or to natural background sources. Load allocations are best estimates of the loading that may range from reasonably accurate estimates to gross allotments, depending on the availability of data and appropriate techniques for predicting loading. Whenever possible, natural and nonpoint source loads should be distinguished.

(28) "Loading Capacity (LC)" means the greatest amount of loading that a water body can receive without violating water quality standards.

(29) "Low Flow Period" means the flows in a stream resulting primarily from groundwater discharge or base flows augmented from lakes and storage projects during the driest period of the year. The dry weather peri-

od varies across the State according to climate and topography. Wherever the low flow period is indicated in the Water Quality Management Plans, this period has been approximated by the inclusive months. Where applicable in a waste discharge permit, the low flow period may be further defined.

(30) "mg/l" means milligrams per liter.

(31) "Migration Corridors" mean those waters that are predominantly used for salmon and steelhead migration during the summer, and where there is little or no anadromous salmonid rearing occurring in the months of July and August. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 151A, 170A, and 340A.

(32) "Minimum" (dissolved oxygen) means the minimum recorded concentration including seasonal and diurnal minimums.

(33) "Monthly (30-day) Mean Minimum" (dissolved oxygen) means the minimum of the 30 consecutive day floating averages of the calculated daily mean dissolved oxygen concentration.

(34) "Natural Conditions" means conditions or circumstances affecting the physical, chemical, or biological integrity of a water of the State that are not influenced by past or present anthropogenic activities. Disturbances from wildfire, floods, earthquakes, volcanic or geothermal activity, wind, insect infestation, diseased vegetation are considered natural conditions.

(35) "Natural Thermal Potential" means the determination of the thermal profile of a water body using best available methods of analysis and the best available information on the site potential riparian vegetation, stream geomorphology, stream flows and other measures to reflect natural conditions.

(36) "Nonpoint Sources" means any source of water pollution other than a point source. Generally, a nonpoint source is a diffuse or unconfined source of pollution where wastes can either enter into, or be conveyed by the movement of water, to waters of the State.

(37) "Ocean Waters" means all oceanic, offshore waters outside of estuaries or bays and within the territorial limits of the State of Oregon.

(38) "Outstanding Resource Waters" means those waters designated by the Environmental Quality Commission where existing high quality waters constitute an outstanding State or national resource based on their extraordinary water quality or ecological values, or where special water quality protection is needed to maintain critical habitat areas.

(39) "Pollution" means such contamination or other alteration of the physical, chemical, or biological properties of any waters of the State, including change in temperature, taste, color, turbidity, silt, or odor of the waters, or such radioactive or other substance into any waters of the State which either by itself or in connection with any other substance present, will or can reasonably be expected to create a public nuisance or render such waters harmful, detrimental, or injurious to public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses or to livestock, wildlife, fish or other aquatic life, or the habitat thereof.

(40) "Point Source" means a discernable, confined and discrete conveyance, including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel, or other floating craft, or leachate collection system, from which pollutants are or may be discharged. Point source does not include agricultural stormwater discharges and return flows from irrigated agriculture.

(41) "Public Water" means the same as "waters of the State".

(42) "Public Works Project" means any land development conducted or financed by a local, State, or federal governmental body.

(43) "Reserve Capacity" means that portion of a receiving stream's loading capacity which has not been allocated to point sources or nonpoint sources and natural background as waste load allocations or load allocations, respectively. The reserve capacity includes that loading capacity which has been set aside for a safety margin and is otherwise unallocated.

(44) "Resident Biological Community" means aquatic life expected to exist in a particular habitat when water quality standards for a specific ecoregion, basin, or water body are met. This must be established by accepted biomonitoring techniques.

(45) "Salmon" means chinook, chum, coho, sockeye and pink salmon.

(46) "Salmon and Steelhead Spawning Use" means waters that are or could be used for salmon and steelhead spawning, egg incubation and fry emergence. These uses are designated on the following subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B.

(47) "Salmon and Trout Rearing and Migration Use" means thermally suitable rearing habitat for salmon and steelhead, rainbow and cutthroat trout as designated on subbasin maps set out at OAR 340-041-0101 to 340-

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041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A.

(48) "Salmonid or Salmonids" means native salmon, trout, mountain whitefish and char (including bull trout). For purposes of Oregon water quality standards, salmonid does not include brook or brown trout since they are introduced species.

(49) "Secondary Treatment" means the following depending on the context:

(a) "Sewage Wastes" means the minimum level of treatment mandated by EPA regulations pursuant to Public Law 92-500;

(b) "Industrial and Other Waste Sources" means control equivalent to best practicable treatment (BPT).

(50) "Seven-Day Average Maximum Temperature" means a calculation of the average of the daily maximum temperatures from seven consecutive days, made on a rolling basis.

(51) "Sewage" means the water-carried human or animal waste from residences, buildings, industrial establishments, or other places together with such groundwater infiltration and surface water as may be present. The admixture with sewage as herein defined of industrial wastes or wastes, as defined in sections (6) and (13) of this rule, may also be considered "sewage" within the meaning of this division.

(52) "Short-Term Disturbance" means a temporary disturbance of six months or less where water quality standards may be violated briefly, but not of sufficient duration to cause acute or chronic effects on beneficial uses.

(53) "Spatial Median" means the value which falls in the middle of a data set of multiple IGDO measurements taken within a spawning area. Half the samples should be greater than, and half the samples should be less than the spatial median.

(54) "SS" means suspended solids.

(55) "Stormwater Quality Control Facility" means any structure or drainage way that is designed, constructed, and maintained to collect and filter, retain, or detain surface water runoff during and after a storm event for the purpose of water quality improvement. It may also include, but not be limited to, existing features such as wetlands, water quality swales, and ponds which are maintained as stormwater quality control facilities.

(56) "Subbasin" means a fourth field hydrologic unit as identified by the U.S. Geological Survey.

(57) "Summer" means June 1 through September 30 of each calendar year.

(58) "Threatened or Endangered Species" means aquatic species listed as either threatened or endangered under the federal Endangered Species Act (16 USC 1531 et seq. and Title 50 of the Code of Federal Regulations).

(59) "Total Maximum Daily Load (TMDL)" means the sum of the individual WLAs for point sources and LAs for nonpoint sources and background. If receiving water has only one point source discharger, the TMDL is the sum of that point source WLA plus the LAs for any nonpoint sources of pollution and natural background sources, tributaries, or adjacent segments. TMDLs can be expressed in terms of either mass per time, toxicity, or other appropriate measure. If Best Management Practices (BMPs) or other nonpoint source pollution controls make more stringent load allocations practicable, then wasteload allocations can be made less stringent. Thus, the TMDL process provides for nonpoint source control tradeoffs.

(60) "Wasteload Allocation (WLA)" means the portion of receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

(61) "Wastes" means sewage, industrial wastes, and all other liquid, gaseous, solid, radioactive, or other substances which will or may cause pollution or tend to cause pollution of any water of the State.

(62) "Water Quality Limited" means one of the following categories:

(a) A receiving stream that does not meet instream water quality standards during the entire year or defined season even after the implementation of standard technology;

(b) A receiving stream that achieves, and is expected to continue to achieve instream water quality standard but utilizes higher than standard technology to protect beneficial uses;

(c) A receiving stream for which there is insufficient information to determine if water quality standards are being met with higher-than-standard treatment technology, or where, through professional judgment, the receiving stream would not be expected to meet water quality standards during the entire year or defined season without higher than standard technology.

(63) "Water Quality Swale" means a natural depression or wide, shallow ditch that is used to temporarily store, route, or filter runoff for the purpose of improving water quality.

(64) "Waters of the State" means lakes, bays, ponds, impounding reservoirs, springs, wells, rivers, streams, creeks, estuaries, marshes, inlets,

canals, the Pacific Ocean within the territorial limits of the State of Oregon, and all other bodies of surface or underground waters, natural or artificial, inland or coastal, fresh or salt, public or private (except those private waters that do not combine or effect a junction with natural surface or underground waters), and that are located wholly or partially within or bordering the State or within its jurisdiction.

(65) "Weekly (seven-day) Mean Minimum" (dissolved oxygen) means the minimum of the seven consecutive day floating average of the calculated daily mean dissolved oxygen concentration.

(66) "Weekly (seven-day) Minimum Mean" (dissolved oxygen) means the minimum of the seven consecutive day floating average of the daily minimum concentration. For purposes of application of the criteria, this value will be used as the reference for diurnal minimums.

(67) "Without Detrimental Changes in the Resident Biological Community" means no loss of ecological integrity when compared to natural conditions at an appropriate reference site or region.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0004

### Antidegradation

(1) Purpose. The purpose of the Antidegradation Policy is to guide decisions that affect water quality such that unnecessary further degradation from new or increased point and nonpoint sources of pollution is prevented, and to protect, maintain, and enhance existing surface water quality to ensure the full protection of all existing beneficial uses. The standards and policies set forth in OAR 340-041-0007 through 340-041-0350 are intended to supplement the Antidegradation Policy.

(2) Growth Policy. In order to maintain the quality of waters in the State of Oregon, it is the general policy of the Commission to require that growth and development be accommodated by increased efficiency and effectiveness of waste treatment and control such that measurable future discharged waste loads from existing sources do not exceed presently allowed discharged loads except as provided in section (3) through (9) of this rule.

(3) Nondegradation Discharges. The following new or increased discharges are subject to this Division. However, because they are not considered degradation of water quality, they are not required to undergo an anti-degradation review under this rule:

(a) Discharges Into Existing Mixing Zones. Pollutants discharged into the portion of a water body that has been included in a previous mixing zone for a permitted source, including the zones of initial dilution, are not considered a reduction in water quality, so long as the mixing zone is established in accordance with OAR 340-041-0053, there are no other overlapping mixing zones from other point sources, and the discharger complies with all effluent limits set out in its NPDES permit;

(b) Water Conservation Activities. An increase in a pollutant concentration is not considered a reduction in water quality so long as the increase occurs as the result of a water conservation activity, the total mass load of the pollutant is not increased, and the concentration increase has no adverse effect on either beneficial uses or threatened or endangered species in the water body; and

(c) Temperature. Insignificant temperature increases authorized under OAR 340-041-0028(11) and (12) are not considered a reduction in water quality.

(d) Dissolved Oxygen. Up to a 0.1 mg/l decrease in dissolved oxygen from the upstream end of a stream reach to the downstream end of the reach is not considered a reduction in water quality so long as it has no adverse effects on threatened and endangered species.

(4) Recurring Activities. Since the baseline for applying the anti-degradation policy to an individual source is the water quality resulting from the source's currently authorized discharge, and since regularly-scheduled, recurring activities remain subject to water quality standards and the terms and conditions in any applicable federal and state permits, certifications and licenses, the following activities will not be considered new or increasing discharges and will therefore not trigger an anti-degradation review under this rule so long as they do not increase in frequency, intensity, duration or geographical extent:

(a) Rotating grazing pastures,

(b) Agricultural crop rotations, and

(c) Maintenance dredging.

(5) Exemptions to the Antidegradation Requirement. Some activities may, on a short term basis, cause temporary water quality degradation. However, these same activities may also have substantial and desirable environmental benefits. The following activities and situations fall into this category. Such activities and situations remain subject to water quality standards, and must demonstrate that they have minimized adverse affects to

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threatened and endangered species in order to be exempt from the anti-degradation review under this rule:

(a) Riparian Restoration Activities. Activities that are intended to restore the geomorphology or riparian vegetation of a water body, or control invasive species need not undergo an anti-degradation review so long as the Department determines that there is a net ecological benefit to the restoration activity. Reasonable measures that are consistent with the restoration objectives for the water body must be used to minimize the degradation;

(b) Emergency Situations. The Director or a designee may, for a period of time no greater than 6 months, allow lower water quality without an anti-degradation review under this rule in order to respond to public health and welfare emergencies (i.e., a significant threat of loss of life, personal injury or severe property damage); and

(c) Exceptions. Exceptions authorized by the Commission under (9) of this rule.

(6) High Quality Waters Policy: Where the existing water quality meets or exceeds those levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, and other designated beneficial uses, that level of water quality must be maintained and protected. However, the Environmental Quality Commission, after full satisfaction of the intergovernmental coordination and public participation provisions of the continuing planning process, and with full consideration of sections (2) and (9) of this rule, and 340-041-0007(5), may allow a lowering of water quality in these high quality waters if it finds:

(a) No other reasonable alternatives exist except to lower water quality; and

(b) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference;

(c) All water quality standards will be met and beneficial uses protected; and

(d) Federal threatened and endangered aquatic species will not be adversely affected.

(7) Water Quality Limited Waters Policy: Water quality limited waters may not be further degraded except in accordance with section (9)(a)(B), (C) and (D) of this rule.

(8) Outstanding Resource Waters Policy. Where existing high quality waters constitute an outstanding State or national resource such as those waters designated as extraordinary resource waters, or as critical habitat areas, the existing water quality and water quality values must be maintained and protected, and classified as "Outstanding Resource Waters of Oregon."

(a) The Commission may specially designate high quality water bodies to be classified as Outstanding Resource Waters in order to protect the water quality parameters that affect ecological integrity of critical habitat or special water quality values that are vital to the unique character of those water bodies. The Department will develop a screening process and establish a list of nominated water bodies for Outstanding Resource Waters designation in the Biennial Water Quality Status Assessment Report (305(b) Report). The priority water bodies for nomination include:

(A) Those in State and National Parks;

(B) National Wild and Scenic Rivers;

(C) State Scenic Waterways;

(D) Those in State and National Wildlife Refuges; and

(E) Those in federally designated wilderness areas.

(b) The Department will bring to the Commission a list of water bodies that are proposed for designation as Outstanding Resource Waters at the time of each triennial Water Quality Standards Review; and

(c) When designating Outstanding Resource Waters, the Commission may establish the water quality values to be protected and provide a process for determining what activities are allowed that would not affect the outstanding resource values. After the designation, the Commission may not allow activities that may lower water quality below the level established except on a short term basis to respond to public health and welfare emergencies, or to obtain long-term water quality improvements.

(9) Exceptions. The Commission or Department may grant exceptions to this rule so long as the following procedures are met:

(a) In allowing new or increased discharged loads, the Commission or Department must make the following findings:

(A) The new or increased discharged load will not cause water quality standards to be violated;

(B) The action is necessary and benefits of the lowered water quality outweigh the environmental costs of the reduced water quality. This evaluation will be conducted in accordance with DEQ's "Antidegradation Policy

Implementation Internal Management Directive for NPDES Permits and section 401 water quality certifications," pages 27, and 33-39 (March 2001) incorporated herein by reference; and

(C) The new or increased discharged load will not unacceptably threaten or impair any recognized beneficial uses or adversely affect threatened or endangered species. In making this determination, the Commission or Department may rely upon the presumption that if the numeric criteria established to protect specific uses are met the beneficial uses they were designed to protect are protected. In making this determination the Commission or Department may also evaluate other State and federal agency data that would provide information on potential impacts to beneficial uses for which the numeric criteria have not been set;

(D) The new or increased discharged load may not be granted if the receiving stream is classified as being water quality limited under OAR 340-041-0002(62)(a), unless:

(i) The pollutant parameters associated with the proposed discharge are unrelated either directly or indirectly to the parameter(s) causing the receiving stream to violate water quality standards and being designated water quality limited; or

(ii) Total maximum daily loads (TMDLs), waste load allocations (WLAs) load allocations (LAs), and the reserve capacity have been established for the water quality limited receiving stream; and compliance plans under which enforcement action can be taken have been established; and there will be sufficient reserve capacity to assimilate the increased load under the established TMDL at the time of discharge; or

(iii) Effective July 1, 1996, in water bodies designated water-quality limited for dissolved oxygen, when establishing WLAs under a TMDL for water bodies meeting the conditions defined in this rule, the Department may at its discretion provide an allowance for WLAs calculated to result in no measurable reduction of dissolved oxygen (DO). For this purpose, "no measurable reduction" is defined as no more than 0.10 mg/L for a single source and no more than 0.20 mg/L for all anthropogenic activities that influence the water quality limited segment. The allowance applies for surface water DO criteria and for Intergravel dissolved oxygen (IGDO) if a determination is made that the conditions are natural. The allowance for WLAs applies only to surface water 30-day and seven-day means; or

(iv) Under extraordinary circumstances to solve an existing, immediate and critical environmental problem, the Commission or Department may, after the completion of a TMDL but before the water body has achieved compliance with standards, consider a waste load increase for an existing source on a receiving stream designated water quality limited under OAR 340-041-0002(62)(a). This action must be based on the following conditions:

(I) That TMDLs, WLAs and LAs have been set; and

(II) That a compliance plan under which enforcement actions can be taken has been established and is being implemented on schedule; and

(III) That an evaluation of the requested increased load shows that this increment of load will not have an unacceptable temporary or permanent adverse effect on beneficial uses or adversely affect threatened or endangered species; and

(IV) That any waste load increase granted under subparagraph (iv) of this paragraph is temporary and does not extend beyond the TMDL compliance deadline established for the water body. If this action will result in a permanent load increase, the action has to comply with sub-paragraphs (i) or (ii) of this paragraph.

(b) The activity, expansion, or growth necessitating a new or increased discharge load is consistent with the acknowledged local land use plans as evidenced by a statement of land use compatibility from the appropriate local planning agency.

(c) Oregon's water quality management policies and programs recognize that Oregon's water bodies have a finite capacity to assimilate waste. Unused assimilative capacity is an exceedingly valuable resource that enhances in-stream values and environmental quality in general. Allocation of any unused assimilative capacity should be based on explicit criteria. In addition to the conditions in subsection (a) of this section, the Commission or Department may consider the following:

(A) Environmental Effects Criteria:

(i) Adverse Out-of-Stream Effects. There may be instances where the non-discharge or limited discharge alternatives may cause greater adverse environmental effects than the increased discharge alternative. An example may be the potential degradation of groundwater from land application of wastes;

(ii) Instream Effects. Total stream loading may be reduced through elimination or reduction of other source discharges or through a reduction in seasonal discharge. A source that replaces other sources, accepts additional waste from less efficient treatment units or systems, or reduces discharge loadings during periods of low stream flow may be permitted an



# ADMINISTRATIVE RULES

increased discharge load year-round or during seasons of high flow, so long as the loading has no adverse effect on threatened and endangered species;

(iii) Beneficial Effects. Land application, upland wetlands application, or other non-discharge alternatives for appropriately treated wastewater may replenish groundwater levels and increase streamflow and assimilative capacity during otherwise low streamflow periods.

(B) Economic Effects Criteria. When assimilative capacity exists in a stream, and when it is judged that increased loadings will not have significantly greater adverse environmental effects than other alternatives to increased discharge, the economic effect of increased loading will be considered. Economic effects will be of two general types:

(i) Value of Assimilative Capacity. The assimilative capacity of Oregon's streams is finite, but the potential uses of this capacity are virtually unlimited. Thus it is important that priority be given to those beneficial uses that promise the greatest return (beneficial use) relative to the unused assimilative capacity that might be utilized. In-stream uses that will benefit from reserve assimilative capacity, as well as potential future beneficial use, will be weighed against the economic benefit associated with increased loading;

(ii) Cost of Treatment Technology. The cost of improved treatment technology, non-discharge and limited discharge alternatives may be evaluated.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0007

### Statewide Narrative Criteria

(1) Notwithstanding the water quality standards contained in this Division, the highest and best practicable treatment and/or control of wastes, activities, and flows must in every case be provided so as to maintain dissolved oxygen and overall water quality at the highest possible levels and water temperatures, coliform bacteria concentrations, dissolved chemical substances, toxic materials, radioactivity, turbidities, color, odor, and other deleterious factors at the lowest possible levels.

(2) Where a less stringent natural condition of a water of the State exceeds the numeric criteria set out in this Division, the natural condition supersedes the numeric criteria and becomes the standard for that water body. However, there are special restrictions, described in OAR 340-041-0004(9)(a)(C)(iii), that may apply to discharges that affect dissolved oxygen.

(3) Point source discharges must follow policies and guidelines in OAR 340-041-0004, and nonpoint source activities must follow guidelines in sections (6), (8), (9), (10), (11), and (12) of this rule.

(4) For any new waste sources, alternatives that utilize reuse or disposal with no discharge to public waters must be given highest priority for use wherever practicable. New source discharges may be approved subject to the criteria in OAR 340-041-0004(9).

(5) No discharges of wastes to lakes or reservoirs may be allowed except as provided in section OAR 340-041-0004(9).

(6) Logging and forest management activities must be conducted in accordance with the Oregon Forest Practices Act to minimize adverse effects on water quality.

(7) Log handling in public waters must conform to current Commission policies and guidelines.

(8) Sand and gravel removal operations must be conducted pursuant to a permit from the Division of State Lands and separated from the active flowing stream by a watertight berm wherever physically practicable. Recirculation and reuse of process water must be required wherever practicable. Discharges or seepage or leakage losses to public waters may not cause a violation of water quality standards or adversely affect legitimate beneficial uses.

(9) Road building and maintenance activities must be conducted in a manner so as to keep waste materials out of public waters and minimize erosion of cut banks, fills, and road surfaces.

(10) In order to improve controls over nonpoint sources of pollution, federal, State, and local resource management agencies will be encouraged and assisted to coordinate planning and implementation of programs to regulate or control runoff, erosion, turbidity, stream temperature, stream flow, and the withdrawal and use of irrigation water on a basin-wide approach so as to protect the quality and beneficial uses of water and related resources. Such programs may include, but not be limited to, the following:

- (a) Development of projects for storage and release of suitable quality waters to augment low stream flow;
- (b) Urban runoff control to reduce erosion;
- (c) Possible modification of irrigation practices to reduce or minimize adverse impacts from irrigation return flows;
- (d) Stream bank erosion reduction projects; and
- (e) Federal water quality restoration plans.

(11) The development of fungi or other growths having a deleterious effect on stream bottoms, fish or other aquatic life, or that are injurious to health, recreation, or industry may not be allowed;

(12) The creation of tastes or odors or toxic or other conditions that are deleterious to fish or other aquatic life or affect the potability of drinking water or the palatability of fish or shellfish may not be allowed;

(13) The formation of appreciable bottom or sludge deposits or the formation of any organic or inorganic deposits deleterious to fish or other aquatic life or injurious to public health, recreation, or industry may not be allowed;

(14) Objectionable discoloration, scum, oily sheens, or floating solids, or coating of aquatic life with oil films may not be allowed;

(15) Aesthetic conditions offensive to the human senses of sight, taste, smell, or touch may not be allowed;

(16) Radioisotope concentrations may not exceed maximum permissible concentrations (MPC's) in drinking water, edible fishes or shellfishes, wildlife, irrigated crops, livestock and dairy products, or pose an external radiation hazard;

(17) Minimum Design Criteria for Treatment and Control of Wastes. Except as provided in OAR 340-041-0101 through 340-041-0350, and subject to the implementation requirements set forth in OAR 340-041-0061, prior to discharge of any wastes from any new or modified facility to any waters of the State, such wastes must be treated and controlled in facilities designed in accordance with the following minimum criteria.

(a) In designing treatment facilities, average conditions and a normal range of variability are generally used in establishing design criteria. A facility once completed and placed in operation should operate at or near the design limit most of the time but may operate below the design criteria limit at times due to variables which are unpredictable or uncontrollable. This is particularly true for biological treatment facilities. The actual operating limits are intended to be established by permit pursuant to ORS 468.740 and recognize that the actual performance level may at times be less than the design criteria.

(A) Sewage wastes:

(i) Effluent BOD concentrations in mg/l, divided by the dilution factor (ratio of receiving stream flow to effluent flow) may not exceed one unless otherwise approved by the Commission;

(ii) Sewage wastes must be disinfected, after treatment, equivalent to thorough mixing with sufficient chlorine to provide a residual of at least 1 part per million after 60 minutes of contact time unless otherwise specifically authorized by permit;

(iii) Positive protection must be provided to prevent bypassing raw or inadequately treated sewage to public waters unless otherwise approved by the Department where elimination of inflow and infiltration would be necessary but not presently practicable; and

(iv) More stringent waste treatment and control requirements may be imposed where special conditions make such action appropriate.

(B) Industrial wastes:

(i) After maximum practicable inplant control, a minimum of secondary treatment or equivalent control (reduction of suspended solids and organic material where present in significant quantities, effective disinfection where bacterial organisms of public health significance are present, and control of toxic or other deleterious substances);

(ii) Specific industrial waste treatment requirements may be determined on an individual basis in accordance with the provisions of this plan, applicable federal requirements, and the following:

- (I) The uses that are or may likely be made of the receiving stream;
- (II) The size and nature of flow of the receiving stream;
- (III) The quantity and quality of wastes to be treated; and
- (IV) The presence or absence of other sources of pollution on the same watershed.

(iii) Where industrial, commercial, or agricultural effluents contain significant quantities of potentially toxic elements, treatment requirements may be determined utilizing appropriate bioassays;

(iv) Industrial cooling waters containing significant heat loads must be subjected to offstream cooling or heat recovery prior to discharge to public waters;

(v) Positive protection must be provided to prevent bypassing of raw or inadequately treated industrial wastes to any public waters;

(vi) Facilities must be provided to prevent and contain spills of potentially toxic or hazardous materials.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0009 Bacteria

(1) Numeric Criteria: Organisms of the coliform group commonly associated with fecal sources (MPN or equivalent membrane filtration

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using a representative number of samples) may not exceed the criteria described in paragraphs (a) and (b) of this paragraph:

(a) Freshwaters and Estuarine Waters Other than Shellfish Growing Waters:

(A) A 30-day log mean of 126 *E. coli* organisms per 100 milliliters, based on a minimum of five (5) samples;

(B) No single sample may exceed 406 *E. coli* organisms per 100 milliliters.

(b) Marine Waters and Estuarine Shellfish Growing Waters: A fecal coliform median concentration of 14 organisms per 100 milliliters, with not more than ten percent of the samples exceeding 43 organisms per 100 ml.

(2) Raw Sewage Prohibition: No sewage may be discharged into or in any other manner be allowed to enter the waters of the State, unless such sewage has been treated in a manner approved by the Department or otherwise allowed by these rules;

(3) Animal Waste: Runoff contaminated with domesticated animal wastes must be minimized and treated to the maximum extent practicable before it is allowed to enter waters of the State;

(4) Bacterial pollution or other conditions deleterious to waters used for domestic purposes, livestock watering, irrigation, bathing, or shellfish propagation, or otherwise injurious to public health may not be allowed;

(5) Effluent Limitations for Bacteria: Except as allowed in subsection (c) of this section, upon NPDES permit renewal or issuance, or upon request for a permit modification by the permittee at an earlier date, effluent discharges to freshwaters, and estuarine waters other than shellfish growing waters may not exceed a monthly log mean of 126 *E. coli* organisms per 100 ml. No single sample may exceed 406 *E. coli* organisms per 100 ml. However, no violation will be found, for an exceedance if the permittee takes at least five consecutive re-samples at four-hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample was taken and the log mean of the five re-samples is less than or equal to 126 *E. coli*. The following conditions apply:

(a) If the Department finds that re-sampling within the timeframe outlined in this section would pose an undue hardship on a treatment facility, a more convenient schedule may be negotiated in the permit, provided that the permittee demonstrates that the sampling delay will result in no increase in the risk to water contact recreation in waters affected by the discharge;

(b) The in-stream criterion for chlorine listed in Table 20 must be met at all times outside the assigned mixing zone;

(c) For sewage treatment plants that are authorized to use reclaimed water pursuant to OAR 340, division 55, and that also use a storage pond as a means to dechlorinate their effluent prior to discharge to public waters, effluent limitations for bacteria may, upon request by the permittee, be based upon appropriate total coliform, limits as required by OAR 340, division 55:

(i) Level II limitations: No two consecutive samples may exceed 240 total coliform per 100 milliliters.

(ii) Level III and Level IV limitations: No single sample may exceed 23 total coliform per 100 milliliters.

(iii) No violation will be found for an exceedance under this paragraph if the permittee takes at least five consecutive re-samples at four hour intervals beginning as soon as practicable (preferably within 28 hours) after the original sample(s) were taken; and in the case of Level II effluent, the log mean of the five re-samples is less than or equal to 23 total coliform per 100 milliliters or, in the case of Level III and IV effluent, if the log mean of the five re-samples is less than or equal to 2.2 total coliform per 100 milliliters.

(6) Sewer Overflows in winter: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of November 1 through May 21, except during a storm event greater than the one-in-five-year, 24-hour duration storm. However, the following exceptions apply:

(a) The Commission may on a case-by-case basis approve a bacteria control management plan to be prepared by the permittee, for a basin or specified geographic area which describes hydrologic conditions under which the numeric bacteria criteria would be waived. These plans will identify the specific hydrologic conditions, identify the public notification and education processes that will be followed to inform the public about an event and the plan, describe the water quality assessment conducted to determine bacteria sources and loads associated with the specified hydrologic conditions, and describe the bacteria control program that is being implemented in the basin or specified geographic area for the identified sources;

(b) Facilities with separate sanitary and storm sewers existing on January 10, 1996, and which currently experience sanitary sewer overflows due to inflow and infiltration problems, must submit an acceptable plan to the Department at the first permit renewal, which describes actions that will be taken to assure compliance with the discharge prohibition by January 1,

2010. Where discharges occur to a receiving stream with sensitive beneficial uses, the Department may negotiate a more aggressive schedule for discharge elimination;

(c) On a case-by-case basis, the beginning of winter may be defined as October 15, if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change.

(7) Sewer Overflows in summer: Domestic waste collection and treatment facilities are prohibited from discharging raw sewage to waters of the State during the period of May 22 through October 31, except during a storm event greater than the one-in-ten-year, 24-hour duration storm. The following exceptions apply:

(a) For facilities with combined sanitary and storm sewers, the Commission may on a case-by-case basis approve a bacteria control management plan such as that described in subsection (6)(a) of this rule;

(b) On a case-by-case basis, the beginning of summer may be defined as June 1 if the permittee so requests and demonstrates to the Department's satisfaction that the risk to beneficial uses, including water contact recreation, will not be increased due to the date change;

(c) For discharge sources whose permit identifies the beginning of summer as any date from May 22 through May 31: If the permittee demonstrates to the Department's satisfaction that an exceedance occurred between May 21 and June 1 because of a sewer overflow, and that no increase in risk to beneficial uses, including water contact recreation, occurred because of the exceedance, no violation may be triggered, if the storm associated with the overflow was greater than the one-in-five-year, 24-hour duration storm.

(8) Storm Sewers Systems Subject to Municipal NPDES Stormwater Permits: Best management practices must be implemented for permitted storm sewers to control bacteria to the maximum extent practicable. In addition, a collection-system evaluation must be performed prior to permit issuance or renewal so that illicit and cross connections are identified. Such connections must be removed upon identification. A collection system evaluation is not required where the Department determines that illicit and cross connections are unlikely to exist.

(9) Storm Sewers Systems Not Subject to Municipal NPDES Stormwater Permits: A collection system evaluation must be performed of non-permitted storm sewers by January 1, 2005, unless the Department determines that an evaluation is not necessary because illicit and cross connections are unlikely to exist. Illicit and cross-connections must be removed upon identification.

(10) Water Quality Limited for Bacteria: In those water bodies, or segments of water bodies identified by the Department as exceeding the relevant numeric criteria for bacteria in the basin standards and designated as water-quality limited under section 303(d) of the Clean Water Act, the requirements specified in section 11 of this rule and in OAR 340-041-0061(12) must apply.

(11) In water bodies designated by the Department as water-quality limited for bacteria, and in accordance with priorities established by the Department, development and implementation of a bacteria management plan may be required of those sources that the Department determines to be contributing to the problem. The Department may determine that a plan is not necessary for a particular stream segment or segments within a water-quality limited basin based on the contribution of the segment(s) to the problem. The bacteria management plans will identify the technologies, best management practices and/or measures and approaches to be implemented by point and nonpoint sources to limit bacterial contamination. For point sources, their National Pollutant Discharge Elimination System permit is their bacteria management plan. For nonpoint sources, the bacteria management plan will be developed by designated management agencies (DMAs) which will identify the appropriate best management practices or measures and approaches.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0011 Biocriteria

Waters of the State must be of sufficient quality to support aquatic species without detrimental changes in the resident biological communities.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 14-1991, f. & cert. ef. 8-13-91; Renumbered from 340-041-0027 by DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0016 Dissolved Oxygen

Dissolved oxygen (DO): No wastes may be discharged and no activities must be conducted that either alone or in combination with other

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wastes or activities will cause violation of the following standards: The changes adopted by the Commission on January 11, 1996, become effective July 1, 1996. Until that time, the requirements of this rule that were in effect on January 10, 1996, apply:

(1) For water bodies identified as active spawning areas in the places and times indicated on the following Tables and Figures set out in OAR 340-041-0101 to 340-041-0340: Tables 101B, 121B, 180B, 201B and 260B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B, (as well as any active spawning area used by resident trout species), the following criteria apply during the applicable spawning through fry emergence periods set forth in the tables and figures:

(a) The dissolved oxygen may not be less than 11.0 mg/l. However, if the minimum intergravel dissolved oxygen, measured as a spatial median, is 8.0 mg/l or greater, then the DO criterion is 9.0 mg/l;

(b) Where conditions of barometric pressure, altitude, and temperature preclude attainment of the 11.0 mg/l or 9.0 mg/l criteria, dissolved oxygen levels must not be less than 95 percent of saturation;

(c) The spatial median intergravel dissolved oxygen concentration must not fall below 8.0 mg/l.

(2) For water bodies identified by the Department as providing cold-water aquatic life, the dissolved oxygen may not be less than 8.0 mg/l as an absolute minimum. Where conditions of barometric pressure, altitude, and temperature preclude attainment of the 8.0 mg/l, dissolved oxygen may not be less than 90 percent of saturation. At the discretion of the Department, when the Department determines that adequate information exists, the dissolved oxygen may not fall below 8.0 mg/l as a 30-day mean minimum, 6.5 mg/l as a seven-day minimum mean, and may not fall below 6.0 mg/l as an absolute minimum (Table 21);

(3) For water bodies identified by the Department as providing cool-water aquatic life, the dissolved oxygen may not be less than 6.5 mg/l as an absolute minimum. At the discretion of the Department, when the Department determines that adequate information exists, the dissolved oxygen may not fall below 6.5 mg/l as a 30-day mean minimum, 5.0 mg/l as a seven-day minimum mean, and may not fall below 4.0 mg/l as an absolute minimum (Table 21);

(4) For water bodies identified by the Department as providing warm-water aquatic life, the dissolved oxygen may not be less than 5.5 mg/l as an absolute minimum. At the discretion of the Department, when the Department determines that adequate information exists, the dissolved oxygen may not fall below 5.5 mg/l as a 30-day mean minimum, and may not fall below 4.0 mg/l as an absolute minimum (Table 21);

(5) For estuarine water, the dissolved oxygen concentrations may not be less than 6.5 mg/l (for coastal water bodies);

(6) For ocean waters, no measurable reduction in dissolved oxygen concentration may be allowed.

[Tables: Tables referenced are available from the agency.]  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0019

### Nuisance Phytoplankton Growth

(1) The following values and implementation program must be applied to lakes, reservoirs, estuaries and streams, except for ponds and reservoirs less than ten acres in surface area, marshes and saline lakes:

(a) The following average Chlorophyll *a* values must be used to identify water bodies where phytoplankton may impair the recognized beneficial uses:

(A) Natural lakes that thermally stratify: 0.01 mg/l;

(B) Natural lakes that do not thermally stratify, reservoirs, rivers and estuaries: 0.015 mg/l;

(C) Average Chlorophyll *a* values may be based on the following methodology (or other methods approved by the Department): A minimum of three samples collected over any three consecutive months at a minimum of one representative location (e.g., above the deepest point of a lake or reservoir or at a point mid-flow of a river) from samples integrated from the surface to a depth equal to twice the secchi depth or the bottom (the lesser of the two depths); analytical and quality assurance methods must be in accordance with the most recent edition of Standard Methods for the Examination of Water and Wastewater.

(2) Upon determination by the Department that the values in section (1) of this rule are exceeded, the Department may:

(a) In accordance with a schedule approved by the Commission, conduct such studies as are necessary to describe present water quality; determine the impacts on beneficial uses; determine the probable causes of the exceedance and beneficial use impact; and develop a proposed control strategy for attaining compliance where technically and economically practicable. Proposed strategies could include standards for additional pollutant parameters, pollutant discharge load limitations, and other such provisions

as may be appropriate. Where natural conditions are responsible for exceedance of the values in section (1) of this rule or beneficial uses are not impaired, the values in section (1) of this rule may be modified to an appropriate value for that water body;

(b) Conduct necessary public hearings preliminary to adoption of a control strategy, standards or modified values after obtaining Commission authorization;

(c) Implement the strategy upon adoption by the Commission.

(3) In cases where waters exceed the values in section (1) of this rule and the necessary studies are not completed, the Department may approve new activities (which require Department approval), new or additional (above currently approved permit limits) discharge loadings from point sources provided that it is determined that beneficial uses would not be significantly impaired by the new activity or discharge.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 7-1986, f. & ef. 3-26-86; Renumbered from 340-041-0150 by DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0021

### pH

(1) Unless otherwise specified in OAR 340-041-0101 through 340-041-0350, pH values (Hydrogen ion concentrations) may not fall outside the following ranges:

(a) Marine waters: 7.0–8.5;

(b) Estuarine and fresh waters: 6.5–8.5.

(2) Waters impounded by dams existing on January 1, 1996, which have pHs that exceed the criteria are not in violation of the standard, if the Department determines that the exceedance would not occur without the impoundment and that all practicable measures have been taken to bring the pH in the impounded waters into compliance with the criteria.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0028

### Temperature

(1) Background. Water temperatures affect the biological cycles of aquatic species and are a critical factor in maintaining and restoring healthy salmonid populations throughout the State. Water temperatures are influenced by solar radiation, stream shade, ambient air temperatures, channel morphology, groundwater inflows, and stream velocity, volume, and flow. Surface water temperatures may also be warmed by anthropogenic activities such as discharging heated water, changing stream width or depth, reducing stream shading, and water withdrawals.

(2) Policy. It is the policy of the Commission to protect aquatic ecosystems from adverse warming and cooling caused by anthropogenic activities. The Commission intends to minimize the risk to cold-water aquatic ecosystems from anthropogenic warming, to encourage the restoration and protection of critical aquatic habitat, and to control extremes in temperature fluctuations due to anthropogenic activities. The Commission recognizes that some of the State's waters will, in their natural condition, not provide optimal thermal conditions at all places and at all times that salmonid use occurs. Therefore, it is especially important to minimize additional warming due to anthropogenic sources. In addition, the Commission acknowledges that control technologies, best management practices and other measures to reduce anthropogenic warming are evolving and that the implementation to meet these criteria will be an iterative process. Finally, the Commission notes that it will reconsider beneficial use designations in the event that man-made obstructions or barriers to anadromous fish passage are removed and may justify a change to the beneficial use for that water body.

(3) Purpose. The purpose of the temperature criteria in this rule is to protect designated temperature-sensitive, beneficial uses, including specific salmonid life cycle stages in waters of the State.

(4) Biologically Based Numeric Criteria. Unless superseded by the natural conditions criteria described in section (8) of this rule, or by subsequently adopted site-specific criteria approved by EPA, the temperature criteria for State waters supporting salmonid fishes are as follows:

(a) The seven-day-average maximum temperature of a stream identified as having salmon and steelhead spawning use on subbasin maps and tables set out in OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 130B, 151B, 160B, 170B, 220B, 230B, 271B, 286B, 300B, 310B, 320B, and 340B, may not exceed 13.0 degrees Celsius (55.4 degrees Fahrenheit) at the times indicated on these maps and tables;

(b) The seven-day-average maximum temperature of a stream identified as having core cold water habitat use on subbasin maps set out in OAR 340-041-101 to 340-041-340: Figures 130A, 151A, 160A, 170A, 220A,

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230A, 271A, 286A, 300A, 310A, 320A, and 340A, may not exceed 16.0 degrees Celsius (60.8 degrees Fahrenheit);

(c) The seven-day-average maximum temperature of a stream identified as having salmon and trout rearing and migration use on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130A, 151A, 160A, 170A, 220A, 230A, 271A, 286A, 300A, 310A, 320A, and 340A, may not exceed 18.0 degrees Celsius (64.4 degrees Fahrenheit);

(d) The seven-day-average maximum temperature of a stream identified as having a migration corridor use on subbasin maps and tables OAR 340-041-0101 to 340-041-0340: Tables 101B, and 121B, and Figures 151A, 170A, and 340A, may not exceed 20.0 degrees Celsius (68.0 degrees Fahrenheit). In addition, these water bodies must have coldwater refugia that's sufficiently distributed so as to allow salmon and steelhead migration without significant adverse effects from higher water temperatures elsewhere in the water body. Finally, the seasonal thermal pattern in Columbia and Snake Rivers must reflect the natural seasonal thermal pattern;

(e) The seven-day-average maximum temperature of a stream identified as having Lahontan cutthroat trout or redband trout use on subbasin maps and tables set out in OAR 340-041-0101 to 340-041-0340: Tables 120B, 140B, 190B, and 250B, and Figures 180A, 201A, and 260A may not exceed 20.0 degrees Celsius (68.0 degrees Fahrenheit);

(f) The seven-day-average maximum temperature of a stream identified as having bull trout spawning and juvenile rearing use on subbasin maps set out at OAR 340-041-0101 to 340-041-0340: Figures 130B, 151B, 160B, 170B, 180A, 201A, 260A, 310B, and 340B, may not exceed 12.0 degrees Celsius (53.6 degrees Fahrenheit). From August 15 through May 15, in bull trout spawning waters below Clear Creek and Mehlhorn reservoirs on Upper Clear Creek (Pine Subbasin), below Laurance Lake on the Middle Fork Hood River, and below Carmen reservoir on the Upper McKenzie River, there may be no more than a 0.3 degrees Celsius (0.5 Fahrenheit) increase between the water temperature immediately upstream of the reservoir and the water temperature immediately downstream of the spillway when the ambient seven-day-average maximum stream temperature is 9.0 degrees Celsius (48 degrees Fahrenheit) or greater, and no more than a 1.0 degree Celsius (1.8 degrees Fahrenheit) increase when the seven-day-average stream temperature is less than 9 degrees Celsius.

(5) Unidentified Tributaries. For waters that are not identified on the fish use maps and tables referenced in section (4) of this rule, the applicable criteria for these waters are the same criteria as is applicable to the nearest downstream water body depicted on the applicable map.

(6) Natural Lakes. Natural lakes may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the ambient condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life.

(7) Oceans and Bays. Except for the Columbia River above river mile 7, ocean and bay waters may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the ambient condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life.

(8) Natural Conditions Criteria. Where the department determines that the natural thermal potential of all or a portion of a water body exceeds the biologically-based criteria in section (4) of this rule, the natural thermal potential temperatures supersede the biologically-based criteria, and are deemed to be the applicable temperature criteria for that water body.

(9) Cool Water Species. Waters that support cool water species may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the ambient condition unless a greater increase would not reasonably be expected to adversely affect fish or other aquatic life. Cool waters of the State are described on subbasin tables set out in OAR 340-041-0101 to 340-041-0340: Tables 140B, 180B, 201B, and 250B.

(10) Borax Lake Chub. State waters in the Malheur Lake Basin supporting the borax lake chub may not be cooled more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) below the ambient condition.

## (11) Protecting Cold Water.

(a) Except as described in subsection (c) of this rule, waters of the State that have summer seven-day-average maximum ambient temperatures that are colder than the biologically based criteria in section (4) of this rule, may not be warmed by more than 0.3 degrees Celsius (0.5 degrees Fahrenheit) above the colder water ambient temperature. This provision applies to all sources taken together at the point of maximum impact where salmon, steelhead or bull trout are present.

(b) A point source that discharges into or above salmon & steelhead spawning waters that are colder than the spawning criterion, may not cause the water temperature in the spawning reach where the physical habitat for spawning exists during the time spawning through emergence use occurs, to increase more than the following amounts after complete mixing of the effluent with the river:

(A) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is 10 to 12.8 degrees Celsius, the allowable increase is 0.5 Celsius above the 60 day average; or

(B) If the rolling 60 day average maximum ambient water temperature, between the dates of spawning use as designated under subsection (4)(a) of this rule, is less than 10 degrees Celsius, the allowable increase is 1.0 Celsius above the 60 day average, unless the source provides analysis showing that a greater increase will not significantly impact the survival of salmon or steelhead eggs or the timing of salmon or steelhead fry emergence from the gravels in downstream spawning reach.

(c) The cold water protection narrative criteria in subsection (a) does not apply if:

(A) There are no threatened or endangered salmonids currently inhabiting the water body;

(B) The water body has not been designated as critical habitat; and

(C) The colder water is not necessary to ensure that downstream temperatures achieve and maintain compliance with the applicable temperature criteria.

## (12) Implementation of the Temperature Criteria.

(a) Minimum Duties. There is no duty for anthropogenic sources to reduce heating of the waters of the State below their natural condition. Similarly, each anthropogenic point and nonpoint source is responsible only for controlling the thermal effects of its own discharge or activity in accordance with its overall heat contribution. In no case may a source cause more warming than that allowed by the human use allowance provided in subsection (b) of this rule.

(b) Human Use Allowance. Insignificant additions of heat are authorized in waters that exceed the applicable temperature criteria as follows:

(A) Prior to the completion of a temperature TMDL or other cumulative effects analysis, no single NPDES point source that discharges into a temperature water quality limited water may cause the temperature of the water body to increase more than 0.3 degrees Celsius (0.5 Fahrenheit) above the applicable criteria after mixing with either twenty five (25) percent of the stream flow, or the temperature mixing zone, whichever is more restrictive; or

(B) Following a temperature TMDL or other cumulative effects analysis, waste load and load allocations will restrict all NPDES point sources and nonpoint sources to a cumulative increase of no greater than 0.3 degrees Celsius (0.5 Fahrenheit) above the applicable criteria after complete mixing in the water body, and at the point of maximum impact.

(C) Point sources must be in compliance with the additional mixing zone requirements set out in OAR 340-041-0053(2)(d).

(D) A point source in compliance with the temperature conditions of its NPDES permit is deemed in compliance with the applicable criteria.

(c) Air Temperature Exclusion. A water body that only exceeds the criteria set out in this rule when the exceedance is attributed to daily maximum air temperatures that exceed the 90th percentile value of annual maximum seven-day average maximum air temperatures calculated using at least 10 years of air temperature data, will not be listed on the section 303(d) list of impaired waters and sources will not be considered in violation of this rule.

(d) Low Flow Conditions. An exceedance of the biologically-based numeric criteria in section (4) of this rule, or an exceedance of the natural condition criteria in section (8) of this rule will not be considered a permit violation during stream flows that are less than the 7Q10 low flow condition for that water body.

(e) Forestry on State and Private Lands. For forest operations on State or private lands, water quality standards are intended to be attained and are implemented through best management practices and other control mechanisms established under the Forest Practices Act (ORS 527.610 to 527.992) and rules thereunder, administered by the Oregon Department of Forestry. Therefore, forest operations that are in compliance with the Forest Practices Act requirements are (except for the limits set out in ORS 527.770) deemed in compliance with this rule. DEQ will work with the Oregon Department of Forestry to revise the Forest Practices program to attain water quality standards.

(f) Agriculture on State and Private Lands. For farming or ranching operations on State or private lands, water quality standards are intended to be attained and are implemented through the Agricultural Water Quality Management Act (ORS 568.900 to 568.933) and rules thereunder, administered by the Oregon Department of Agriculture. Therefore, farming and ranching operations that are in compliance with the Agricultural Water Quality Management Act requirements will not be subject to DEQ enforcement under this rule. DEQ will work with the Oregon Department of Agriculture to revise the Agricultural Water Quality Management program to attain water quality standards.

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(g) Agriculture and Forestry on Federal Lands. Agriculture and forestry activities conducted on federal land must meet the requirements of this rule and are subject to the department's jurisdiction. Pursuant to Memoranda of Agreement with the U.S. Forest Service and the Bureau of Land Management, water quality standards are expected to be met through the development and implementation of water quality restoration plans, best management practices and aquatic conservation strategies. Where a Federal Agency is a Designated Management Agency by the Department, implementation of these plans, practices and strategies is deemed compliance with this rule.

(h) Other Nonpoint Sources. The department may, on a case-by-case basis, require nonpoint sources (other than forestry and agriculture), including private hydropower facilities regulated by a 401 water quality certification, that may contribute to warming of State waters beyond 0.3 degrees Celsius (0.5 degrees Fahrenheit), and are therefore designated as water-quality limited, to develop and implement a temperature management plan to achieve compliance with applicable temperature criteria or an applicable load allocation in a TMDL pursuant to OAR 340-042-0080.

(A) Each plan must ensure that the nonpoint source controls its heat load contribution to water temperatures such that the water body experiences no more than a 0.3 degrees Celsius (0.5 degree Fahrenheit) increase above the applicable criteria from all sources taken together at the maximum point of impact.

(B) Each plan must include a description of best management practices, measures, effluent trading, and control technologies (including eliminating the heat impact on the stream) that the nonpoint source intends to use to reduce its temperature effect, a monitoring plan, and a compliance schedule for undertaking each measure.

(C) The Department may periodically require a nonpoint source to revise its temperature management plan to ensure that all practical steps have been taken to mitigate or eliminate the temperature effect of the source on the water body.

(D) Once approved, a nonpoint source complying with its temperature management plan is deemed in compliance with this rule.

(i) Compliance Methods. Anthropogenic sources may engage in thermal water quality trading in whole or in part to offset its temperature discharge, so long as the trade results in at least a net thermal loading decrease in anthropogenic warming of the water body, and does not adversely affect a threatened or endangered species. Sources may also achieve compliance, in whole or in part, by flow augmentation, hyporheic exchange flows, out-fall relocation, or other measures that reduce the temperature increase caused by the discharge.

(ii) Release of Stored Water. Stored cold water may be released from reservoirs to cool downstream waters in order to achieve compliance with the applicable numeric criteria. However, there can be no significant adverse impact to downstream designated beneficial uses as a result of the releases of this cold water, and the release may not contribute to violations of other water quality criteria. Where the Department determines that the release of cold water is resulting in a significant adverse impact, the Department may require the elimination or mitigation of the adverse impact.

(13) Site-Specific Criteria. The Department may establish, by separate rulemaking, alternative site-specific criteria for all or a portion of a water body that fully protects the designated use.

(a) These site-specific criteria may be set on a seasonal basis as appropriate.

(b) The Department may use, but is not limited by the following considerations when calculating site-specific criteria:

- (A) Stream flow;
- (B) Riparian vegetation potential;
- (C) Channel morphology modifications;
- (D) Cold water tributaries and groundwater;
- (E) Natural physical features and geology influencing stream temperatures; and

- (F) Other relevant technical data.

(c) DEQ may consider the thermal benefit of increased flow when calculating the site-specific criteria.

(d) Once established and approved by EPA, the site-specific criteria will be the applicable criteria for the water bodies affected.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0031

### Total Dissolved Gas

(1) Waters will be free from dissolved gases, such as carbon dioxide hydrogen sulfide, or other gases, in sufficient quantities to cause objectionable odors or to be deleterious to fish or other aquatic life, navigation, recreation, or other reasonable uses made of such water.

(2) Except when stream flow exceeds the ten-year, seven-day average flood, the concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection may not exceed 110 percent of saturation. However, in hatchery-receiving waters and other waters of less than two feet in depth, the concentration of total dissolved gas relative to atmospheric pressure at the point of sample collection may not exceed 105 percent of saturation.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0032

### Total Dissolved Solids (TDS)

Total Dissolved Solids: Total Dissolved Solids: The concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary: All Fresh Water Streams and Tributaries — 100.0 mg/l.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0033

### Toxic Substances

(1) Toxic substances may not be introduced above natural background levels in the waters of the State in amounts, concentrations, or combinations that may be harmful, may chemically change to harmful forms in the environment, or may accumulate in sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety or welfare, aquatic life, wildlife, or other designated beneficial uses;

(2) Levels of toxic substances may not exceed the criteria listed in Table 20 which were based on criteria established by EPA and published in Quality Criteria for Water (1986), unless otherwise noted;

(3) The criteria in section (2) of this rule must apply unless data from scientifically valid studies demonstrate that the most sensitive designated beneficial uses will not be adversely affected by exceeding a criterion, or that a more restrictive criterion is warranted to protect beneficial uses, as accepted by the Department on a site specific basis. Where no published EPA criteria exist for a toxic substance, public health advisories and other published scientific literature may be considered and used, if appropriate, to set guidance values;

(4) If the Department determines that it is necessary to monitor the toxicity of complex effluents, other suspected discharges or chemical substances without numeric criteria to aquatic life, then bio-assessment studies may be conducted. Laboratory bioassays or in-stream measurements of indigenous biological communities, properly conducted in accordance with standards testing procedures, may be considered as scientifically valid data for the purposes of section (3) of this rule. If toxicity occurs, the Department will evaluate and implement necessary measures to reduce or eliminate the toxicity on a case-by-case basis.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0036

### Turbidity

Turbidity (Nephelometric Turbidity Units, NTU): No more than a ten percent cumulative increase in natural stream turbidities may be allowed, as measured relative to a control point immediately upstream of the turbidity causing activity. However, limited duration activities necessary to address an emergency or to accommodate essential dredging, construction or other legitimate activities and which cause the standard to be exceeded may be authorized provided all practicable turbidity control techniques have been applied and one of the following has been granted:

(a) Emergency activities: Approval coordinated by the Department with the Oregon Department of Fish and Wildlife under conditions they may prescribe to accommodate response to emergencies or to protect public health and welfare;

(b) Dredging, Construction or other Legitimate Activities: Permit or certification authorized under terms of section 401 or 404 (Permits and Licenses, Federal Water Pollution Control Act) or OAR 141-085-0100 et seq. (Removal and Fill Permits, Division of State Lands), with limitations and conditions governing the activity set forth in the permit or certificate.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0046

### Water Quality Limited Waters

(1) A receiving stream may be designated as water quality limited through the biennial water quality status assessment report prepared to meet

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the requirements of section 305(b) of the Federal Clean Water Act. Appendix A of the Status Assessment report will identify: what water bodies are water quality limited, the time of year the water quality standards violations occur, the segment of stream or area of water body limited, the parameter(s) of concern, whether it is water quality limited under OAR 340-041-0002(62)(a), (b) or (c). Appendix B and C of the Status Assessment report will identify the specific evaluation process for designating water bodies limited;

(2) The water quality limited list contained in Appendix A of the Status Assessment report will be placed on public notice and reviewed through the public hearing process. At the conclusion of the hearing process and the evaluation of the testimony, Appendix A will become the official water quality limited list. The Department may add a water body to the water quality limited list between status assessment reports after placing that action out on public notice and conducting a public hearing;

(3) For interstate water bodies, the State is responsible for completing the requirements of OAR 340-041-0004(9) of this rule for that portion of the interstate water body within the boundary of the State;

(4) For water bodies designated as water quality limited under OAR 340-041-0002(62)(c), the Department will establish a priority list and schedule for future water quality monitoring activities to determine: if the water body should be designated as water quality limited under OAR 340-041-0002(62)(a) or (b), if estimated TMDLs need to be prepared, and if an implementation plan needs to be developed and implemented;

(5) For water bodies designated as water quality limited under OAR 340-041-0002(62)(b), requests for load increases may be considered using the process set out in OAR 340-041-0004(9)(b) of this rule.

(6) Appendix B and C of the Status Assessment report will identify the specific evaluation process for designating water bodies limited.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0053

### Mixing Zones

(1) The Department may allow a designated portion of a receiving water to serve as a zone of dilution for wastewaters and receiving waters to mix thoroughly and this zone will be defined as a mixing zone;

(2) The Department may suspend all or part of the water quality standards, or set less restrictive standards in the defined mixing zone, provided that the following conditions are met:

(a) A point source for which the mixing zone is established may not cause or significantly contribute to any of the following:

(A) Materials in concentrations that will cause acute toxicity to aquatic life as measured by a Department approved bioassay method. Acute toxicity is lethal to aquatic life as measured by a significant difference in lethal concentration between the control and 100 percent effluent in an acute bioassay test. Lethality in 100 percent effluent may be allowed due to ammonia and chlorine only when it is demonstrated on a case-by-case basis that immediate dilution of the effluent within the mixing zone reduces toxicity below lethal concentrations. The Department may on a case-by-case basis establish a zone of immediate dilution if appropriate for other parameters;

(B) Materials that will settle to form objectionable deposits;

(C) Floating debris, oil, scum, or other materials that cause nuisance conditions; and

(D) Substances in concentrations that produce deleterious amounts of fungal or bacterial growths.

(b) A point source for which the mixing zone is established may not cause or significantly contribute to any of the following conditions outside the boundary of the mixing zone:

(A) Materials in concentrations that will cause chronic (sublethal) toxicity. Chronic toxicity is measured as the concentration that causes long-term sublethal effects, such as significantly impaired growth or reproduction in aquatic organisms, during a testing period based on test species life cycle. Procedures and end points will be specified by the Department in wastewater discharge permits;

(B) Exceedances of any other water quality standards under normal annual low flow conditions.

(c) The limits of the mixing zone must be described in the wastewater discharge permit. In determining the location, surface area, and volume of a mixing zone area, the Department may use appropriate mixing zone guidelines to assess the biological, physical, and chemical character of receiving waters, effluent, and the most appropriate placement of the outfall, to protect instream water quality, public health, and other beneficial uses. Based on receiving water and effluent characteristics, the Department will define a mixing zone in the immediate area of a wastewater discharge to:

(A) Be as small as feasible;

(B) Avoid overlap with any other mixing zones to the extent possible and be less than the total stream width as necessary to allow passage of fish and other aquatic organisms;

(C) Minimize adverse effects on the indigenous biological community, especially when species are present that warrant special protection for their economic importance, tribal significance, ecological uniqueness, or other similar reasons determined by the Department and does not block the free passage of aquatic life;

(D) Not threaten public health;

(E) Minimize adverse effects on other designated beneficial uses outside the mixing zone.

(d) Temperature Thermal Plume Limitations. Temperature mixing zones and effluent limits authorized under 340-041-0028(12)(b) will be established to prevent or minimize the following adverse effects to salmonids inside the mixing zone:

(A) Impairment of an active salmonid spawning area where spawning redds are located or likely to be located. This adverse effect is prevented or minimized by limiting potential fish exposure to temperatures of 13 degrees Celsius (55.4 Fahrenheit) or less for salmon and steelhead, and 9 degrees Celsius (48 degrees Fahrenheit) for bull trout;

(B) Acute impairment or instantaneous lethality is prevented or minimized by limiting potential fish exposure to temperatures of 32.0 degrees Celsius (89.6 degrees Fahrenheit) or more to less than 2 seconds;

(C) Thermal shock caused by a sudden increase in water temperature is prevented or minimized by limiting potential fish exposure to temperatures of 25.0 degrees Celsius (77.0 degrees Fahrenheit) or more to less than 5 percent of the cross section of 100 percent of the 7Q10 low flow of the water body; the Department may develop additional exposure timing restrictions to prevent thermal shock; and

(D) Unless the ambient temperature is 21.0 degrees or greater, migration blockage is prevented or minimized by limiting potential fish exposure to temperatures of 21.0 degrees Celsius (69.8 degrees Fahrenheit) or more to less than 25 percent of the cross section of 100 percent of the 7Q10 low flow of the water body.

(e) The Department may request the applicant of a permitted discharge for which a mixing zone is required, to submit all information necessary to define a mixing zone, such as:

(A) Type of operation to be conducted;

(B) Characteristics of effluent flow rates and composition;

(C) Characteristics of low flows of receiving waters;

(D) Description of potential environmental effects;

(E) Proposed design for outfall structures.

(f) The Department may, as necessary, require mixing zone monitoring studies and/or bioassays to be conducted to evaluate water quality or biological status within and outside the mixing zone boundary;

(g) The Department may change mixing zone limits or require the relocation of an outfall, if it determines that the water quality within the mixing zone adversely affects any existing beneficial uses in the receiving waters.

(h) Alternate requirements for mixing zones: For some existing or proposed discharges to some receiving streams, it may not be practical to treat wastewater to meet instream water quality standards at the point of discharge or within a short distance from the point of discharge. Some of these discharges could be allowed without impairing the overall ecological integrity of the receiving streams, or may provide an overall benefit to the receiving stream. This section specifies the conditions and circumstances under which a mixing zone may be allowed by the Department that extends beyond the immediate area around a discharge point, or that extends across a stream width. An alternate mixing zone may be approved if the applicant demonstrates to the Department's satisfaction that the discharge (A) creates an overall environmental benefit, or (B) is to a constructed water course, or (C) is insignificant. The three circumstances under which alternate mixing zones may be established are described further below.

(A) Overall environmental benefit.

(i) Qualifying for alternate mixing zone based on overall environmental benefit: In order to qualify for an alternate mixing zone based on a finding of overall environmental benefit, the discharger must demonstrate to the Department's satisfaction the following:

(I) All practical strategies have been, or will be, implemented to minimize the pollutant loads in the effluent; and

(II) For proposed increased discharges, the current actual discharge and mixing zone does not meet the requirements of a standard mixing zone; and

(III) Either that, on balance, an environmental benefit would be lost if the discharge did not occur, or that the discharger is prepared to undertake other actions that will mitigate the effect of the discharge to an extent resulting in a net environmental benefit to the receiving stream.

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(IV) For the purposes of this rule, the term "practical" must include environmental impact, availability of alternatives, cost of alternatives and other relevant factors.

(ii) Studies required and evaluation of studies: In order to demonstrate that, on balance, an environmental benefit will result from the discharge, the following information must be provided by the applicant:

(I) The effluent flow and pollutant loads that are detected or expected in the effluent, by month, both average and expected worst case discharges: The parameters to be evaluated include at a minimum: temperature, biochemical oxygen demand, total suspended solids, total dissolved solids, pH, settleable solids, *E. coli* bacteria, oil and grease, any pollutants listed in Table 20 of this rule division, and any pollutant for which the receiving stream has been designated by the Department as water quality limited; and

(II) Receiving stream flow, by month; and

(III) The expected impact of the discharge, by month, on the receiving stream for the entire proposed mixing zone area for all of the pollutants listed above. Included in this analysis must be a comparison of the receiving stream water quality with the discharge and without the discharge; and

(IV) A description of fish, other vertebrate populations, and macroinvertebrates that reside in, or are likely to pass through, the proposed mixing zone, including expected location (if known), species identification, stage of development, and time of year when their presence is expected. For existing discharges, the applicant must provide the same information for similar nearby streams that are unaffected by wastewater discharges. In addition, any threatened or endangered species in the immediate vicinity of the receiving stream must be identified; and

(V) The expected impact of the discharge on aquatic organisms and/or fish passage, including any expected negative impacts from the effluent attracting fish, where that is not desirable; and

(VI) A description of the expected environmental benefits to be derived from the discharge or other mitigation measures proposed by the applicant, including but not limited to improvements in water quality, improvements in fish passage, and improvements in aquatic habitat. If the applicant proposes to undertake mitigation measures designed to provide environmental benefits (e.g., purchasing water or water conservation rights to increase stream flows or establishing stream cover to decrease temperature), the applicant must describe the mitigation measures in detail, including a description of the steps it will take to ensure that the benefits of the mitigation measures are attained and are not lost or diminished over time.

(VII) Some or all of the above study requirements may be waived by the Department, if the Department determines that the information is not needed. In the event that the Department does waive some or all of the above study requirements, the basis for waiving the requirements will be included in the permit evaluation report upon the next permit renewal or modification relating to the mixing zone.

(VIII) Upon request of the Department, the applicant must conduct additional studies to further evaluate the impact of the discharge, which may include whole effluent toxicity testing, stream surveys for water quality, stream surveys for fish and other aquatic organisms, or other studies as specified by the Department.

(IX) In evaluating whether an existing or proposed increase in an existing discharge would result in a net environmental benefit, the applicant must use the native biological community in a nearby, similar stream that is unaffected by wastewater discharges. The Department will consider all information generated as required in this rule and other relevant information. The evaluation will only consider benefits to the native aquatic biological community.

(iii) Permit conditions: Upon determination by the Department that the discharge and mitigation measures (if any) will likely result in an overall environmental benefit, the Department will include appropriate permit conditions to ensure that the environmental benefits are attained and continue. Such permit conditions may include, but not be limited to:

(I) Maximum allowed effluent flows and pollutant loads;

(II) Requirements to maintain land ownership, easements, contracts, or other legally binding measures necessary to assure that mitigation measures, if any, remain in place and effective;

(III) Special operating conditions;

(IV) Monitoring and reporting requirements; and

(V) Studies to evaluate the effectiveness of mitigation measures.

(B) Constructed water course: A mixing zone may be extended through a constructed water course and into a natural water course. For the purposes of this rule, a constructed water course is one that was constructed for irrigation, site drainage, or wastewater conveyance, and has the following characteristics:

(i) Irrigation flows, stormwater runoff, or wastewater flows have replaced natural streamflow regimes;

(ii) The channel form is greatly simplified in lengthwise and cross sectional profiles;

(iii) Physical and biological characteristics that differ significantly from nearby natural streams;

(iv) A much lower diversity of aquatic species than the diversity found in nearby natural streams; and

(v) Effective fish screens if the constructed water course is an irrigation canal.

(C) Insignificant discharges: Insignificant discharges are those that either by volume, pollutant characteristics, and/or temporary nature are expected to have little if any impact on beneficial uses in the receiving stream, and for which the extensive evaluations required for discharges to smaller streams are not warranted. For the purposes of this rule, only filter backwash discharges and underground storage tank cleanups are considered insignificant discharges.

(D) Other requirements for alternate mixing zones: The following are additional requirements for dischargers requesting an alternate mixing zone:

(i) Most discharges that qualify for an alternate mixing zone will extend through the receiving stream until a larger stream is reached, where thorough mixing of the effluent can occur and where the edge of the allowed mixing zone will be located. The portion of the mixing zone in the larger stream must meet all of the requirements of the standard mixing zone, including not blocking aquatic life passage; and

(ii) An alternate mixing zone may not be granted if a municipal drinking water intake is located within the proposed mixing zone, and the discharge has a significant adverse impact on the drinking water source; and

(iii) The discharge will not pose an unreasonable hazard to the environment or pose a significant health risk, considering the likely pathways of exposure; and

(iv) The discharge may not be acutely toxic to organisms passing through the mixing zone; and

(v) An alternate mixing zone may not be granted if the substances discharged may accumulate in the sediments or bioaccumulate in aquatic life or wildlife to levels that adversely affect public health, safety or welfare, aquatic life, wildlife, or other designated beneficial uses; and

(vi) In the event that the receiving stream is water quality limited, the requirements for discharges to water quality limited streams supersede this rule.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0057

### Implementation at Domestic Wastewater Treatment Works

(1) Oregon's publicly owned sewerage utilities have since 1956 developed an increasing reliance on federal sewerage works construction grant funds to meet a major portion of the cost of their sewerage works construction needs. This reliance did not appear unreasonable based on federal legislation passed up through 1978. Indeed, the Environmental Quality Commission (Commission) has routinely approved compliance schedules with deadlines contingent on federal funding. This reliance no longer appears reasonable based on recent and proposed legislative actions and appropriations and the general state of the nation's economy.

(2) The federal funds expected for future years will address a small percentage of Oregon's sewerage works construction needs. Thus, continued reliance by DEQ and public agencies on federal funding for sewerage works construction will not assure that sewage from a growing Oregon population will be adequately treated and disposed of so that health hazards and nuisance conditions are prevented, and beneficial uses of public waters are not threatened or impaired by quality degradation.

(3) Therefore, the following statements of policy are established to guide future sewerage works planning and construction:

(a) The Commission remains strongly committed to its historic program of preventing water quality problems by requiring control facilities to be provided prior to the connection of new or increased waste loads;

(b) The Commission urges each sewerage utility in Oregon to develop, as soon as practicable, a financing plan that will ensure that future sewerage works construction, operation, maintenance and replacement needs can be met in a timely manner. Such financing plans will be a prerequisite to Department issuance of permits for new or significantly modified sewerage facilities, for approval of plans for new or significantly modified sewerage facilities, or for access to funding assistance from the State pollution control bond fund. The Department may accept assurance of development of such financing plan if necessary to prevent delay in projects already planned and in the process of implementation. The Department will work with the League of Oregon Cities and others as necessary to aid in the development of financing plans;

(c) No sewerage utility should assume that it will receive grant assistance to aid in addressing its planning and construction needs;

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(d) Existing sewerage facility plans that are awaiting design and construction should be updated where necessary to include:

(A) Evaluation of additional alternatives where appropriate, and re-evaluation of costs of existing alternatives;

(B) Identification and delineation of phased construction alternatives; and

(C) A financing plan which will assure ability to construct facilities over an appropriate time span with locally derived funds.

(e) New sewerage works facility planning initiated after October 1, 1981 should not be approved without adequate consideration of alternatives and phased construction options, and without a financing plan which assures adequate funding for construction, operation, maintenance and replacement of sewerage facilities:

(A) The Commission recognizes that many cities in need of immediate sewerage works construction have completed planning and are awaiting design or construction funding. These cities have developed their program relying on 75 percent federal grants. They will have difficulty developing and implementing alternatives to fund immediate construction needs. Many are, or will be, under moratoriums on new connections because existing facilities are at, or near, capacity. The Commission will consider the following interim measures as a means of assisting these cities to get on a self-supporting basis provided that an approvable long-range program is presented:

(i) Temporary increases in waste discharge loading may be approved provided a minimum of secondary treatment, or equivalent control is maintained and beneficial uses of the receiving waterway are not impaired;

(ii) Installation and operation of temporary treatment works may be approved providing:

(I) The area served is inside an approved urban growth boundary and the proposal is consistent with State Land Use Planning laws;

(II) A master sewerage plan is adopted which shows how and when the temporary facilities will be phased out;

(III) The public agency responsible for implementing the master plan is the owner and operator of the temporary facilities;

(IV) Sewerage service to the area served by the temporary facility is necessary as part of the financing program for master plan implementation and no other option for service is practicably available;

(V) An acceptable receiving stream or method of effluent disposal is available for the temporary facility.

(B) Compliance schedules and other permit requirements may be modified to incorporate an approved interim program. Compliance with a permit so modified will be required at all times.

(f) Sewerage Construction programs should be designed to eliminate raw sewage bypassing during the summer recreation season (except for a storm event greater than the ten-year, 24-hour storm) as soon as practicable. A program and timetable should be developed through negotiation with each affected source. Bypasses which occur during the remainder of the year should be eliminated in accordance with an approved longer term maintenance based correction program. More stringent schedules may be imposed as necessary to protect drinking water supplies and shellfish growing areas;

(g) Any sewerage utility that is presently in compliance and foresees a need to plan for future expansion to accommodate growth, but elects to wait for federal funds for planning and construction, will make such election with full knowledge that if existing facilities reach capacity before new facilities are completed, a new-connection moratorium will be imposed. Such moratorium will not qualify them for any special consideration, since its presence is deemed a matter of their choice;

(h) The Department will continue to assist cities to develop interim and long-range programs, use construction schedules and to secure financing for essential construction.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0061

### Other Implementation of Water Quality Criteria

(1) No waste treatment and disposal facilities may be constructed or operated, and no wastes may be discharged to public waters, without obtaining a permit from the Department as required by ORS 468B.050.

(2) Water Quality Variances. The Commission may grant point source variances from the water quality standards in this Division where the following requirements are met:

(a) The water quality variance applies only to the point source requesting the variance and only to the pollutant or pollutants specified in the variance; the underlying water quality standard otherwise remains in effect.

(b) A water quality standard variance shall not be granted if:

(A) Standards will be attained by all point source dischargers implementing effluent limitations required under sections 301(b) and 306 of the federal Clean Water Act, and by nonpoint sources implementing cost-effective and reasonable best management practices; or

(B) The variance would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act, or result in the destruction or adverse modification of such species' critical habitat.

(c) Prior to granting a variance, the point source must demonstrate that attaining the water quality standard is not feasible because:

(A) Naturally occurring pollutant concentrations prevent the attainment of the use; or

(B) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met; or

(C) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place; or

(D) Dams, diversions or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use; or

(E) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like unrelated to water quality, preclude attainment of aquatic life protection uses; or

(F) Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact.

(d) Procedures. An applicant for a water quality standards variance shall submit a request to the Department. The application shall include all relevant information showing that the requirements for a variance have been satisfied. The burden is on the applicant to demonstrate that the designated use is unattainable for one of the reasons specified in subsection (c) of this rule. If the Department preliminarily determines that grounds exist for granting a variance, it shall provide public notice of the proposed variance and provide an opportunity for public comment.

(A) The Department may condition the variance on the performance of such additional studies, monitoring, management practices, and other controls as may be deemed necessary. These terms and conditions will be incorporated into the applicant's NPDES permit or Department order.

(B) A variance may not exceed 3 years or the term of the NPDES permit, whichever is less. A variance may be renewed if the applicant reapplies and demonstrates that the use in question is still not attainable. Renewal of the variance may be denied if the applicant does not comply with the conditions of the original variance, or otherwise does not meet the requirements of this section.

(C) DEQ approval of a variance for a point source is not effective under the federal Clean Water Act until submitted to and approved by EPA.

(3) Plans for all sewage and industrial waste treatment, control, and disposal facilities must be submitted to the Department for review and approval prior to construction as required by ORS 468B.055.

(4) Minimum design criteria for waste treatment and control facilities prescribed under this plan and such other waste treatment, and controls as may be necessary to ensure compliance with the water quality standards contained in this plan, must be provided in accordance with specific permit conditions for those sources or activities for which permits are required and the following implementation program:

(a) For new or expanded waste loads or activities, fully approved treatment or control facilities, or both, must be provided prior to discharge of any wastes from the new or expanded facilities or conduct of the new or expanded activity;

(b) For existing waste loads or activities, additional treatment or control facilities necessary to correct specific unacceptable water quality conditions must be provided in accordance with a specific program and timetable incorporated into the waste discharge permit for the individual discharger or activity. In developing treatment requirements and implementation schedules for existing installations or activities, consideration will be given to the impact upon the overall environmental quality, including air, water, land use, and aesthetics;

(c) Wherever minimum design criteria for waste treatment and control facilities set forth in this plan are more stringent than applicable federal standards and treatment levels currently being provided, upgrading to the more stringent requirements will be deferred until it is necessary to expand or otherwise modify or replace the existing treatment facilities. Such deferral will be acknowledged in the permit for the source;



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(d) Where planning, design or construction of new or modified waste treatment and controls to meet prior applicable State or federal requirements are underway at the time this plan is adopted, such plans, design, or construction may be completed under the requirements in effect when the project was initiated. Timing for upgrading to meet more stringent future requirements will be as provided in section (3) of this rule.

(5) Confined animal feeding operations (CAFOs) are regulated pursuant to OAR 340-051-0005 through 340-051-0080 in order to minimize potential adverse effect on water quality (see also OAR 603-074-0005 through 603-074-0070).

(6) Programs for control of pollution from nonpoint sources when developed by the Department, or by other agencies pursuant to section 208 of Public Law 92-500 and approved by the Department, will as applicable, be incorporated into this plan by amendment via the same process used to adopt the plan unless other procedures are established by law.

(7) Where minimum requirements of federal law or enforceable regulations are more stringent than specific provisions of this plan, the federal requirements will prevail.

(8) Within framework of State-wide priority and available resources, the Department will monitor water quality within the basin for the purposes of evaluating conformance with the plan and developing information for future additions or updating.

(9) The Commission recognizes that the potential exists for conflicts between water quality management plans and the land use plans and resource management plans which local governments and other agencies must develop pursuant to law. In the event any such conflicts develop, it is the intent of the Department to meet with the local government or responsible agency to formulate proposed revisions to one or both so as to resolve the conflict. Revisions will be presented for adoption via the same process used to adopt the plan unless other specific procedures are established by law.

(10) The Department will calculate and include effluent limits specified in pounds per day, which will be the mass load limits for biochemical oxygen demand or carbonaceous biochemical oxygen demand and total suspended solids in National Pollutant Discharge Elimination System permits issued to all sewage treatment facilities. These limits must be calculated as follows:

(a) Except as noted in paragraph (H) of this subsection, for existing facilities and for facilities receiving engineering plans and specifications approval from the Department for new treatment facilities or treatment facilities expanding the average dry weather treatment capacity, prior to June 30, 1992:

(A) During periods of low stream flows (approximately May 1 through October 31), the monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0;

(B) During the period of high stream flows (approximately November 1 through April 30), the monthly average mass load expressed as pounds per day may not exceed the monthly concentration effluent limit times the design average wet weather flow expressed in million gallons per day times 8.34. The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5. The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0;

(C) On any day that the daily flow to a sewage treatment facility exceeds the lesser hydraulic capacity of the secondary treatment portion of the facility or twice the design average dry weather flow, the daily mass load limit will not apply. The permittee must operate the treatment facility at highest and best practicable treatment and control;

(D) The design average wet weather flow used in calculating mass loads must be approved by the Department in accordance with prudent engineering practice and must be based on a facility plan approved by the Department, engineering plans and specifications approved by the Department, or an engineering evaluation. The permittee must submit documentation describing and supporting the design average wet weather flow with the permit application, application for permit renewal, or modification request, or upon request by the Department. The design average wet weather flow is defined as the average flow between November 1 and April 30 when the sewage treatment facility is projected to be at design capacity for that portion of the year;

(E) Mass loads assigned as described in paragraphs (B) and (C) of this subsection will not be subject to OAR 340-041-0004(7);

(F) Mass loads as described in this rule will be included in permits upon renewal, or upon permit modification request;

(G) Within 180 days after permit renewal or modification, permittees receiving higher mass loads under this rule and having a separate sanitary sewer system must submit to the Department for review and approval a proposed program and time schedule for identifying and reducing inflow. The program must consist of the following:

(i) Identification of all overflow points and verification that sewer system overflows are not occurring up to a 24-hour, five-year storm event or equivalent;

(ii) Monitoring of all pump station overflow points; and

(iii) A program for identifying and removing all inflow sources into the permit holder's sewer system over which the permit holder has legal control; and

(iv) For those permit holders not having the necessary legal authority for all portions of the sewer system discharging into the permit holder's sewer system or treatment facility, a program and schedule for gaining legal authority to require inflow reduction and a program and schedule for removing inflow sources.

(H) Within one year after the Department's approval of the program, the permit holder must begin implementation of the program.

(I) Paragraphs (A) through (G) of this subsection does not apply to the cities of Athena, Elgin, Adair Village, Halsey, Harrisburg, Independence, Carlton and Sweet Home. Mass load limits have been individually assigned to these facilities.

(b) For new sewage treatment facilities or treatment facilities expanding the average dry weather treatment capacity, and receiving engineering plans and specifications approval from the Department after June 30, 1992, the mass load limits must be calculated by the Department based on the proposed treatment facility capabilities and the highest and best practicable treatment to minimize the discharge of pollutants;

(c) Mass load limits as defined in this rule may be replaced by more stringent limits if required by waste load allocations established in accordance with a TMDL for treatment facilities discharging to water quality limited streams, or if required to prevent or eliminate violations of water quality standards;

(d) In the event that the design average wet weather flow or the hydraulic secondary treatment capacity is not known or has not been approved by the Department at the time of permit issuance, the permit must include as interim mass load limits the mass load limits in the previous permit issued to the permit holder for the treatment facility. The permit must also include a requirement that the permit holder must submit to the Department the design average wet weather flow and hydraulic secondary treatment capacity within 12 months after permit issuance. Upon review and approval of the design flow information, the Department will modify the permit and include mass load limits as described in subsection (a) of this section;

(e) Each permit holder with existing sewage treatment facilities otherwise subject to subsection (a) of this section may choose mass load limits calculated as follows:

(A) The monthly average mass load expressed as pounds per day may not exceed the applicable monthly concentration effluent limit times the design average dry weather flow expressed in million gallons per day times 8.34 pounds per gallon;

(B) The weekly average mass load expressed as pounds per day may not exceed the monthly average mass load times 1.5;

(C) The daily mass load expressed in pounds per day may not exceed the monthly average mass load times 2.0. In the event that existing mass load limits are retained by the permit holder, the terms and requirements of subsection (a) of this section will not apply.

(f) The Commission may grant exceptions to subsection (a) of this section. In allowing increased discharged loads, the Commission must make the findings specified in OAR 340-041-0004(9)(a) for waste loads, and in addition must make the following findings:

(A) That mass loads as calculated in subsection (a) of this section cannot be achieved with the existing treatment facilities operated at maximum efficiency at projected design flows; and

(B) That there are no practicable alternatives to achieving the mass loads as calculated in subsection (a) of this section.

(11) Forestry on State and Private Lands. For forest operations on State or private lands, water quality standards are intended to be attained and are implemented through best management practices and other control mechanisms established under the Forest Practices Act (ORS 527.610 to 527.992) and rules thereunder, administered by the Oregon Department of Forestry. Therefore, forest operations that are in compliance with the Forest Practices Act requirements are (except for the limits set out in ORS 527.770) deemed in compliance with this Division. DEQ will work with the Oregon Department of Forestry to revise the Forest Practices program to attain water quality standards.

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(12) Agricultural water quality management plans to reduce agricultural nonpoint source pollution are developed and implemented by the Oregon Department of Agriculture (ODA) through a cooperative agreement with the Department to implement applicable provisions of ORS 568.900 to 568.933 and 561.191. If the Department has reason to believe that agricultural discharges or activities are contributing to water quality problems resulting in water quality standards violations, the Department may consult with the ODA. If water quality impacts are likely from agricultural sources, and the Department determines that a water quality management plan is necessary, the Director may write a letter to the Director of the ODA requesting that such a management plan be prepared and implemented to reduce pollutant loads and achieve the water quality criteria.

(13) Agriculture and Forestry on Federal Lands. Agriculture and forestry activities conducted on federal land must meet the requirements of this Division and are subject to the department's jurisdiction. Pursuant to Memoranda of Agreement with the U.S. Forest Service and the Bureau of Land Management, water quality standards are expected to be met through the development and implementation of water quality restoration plans, best management practices and aquatic conservation strategies. Where a Federal Agency is a Designated Management Agency by the Department, implementation of these plans, practices and strategies is deemed compliance with this Division.

(14) Testing methods: The analytical testing methods for determining compliance with the water quality standards contained in this rule must be in accordance with 40 CFR Part 136, or if Part 136 does not prescribe a method, then the most recent edition of Standard Methods for the Examination of Water and Waste Water published jointly by the American Public Health Association, American Water Works Association, and Water Pollution Control Federation, unless the Department has published an applicable superseding method, in which case testing must be in accordance with the superseding method; provided, however, that testing in accordance with an alternative method must comply with this rule if the Department has published the method or has approved the method in writing.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0101

### Beneficial Uses to Be Protected in the Main Stem Columbia River

(1) Water quality in the main stem Columbia River (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 101A (November 2003).

(2) Designated fish uses to be protected in the main stem Columbia River are shown in Table 101B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0103

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Columbia River — Dioxin — February 25, 1991  
Columbia River — Dissolved Gas — November 11, 2002  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0104

### Water Quality Standards and Policies Specific to the Main Stem Columbia River

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: main stem Columbia River (mouth to river mile 309): 7.0 — 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below must not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0101:

(a) Main stem Columbia River (river miles 120 to 147 and 210-309) — 200.0 mg/l;

(b) All other river miles of main stem Columbia River — 500.0 mg/l.

(3) Total Dissolved Gas. The Commission may modify the total dissolved gas criteria in the Columbia River for the purpose of allowing increased spill for salmonid migration. The Commission must find that:

(a) Failure to act would result in greater harm to salmonid stock survival through in-river migration than would occur by increased spill;

(b) The modified total dissolved gas criteria associated with the increased spill provides a reasonable balance of the risk of impairment due to elevated total dissolved gas to both resident biological communities and

other migrating fish and to migrating adult and juvenile salmonids when compared to other options for in-river migration of salmon;

(c) Adequate data will exist to determine compliance with the standards; and

(d) Biological monitoring is occurring to document that the migratory salmonid and resident biological communities are being protected.

(e) The Commission will give public notice and notify all known interested parties and will make provision for opportunity to be heard and comment on the evidence presented by others, except that the Director may modify the total dissolved gas criteria for emergencies for a period not exceeding 48 hours;

(f) The Commission may, at its discretion, consider alternative modes of migration.

(4) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (see subsections (A) and (B) below): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control. Periods of low stream flow vary throughout the main stem Columbia River. Low stream flow periods are listed below, by river mile:

(A) River miles 120 to 147: Approximately July 1 to January 31;

(B) River miles 147 to 218: Approximately May 1 to October 31.

(b) During periods of high stream flows (see subsections (A) and (B) below): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(A) River miles 120 to 147: Approximately February 1 to June 30;

(B) River miles 147 to 218: Approximately November 1 to April 30.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0121

### Beneficial Uses to Be Protected in the Main Stem Snake River

(1) Water quality in the main stem Snake River (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 121A (November 2003).

(2) Designated fish uses to be protected in the main stem Snake River are shown in Table 121B (November 2003).

[Ed. Note: Figures and Tables are available from the agency.]

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0122

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0124

### Water Quality Standards and Policies Specific to the Main Stem Snake River

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: main stem Snake River (river miles 260 to 335): 7.0–9.0.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0120: main stem Snake River — 750.0 mg/l.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0130

### Beneficial Uses to Be Protected in the Deschutes Basin

(1) Water quality in the Deschutes Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 130A (November 2003).

(2) Designated fish uses to be protected in the Deschutes Basin are shown in Figures 130A and 130B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

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## 340-041-0133

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0135

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) All other Basin streams (except Cascade lakes): 6.5–8.5;

(b) Cascade lakes above 3,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0562: 500.0 mg/l.

(3) La Pine Aquifer.

(a) In order to protect the shallow aquifer located in the vicinity of the community of La Pine in Deschutes County for present and future use as a drinking water source, it is the policy of the Environmental Quality Commission to support the implementation of the La Pine Aquifer Management Plan adopted by the Deschutes County Board of Commissioners on September 28, 1982, by requiring the following:

(b) The waste water generated outside the core area of the community of La Pine but within the study area described in the La Pine Aquifer Management Plan, will be subjected to regulation under the Department's on-site waste disposal rules (OAR Chapter 340, Division 71);

(A) The core area of the community of La Pine is that area defined as follows: Located in a portion of Sections 10, 11, 14, and 15, Township 22 South, Range 10 East, Willamette Meridian, Deschutes County, Oregon, more particularly described as follows: Beginning at the northwest corner of the intersection of U.S. Highway 97 and First Street (aka Reed Road); thence in a northeasterly direction along the westerly right-of-way line of said U.S. Highway 97 a distance of 1,480 feet, more or less, to the intersection of said U.S. Highway 97 and the northerly line of the south one-half of the southwest one-quarter of said Section 11; thence in a westerly direction along the northerly line of the south one-half of the southwest one-quarter of said Section 11 a distance of 1,950 feet, more or less, to the south one-sixteenth corner between said Sections 10 and 11; thence in a northerly direction along the section line between Sections 10 and 11, 990 feet, more or less, to the northeast corner of the south one-half of the north one-half of the northeast one-quarter of the southeast one-quarter of said Section 10 being the northeast corner of the Bend-La Pine School District property; thence in a westerly direction along the north line of the said south one-half of the north one-half of the northeast one-quarter of the southeast one-quarter, being the north line of the said Bend-La Pine School District property, 1,320 feet, more or less, to the northwest corner of the south one-half of the north one-half of the southeast one-quarter of the southeast one-quarter of said Section 10, said point further being the northwest corner of the Bend-La Pine School District property; thence in a southerly direction along the westerly line of the east one-half of the southeast one-quarter of said Section 10, 2, 310 feet, more or less, to a point at the intersection of the westerly line of the southeast one-quarter of the southeast one-quarter of said Section 10 and the northerly right-of-way line of said First Street, said point further being the southwest corner of the Bend-La Pine School District property; thence in an easterly direction along the northerly right-of-way line of said First Street, 350 feet, more or less, to a point on the northerly right-of-way line of said First Street due north of the northwest corner of the alley in Block 16 of the Plat of La Pine Subdivision; thence in a southerly direction along the westerly side of said alley 550 feet, more or less, to a point along the southerly right-of-way of 2nd Street due south of the southwest corner of the alley in Block 16 of the Plat of La Pine Subdivision; thence in an easterly direction along the southerly right-of-way of 2nd Street, 390 feet, more or less, to the southwest corner of the intersection of Stillwell Street and 2nd Street; thence in a southerly direction along the westerly right-of-way line of said Stillwell Street, 950 feet, more or less, to the northwest corner of the intersection of said Stillwell Street and 4th Street; thence in a southerly direction along the west right-of-way line of Stillwell Street approximately 1,186 feet to the northwest corner of the intersection of Stillwell Street and Hill Street; thence in a southwesterly direction along the west right-of-way line of Hill Street approximately 340 feet to the intersection of the west line of Hill Street with the north line of 8th Street; thence westerly along the north line of 8th Street, 41 feet, more or less to the northeast corner of the intersection of 8th Street and Stearns Street; thence in a southerly direction along the

east right-of-way line of Stearns Street approximately 387 feet to the northeast corner of the intersection of Stearns Street and 9th Street; thence in an easterly direction along the north right-of-way line of 9th Street and the easterly extension of the north line of said 9th Street, 1,093 feet to its intersection with the east right-of-way line of Pengra Huntington Road; thence in a northerly direction along the east right-of-way line of Pengra Huntington Road approximately 1,166 feet to the southwest corner of Lot 31, Government Homesite Tracts; thence in an easterly direction along the south boundary of said Lot 31 approximately 263 feet to the southeast corner of said Lot 31; thence in a northerly direction along the east boundary of said Lot 31 approximately 200 feet to the south right-of-way line of Finley Butte Road; thence in an easterly direction along the south right-of-way line of Finley Butte Road approximately 675 feet to the southeast corner of the intersection of Finley Butte Road and Bonnie Road; thence in a northerly direction along the east right-of-way line of Bonnie Road approximately 1,075 feet to the southeast corner of the intersection of Bonnie Road and William Foss Road; thence in an easterly direction along the southerly right-of-way line of said William Foss Road, 1,640 feet, more or less, to the north-south center section line of said Section 14 thence in a northerly direction along the north-south center line of said Section 14, 1,635 feet, more or less, to the north right-of-way line of said First Street (aka Reed Road); thence in a westerly direction along the north right-of-way line of said First Street, 1,432 feet, more or less, to the point of beginning;

(B) All dwellings and buildings that contain plumbing fixtures inside this core area boundary must eliminate the discharge of inadequately treated sewage, abandon existing on-site sewage disposal systems and connect to the regional sewerage facility. This must be done within 90 days following notification by the approved regional sewerage agency that sewer service is available.

(c) Waste disposal systems for new developments within the La Pine Aquifer Management Plan Boundary where development density exceeds two single family equivalent dwelling units per acre or which have an aggregate waste flow in excess of 5,000 gallons per day may only be approved if a study is conducted by the applicant which convinces the department that the aquifer will not be unreasonably degraded.

(4) In addition to the requirements set forth in section (3) of this rule, the following actions are encouraged:

(a) Since the aquifer is presently degraded to the point where it does not meet Federal Drinking Water Standards, and the installation of sewer facilities will not immediately restore the quality to safe levels, Deschutes County should notify the citizens of the La Pine core area of the need to develop a safe drinking water supply for the community as soon as possible;

(b) Residents of the La Pine area are encouraged to test their drinking water frequently;

(c) Owners of underground liquid storage tanks are encouraged to periodically test the storage tanks to assure prompt detection and repair of leaks;

(d) Data on the quality of the shallow aquifer in and around La Pine should be obtained on a periodic basis to assess the effect of the above waste water management decisions on the quality of the groundwater.

(5) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) Metolius River Subbasin and Deschutes River Basin above Bend Diversion Dam (river mile 165): Treatment resulting in monthly average effluent concentrations not to exceed 5 mg/l of BOD and 5 mg/l of SS or equivalent control;

(b) Deschutes River from the Bend Diversion Dam (river mile 165) downstream to the Pelton Reregulating Dam (river mile 100) and for the Crooked River Subbasin:

(A) During periods of low stream flows (approximately April 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to March 31): A minimum of secondary treatment or equivalent and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

(c) Deschutes from the Pelton Reregulating Dam (river mile 100) downstream to the mouth:

(A) During periods of low stream flows (approximately April 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to March 31): A minimum of secondary treatment or equivalent and

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unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0140

### Beneficial Uses to be Protected in Goose and Summer Lake Basins

(1) Water quality in the Goose and Summer Lake Basins (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 140A (November 2003).

(2) Designated fish uses to be protected in the Goose and Summer Lake Basins are shown in Table 140B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0143

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0145

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration):

(a) Goose Lake: pH values may not fall outside the range of 7.5 to 9.5;

(b) All other basin waters. pH values may not fall outside the range of 7.0 to 9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0140: None.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes: a minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0151

### Beneficial Uses to be Protected in the Grande Ronde Basin

(1) Water quality in the Grande Ronde Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 151A (November 2003).

(2) Designated fish uses to be protected in the Grande Ronde Basin are shown in Figures 151A and 151B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0154

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Upper Grande Ronde — Temperature, Sediment, Nitrogen and Phosphorous — May 3, 2000

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0156

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: all basin streams (other than main stem Snake River): 6.5–9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such

conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0150: main stem Grande Ronde River — 200.0 mg/l;

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately June 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of suspended solids or equivalent control;

(b) During the period of high stream flows (approximately November 1 to May 31): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0160

### Beneficial Uses to be Protected in the Hood Basin

(1) Water quality in the Hood Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 160A (November 2003).

(2) Designated fish uses to be protected in the Hood Basin are shown in Figures 160A and 160B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0164

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Western Hood — Temperature — January 30, 2002  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0165

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) Hood River Basin streams (except main stem Columbia River and Cascade lakes): pH values may not fall outside the range of 6.5 to 8.5;

(b) Cascade lakes above 3,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0160: 500.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes in this Basin:

(a) During periods of low stream flows (approximately May 1 to October 31): Hood River Basin streams (except main stem Columbia River): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of suspended solids or equivalent control.

(b) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0170

### Beneficial Uses to be Protected in the John Day Basin

(1) Water quality in the John Day Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 170A (November 2003).

(2) Designated fish uses to be protected in the John Day Basin are shown in Figures 170A and 170B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

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## 340-041-0174

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0175

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: all Basin streams (other than the main stem Colombia River): 6.5–9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0170: John Day River and Tributaries — 500.0 mg/l.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0180

### Beneficial Uses to Be Protected in the Klamath Basin

(1) Water quality in the Klamath Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 180A (November 2003).

(2) Designated fish uses to be protected in the Klamath Basin are shown in Figure 180A (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0184

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Upper Klamath Lake Drainage — Temperature, Dissolved Oxygen, pH, Chlorophyll a — August 7, 2002.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0185

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) Fresh waters except Cascade lakes: pH values may not fall outside the range of 6.5–9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin;

(b) Cascade lakes above 5,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0180: main stem Klamath River from Klamath Lake to the Oregon-California Border (river miles 255 to 208.5): The specific conductance may not exceed 400 micro-ohms at 77°F when measured at the Oregon-California Border (river mile 208.5).

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low streams flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 of suspended solids or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities to maximum practicable efficient and effectiveness so as to minimize waste discharge to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0190

### Beneficial Uses to Be Protected in the Malheur Lake Basin

(1) Water quality in the Malheur Lake Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 190A (November 2003).

(2) Designated fish uses to be protected in the Malheur Lake Basin are shown in Table 190B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0194

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0195

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the range of 7.0 to 9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0190: None.

(3) Minimum Design Criteria for Treatment and Control of Sewage wastes: a minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0201

### Beneficial Uses to Be Protected in the Malheur River Basin

(1) Water quality in the Malheur River Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 201A (November 2003).

(2) Designated fish uses to be protected in the Malheur River Basin are shown in Figure 201A (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0204

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0207

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the range of 7.0 to 9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0201: Snake River — 750.0 mg/l.

(3) Minimum Design Criteria for Treatment Control of Sewage Wastes:

(a) During periods of low stream flow (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During periods of high stream flow (approximately November 1 to April 30): A minimum of Secondary Treatment or equivalent control and

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unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0220

### Beneficial Uses to Be Protected in the Mid Coast Basin

(1) Water quality in the Mid Coast Basin (see Figure 1) may be managed to protect the designated beneficial uses shown in Table 220A (November 2003).

(2) Designated fish uses to be protected in the Mid Coast Basin are shown in Figures 220A and 220B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0224

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Clear Lake — Phosphorus — December 8, 1992  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0225

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

- (a) Marine waters: 7.0–8.5;
- (b) Estuarine and fresh waters: 6.5–8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0220: 100.0 mg/l.

(3) Nutrients in Clear Lake Watershed. In order to preserve the existing high quality water in Clear Lake north of Florence for use as a public water supply source requiring only minimal filtration, it is the policy of the Environmental Quality Commission to protect the Clear Lake watershed including both surface and groundwater, from existing and potential contamination sources with the following requirements:

(a) The total phosphorus maximum annual loading discharged into Clear Lake may not exceed 241 pounds per year from all sources.

(b) The total phosphorus maximum annual loading for the Clear Lake watershed may be deemed exceeded if the median concentration of total phosphorus from samples collected in the epilimnion between May 1 and September 30 exceed nine micrograms per liter during two consecutive years.

(c) Of the total phosphorus loading of 241 pounds per year specified in section (1) of this rule, 192 pounds per year will be considered current background and Department reserve and is not available to other sources.

(d) The total phosphorus maximum annual loading discharged into Collard Lake may not exceed 123 pounds per year.

(e) If water quality monitoring within the Clear Lake watershed indicates degradation, the Commission may require additional studies, corrective actions, or both, by rule. Such corrective actions may include but are not limited to the construction of sewage collection and off-site treatment and disposal facilities.

(4) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS, or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30) and for direct ocean discharges: a minimum of secondary treatment or equivalent control, and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0230

### Beneficial Uses to Be Protected in the North Coast Basin

(1) Water quality in the North Coast Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 230A (November 2003).

(2) Designated fish uses to be protected in the North Coast Basin are shown in Figures 230A and 230B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0234

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Nestucca Bay Drainage — Temperature, Bacteria and Sediment — May 13, 2002  
Tillamook Bay Drainage — Temperature and Bacteria — July 31, 2001  
North Coast — Temperature and Bacteria — August 20, 2003  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0235

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

- (a) Marine waters: 7.0–8.5;
- (b) Estuarine and fresh waters: 6.5–8.5.

(2) Total Dissolved Solids. Guide concentrations may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0230: All Fresh Water Streams and Tributaries (other than the main stem Columbia River) — 100.0 mg/l.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0250

### Beneficial Uses to Be Protected in the Owyhee Basin

(1) Water quality in the Owyhee Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 250A (November 2003).

(2) Designated fish uses to be protected in the Owyhee Basin are shown in Table 250B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0254

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0256

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the range of 7.0 to 9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0250: Snake River — 750.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes: a minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

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## 340-041-0260

### Beneficial Uses to Be Protected in the Powder/Burnt Basins

(1) Water quality in the Powder/Burnt Basins (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 260A (November 2003).

(2) Designated fish uses to be protected in the Powder/Burnt Basins are shown in Figure 260A (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0264

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0265

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following range: all Basin streams (other than main stem Snake River): 6.5–9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Minimum Design Criteria for Treatment and Control of Sewage Wastes: a minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, the operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0271

### Beneficial Uses to Be Protected in the Rogue Basin

(1) Water quality in the Rogue Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 271A (November 2003).

(2) Designated fish uses to be protected in the Rogue Basin are shown in Figures 271A and 271B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0274

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Bear Creek — Ammonia, BOD and Phosphorus — December 8, 1992  
Lobster Creek — Temperature — June 13, 2002  
Lower Sucker Creek — Temperature — May 30, 2002  
Upper Sucker Creek — Temperature — May 4, 1999  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0275

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

- (a) Marine waters: 7.0–8.5;
- (b) Estuarine and fresh waters (except Cascade lakes): 6.5–8.5;
- (c) Cascade lakes above 3,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0271: 500.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all

waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0286

### Beneficial Uses to Be Protected in the Sandy Basin

(1) Water quality in the Sandy Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 286A (November 2003).

(2) Designated fish uses to be protected in the Sandy Basin are shown in Figures 286A and 286B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0289

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0290

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) All Basin waters (except main stem Columbia River and Cascade lakes): pH values may not fall outside the range of 6.5 to 8.5;

(b) Cascade lakes above 3,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0286: All Basin Waters (other than the main stem Columbia river) — 100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) All Basin waters (except main stem Columbia River):

(A) During periods of low stream flows (approximately June 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to May 31): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0300

### Beneficial Uses to Be Protected in the South Coast Basin

(1) Water quality in the South Coast Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 300A (November 2003).

(2) Designated fish uses to be protected in the South Coast Basin are shown in Figures 300A and 300B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0304

### Approved TMDLs in the Basin

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Coquille — BOD — July 3, 1996  
Upper South Fork of the Coquille — Temperature — March 23, 2001  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0305

### Water Quality Standards and Policies for this Basin

(1) pH (Hydrogen ion concentration) pH values may not fall outside the following ranges:

- (a) Estuarine and fresh waters: 6.5–8.5.
- (b) Marine waters: 7.0–8.5.

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(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0300: 100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31):

Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control;

(b) During the period of high stream flows (approximately November 1 to April 30) and for direct ocean discharges: A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0310

### Beneficial Uses to Be Protected in the Umatilla Basin

(1) Water quality in the Umatilla Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 310A (November 2003).

(2) Designated fish uses to be protected in the Umatilla Basin are shown in Figures 310A and 310B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0314

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Umatilla River Basin — Temperature, pH, Sediment, Turbidity, Aquatic Weeds, and

Algae — May 9, 2001

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0315

### Water Quality Standards and Policies for this Basin

pH (hydrogen ion concentration). pH values may not fall outside the following range: all Basin streams (other than main stem Columbia River): 6.5–9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0320

### Beneficial Uses to Be Protected in the Umpqua Basin

(1) Water quality in the Umpqua Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 320A (November 2003).

(2) Designated fish uses to be protected in the Umpqua Basin are shown in Figures 320A and 320B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0324

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Little River — Temperature, pH and Sediment — January 29, 2002

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0326

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) Marine waters: 7.0 – 8.5;

(b) Estuarine and fresh waters (except Cascade lakes): 6.5 – 8.5;

(c) Cascade lakes above 3,000 feet altitude: pH values may not fall outside the range of 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0320: 500.0 mg/l.

(3) Turbidity (Nephelometric Turbidity Units, NTU). When appropriate studies are completed by the Corps of Engineers, or others, the Environmental Quality Commission will, consistent with the provisions of ORS Chapter 468, modify the turbidity standard, on a case-by-case basis if necessary, to accommodate such specific water storage and development projects in the South Umpqua Basin as are found to be in the best overall interest of the public.

(4) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) During periods of low stream flows (approximately May 1 to October 31):

(A) Main stem Umpqua River, South Umpqua River, and all tributaries to the main stem and South Umpqua Rivers: Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) North Umpqua River from mouth to Idleld Park (river mile 0 to 35): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(C) North Umpqua River above Idleld Park (river mile 35) and all tributaries to North Umpqua River: Treatment resulting in monthly average effluent concentrations not to exceed 5 mg/l of BOD and 5 mg/l of SS or equivalent control.

(b) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable efficiency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0330

### Beneficial Uses to Be Protected in the Walla Walla Basin

(1) Water quality in the Walla Walla Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 330A (November 2003).

(2) Designated fish uses to be protected in the Walla Walla Basin are shown in Figures 310A and 310B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0334

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site: None

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0336

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the range of 6.5 to 9.0. When greater than 25 percent of ambient measurements taken between June and September are greater than pH 8.7, and as resources are available according to priorities set by the Department, the Department will determine whether the values higher than 8.7 are anthropogenic or natural in origin.

(2) Total Dissolved Solids. Guide concentrations listed below may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0330: 200.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes in this Basin:

(a) During periods of low stream flows (approximately April 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of suspended solids or equivalent control;

(b) During the period of high stream flows (approximately November 1 to March 31): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practicable effi-



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ciency and effectiveness so as to minimize waste discharges to public waters.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0340

### Beneficial Uses to Be Protected in the Willamette Basin

(1) Water quality in the Willamette Basin (see Figure 1) must be managed to protect the designated beneficial uses shown in Table 340A (November 2003).

(2) Designated fish uses to be protected in the Willamette Basin are shown in Figures 340A and 340B (November 2003).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0344

### Approved TMDLs in the Basin:

The following TMDLs have been approved by EPA, and appear on the Department's web site:

Columbia Slough — Bacteria, Dissolved Oxygen, Chlorophyll a, pH, lead, PCBs, Dieldrin, Dioxin, DDE/DDT, and Phosphorus — November 25, 1998  
Pudding — Ammonia and BOD — October 18, 1993  
Rickreall Creek — BOD — April 18, 1994  
Tualatin — Temperature, Bacteria, Dissolved Oxygen, Settleable Volatile Solids, Ammonia, Chlorophyll a, pH and Phosphorus — August 7, 2001  
Yamhill — Phosphorus — December 8, 1992  
Willamette — Dioxin — February 25, 1991  
Willamette Coast Fork — Ammonia and Phosphorus — May 17, 1996  
Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048  
Stats. Implemented: ORS 468B.030, 468B.035, 468B.048  
Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0345

### Water Quality Standards and Policies for this Basin

(1) pH (hydrogen ion concentration). pH values may not fall outside the following ranges:

(a) All basin waters (except main stem Columbia River and Cascade lakes): 6.5 to 8.5;

(b) Cascade lakes above 3,000 feet altitude: 6.0 to 8.5.

(2) Total Dissolved Solids. Guide concentrations listed may not be exceeded unless otherwise specifically authorized by DEQ upon such conditions as it may deem necessary to carry out the general intent of this plan and to protect the beneficial uses set forth in OAR 340-041-0340: Willamette River and Tributaries—100.0 mg/l.

(3) Minimum Design Criteria for Treatment and Control of Sewage Wastes:

(a) Willamette River and tributaries except Tualatin River Subbasin:

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to April 30): A minimum of secondary treatment or equivalent control and unless otherwise specifically authorized by the Department, operation of all waste treatment and control facilities at maximum practical efficiency and effectiveness so as to minimize waste discharges to public waters.

(b) Main stem Tualatin River from mouth to Gaston (river mile 0 to 65):

(A) During periods of low stream flows (approximately May 1 to October 31): Treatment resulting in monthly average effluent concentrations not to exceed 10 mg/l of BOD and 10 mg/l of SS or equivalent control;

(B) During the period of high stream flows (approximately November 1 to April 30): Treatment resulting in monthly average effluent concentrations not to exceed 20 mg/l of BOD and 20 mg/l of SS or equivalent control.

(c) Main stem Tualatin River above Gaston (river mile 65) and all tributaries to the Tualatin River: Treatment resulting in monthly average effluent concentrations not to exceed 5 mg/l of BOD and 5 mg/l of SS or equivalent control;

(d) Tualatin River Subbasin: The dissolved oxygen level in the discharged effluents may not be less than 6 mg/l;

(4) Nonpoint source pollution control in the Tualatin River subbasin and lands draining to Oswego Lake:

(a) Subsection (5)(b) of this rule applies to any new land development within the Tualatin River and Oswego Lake subbasins, except those developments with application dates prior to January 1, 1990. The application date is the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction;

(b) For land development, no preliminary plat, site plan, permit or public works project may be approved by any jurisdiction in these subbasins unless the conditions of the plat permit or plan approval include an erosion control plan containing methods and/or interim facilities to be constructed or used concurrently with land development and to be operated during construction to control the discharge of sediment in the stormwater runoff. The erosion control plan must include the following elements:

(A) Protection techniques to control soil erosion and sediment transport to less than one ton per acre per year, as calculated using the Natural Resources Conservation Service's Universal Soil Loss Equation or other equivalent methods (see Figures 1 to 6 in Appendix 1 for examples). The erosion control plan must include temporary sedimentation basins or other sediment control devices when, because of steep slopes or other site specific considerations, other on-site sediment control methods will not likely keep the sediment transport to less than one ton per acre per year. The local jurisdictions may establish additional requirements for meeting an equivalent degree of control. Any sediment basin constructed must be sized using 1.5 feet minimum sediment storage depth plus 2.0 feet storage depth above for a settlement zone. The storage capacity of the basin must be sized to store all of the sediment that is likely to be transported and collected during construction while the erosion potential exists. When the erosion potential has been removed, the sediment basin, or other sediment control facilities, can be removed and the site restored as per the final site plan. All sediment basins must be constructed with an emergency overflow to prevent erosion or failure of the containment dike; or

(B) A soil erosion control matrix derived from and consistent with the universal soil equation approved by the jurisdiction or the Department.

(c) The Director may modify Appendix 1 as necessary without approval from the Environmental Quality Commission. The Director may modify Appendix 1 to simplify it and to make it easier for people to apply;

(d) Subsection (5)(e) of this rule applies to any new land development within the Tualatin River and Oswego Lake subbasins, except:

(A) Those developments with application dates prior to June 1, 1990. The application date is the date on which a complete application for development approval is received by the local jurisdiction in accordance with the regulations of the local jurisdiction;

(B) One and two family dwellings on existing lots of record;

(C) Sewer lines, water lines, utilities or other land development that will not directly increase nonpoint source pollution once construction has been completed and the site is either restored to or not altered from its approximate original condition;

(D) If the Environmental Quality Commission determines that a jurisdiction does not need to require stormwater quality control facilities for new development;

(E) When a jurisdiction adopts ordinances that provide for a stormwater quality program equivalent to subsection (e) of this section. Ordinances adopted to implement equivalent programs must:

(i) Encourage on-site retention of stormwater, require phosphorus removal equivalent to the removal efficiency required by subsection (e) of this section, provide for adequate operation and maintenance of stormwater quality control facilities, and require financial assurance, or equivalent security that assures construction of the stormwater quality control facilities required by the ordinance;

(ii) If the ordinances provide for exemptions other than those allowed for by paragraphs (B) and (C) of this subsection, the ordinances must provide for collection of in-lieu fees or other equivalent mechanisms that assure financing for, and construction of, associated, off-site stormwater quality control facilities. No exemption may be allowed if the jurisdiction is not meeting an approved schedule for identifying location of the off-site stormwater quality control facility to serve the development requesting an exemption.

(e) For new development, no plat, site plan, building permit or public works project may be approved by any jurisdiction in these subbasins unless the conditions of the plat, permit or plan approval require permanent stormwater quality control facilities to control phosphorus loadings associated with stormwater runoff from the development site. Jurisdictions must encourage and provide preference to techniques and methods that prevent and minimize pollutants from entering the storm and surface water systems. Permanent stormwater quality control facilities for phosphorus must meet the following requirements:

(A) The stormwater quality control facilities must be designed to achieve a phosphorus removal efficiency as calculated from the following equation:

$$R_p = 100 - 24.5/R_v$$

Where:

$R_p$  = Required phosphorus removal efficiency

$R_v$  = Average site runoff coefficient

The average site runoff coefficient can be calculated from the following equation:

$$R_v = (0.7 \times A_1) + (0.3 \times A_2) + (0.7 \times A_3) +$$

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$(0.05 \times A4) + (A5 \times 0.0)$

Where:

A1 = fraction of total area that is paved streets with curbs and that drain to storm sewers or open ditches.

A2 = fraction of total area that is paved streets that drain to water quality swales located on site.

A3 = fraction of total area that is building roof and paved parking that drains to storm sewers.

A4 = fraction of total area that is grass, trees and marsh areas.

A5 = fraction of total area for which runoff will be collected and retained on site with no direct discharge to surface waters.

(B) A jurisdiction may modify the equation for  $R_v$  to allow the application of additional runoff coefficients associated with land surfaces not identified in this subsection. The Department must be notified in writing whenever an additional runoff coefficient is used. The use of additional runoff coefficients must be based on scientific data. The jurisdiction must discontinue use of an additional runoff coefficient if the Department objects to its use in writing within ten days of receiving notification;

(C) The stormwater quality control facilities must be designed to meet the removal efficiency specified in paragraph (A) of this subsection for a mean summertime storm event totaling 0.36 inches of precipitation with an average return period of 96 hours;

(D) The removal efficiency specified in paragraph (A) of this subsection specify only design requirements and are not intended to be used as a basis for performance evaluation or compliance determination of the stormwater quality control facility installed or constructed pursuant to this subsection;

(E) Stormwater quality control facilities required by this subsection may be approved by a jurisdiction only if the following are met:

(i) For developments larger than one acre, the plat or site plan must include plans and a certification prepared by an Oregon registered, professional engineer that the proposed stormwater control facilities have been designed in accordance with criteria expected to achieve removal efficiencies for total phosphorus required by paragraph (A) of this subsection;

(ii) The plat or site plan must be consistent with the area and associated runoff coefficients used to determine the removal efficiency required in paragraph (A) of this subsection;

(iii) A financial assurance, or equivalent security acceptable to the jurisdiction, must be provided by the developer with the jurisdiction that assures that the stormwater control facilities are constructed according to the plans established in the plat or site plan approval. Where practicable, the jurisdiction must combine the financial assurance required by this rule with other financial assurance requirements imposed by the jurisdiction;

(iv) Each jurisdiction that constructs or authorizes construction of permanent stormwater quality control facilities must file with the Department, an operation and maintenance plan for the stormwater quality control facilities within its jurisdiction. The operation and maintenance plan must allow for public or private ownership, operation, and maintenance of individual permanent stormwater quality control facilities. The jurisdiction or private operator must operate and maintain the permanent stormwater control facilities in accordance with the operation and maintenance plan.

(f) Except as required by paragraph (D) of this subsection, the jurisdiction may grant an exception to subsection (e) of this section if the jurisdiction chooses to adopt and, on a case-by-case basis, impose a one time in-lieu fee. The fee will be an option where, because of the size of the development, topography, or other factors, the jurisdiction determines that the construction of on-site permanent stormwater treatment systems is impracticable or undesirable:

(A) The in-lieu fee will be based upon a reasonable estimate of the current, prorated cost for the jurisdiction to provide stormwater quality control facilities for the land development being assessed the fee. Estimated costs include costs associated with off-site land and rights-of-way acquisition, design, construction and construction inspection;

(B) The jurisdiction must deposit any in-lieu fees collected pursuant to this paragraph in an account dedicated only to reimbursing the jurisdiction for expenses related to off-site land and rights-of-way acquisition, design, construction and construction inspection of stormwater quality control facilities;

(C) The ordinance establishing the in-lieu fee must include provisions that reduce the fee in proportion to the ratio of the site's average runoff coefficient ( $R_v$ ), as established according to the equation in paragraph (6)(e)(A) of this rule;

(D) No new development may be granted an exemption if the jurisdiction is not meeting an approved time schedule for identifying the location for the off-site stormwater quality control facilities that would serve that development.

(g) The Department may approve other mechanisms that allow jurisdictions to grant exemptions to new development. The Department may only approve those mechanisms that assure financing for off-site stormwa-

ter quality control facilities and that encourage or require on-site retention where feasible;

(h) Subsection (b) of this section apply until a jurisdiction adopts ordinances that provide for a program equivalent to subsection (b) of this section, or the Environmental Quality Commission determines such a program is not necessary when it approves the jurisdiction's program plan required by OAR 340-041-0470(2)(g).

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

## 340-041-0350

### The Three Basin Rule: Clackamas, McKenzie (above RM 15) & the North Santiam

(1) In order to preserve or improve the existing high quality water for municipal water supplies, recreation, and preservation of aquatic life, new or increased waste discharges must be prohibited, except as provided by this rule, to the waters of:

(a) The Clackamas River Subbasin;

(b) The McKenzie River Subbasin above the Hayden Bridge (river mile 15);

(c) The North Santiam River Subbasin.

(2) Except as otherwise provided for in this rule, this rule becomes effective and applies to all permits pending or applied for after the date of filing with the Secretary of State.

(3) Special Definitions. The following special definitions apply to this rule:

(a) "Waste Discharges" are defined to mean any discharge that requires and NPDES permit, WPCF permit, or 401 Certification. Individual on-site sewage disposal systems subject to issuance of a construction-installation permit; domestic sewage facilities that discharge less than 5,000 gallons per day under WPCF permit; biosolids land applied within agronomic loading rates pursuant to OAR chapter 340, division 50; and reclaimed domestic waste water land applied at agronomic rates pursuant to OAR chapter 340, division 55 are excluded from this definition.

(b) "Existing Discharges" are defined as those discharges from point sources which existed prior to January 28, 1994;

(c) "Existing Facilities" are defined as those for which construction started prior to January 28, 1994. Where existing facilities are exempted from requirements placed on new facilities, the exemption applies only to the specific permit(s) addressed in the subsection which allows the exemption;

(d) "New" NPDES and WPCF permits are defined to include permits for potential or existing discharges which did not previously have a permit, and existing discharges which have a permit, but request an increased load limitation;

(e) "Agronomic Loading Rate" means the application of biosolids or reclaimed effluent to the land at a rate which is designed to:

(A) Provide the quantity of plant nutrients, usually nitrogen, needed by a food crop, feed crop, fiber crop, cover crop or other vegetation grown on the land; and

(B) Minimize the quantity of nitrogen or other nutrients from land applied materials that pass below the root zone of the crop or vegetation grown on the land to groundwater.

(f) "Biosolids" means solids derived from primary, secondary, or advanced treatment of domestic wastewater which have been treated through one or more controlled processes that significantly reduce pathogens and reduce volatile solids or chemical stabilize solids to the extent that they do not attract vectors. This term refers to domestic wastewater treatment facility solids that have undergone adequate treatment to permit their land application;

(g) "Reclaimed Wastewater" means treated effluent from a domestic wastewater treatment system which, as a result of treatment, is suitable for a direct beneficial purpose or a controlled use that could not otherwise occur.

(4) To respond to emergencies or to otherwise avoid imminent serious danger to public health or welfare, the Director or designee may allow lower water quality on a short-term basis.

(5) The Director or a designee may renew or transfer NPDES and WPCF permits for existing facilities. Existing facilities with NPDES permits may not be granted increases in their permitted mass load limitations. The following restrictions and exceptions apply:

(a) The Department may conduct an inspection prior to permit renewal. Existing sources with general permits that are found not to qualify for a general permit, and who wish to continue discharging, must apply for an individual permit;

(b) Fish hatcheries (General Permit 300) and log ponds (General Permit 400) are required to apply for an individual permit at the time of permit renewal;

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(c) Additional industrial, confined animal feeding operations, or domestic waste loads that are irrigated on land at agronomic rates or that otherwise meet the conditions of section (7) of this rule is not be considered to be an increase in the permitted wasteload.

(6) The Director or a designee may issue the following General Permits or Certifications subject to the conditions of the Permit or Certification:

(a) Stormwater construction activities (General Permits 1200C and 1200CA);

(b) Underground storage tank cleanups using best available treatment technology (General Permit 1500);

(c) Non-contact cooling water (General Permit 100);

(d) Filter backwash (General Permit 200);

(e) Boiler blowdown water (General Permit 500);

(f) Suction dredging (General Permit 700) only in portions of the basins that are not designated as Scenic Waterways under ORS 390.805 to 390.925;

(g) Federal Clean Water Act Section 401 water quality certifications.

(7) Long-term general and individual stormwater permits may be allowed as required by State and/or Federal law. The following requirements apply:

(a) New stormwater discharge permit holders must maintain a monitoring and water quality evaluation program that is effective in evaluation of the in-stream water quality impacts of the discharge; and

(b) When sufficient data is available to do so, the Department will assess the water quality impacts of stormwater discharges. Within a sub-basin, if the proportion of total degradation that is contributed by the stormwater is determined to be significant compared to that of other permitted sources, or if the Department determines that reducing degradation due to stormwater is cost-effective when compared to other available pollution control options, the Department may institute regulatory mechanisms or modify permit conditions to require control technologies and/or practices that result in protection that is greater than that required Statewide.

(8) Industrial waste discharge sources, confined animal feeding operations, and domestic sewage treatment facilities must meet the following conditions:

(a) No NPDES permits for new industrial or new confined animal feeding operation waste discharges, or new domestic sewage treatment facilities may be issued, except as allowed under sections (3), (4), (5), and (6) of this rule;

(b) The Department may issue WPCF permits for new industrial or confined animal feeding operation waste discharges provided:

(A) There is no waste discharge to surface water; and

(B) All groundwater quality protection requirements of OAR 340-040-0030 are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held prior to Commission action on the request.

(c) The Department may issue WPCF permits for new domestic sewage treatment facilities provided there is no waste discharge to surface water and provided:

(A) All groundwater quality protection requirements of OAR 340-040-0030 are met. Neither the Department nor the Commission may grant a concentration limit variance as provided in OAR 340-040-0030, unless the Commission finds that all appropriate groundwater quality protection requirements and compliance monitoring are met and there will be no measurable change in the water quality of the surface water that would be potentially affected by the proposed facility. For any variance request, a public hearing must be held and the permit application will be evaluated according to paragraphs (B) and (C) of this subsection;

(B) The Commission finds that the proposed new domestic sewage treatment facility provides a preferable means of sewage collection, treatment and disposal as compared to individual on-site sewage disposal systems. To be preferable, the Commission must find that one of the following criteria applies:

(i) The new sewage treatment facility will eliminate a significant number of failing individual on-site sewage disposal systems that cannot be otherwise reliably and cost-effectively repaired; or

(ii) The new sewage treatment facility will treat domestic sewage that would otherwise be treated by individual on-site sewage disposal systems, from which the cumulative impact to groundwater is projected to be greater than that from the new facility; or

(iii) If an individual on-site sewage disposal system, or several such systems, would not normally be utilized, a new sewage treatment facility

may be allowed if the Commission finds that the social and economic benefits of the discharge outweigh the possible environmental impacts.

(C) Applicants for domestic wastewater WPCF permits must meet the following requirements:

(i) Application must be for an individual permit; and

(ii) The proposed discharge must not include wastes that incapacitate the treatment system; and

(iii) The facility must be operated or supervised by a certified wastewater treatment plant operator as required in OAR 340-049-0015, except as exempted by ORS 448.430; and

(iv) An annual written certification of proper treatment and disposal system operation must be obtained from a qualified Registered Sanitarian, Professional Engineer, or certified wastewater treatment system operator.

(9) The Environmental Quality Commission may investigate, together with any other affected State agencies, the means of maintaining at least existing minimum flow during the summer low flow period.

(10) In order to improve water quality within the Yamhill River sub-basin to meet the existing water quality standard for pH, the following special rules for total maximum daily loads, waste load allocations, load allocations and program plans are established:

(a) After completion of wastewater control facilities and program plans approved by the Commission under this rule and no later than June 30, 1994, no activities may be allowed and no wastewater may be discharged to the Yamhill River or its tributaries without the authorization of the Commission that cause the monthly median concentration of total phosphorus to exceed 70 ug/l as measured during the low flow period between approximately May 1 and October 31\*\*\* of each year;

(b) Within 90 days of adoption of these rules, the Cities of McMinnville and Lafayette must submit a program plan and time schedule to the Department describing how and when they will modify their sewerage facility to comply with this rule;

(c) Final program plans will be reviewed and approved by the Commission. The Commission may define alternative compliance dates as program plans are approved. All proposed final program plans must be subject to public hearing prior to consideration for approval by the Commission;

(d) The Department will within 60 days of adoption of these rules distribute initial waste load allocations and load allocations to the point and nonpoint sources in the basin. These allocations are considered interim and may be redistributed based upon the conclusions of the approved program plans. \*\*\*Precise dates for complying with this rule may be conditioned on physical conditions (i.e., flow, temperature) of the receiving water and may be specified in individual permits or memorandums of understanding issued by the Department. The Department may consider system design flows, river travel times, and other relevant information when establishing the specific conditions to be inserted in the permits or memorandums of understanding.

Stat. Auth.: ORS 468.020, 468B.030, 468B.035, 468B.048

Stats. Implemented: ORS 468B.030, 468B.035, 468B.048

Hist.: DEQ 17-2003, f. & cert. ef. 12-9-03

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**Rules Amended:** 340-011-0005

**Rules Renumbered:** 340-011-0122 to 340-011-0560, 340-011-0106 to 340-011-0515

**Rules Transferred:** 340-011-0098 to 340-011-0500, 340-011-0136 to 340-011-0505, 340-011-0103 to 340-011-0510, 340-011-0097 to 340-011-0525, 340-011-0107 to 340-011-0530, 340-011-0035 to 340-011-0540, 340-011-0124 to 340-011-0565, 340-011-0131 to 340-011-0570, 340-011-0132 to 340-011-0575

**Subject:** The rule changes place into rule certain policies that the Department has been following in regards to contested case hearings. Additionally, the rule changes will align the Department's rules with the most recent version of the Attorney General's Hearing Panel Rules.

**Rules Coordinator:** Rachel Sakata—(503) 229-5659

# ADMINISTRATIVE RULES

## 340-011-0005

### Definitions

Unless otherwise defined in this division, the words and phrases used in this division have the same meaning given them in ORS 183.310, the rules of the Office of Administrative Hearings, the Model Rules or other divisions in Oregon Administrative Rules, Chapter 340, as context requires.

- (1) "Commission" means the Environmental Quality Commission.
- (2) "Department" means the Department of Environmental Quality.
- (3) "Director" means the director of the department or the director's authorized delegates.

(4) "Rules of the Office of Administrative Hearings" means the Attorney General's Rules, OAR 137-003-0501 through 137-003-0700.

(5) "Model Rules" or "Uniform Rules" means the Attorney General's Uniform and Model Rules of Procedure, OAR 137-001-0005 through 137-003-0500, excluding OAR 137-001-0008 through 137-001-0009, in effect as of August 15, 2003.

(6) "Participant" means the respondent, a person granted either party or limited party status in the contested case under OAR 137-003-0535, an agency participating in the contested case under OAR 137-003-0540, and the department.

(7) "Respondent" means the person to whom a formal enforcement action is issued.

(8) "Formal Enforcement Action" has the same meaning as defined in OAR 340, Division 012.

Stat. Auth.: ORS 183.341 & 468.020  
Stats. Implemented: ORS 183.341  
Hist.: DEQ 69(Temp), f. & ef. 3-22-74; DEQ 72, f. 6-5-74, ef. 6-25-74; DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 10-1997, f. & cert. ef. 6-10-97; DEQ 3-1998, f. & cert. ef. 3-9-98; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 10-2002, f. & cert. ef. 10-8-02; DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0500

### Contested Case Proceedings Generally

(1) Except as otherwise provided in OAR 340, division 011, contested cases will be governed by the Rules of the Office of Administrative Hearings. The term "agency" generally will be interpreted to mean "Department". The term "decision maker" generally will be interpreted to mean "Commission." The term "party" generally will be interpreted to mean "participant."

(2) In computing any period of time prescribed or allowed by this Division, the day of the act or event from which the designated period of time begins to run will not be included. The last day of the time period is included, unless it is a Saturday or a legal holiday (including Sunday), in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday.

Stat. Auth.: ORS 183.341 & ORS 468.020  
Stats. Implemented: ORS 183.341  
Hist.: DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0098 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0505

### Powers of the Director

The director, on behalf of the Commission, may execute

(1) Any written order which has been consented to in writing by the participants;

(2) Formal enforcement actions;

(3) Orders upon default; and

(4) Any other final order implementing any action taken by the Commission on any matter.

Stat. Auth.: ORS 183.335 and ORS 468.020  
Stats. Implemented: ORS 468.045 and 468.130  
Hist.: DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 360-011-0136 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0510

### Agency Representation by Environmental Law Specialist

(1) Environmental Law Specialists and other department personnel as approved by the director, are authorized to appear on behalf of the department and commission in contested case hearings involving formal enforcement actions issued under OAR 340, division 012.

(2) Environmental Law Specialists or other approved personnel may not present legal argument as defined under OAR 137-003-0545 on behalf of the department or commission in contested case hearings.

(3) When the department determines it is necessary to consult with the Attorney General's office, an administrative law judge will provide a rea-

sonable period of time for an agency representative to consult with the Attorney General's office and to obtain either written or oral legal argument, if necessary.

Stat. Auth.: ORS 183.341, ORS 183.452 & ORS 468.020  
Stats. Implemented: ORS 183.452  
Hist.: DEQ 16-1991, f. & cert. ef. 9-30-91; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0103 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0515

### Authorized Representative of Respondent other than a Natural Person in a Contested Case Hearing

A corporation, partnership, limited liability company, unincorporated association, trust and government body may be represented by either an attorney or an authorized representative in a contested case hearing before an administrative law judge or the commission to the extent allowed by OAR 340-003-0555.

Stat. Auth.: ORS 183.341 & ORS 468.020  
Stats. Implemented: ORS 183.457  
Hist.: DEQ 6-2002(Temp), f. & cert. ef. 4-24-02, thru 10-21-02; DEQ 10-2002, f. & cert. ef. 10-8-02; Renumbered from 340-011-0106 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0520

### Liability for the Acts of a Respondent's Employees

A respondent is legally responsible for not only its direct acts but also the acts of its employee when the employee is acting within the scope of the employment relationship, regardless of whether the respondent expressly authorizes the act in question. The mental state ("R" factor under OAR 340-012-0045) of an employee can be imputed to the employer. Nothing in this rule prevents the department from issuing a formal enforcement action to an employee for violations occurring during the scope of the employee's employment.

Stat. Auth.: ORS 183.341 & ORS 468.020  
Stat. Implemented: ORS 468.005, 468.130 & 468.140  
Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0525

### Service of Documents

(1) Service of a formal enforcement action or other document by the department or commission can be made either personally, by certified mail or by regular mail. Service is perfected when received by the respondent, if by personal service, or when mailed, if sent by mail. Service may be made upon:

(a) The respondent;

(b) Any other person designated by law as competent to receive service of a summons or notice for the respondent; or

(c) The respondent's attorney or other authorized representative.

(2) A respondent holding a license or permit issued by the department or commission, or who has submitted an application for a license or permit, will be conclusively presumed able to be served at the address given in the license or permit application, as it may be amended from time to time.

(3) Service by regular mail may be proven by a certificate executed by the person effecting service.

(4) Regardless of other provisions in this rule, documents sent by the department or commission through the U.S. Postal Service by regular mail to a person's last known address are presumed to have been received, subject to evidence to the contrary.

Stat. Auth.: ORS 183.341 & ORS 468.020  
Stats. Implemented: ORS 183.413 & ORS 183.415  
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0097 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0530

### Requests for Hearing

(1) Unless a request for hearing is not required by statute or rule, or the requirement to file a request for hearing is waived in the formal enforcement action, a respondent has 20 calendar days from the date of service of the formal enforcement action in which to file a written request for hearing unless another timeframe is allowed by statute or rule.

(2) The request for hearing must include a written response to the formal enforcement action that admits or denies all factual matters alleged therein, and alleges any and all affirmative defenses and the reasoning in support thereof. Factual matters not denied will be considered admitted, and failure to raise a defense will be a waiver of the defense. New matters alleged in the request for hearing are denied by the department unless admitted in subsequent stipulation.

(3) An amended request for hearing may be accepted by the department if the department determines that the filing of an amended request will

# ADMINISTRATIVE RULES

not unduly delay the proceeding or unfairly prejudice the participants. The respondent must provide the department with a written explanation why an amended request for hearing is needed with the amended request for hearing.

(4) A late request for hearing may be accepted by the department if the department determines that the cause for the late request was beyond the reasonable control of the respondent. The respondent must provide the department with a written explanation why the request for hearing was not filed in a timely manner. If the respondent fails to provide the written explanation, the department cannot accept the late request for hearing. The department may require that the explanation be supported by an affidavit.

(5) The filing of a late request for hearing does not stay the effect of any final order.

(6) The department will deny a late request for hearing that is filed more than 60 days after entry of a final order by default. A final order by default is considered entered when the order is signed by the director on behalf of the department or commission.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.415, 183.464, 183.482 & ORS 183.484

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 122, f. & ef. 9-13-76; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0107 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0535

### Final Orders by Default

(1) The department may enter a final order by default on behalf of the commission, based upon a prima facie case made on the record, when respondent defaults as set forth in OAR 137-003-0670(1).

(2) If the respondent has defaulted, the formal enforcement action states that the department's record to date will automatically become the contested case record upon default, and no further evidence is necessary to make a prima facie case of the facts alleged in the formal enforcement action, no contested case hearing will be conducted and the department will issue a final order by default.

(3) If the respondent has defaulted and the department determines that evidence, besides that which is in the department's record to date, is necessary to make a prima facie case of the facts alleged in the formal enforcement action, the department will proceed to a contested case hearing for the purpose of establishing a prima facie case upon which the administrative law judge may issue a proposed order by default.

(4) If more than one respondent is named in the formal enforcement action and at least one respondent defaults as provided in section (1) of this rule, the department will issue a final order by default against the defaulting respondent. An administrative law judge will conduct a contested case hearing, as necessary, for the respondents who did not default.

(5) If the formal enforcement action states that a department or commission order becomes a final order unless a timely request for hearing is filed with the department, the order becomes final on the day after the last day that a timely request for hearing should have been filed. No further order need be served on the respondent.

Stat. Auth.: ORS 183.335 & ORS 468.020

Stat. Impl.: ORS 183.415 & ORS 183.090

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0540

### Consolidation or Bifurcation of Contested Case Hearings

Each and every violation is a separate and distinct violation, and in cases of continuing violations, each day's continuance is a separate and distinct violation. Proceedings for the assessment of multiple civil penalties for multiple violations may, however, be consolidated into a single proceeding or bifurcated into separate proceedings, at the department's discretion. Additionally, the department, at its discretion, may consolidate or bifurcate contested case hearings involving the same fact or set of facts constituting the violation.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0035 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0545

### Burden and Standard of Proof in Contested Case Hearings; Department Interpretation of Rules and Statutory Terms

(1) The participant who asserts a fact or position is the proponent of that fact or position and has the burden of presenting evidence to support that fact or position.

(2) All findings in a proposed or final order must be based on a preponderance of evidence in the record unless another standard is specifically required by statute or rule.

(3) In reviewing the department's interpretation of a department rule as applied in a formal enforcement action, an administrative law judge must follow the department's interpretation if that interpretation is both plausible and reasonably consistent with the wording of the rule and the underlying statutes. The administrative law judge may state, on the record, an alternative interpretation for consideration on appeal.

(4) With the exception of exact terms that do not require interpretation, an administrative law judge shall give the department's interpretation of statutory terms the appropriate deference in light of the department's expertise with the subject matter, the department's experience with the statute, the department's involvement in the relevant legislative process, and the degree of discretion accorded the department by the legislature.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.450

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0550

### Discovery

(1) Motions for discovery will only be granted if the motion establishes that:

(a) the participant seeking the information attempted to obtain the information through an informal process. If the participant is seeking information from a public agency, the participant must make a public record request prior to petitioning for discovery; and

(b) the discovery request is reasonably likely to produce information that is generally relevant and necessary to the matters alleged in the formal enforcement action and the request for hearing or is likely to facilitate resolution of the case.

(2) An administrative law judge is not authorized to order depositions or site visits unless the department authorizes the same in writing in the specific case.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.425, 183.440 & 183.450

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0555

### Subpoenas

(1) Subpoenas for the attendance of witnesses or production of documents at a contested case hearing will be issued in accordance with OAR 137-003-0585.

(2) Copies of the subpoena must be provided to the administrative law judge and all participants at the time of service to the person to whom the subpoena is issued.

(3) Service of a subpoena for the attendance of a witness must be completed by personal service unless the witness has indicated that he is willing to appear and the subpoena is mailed at least 10 days prior to the hearing. Personal service should be effected at least 7 days prior to the hearing.

(4) Service of a subpoena for the production of documents at a contested case hearing may be effected by regular mail provided that it is done sufficiently in advance of the hearing to allow reasonable time to produce the documents.

(5) Service of a subpoena for both the attendance of a witness and production of documents must be completed as provided under section (3) of this rule.

(6) Any witness who appears at a hearing under a subpoena will receive fees and mileage as set forth in ORS 44.415(2). The fees and mileage must be paid by the participant for whom the subpoena was issued and may be paid at either the time of service of the subpoena or at the hearing.

Stat. Author ORS 183.341 & ORS 468.020

Stat. Implemented: ORS 183.425, 183.440 & 468.120

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0560

### Public Attendance at Contested Case Hearing

An administrative law judge may close a contested case hearing to the public upon the request of a participant in the contested case hearing.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0122 by DEQ 18-2003, f. & cert. ef. 12-12-03

# ADMINISTRATIVE RULES

## 340-011-0565

### Immediate Review by Agency

Immediate review by the agency is not allowed. (See OAR 137-003-0640)

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.341

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0124 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0570

### Permissible Scope of Hearing

(1) The scope of a contested case hearing will be limited to those matters that are relevant and material to either proving or disproving the matters alleged in formal enforcement action and request for hearing. Equitable remedies will not be considered by an administrative law judge.

(2) The administrative law judge may not reduce or mitigate a civil penalty below the amount established by the application of the civil penalty formula contained in OAR 340, Division 12.

Stat. Auth.: ORS 183.341 & ORS 468.020

Stats. Implemented: ORS 183.450 & ORS 468.130

Hist.: DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0131 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0575

### Review of Proposed Orders in Contested Cases

(1) For purposes of this rule, filing means receipt in the office of the director or other office of the department.

(2) Following the close of the record for a contested case hearing, the administrative law judge will issue a proposed order. The administrative law judge will serve the proposed order on each participant.

(3) Commencement of Review by the Commission: The proposed order will become final unless a participant or a member of the commission files, with the commission, a Petition for Commission Review within 30 days of service of the proposed order. The timely filing of a Petition is a jurisdictional requirement and cannot be waived. Any participant may file a petition whether or not another participant has filed a petition.

(4) Contents of the Petition for Commission Review. A petition must be in writing and need only state the participant's or a commissioner's intent that the commission review the proposed order. Each petition and subsequent brief must be captioned to indicate the participant filing the document and the type of document (for example: Respondents Exceptions and Brief; Department's Answer to Respondent's Exceptions and Brief).

(5) Procedures on Review:

(a) Exceptions and Brief: Within 30 days from the filing of a petition, the participant(s) filing the petition must file written exceptions and brief. The exceptions must specify those findings and conclusions objected to, and also include proposed alternative findings of fact, conclusions of law, and order with specific references to the parts of the record upon which the participant relies. The brief must include the arguments supporting these alternative findings of fact, conclusions of law and order. Failure to take an exception to a finding or conclusion in the brief, waives the participant's ability to later raise that exception.

(b) Answering Brief: Each participant, except for the participant(s) filing that exceptions and brief, will have 30 days from the date of filing of the exceptions and brief under subsection (5)(a), in which to file an answering brief.

(c) Reply Brief: If an answering brief is filed, the participant(s) who filed a petition will have 20 days from the date of filing of the answering brief under subsection (5)(b), in which to file a reply brief.

(d) Briefing on Commission Invoked Review: When one or more members of the commission wish to review the proposed order, and no participant has timely filed a Petition, the chair of the commission will promptly notify the participants of the issue that the commission desires the participants to brief. The participants must limit their briefs to those issues. The chair of the commission will also establish the schedule for filing of briefs. When the commission wishes to review the proposed order and a participant also requested review, briefing will follow the schedule set forth in subsections (a), (b), and (c) of this section.

(e) Extensions: The commission or director may extend any of the time limits contained in section (5) of this rule. Each extension request must be in writing and filed with the commission before the expiration of the time limit. Any request for an extension may be granted or denied in whole or in part.

(f) Dismissal: The commission may dismiss any petition, upon motion of any participant or on its own motion, if the participant(s) seeking review fails to timely file the exceptions or brief required under subsection

(5)(a) of this rule. A motion to dismiss made by a participant must be filed within 45 days after the filing of the Petition. At the time of dismissal, the commission will also enter a final order upholding the proposed order.

(g) Oral Argument: Following the expiration of the time allowed the participants to present exceptions and briefs, the matter will be scheduled for oral argument before the commission.

(6) Additional Evidence: A request to present additional evidence must be submitted by motion and must be accompanied by a statement showing good cause for the failure to present the evidence to the administrative law judge. The motion must accompany the brief filed under subsection (5)(a) or (b) of this rule. If the commission grants the motion or decides on its own motion that additional evidence is necessary, the matter will be remanded to an administrative law judge for further proceedings.

(7) Scope of Review: The commission may substitute its judgment for that of the administrative law judge in making any particular finding of fact, conclusion of law, or order except as limited by OAR 137-003-0655 and 137-003-0665.

(8) Service of documents on other participants: All documents required to be filed with the commission under this rule must also be served upon each participant in the contested case hearing. Service can be completed by personal service, certified mail or regular mail.

Stat. Auth.: ORS 183.341 & 468.020

Stats. Implemented: ORS 183.460, 183.464 & ORS 183.470

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 115, f. & ef. 7-6-76; DEQ 25-1979, f. & ef. 7-5-79; DEQ 7-1988, f. & cert. ef. 5-6-88; DEQ 1-2000(Temp), f. 2-15-00, cert. ef. 2-15-00 thru 7-31-00; DEQ 9-2000, f. & cert. ef. 7-21-00; Renumbered from 340-011-0132 by DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0580

### Petitions for Reconsideration or Rehearing

(1) A participant is not required to seek either reconsideration or rehearing of a final order prior to seeking judicial review.

(2) Any petition for reconsideration or rehearing must be received by the department within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for reconsideration or rehearing are those in OAR 137-003-0675.

(3) A petition for reconsideration or rehearing does not stay the effect of the final order.

(4) The director, on behalf of the commission, shall issue orders granting or denying petitions for reconsideration and rehearing.

Stat. Auth.: ORS 183.341 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

## 340-011-0585

### Petitions for a Stay of the Effect of a Final Order

(1) A petition to stay the effect of any final order must be received by the department within 60 days of service of the final order. Unless specifically set forth in this rule, the procedures for petitions for a stay are those in OAR 137-003-0690 through 0700.

(2) If a participant submits a petition for reconsideration or rehearing or a late request for hearing, the petition for a stay must accompany that petition.

(3) A petition for a stay must contain all the elements set forth in OAR 137-003-0690 and be served upon all participants as set forth in OAR 137-003-0690(4).

(4) Any participant may seek to intervene in the stay proceeding as set forth in OAR 137-003-0695 by filing a response to the petition for a stay with the department.

(5) The director, on behalf of the commission, shall issue an order granting or denying the petition for a stay within 30 days of receipt of the petition.

Stat. Auth.: ORS 183.341 and 468.020

Stats. Implemented: ORS 183.480 and ORS 183.482

Hist.: DEQ 18-2003, f. & cert. ef. 12-12-03

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**Rules Amended:** 340-200-0040

# ADMINISTRATIVE RULES

**Subject:** The Environmental Quality Commission adopted the Oregon Regional Haze Section 309 Implementation Plan, as a revision to Oregon's State Implementation Plan (SIP). The Oregon Regional Haze Plan contains regional haze strategies to reduce air pollution that impairs visibility in national parks and wilderness areas. These strategies represent the first step in improving visibility under the federal Regional Haze Rule, adopted by the Environmental Protection Agency. This federal rule is intended to improve visibility in 156 national parks and wilderness areas across the country, including Oregon, over the next 60 years.

**Rules Coordinator:** Rachel Sakata—(503) 229-5659

## 340-200-0040

### State of Oregon Clean Air Act Implementation Plan

(1) This implementation plan, consisting of Volumes 2 and 3 of the State of Oregon Air Quality Control Program, contains control strategies, rules and standards prepared by the Department of Environmental Quality and is adopted as the state implementation plan (SIP) of the State of Oregon pursuant to the federal Clean Air Act, 42 U.S.C.A §§ 7401 to 7671q.

(2) Except as provided in section (3), revisions to the SIP will be made pursuant to the Commission's rulemaking procedures in division 11 of this chapter and any other requirements contained in the SIP and will be submitted to the United States Environmental Protection Agency for approval.

(3) Notwithstanding any other requirement contained in the SIP, the Department may:

(a) Submit to the Environmental Protection Agency any permit condition implementing a rule that is part of the federally-approved SIP as a source-specific SIP revision after the Department has complied with the public hearings provisions of 40 CFR 51.102 (July 1, 2002); and

(b) Approve the standards submitted by a regional authority if the regional authority adopts verbatim any standard that the Commission has adopted, and submit the standards to EPA for approval as a SIP revision.

[NOTE: Revisions to the State of Oregon Clean Air Act Implementation Plan become federally enforceable upon approval by the United States Environmental Protection Agency. If any provision of the federally approved Implementation Plan conflicts with any provision adopted by the Commission, the Department shall enforce the more stringent provision.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 35, f. 2-3-72, ef. 2-15-72; DEQ 54, f. 6-21-73, ef. 7-1-73; DEQ 19-1979, f. & ef. 6-25-79; DEQ 21-1979, f. & ef. 7-2-79; DEQ 22-1980, f. & ef. 9-26-80; DEQ 11-1981, f. & ef. 3-26-81; DEQ 14-1982, f. & ef. 7-21-82; DEQ 21-1982, f. & ef. 10-27-82; DEQ 1-1983, f. & ef. 1-21-83; DEQ 6-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 25-1984, f. & ef. 11-27-84; DEQ 3-1985, f. & ef. 2-1-85; DEQ 12-1985, f. & ef. 9-30-85; DEQ 5-1986, f. & ef. 2-21-86; DEQ 10-1986, f. & ef. 5-9-86; DEQ 20-1986, f. & ef. 11-7-86; DEQ 21-1986, f. & ef. 11-7-86; DEQ 4-1987, f. & ef. 3-2-87; DEQ 5-1987, f. & ef. 3-2-87; DEQ 8-1987, f. & ef. 4-23-87; DEQ 21-1987, f. & ef. 12-16-87; DEQ 31-1988, f. 12-20-88, cert. ef. 12-23-88; DEQ 2-1991, f. & cert. ef. 2-14-91; DEQ 19-1991, f. & cert. ef. 11-13-91; DEQ 20-1991, f. & cert. ef. 11-13-91; DEQ 21-1991, f. & cert. ef. 11-13-91; DEQ 22-1991, f. & cert. ef. 11-13-91; DEQ 23-1991, f. & cert. ef. 11-13-91; DEQ 24-1991, f. & cert. ef. 11-13-91; DEQ 25-1991, f. & cert. ef. 11-13-91; DEQ 1-1992, f. & cert. ef. 2-4-92; DEQ 3-1992, f. & cert. ef. 2-4-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 19-1992, f. & cert. ef. 8-11-92; DEQ 20-1992, f. & cert. ef. 8-11-92; DEQ 25-1992, f. 10-30-92, cert. ef. 11-1-92; DEQ 26-1992, f. & cert. ef. 11-2-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 8-1993, f. & cert. ef. 5-11-93; DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 15-1993, f. & cert. ef. 11-4-93; DEQ 16-1993, f. & cert. ef. 11-4-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 1-1994, f. & cert. ef. 1-3-94; DEQ 5-1994, f. & cert. ef. 3-21-94; DEQ 14-1994, f. & cert. ef. 5-31-94; DEQ 15-1994, f. 6-8-94, cert. ef. 7-1-94; DEQ 25-1994, f. & cert. ef. 11-2-94; DEQ 9-1995, f. & cert. ef. 5-1-95; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 14-1995, f. & cert. ef. 5-25-95; DEQ 17-1995, f. & cert. ef. 7-12-95; DEQ 19-1995, f. & cert. ef. 9-1-95; DEQ 20-1995 (Temp), f. & cert. ef. 9-14-95; DEQ 8-1996(Temp), f. & cert. ef. 6-3-96; DEQ 15-1996, f. & cert. ef. 8-14-96; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 23-1996, f. & cert. ef. 11-4-96; DEQ 24-1996, f. & cert. ef. 11-26-96; DEQ 10-1998, f. & cert. ef. 6-22-98; DEQ 15-1998, f. & cert. ef. 9-23-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 17-1998, f. & cert. ef. 9-23-98; DEQ 20-1998, f. & cert. ef. 10-12-98; DEQ 21-1998, f. & cert. ef. 10-12-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 5-1999, f. & cert. ef. 3-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 10-1999, f. & cert. ef. 7-1-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0047; DEQ 15-1999, f. & cert. ef. 10-22-99; DEQ 2-2000, f. 2-17-00, cert. ef. 6-fj-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-214-0400

### Purpose

The purpose of OAR 340-214-0400 through 340-214-0430 is to establish consistent monitoring, recordkeeping, and reporting requirements for stationary sources in Oregon to determine whether sulfur dioxide emissions remain below the sulfur dioxide milestones established in the State Implementation Plan, section 5.5.2.3.1.a, incorporated by reference in OAR 340-200-0040.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-214-0410

### Applicability

(1) OAR 340-214-0410 through 340-214-0430 apply to all stationary sources with actual sulfur dioxide emissions of 100 tons per year or more in calendar year 2000 or any subsequent calendar year.

(2) Any source that triggers applicability and then emits less than 100 tons per year in any subsequent year remains subject to the requirements of OAR 340-214-0410 to 340-214-0430 until 2018 or until the first control period under the Western Backstop Sulfur Dioxide Trading Program as established in OAR 340-228-0510(1)(a), whichever is earlier.

(3) Sources that emit less than 100 tons per year of sulfur dioxide in all years (2003 through 2018) are not subject to OAR 340-214-0420 through 0430.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-214-0420

### Annual Sulfur Dioxide Emission Report

(1) The owner or operator must:

(a) Submit a report of actual annual SO<sub>2</sub> inventory emissions;

(b) Use appropriate emission factors and estimating techniques and document the emissions monitoring/estimation methodology used;

(c) Include emissions from start up, shut down, and upset conditions in the annual total inventory;

(d) Use 40 CFR Part 75 methodology for reporting emissions for all sources subject to the federal acid rain program; and

(e) Maintain all records used in the calculation of the emissions, including but not limited to the following:

(A) Amount and type of fuel combusted;

(B) Percent sulfur content of fuel and how the content was determined;

(C) Quantity of product produced;

(D) Emissions monitoring data;

(E) Operating data;

(F) How the emissions are calculated;

(G) If the emissions increased or decreased by twenty percent or more from a previous year, then the owner or operator must include in their annual emissions report an explanation of why this occurred.

(f) Maintain records of any physical changes to facility operations or equipment, or any other changes (e.g. raw material or feed) that may affect the emissions projections as established in the State Implementation Plan.

(g) Retain records for a minimum of ten years from the date of establishment, or if the record was the basis for an adjustment to the milestone, 5 years after the date of an implementation plan revision, whichever is longer. Smelters must submit an annual report of sulfur input, in tons/year.

(2) The owner or operator must report emissions for the year 2003 by May 15, 2004 and annually thereafter.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-214-0430

### Changes in Emission Measurement Techniques

The owner or operator that uses a different emission monitoring or calculation method than was used to report the sulfur dioxide emissions (1999 for utilities and 1998 for all other sources) under OAR 340-214-0114 must indicate this in the annual emission report, so that the Department can ensure consistent comparison to the regional SO<sub>2</sub> milestones, as described in State Implementation Plan Section 5.5.2.3.2 a.(3).

# ADMINISTRATIVE RULES

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0400

### Purpose

(1) OAR 340-228-0400 through 340-228-0530 implement the Western Backstop (WEB) Sulfur Dioxide (SO<sub>2</sub>) Trading Program provisions in accordance with the federal Regional Haze Rule, 40 CFR 51.309 (2003), and Section 5.5.2.3 of the State Implementation Plan, titled "Sulfur Dioxide Milestones and Backstop Trading Program," incorporated under OAR 340-200-0040.

(2) Nothing in OAR 340-228-0400 through 340-228-0530 waives any requirement otherwise in effect or subsequently required under another program, including Rules governing new sources.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0410

### Definitions

The definitions in OAR 340-200-0020 and this rule apply to OAR 340-228-0400 through 340-228-0530. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to OAR 340-228-0400 through 340-228-0530.

(1) "Account Certificate of Representation" means the completed and signed submission required to designate an Account Representative for a WEB source or an Account Representative for a general account.

(2) "Account Representative" means the individual who is authorized through an Account Certificate of Representation to represent owners and operators of the WEB source with regard to matters under the WEB Trading Program or, for a general account, who is authorized through an Account Certificate of Representation to represent the persons having an ownership interest in allowances in the general account with regard to matters concerning the general account.

(3) "Actual Emissions" means total annual SO<sub>2</sub> emissions determined in accordance with OAR 340-228-0480, or determined in accordance with SO<sub>2</sub> emission inventory requirements of OAR 340-214-0400 through 340-214-0430 for sources that are not subject to OAR 340-228-0480.

(4) "Allocate" means to assign allowances to a WEB source through State Implementation Plan section 5.5.2.3.3.a.

(5) "Allowance" means the limited authorization under the WEB Trading Program to emit one ton of SO<sub>2</sub> during a specified control period or any control period thereafter subject to the terms and conditions for use of unused allowances as established by OAR 340-228-0400 through 340-228-0530.

(6) "Allowance Limitation" means the tonnage of SO<sub>2</sub> emissions authorized by the allowances available for compliance deduction for a WEB source for a control period under OAR 340-228-0510(1) on the allowance transfer deadline for that control period.

(7) "Allowance Tracking System" means the system where allowances under the WEB Trading Program are recorded, held, transferred, and deducted.

(8) "Allowance Tracking System account" means an account in the Allowance Tracking System established for purposes of recording, holding, transferring, and deducting allowances.

(9) "Allowance transfer deadline" means the deadline established in OAR 340-228-0490(2) when allowances must be submitted for recording in a WEB source's compliance account in order to demonstrate compliance for that control period.

(10) "Compliance account" means an account established in the Allowance Tracking System under OAR 340-228-0470(1) for the purpose of recording allowances that a WEB source might hold to demonstrate compliance with its allowance limitation.

(11) "Compliance certification" means a submission to the Department by the Account Representative as required under OAR 340-228-0510(2) to report a WEB source's compliance or noncompliance with this rule.

(12) "Control period" means the period beginning January 1 of each year and ending on December 31 of the same year, inclusive.

(13) "Emission unit" means any part of a stationary source that emits or would have the potential to emit any pollutant submitted to regulations under the Clean Air Act.

(14) "Emissions tracking database" means the central database where SO<sub>2</sub> emissions for WEB sources as recorded and reported in accordance with OAR 340-228-0400 through 340-228-0530 are tracked to determine compliance with allowance limitations.

(15) "Existing source" means a stationary source that commenced operation before the Program Trigger Date.

(16) "Fugitive emissions" are those emissions that could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(17) "General account" means an account established in the Allowance Tracking System under OAR 340-228-0470 for the purpose of recording allowances held by a person that are not to be used to show compliance with an allowance limitation.

(18) "Milestone" means the maximum level of stationary source regional sulfur dioxide emissions for each year from 2003 to 2018, established according to the procedures in State Implementation Plan Section 5.5.2.3.1.

(19) "New WEB Source" means a WEB source that commenced operation on or after the Program Trigger Date.

(20) "New Source Set-aside" means a pool of allowances that are available for allocation to new sources in accordance with the provisions of State Implementation Plan Section 5.5.2.3.3.a(2).

(21) "Owner or operator" means any person who is an owner or who operates, controls or supervises a WEB source and includes but is not limited to any holding company, utility system, or plant manager.

(22) "Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored or processed, will be treated as part of its design if the limitation is enforceable by the EPA Administrator.

(23) "Program trigger date" means the date that the Department determines that the WEB Trading Program has been triggered in accordance with the State Implementation Plan Section 5.5.2.3.1(1)(b).

(24) "Program trigger years" means the years shown in Table 5.5.2-4, column 3, of the State Implementation Plan for the applicable milestone if the WEB Trading Program is triggered as described in State Implementation Plan Section 5.5.2.3.1 c.

(25) "Renewable Energy Resource" means a resource that generates electricity by non-nuclear and non-fossil technologies that results in low or no air emissions. The term includes electricity generated by wind energy technologies; solar photovoltaic and solar thermal technologies; geothermal technologies; technologies based on landfill gas and biomass sources; waste-to-energy facilities that meet maximum achievable control technology (MACT) requirements, and new low-impact hydropower that meets the Low-Impact Hydropower Institute criteria. Biomass includes agricultural, food and wood wastes. The term does not include pumped storage, black liquor, or treated wood.

(26) "Retired source" means a WEB source that has received a retired source exemption as provided in OAR 340-228-0430(4).

(27) "Serial number" means, when referring to allowances, the unique identification number assigned to each allowance by the Tracking Systems Administrator, in accordance with OAR 340-228-0460(2).

(28) "SO<sub>2</sub> emitting unit" means any equipment that is located at a WEB source and that emits SO<sub>2</sub>.

(29) "Stationary source" means any building, structure, facility or installation that emits or may emit any air pollutant subject to regulation under the Clean Air Act.

(30) "Submit" means to send to the appropriate authority under the signature of the Account Representative. For purposes of determining when something is submitted, an official U.S. Postal Service postmark or equivalent electronic time stamp will establish the date of submittal.

(31) "Ton" means 2000 pounds. For any control period, any fraction of a ton equaling 1000 pounds or more will be treated as one ton, and any fraction of a ton equaling less than 1000 pounds will be treated as zero tons.

(32) "Tracking System Administrator" means the person designated by the Department as the administrator of the Allowance Tracking System and the emission tracking database.

(33) "WEB source" means a stationary source that meets the applicability requirements of OAR 340-228-0430.



# ADMINISTRATIVE RULES

(34) "Web Trading Program" means OAR 340-228-0400 through 340-228-0530, the Western Backstop SO<sub>2</sub> Trading Program, triggered as a backstop in accordance with the provisions in the SO<sub>2</sub> Milestones and Backstop Trading Program Implementation Plan, if necessary, to ensure that regional SO<sub>2</sub> emissions are reduced.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0420

### WEB Trading Program Trigger

(1) OAR 340-228-0400 through 340-228-0530 becomes effective on the program trigger date established by the procedures outlined in the SO<sub>2</sub> Milestones and Backstop Trading Program Implementation Plan.

(2) Exception. Special Penalty Provisions for Year 2018, OAR 340-228-0520 becomes effective on January 1, 2018 and remains effective until the requirements of OAR 340-228-0520 have been met.

[NOTE: This rule is included in the EQC under OAR 340-200-0040.]  
Plan as adopted by the EQC under OAR 340-200-0040.  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0430

### WEB Trading Program Applicability

(1) General Applicability. Except as provided in section (2) of this rule, OAR 340-228-0400 through 340-228-0530 apply to any stationary source or group of stationary sources that are located on one or more contiguous or adjacent properties and that are under the control of the same person or persons under common control, belong to the same industrial grouping, and are described in subsections (a) through (c) of this section. A stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

(a) All BART-eligible sources as defined in 40 CFR 51.301 (2003) that are BART-eligible due to SO<sub>2</sub> emissions.

(b) All stationary sources not meeting the criteria of subsection (a) of this rule that have actual SO<sub>2</sub> emissions of 100 tons or more per year in the program trigger years or any subsequent year. The fugitive emissions of a stationary source are not considered in determining whether the source is subject to OAR 340-228-0400 through 340-228-0530 unless the source belongs to one of the following categories of stationary source:

- (i) Coal cleaning plants (with thermal dryers);
- (ii) Kraft pulp mills;
- (iii) Portland cement plants;
- (iv) Primary zinc smelters;
- (v) Iron and steel mills;
- (vi) Primary aluminum ore reduction plants;
- (vii) Primary copper smelters;
- (viii) Municipal incinerators capable of charging more than 250 tons of refuse per day;
- (ix) Hydrofluoric, sulfuric, or nitric acid plants;
- (x) Petroleum refineries;
- (xi) Lime plants;
- (xii) Phosphate rock processing plants;
- (xiii) Coke oven batteries;
- (xiv) Sulfur recovery plants;
- (xv) Carbon black plants (furnace process);
- (xvi) Primary lead smelters;
- (xvii) Fuel conversion plants;
- (xviii) Sintering plants;
- (xix) Secondary metal production plants;
- (xx) Chemical process plants;
- (xxi) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
- (xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
- (xxiii) Taconite ore processing plants;
- (xxiv) Glass fiber processing plants;
- (xxv) Charcoal production plants;
- (xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, that is being regulated under Section 111 or 112 of the Act as of August 7, 1980.

(c) A new source that begins operation after the program trigger date and has the potential to emit 100 tons or more of SO<sub>2</sub> per year.

(2) The Department may determine on a case-by-case basis, with concurrence from the EPA Administrator, that a source is not a WEB source if the source:

(a) had actual sulfur dioxide emissions of 100 tons or more in a single year and in each of the previous five years had actual SO<sub>2</sub> emissions of less than 100 tons per year, and

(A)(i) the emissions increase that was caused by a sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner and that the source took timely and reasonable action to minimize the temporary emission increase. A temporary emission increase due to poor maintenance or careless operation does not meet the criteria of this section; and

(ii) has corrected the failure of air pollution control equipment, process equipment, or process by the time of the Department's determination under this section; or

(B) had to switch fuels or feedstocks on a temporary basis as a result of an emergency situation or unique and unusual circumstances besides the cost of such fuels or feedstocks.

(3) Duration of Applicability. Except as provided for in section (4) of this rule, once a source is subject to the WEB Trading Program (OAR 340-228-0400 through 340-228-0530), it is subject to the requirements every year thereafter.

(4) Retired Source Exemption.

(a) Application. Any WEB that is permanently retired must apply for a retired source exemption. The WEB source may only be considered permanently retired if all SO<sub>2</sub> emitting units at the source are permanently retired. The application must contain the following information:

(A) Identification of the WEB source, including the plant name and an appropriate identification code in a format specified by the Department.

(B) Name of Account Representative.

(C) Description of the status of the WEB source, including the date that the WEB source was permanently retired.

(D) Signed certification that the WEB source is permanently retired and will comply with the requirements of section (4) of this rule.

(E) Verification that the WEB source has a general account where any unused allowances or future allocations will be recorded.

(b) Notice. The retired source exemption becomes effective when the Department notifies the source that the Department has granted the retired source exemption.

(c) Responsibilities of Retired Sources:

(A) A retired source is exempt from OAR 340-228-0480 and 340-228-0510, except as provided below.

(B) A retired source may not emit any SO<sub>2</sub> after the date the Department issues a retired source exemption.

(C) A WEB source must submit SO<sub>2</sub> emissions reports, as required by OAR 340-228-0480 for any time period the source was operating before the effective date of the retired source exemption. The retired source is subject to the compliance provisions of OAR 340-228-0510, including the requirement to hold allowances in the source's compliance account to cover all SO<sub>2</sub> emissions before the date the source was permanently retired.

(D) A retired source that is still in existence but no longer emitting SO<sub>2</sub> must, for a period of five years from the date the records are created, retain records demonstrating the effective date of the retired source exemption for purposes of this rule.

(d) Resumption of Operations.

(A) Before resuming operation, the retired source must submit registration materials as follows:

(i) If the source is required to obtain a new source review permit or operating permit under OAR 340, division 224 or division 218, before resuming operation, then registration information as described in OAR 340-228-0450(1) and a copy of the retired source exemption must be submitted with the application required under OAR 340, division 224 or division 218.

(ii) If the source does not meet the criteria under subparagraph (i) of this rule, then registration information as described in OAR 340-228-0450 and a copy of the retired source exemption must be submitted to the Department at least ninety days before the source resumes operation.

(B) The retired source exemption automatically expires on the day the source resumes operation.

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(e) Loss of Future Allowances. A WEB source that is permanently retired and that does not apply to the Department for a retired source exemption within ninety days of the date that the source is permanently retired forfeits any unused and future allowances. The Tracking System Administrator must retire the abandoned allowances.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0440

### Account Representative for WEB Sources

(1) Each WEB source must identify one Account Representative and may also identify an alternate Account Representative who may act on behalf of the Account Representative. Any representation, action, inaction, or submission by the alternate Account Representative will be deemed to be a representation, action, inaction, or submission by the Account Representative.

(2) Identification and Certification of an Account Representative.

(a) The Account Representative and any Alternate Account Representative must be appointed by an agreement that makes the representations, actions, inactions, or submissions of the Account Representative and any alternate binding on the owners and operators of the WEB source.

(b) The Account Representative must submit to the Department and the Tracking System Administrator a signed and dated Account Certificate of Representation (Certificate) that contains the following elements:

(A) Identification of the WEB source by plant name, state and an appropriate identification code in a format specified by the Department;

(B) The name, address, e-mail (if available), telephone, and facsimile number of the Account Representative and any alternate;

(C) A list of owners and operators of the WEB source;

(D) Information to be part of the emission tracking system database in accordance with the State Implementation Plan. The Department will specify specific data elements that are consistent with the data system structure, including basic facility information that appears in other reports and notices submitted by the WEB source, such as county location, industrial classification codes, and similar general facility information.

(E) The following certification statement: "I certify that I was selected as the Account Representative or alternate Account Representative, as applicable, by an agreement binding on the owners and operators of the WEB source. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of the owners and operators of the WEB source, and that each such owner and operator will be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department regarding the WEB Trading Program."

(c) Once the Department receives the complete Certificate, the Account Representative and any alternate Account Representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each owner and operator of the WEB source in all matters pertaining to the WEB Trading Program. Any order issued by the Department regarding the WEB Trading Program is binding on the owners and operators, subject to the provisions of ORS Chapter 183.

(d) No WEB Allowance Tracking System account may be established for the WEB source until the Tracking System Administrator has received a complete Certificate. Once the account is established, the Account Representative must make all submissions concerning the account, including the deduction or transfer of allowances.

(3) Requirements and Responsibilities.

(a) The Account Representative's responsibilities include, but are not limited to, transferring allowances; submitting monitoring plans, registrations, certification applications, SO<sub>2</sub> emissions data, and compliance reports as required by OAR 340-228-0400 through 340-228-0530; and representing the source in all matters pertaining to the WEB Trading Program.

(b) Each submission under this program must be signed and certified by the Account Representative for the WEB source. Each submission must include the following truth and accuracy certification statement by the Account Representative: "I am authorized to make this submission on behalf of the owners and operators of the WEB source for which the submission is made. I certify under penalty of law that I have personally examined and am familiar with the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true,

accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(4) Changing the Account Representative or Owners and Operators.

(a) Changing the Account Representative or the Alternate Account Representative. The Account Representative or alternate Account Representative may be changed at any time by sending a complete superseding Certificate to the Department and the Tracking System Administrator under OAR 340-228-0440(2)(b). The change will be effective when the Tracking System Administrator receives it. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Account Representative or alternate before the Tracking System Administrator receives the superseding Certificate are binding on the new Account Representative and the owners and operators of the WEB source.

(b) Changes in Owners and Operators.

(A) Within thirty days of any change in the owners and operators of the WEB source, including the addition of a new owner or operator, the Account Representative must submit a revised Certificate amending the list of owners and operators to include such change.

(B) If a new owner or operator of a WEB source is not included in the list of owners and operators submitted in the Certificate, such new owner or operator is subject to and bound by the Certificate, the representations, actions, inactions, and submissions of the Account Representative of the WEB source, and the decisions, orders, actions, and inactions of the Department as if the new owner or operator were included in the list.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0450

### Registration

(1) Deadlines.

(a) Each source that is a WEB source on or before the Program Trigger Date must register by submitting the initial Certificate required in OAR 340-228-0440(2) to the Department no later than 180 days after the program trigger date.

(b) Any existing source that becomes a WEB source after the program trigger date must register by submitting the initial Certificate required in OAR 340-228-0440(2) to the Department no later than September 30 of the year following the inventory year in which the source exceeded the emission threshold.

(c) Any new WEB source must register by submitting the initial Certificate required in OAR 340-228-0440(2) to the Department before commencing operation.

(2) Any allocation, transfer or deduction of allowance to or from the compliance account of a WEB source does not require revision of the WEB source's operating permit.

(3) Whether or not a WEB source is not required to have a permit under OAR 340-218 or 340-224 at any time after this Rule is effective, it must at all times possess a permit that includes the requirements of OAR 340-228-0400 through 340-228-0530. If it does not possess a Title V permit under this rule, it must satisfy this paragraph's requirements by obtaining or modifying a permit under OAR 340, division 216, to incorporate the requirements of OAR 340-228-0400 through 340-228-0530. The source must at all times possess a permit that includes these requirements.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0460

### Allowance Allocations

(1) The Tracking System Administrator must record the allowances for each WEB source in the compliance account for a WEB source after the Department allocates the allowances under Section 5.5.2.3.3(a) of the State Implementation Plan. If applicable, the Tracking System Administrator must record a portion of the SO<sub>2</sub> allowances for a WEB source in a WEB source's special reserve compliance account assigned to the Department to account for any allowances to be held by the Department in accordance with OAR 340-228-0480(1)(b).

(2) The Tracking System Administrator must assign a serial number to each allowance in accordance with State Implementation Plan Section 5.5.2.3.3(f).

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(3) All allowances must be allocated, recorded, transferred, or used as whole allowances. To determine the number of whole allowances, the number of allowances must be rounded down for decimals less than 0.50 and rounded up for decimals of 0.50 or greater.

(4) An allowance is not a property right. It is a limited authorization to emit one ton of SO<sub>2</sub> for the purpose of meeting the requirements of this Rule. No provision of this WEB Trading Program or other law should be construed to limit the authority of the United States or the Department to terminate or limit such authorization.

(5) Early Reduction Bonus Allocation. Any WEB source that reduces its permitted annual SO<sub>2</sub> emissions to a level that is below the floor level allocation established for that source in State Implementation Plan Section 5.5.2.3.3.a between 2003 and the program trigger year may apply to the Department for an early reduction bonus allocation. The application must be submitted no later than ninety days after the Program Trigger Date. Any WEB source that applies and receives early reduction bonus allocations must retain the records referenced below for a minimum of five years after the early reduction bonus allowance is certified in accordance with Section 5.5.2.3.3(a)(c) of the State Implementation Plan. The application for an early reduction bonus allocation must contain the following information:

(a) Copies of all permits or other enforceable documents that include annual SO<sub>2</sub> emissions limits for the WEB source during the period the WEB source was generating the early reductions. Such permits or enforceable documents require monitoring for SO<sub>2</sub> emissions that meets the requirements in OAR 340-228-0480(1)(a) and 340-228-0480(1)(c).

(b) Copies of emissions monitoring reports for the period the WEB source was generating the early reductions that document the actual annual SO<sub>2</sub> emissions and demonstrates that the actual annual SO<sub>2</sub> emissions were below the floor level allocation established for that source in Section 5.5.2.3.3.a of the State Implementation Plan.

(c) Demonstration that the floor level established for the source in accordance with Section 5.5.2.3.3.a of the State Implementation Plan was calculated using data that are consistent with the new monitoring methodology. If new monitoring techniques will change the floor level for the source, then a demonstration of the new floor level based on new monitoring techniques must be included in the application.

(6) Request for allowances for new WEB sources or modified WEB Sources.

(a) A new WEB source or an existing WEB source that has increased production capacity through a permitted change in operations OAR 340, division 224 may apply to the Department for an allocation from the new source set-aside, as outlined in Section 5.5.2.3.3.c. of the State Implementation Plan.

(A) A new WEB source is eligible to apply for an annual allocation equal to the permitted annual SO<sub>2</sub> emission limit for that source after the source has commenced operation.

(B) An existing WEB source is eligible to apply for an annual allocation equal to the permitted annual SO<sub>2</sub> emission limit for that source that is attributable to any amount of production capacity that is greater than the permitted production capacity for that source as of January 1, 2003.

(C) A source that has received a retired source exemption under OAR 340-228-0430(4) is not eligible to apply for an allocation from the new source set-aside.

(b) The application for an allocation from the new source set-aside must contain the following information:

(A) for an existing WEB source, documentation of the production capacity before and after the new permit;

(B) for new WEB sources, documentation of the actual date and a copy of the permit.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. eff. 12-12-03

## 340-228-0470

### Establishment of Accounts

(1) Allowance Tracking System Accounts. All WEB sources must open a compliance account. Any person may open a general account for the purpose of holding and transferring allowances. In addition, if a WEB source conducts monitoring under OAR 340-228-480(1)(b), the WEB source must open a special reserve compliance account for allowances associated with units monitored under those provisions. Allowances may not be transferred out of the special reserve account by the WEB source or account representative. The Department shall allocate allowances to the

account in accordance with OAR 340-228-0480(1)(b)(E) and all such allowances for each control period shall be retired each year for compliance in accordance with OAR 340-228-0510. To open either type of account, an application that contains the following information must be submitted to the TSA.

(a) The Account Representative's name, mailing address, e-mail address, telephone number, and facsimile number. For a compliance account, include a copy of the Account Certificate of Representation of the Account Representative and any alternate as required in OAR 340-228-0440(2)(b). For a general account, include the Account Certificate of Representation of the Account Representative and any alternate as required in OAR 340-228-0470(3)(b).

(b) The WEB source or organization name;

(c) The type of account to be opened; and

(d) A signed certification of truth and accuracy by the Account Representative according to OAR 340-228-0440(3)(b) for compliance accounts and certification of truth and accuracy by the Account Representative according to OAR 340-228-0470(4) for general accounts.

(2) Account Representative for General Accounts. For a general account, one Account Representative must be identified and an alternate Account Representative may be identified and may act on behalf of the Account Representative. Any representation, action, inaction, or submission by the alternate Account Representative is a representation, action, inaction, or submission by the Account Representative.

(3) Identification and Certification of an Account Representative for General Accounts.

(a) The Account Representative must be appointed by an agreement that makes the representations, actions, inactions, or submissions of the Account Representative binding on all persons who have an ownership interest with respect to allowances held in the general account.

(b) The Account Representative must submit to the Tracking System Administrator a signed and dated Account Certificate of Representation (Certificate) that contains the following elements:

(A) The name, address, e-mail (if available), telephone, and facsimile number of the Account Representative and any alternate;

(B) The organization's name;

(C) The following certification statement: "I certify that I was selected as the Account Representative or alternate Account Representative, as applicable, by an agreement binding on all persons who have an ownership interest in allowances in the general account with regard to matters concerning the general account. I certify that I have all the necessary authority to carry out my duties and responsibilities under the WEB Trading Program on behalf of said persons, and that each such person will be fully bound by my representations, actions, inactions, or submissions and by any decision or order issued to me by the Department regarding the general account."

(c) When the Department receives the complete Certificate, the Account Representative represents and, by his or her representations, actions, inactions, or submissions, legally binds each person who has an ownership interest in allowances held in the general account with regard to all matters concerning the general account. Such persons will be bound by any decision or order issued by the Department.

(d) A WEB Allowance Tracking System general account may not be established until the Tracking System Administrator has received a complete Certificate. Once the account is established, the Account Representative must make all submissions concerning the account, including the deduction or transfer of allowances.

(4) Requirements and Responsibilities for General Accounts. Each submission for the general account must be signed and certified by the Account Representative for the general account. Each submission must include the following truth and accuracy certification statement by the Account Representative: "I am authorized to make this submission on behalf of all person who have an ownership interest in allowances held in the general account. I certify under penalty of law that I have personally examined and am familiar with the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment."

(5) Changing the Account Representative. The Account Representative or alternate Account Representative may be changed at any time by sending a complete superseding Certificate to the Department and

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the Tracking System Administrator, according to OAR 340-228-0470(3)(b). The change will take effect when the Department receives the Certificate. Notwithstanding any such change, all representations, actions, inactions, and submissions by the previous Account Representative or alternate before the Department receives the superseding Certificate are binding on the new Account Representative and all persons having ownership interest with respect to allowances held in the general account.

(6) Changes to the Account. Any change to the information required in the application for an existing account under OAR 340-228-0470(1) requires a revision of the application.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0480

### Monitoring, Recordkeeping and Reporting

(1) General Requirements on Monitoring Methods.

(a) For each SO<sub>2</sub> emitting unit at a WEB source the owner or operator must comply with the following, as applicable, to monitor and record SO<sub>2</sub> mass emissions:

(A) If a unit is subject to 40 CFR Part 75 (2003) under a requirement separate from the WEB Trading Program, the unit must meet the requirements contained in Part 75 with respect to monitoring, recording and reporting SO<sub>2</sub> mass emissions.

(B) If a unit is not subject to 40 CFR Part 75 (2003) under a requirement separate from the WEB Trading Program, a unit must use one of the following monitoring methods, as applicable:

(i) A continuous emission monitoring system (CEMS) for SO<sub>2</sub> and flow that complies with all applicable monitoring provisions in 40 CFR Part 75;

(ii) If the unit is a gas- or oil-fired combustion device, the excepted monitoring methodology in Appendix D to 40 CFR Part 75, or, if applicable, the low mass emissions (LME) provisions (with respect to SO<sub>2</sub> mass emissions only) of section 75.19 of 40 CFR Part 75; or

(iii) One of the optional WEB protocols, if applicable, in Appendix A to this Rule; or

(iv) A monitoring plan for site-specific monitoring that the source submits for approval by the Department and by the U.S. Environmental Protection Agency in accordance with OAR 340-228-0480(8)(e).

(C) A permanently retired unit is not required to monitor under this rule if such unit was permanently retired and had no emissions for the entire period for which the WEB source implements this paragraph (C) of this rule and the Account Representative certifies in accordance with OAR 340-228-0510(2) that these conditions were met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this rule in the same manner as if the unit was a new unit.

(b) Notwithstanding OAR 340-228-0480(1)(a), the owner or operator of a unit that meets one of the conditions of OAR 340-228-0480(1)(b)(A) may elect to have the provisions of this OAR 340-228-0480(1)(b) apply to that unit.

(A) Any of the following units may implement OAR 340-228-0480(1)(b):

(i) Any smelting operation where all of the emissions from the operation are not ducted to a stack; or

(ii) Any flare, except to the extent such flares are used as a fuel gas combustion device at a petroleum refinery.

(iii) Any other type of unit without add-on SO<sub>2</sub> control equipment, if no control level was assumed for the WEB source in establishing the floor level (and reducible allocation) provided in Section 5.5.2.3.3.a of the State Implementation Plan.

(B) For each unit covered by OAR 340-228-0480(1)(b), the Account Representative must submit a notice to request that OAR 340-228-0480(1)(b) applies to one or more SO<sub>2</sub> emitting units at a WEB source. The notice must be submitted in accordance with the compliance dates specified in OAR 340-228-0480(6)(a) and include the following information (in a format specified by the Department with such additional, related information as may be requested):

(i) A notice of all units at the applicable source, specifying which of the units are covered by OAR 340-228-0480(1)(b);

(ii) Consistent with the emission estimation methodology used to determine the floor level (and reducible allocation) for the source in accordance with State Implementation Plan Section 5.5.2.3.3.a, the portion of the

WEB source's overall allowance allocation that is attributable to any unit(s) covered by OAR 340-228-0480(1)(b); and

(iii) An identification of any such units that are permanently retired.

(C) For each new unit at an existing WEB source for which the owner or operator seeks to comply with this OAR 340-228-0480(1)(b) and for which the Account Representative applies for an allocation under the new source set-aside provisions of OAR 340-228-0460(6), the Account Representative must submit a modified notice under OAR 340-228-0480(1)(b)(B) that includes such new SO<sub>2</sub> emitting unit(s). The modified notice must be submitted in accordance with the deadlines in OAR 340-228-0480, but no later than the date on which a request is submitted under OAR 340-228-0460(6) for allocations from the set-aside.

(D) The Department will evaluate the information submitted by the WEB source in paragraphs (B) and (C) of this subsection and may issue a notice to the source to exclude any units that do not qualify under OAR 340-228-0480(1)(b) or to adjust the portion of allowances attributable to units that do qualify to be consistent with the emission estimation methodology used to establish the floor level and reducible allocation for the source.

(E) The Department will allocate allowances equal to the adjusted portion of the WEB source's allowances under paragraphs (B), (C), and (D) of this subsection in a special reserve compliance account, provided that no such treatment of the WEB source's allocation will be required for any unit that is permanently retired and had no emissions for the entire period for which the WEB source implements subsection (b) of this rule and the Account Representative certifies in accordance with OAR 340-228-0510 that these conditions were met. In the event that a permanently retired unit recommences operation, the WEB source shall meet the requirements of this OAR 340-228-0480 in the same manner as if the unit was a new unit.

(F) The Account Representative for a WEB source must submit an annual emissions statement for each unit under OAR 340-228-0480(1)(b) pursuant to 340-228-0480(8). The WEB source must maintain operating records sufficient to estimate annual emissions in a manner consistent with the emission estimation methodology used to establish the floor level (and reducible allocation) for the source. In addition, if the estimated emissions from all such units at the WEB source are greater than the allowances for the current control year held in the special reserve account under OAR 340-228-0480(1)(b)(E) for the WEB source, the Account Representative must report the extra amount as part of the annual report for the WEB source under OAR 340-228-0510 and be required to use other allowances in the standard compliance account to account for such emissions, in accordance with OAR 340-228-0510.

(G) The remaining provisions of OAR 340-228-0480 do not apply to units covered by this subsection except where otherwise noted.

(H) A WEB source may modify the monitoring for an SO<sub>2</sub> emitting unit by using monitoring under OAR 340-228-0480(1)(a), but any such monitoring change must take effect on January 1 of the next compliance year. In addition, the Account Representative must submit an initial monitoring plan at least 180 days before the date on which the new monitoring will take effect and a detailed monitoring plan in accordance with OAR 340-228-0480(2). The Account Representative must also submit a revised notice under OAR 340-228-0480(1)(b)(B) with the initial monitoring plan.

(c) For any monitoring method that the owner or operator uses under this rule (including OAR 340-228-0480(1)(a)(B)) the owner or operator (and, as applicable, the Account Representative) must install, certify, and operate such monitoring in accordance with this rule and record and report the data from such monitoring as required in this rule. In addition, the owner or operator (and, as applicable, the Account Representative) may not:

(A) Except for an alternative approved by the U.S. EPA Administrator for a WEB source that implements monitoring under OAR 340-228-0480(1)(a)(A), use an alternative monitoring system, alternative reference method, or another alternative for the required monitoring method without having obtained prior written approval in accordance with OAR 340-228-0480(8)(e) (relating to petitions);

(B) Operate an SO<sub>2</sub> emitting unit so as to discharge, or allow to be discharged, SO<sub>2</sub> emissions to the atmosphere without accounting for these emissions in accordance with the applicable provisions of this rule;

(C) Disrupt the approved monitoring method or any portion thereof and thereby avoid monitoring and recording SO<sub>2</sub> mass emissions discharged into the atmosphere, except for periods of recertification or periods when calibration, quality assurance testing, or maintenance is performed in accordance with the applicable provisions of this rule; or

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(D) Retire or permanently discontinue use of an approved monitoring method, except under one of the following circumstances:

(i) During a period when the unit is exempt from the requirements of this rule, including retirement of a unit as addressed in OAR 340-228-0480(1)(a)(3);

(ii) The owner or operator is monitoring emissions from the unit with another certified monitoring method approved under this rule for use at the unit that provides data for the same parameter as the retired or discontinued monitoring method; or

(iii) The Account Representative notifies the Department of the date of certification testing of a replacement monitoring system in accordance with this rule, and the owner or operator recertifies thereafter a replacement monitoring system in accordance with the applicable provisions of this rule.

## (2) Monitoring Plan.

(a) General Provisions. The owner or operator of an SO<sub>2</sub> emitting unit that uses a monitoring method under OAR 340-228-0480(1)(a)(A) must meet the following requirements:

(A) Prepare and submit to the Department an initial monitoring plan for each monitoring method that the owner or operator uses to comply with this rule. In accordance with OAR 340-228-0480(2)(c), the plan must contain sufficient information on the units involved, the applicable method, and the use of data derived from that method to demonstrate that all unit SO<sub>2</sub> emissions are monitored and reported. The plan must be submitted in accordance with the compliance deadlines specified in OAR 340-228-0480(6).

(B) Prepare, maintain and submit to the Department a detailed monitoring plan before the first day of certification testing, in accordance with the compliance deadline specified in OAR 340-228-0480(5). The plan must contain the applicable information required by OAR 340-228-0480(2)(d). The Department may require that the monitoring plan (or portions thereof) be submitted electronically. The Department also may require that the plan be submitted on an ongoing basis in electronic format as part of the quarterly report submitted under OAR 340-228-0480(8)(a) of this Rule or resubmitted separately within 30 days after any change is made to the plan in accordance with OAR 340-228-0480(2)(a)(C).

(C) Whenever the owner or operator makes a replacement, modification, or change in one of the systems or methodologies provided for in OAR 340-228-0480(1)(a)(B), including a change in the automated data acquisition and handling system or in the flue gas handling system, that affects information reported in the monitoring plan (e.g., a change to serial number for a component of a monitoring system), then the owner or operator must update the monitoring plan in accordance with the compliance deadline specified in OAR 340-228-0480(5).

(b) The owner or operator of an SO<sub>2</sub> emitting unit that uses a method under OAR 340-228-0480(1)(a)(A) (a unit subject to 40 CFR Part 75 (2003) under a program other than this WEB Trading Program) must meet the requirements of OAR 340-228-0480(2)(a)-(f) by preparing, maintaining, and submitting a monitoring plan in accordance with the requirements of 40 CFR Part 75 (2003), provided that the owner or operator also submits the entire monitoring plan to the Department upon request.

(c) Initial Monitoring Plan. The Account Representative must submit an initial monitoring plan for each SO<sub>2</sub> emitting unit (or group of units sharing a common methodology) that, except as otherwise specified in the permit monitoring requirements that, except as otherwise specified in an applicable provision in Appendix A, contains the following information:

(A) For all SO<sub>2</sub> emitting units involved in the monitoring plan:

(i) Plant name and location (street address, legal address, county, city);

(ii) Plant and unit identification numbers assigned by the Department;

(iii) Type of unit (or units for a group of units using a common monitoring methodology);

(iv) Identification of all stacks or pipes associated with the monitoring plan;

(v) Types of fuel(s) fired (or sulfur containing process materials used in the SO<sub>2</sub> emitting unit) and the fuel classification of the unit if combusting more than one type of fuel and using a 40 CFR Part 75 (2003) methodology;

(vi) Type(s) of emissions controls installed or to be installed, including specifications of whether such controls are pre-combustion, post-combustion, or integral to the combustion process;

(vii) Maximum hourly heat input capacity, or process throughput capacity, if applicable;

(viii) Identification of all units using a common stack; and

(ix) Indication of whether any stack identified in the plan is a bypass stack.

(B) For each unit and parameter required to be monitored, identification of monitoring methodology information monitoring methodology, monitor locations, substitute data approach for the methodology, and general identification of quality assurance procedures. If the proposed methodology is a site-specific methodology submitted pursuant to OAR 340-228-0480(1)(a)(B)(iv), the description under this paragraph must describe fully all aspects of the monitoring equipment, installation locations, operating characteristics, certification testing, ongoing quality assurance and maintenance procedures, and substitute data procedures.

(C) If the WEB source intends to petition for a change to any specific monitoring requirement otherwise required under OAR 340-228-0480, such petition may be submitted as part of the initial monitoring plan.

(D) The Department may issue a notice of approval or disapproval of the initial monitoring plan based on the compliance of the proposed methodology with the requirements for monitoring in this rule.

(d) Detailed Monitoring Plan. The Account Representative must submit a detailed monitoring plan that, except as otherwise specified in an applicable provision in Appendix A, contains the following information:

(A) Identification and description of each monitoring component (including each monitor and its identifiable components, such as analyzer and/or probe) in a CEMS (e.g., SO<sub>2</sub> pollutant concentration monitor, flow monitor, moisture monitor), a 40 CFR Part 75, Appendix D monitoring system (e.g., fuel flowmeter, data acquisition and handling system), or a protocol in or a protocol in Appendix A., including:

(i) Manufacturer, model number, and serial number;

(ii) Component/system identification code assigned by the facility to each identifiable monitoring component, such as the analyzer and/or probe;

(iii) Designation of the component type and method of sample acquisition or operation (e.g., in situ pollutant concentration monitor or thermal flow monitor);

(iv) Designation of the system as a primary or backup system;

(v) First and last dates the system reported data;

(vi) Status of the monitoring component; and

(vii) Parameter monitored.

(B) Identification and description of all major hardware and software components of the automated data acquisition and handling system, including:

(i) Hardware components that perform emission calculations or store data for quarterly reporting purposes (provide the manufacturer and model number); and

(ii) Software components (provide the identification of the provider and model/version number).

(C) Explicit formulas for each measured emissions parameter, using component/system identification codes for the monitoring system used to measure the parameter that links the system observations with the reported concentrations and mass emissions. The formulas must contain all constants and factors required to derive mass emissions from component/system code observations and an indication of whether the formula is being added, corrected, deleted, or is unchanged. The owner or operator of a low mass emissions unit for which the owner or operator is using the optional low mass emissions excepted methodology in 40 CFR section 75.19(c) (2003) is not required to report such formulas.

(D) for units with flow monitors only, include the inside cross-sectional area (ft<sup>2</sup>) at flow monitoring location.

(E) If using CEMS for SO<sub>2</sub> and flow, for each parameter monitored, include the scale, maximum potential concentration (and method of calculation), maximum expected concentration (if applicable) (and method of calculation), maximum potential flow rate (and method of calculations), span value, full-scale range, daily calibration units of measure, span effective date/hour, span inactivation date/hour, indication of whether dual spans are required, default high range value, flow rate span, and flow rate span value and full scale value (in scfh) for each unit or stack using SO<sub>2</sub> or flow component monitors.

(F) If the monitoring system or excepted methodology provides for use of a constant, assumed, or default value for a parameter under specific circumstances, then include the following information for each value of such parameter:

(i) Identification of the parameter;

(ii) Default, maximum, minimum, or constant value, and units of measure for the value;

(iii) Purpose of the value;

(iv) Indicator of use during controlled/uncontrolled hours;

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- (v) Types of fuel;
- (vi) Source of the value;
- (vii) Value effective date and hour;
- (viii) Date and hour value is no longer effective (if applicable); and
- (ix) For units using the excepted methodology under 40 CFR section 75.19 (2003), the applicable SO<sub>2</sub> emission factor.

(G) Unless otherwise specified in section 6.5.2.1 of Appendix A to 40 CFR Part 75 (2003), for each unit or common stack on which hardware CEMS are installed:

(i) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of Appendix A to 40 CFR Part 75), or thousand of lb/hr of steam, or ft/sec (as applicable);

(ii) The load or operating level(s) designated as normal in section 6.5.2.1 of Appendix A to 40 CFR Part 75, or thousands of lb/hr of steam, or ft/sec (as applicable);

(iii) The two load or operating levels (i.e., low, mid, or high) identified in section 6.5.2.1 of Appendix A to 40 CFR Part 75 as the most frequently used;

(iv) The date of the data analysis used to determine the normal load (or operating) level(s) and the two most frequently-used load (or operating) levels; and

(v) Activation and deactivation dates when the normal load or operating level(s) change and are updated.

(H) For each unit that is complying with 40 CFR Part 75 (2003) for which the optional fuel flow-to-load test in section 2.1.7 of appendix D to 40 CFR Part 75 is used:

(i) The upper and lower boundaries of the range of operation (as defined in section 6.5.2.1 of Appendix A to 40 CFR Part 75), expressed in thousand of lb/hr of steam;

(ii) The load level designated as normal, pursuant to section 6.5.2.1 of Appendix A to 40 CFR Part 75, expressed in thousands of lb/hr of steam; and

(iii) The date of the load analysis used to determine the normal load level.

(I) Information related to quality assurance testing, including (as applicable): identification of the test strategy; protocol for the relative accuracy test audit; other relevant test information; calibration gas levels (percent of span) for the calibration error test and linearity check; calculations for determining maximum potential concentration, maximum expected concentration (if applicable), maximum potential flow rate, and span;

(J) If applicable, apportionment strategies under 40 CFR sections 75.10 through 75.18 (2003).

(K) Description of site locations for each monitoring component in a monitoring system, including schematic diagrams and engineering drawings and any other documentation that demonstrates each monitor location meets the appropriate siting criteria. For units monitored by a continuous emission monitoring system, diagrams must include:

(i) A schematic diagram identifying entire gas handling system from unit to stack for all units, using identification numbers for units, monitor components, and stacks corresponding to the identification numbers provided in the initial monitoring plan and OAR 340-228-0480(2)(d)(A) and (C). The schematic diagram must depict the height of any monitor locations. Comprehensive and/or separate schematic diagrams must be used to describe groups of units using a common stack.

(ii) Stack and duct engineering diagrams showing the dimensions and locations of fans, turning vanes, air preheaters, monitor components, probes, reference method sampling ports, and other equipment that affects the monitoring system location, performance, or quality control checks.

(L) A data flow diagram denoting the complete information handling path from output signals of CEMS components to final reports.

(e) In addition to supplying the information in OAR 340-228-0480(2)(c) and (d), the owner or operator of an SO<sub>2</sub> emitting unit using either of the methodologies in OAR 340-228-0480(1)(a)(B)(ii) must include the following information in its monitoring plan for the specific situations described:

(A) For each gas-fired or oil-fired SO<sub>2</sub> emitting unit for which the owner or operator uses the optional protocol in appendix D to 40 CFR Part 75 for SO<sub>2</sub> mass emissions, the Account Representative must include the following information in the monitoring plan:

(i) Parameter monitored;

(ii) Type of fuel measured, maximum fuel flow rate, units of measure, and basis of maximum fuel flow rate (i.e., upper range value or unit maximum) for each fuel flowmeter;

(iii) Test method used to check the accuracy of each fuel flowmeter;

(iv) Submission status of the data;

(v) Monitoring system identification code;

(vi) The method used to demonstrate that the unit qualifies for monthly GCV sampling or for daily or annual fuel sampling for sulfur content, as applicable;

(vii) A schematic diagram identifying the relationship between the unit, all fuel supply lines, the fuel flowmeter(s), and the stack(s). The schematic diagram must depict the installation location of each fuel flowmeter and the fuel sampling location(s). Comprehensive and/or separate schematic diagrams will be used to describe groups of units using a common pipe;

(viii) For units using the optional default SO<sub>2</sub> emission rate for "pipeline natural gas" or "natural gas" in appendix D to 40 CFR Part 75 (2003), the information on the sulfur content of the gaseous fuel used to demonstrate compliance with either section 2.3.1.4 or 2.3.2.4 of appendix D to 40 CFR Part 75;

(ix) For units using the 720 hour test under section 2.3.6 of appendix D to 40 CFR Part 75 to determine the required sulfur sampling requirements, report the procedures and results of the test; and

(x) For units using the 720 hour test under section 2.3.5 of appendix D to 40 CFR Part 75 to determine the appropriate fuel gross calorific value (GCV) sampling frequency, report the procedures used and the results of the test.

(B) For each SO<sub>2</sub> emitting unit for which the owner or operator uses the low mass emission excepted methodology of section 75.19 to 40 CFR Part 75, the Account representative must include the following information in the monitoring plan that accompanies the initial certification application:

(i) The results of the analysis performed to qualify as a low mass emissions unit under 40 CFR section 75.19(c) (2003). This report must include either the previous three years actual or projected emissions. The following items must be included:

(I) Current calendar year of application;

(II) Type of qualification;

(III) Years one, two, and three;

(IV) Annual measured, estimated, or projected SO<sub>2</sub> mass emissions for years one, two, and three; and

(V) Annual operating hours for years one, two, and three.

(ii) A schematic diagram identifying the relationship between the unit, all fuel supply lines and tanks, any fuel flowmeter(s), and the stack(s). Comprehensive separate schematic diagrams must be used to describe groups of units using a common pipe;

(iii) For units which use the long term fuel flow methodology under 40 CFR section 75.19(c)(3) (2003), a diagram of the fuel flow to each unit or group of units and a detailed description of the procedures used to determine the long term fuel flow for a unit or group of units for each fuel combusted by the unit or group of units;

(iv) A statement that the unit burns only gaseous fuel(s) and/or fuel oil and a list of the fuels that are burned or a statement that the unit is projected to burn only gaseous fuel(s) and/or fuel oil and a list of the fuels that are projected to be burned;

(v) A statement that the unit meets the applicability requirements in 40 CFR 75.19(a) and (b) with respect to SO<sub>2</sub> emissions; and

(vi) Any unit historical actual, estimated and projected SO<sub>2</sub> emissions data and calculated SO<sub>2</sub> emissions data demonstrating that the unit qualifies as a low mass emissions unit under 40 CFR 75.19(a) and (b).

(C) For each gas-fired unit the Account Representative will include the following in the monitoring plan: current calendar year, fuel usage data as specified in the definition of gas-fired in 40 CFR section 72.2 (2003), and an indication of whether the data are actual or projected data.

(f) The specific elements of a monitoring plan under OAR 340-228-0480(2) must not be part of an operating permit for a WEB source issued in accordance with Title V of the Clean Air Act, and modifications to the elements of the plan must not require a permit modification.

(3) Certification/Recertification

(a) All monitoring systems are subject to initial certification and recertification testing as specified in 40 CFR Part 75 (2003) or Appendix A to this Rule as applicable. Certification or recertification of a monitoring system by the U.S. Environmental Protection Agency for a WEB source that is subject to 40 CFR Part 75 under a requirement separate from this division constitutes certification under the WEB Trading Program.

(b) The owner or operator of an SO<sub>2</sub> emitting unit not otherwise subject to 40 CFR Part 75 that monitors SO<sub>2</sub> mass emissions in accordance with 40 CFR Part 75 to satisfy the requirements of this rule must perform

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all of the tests required by that regulation and must submit the following to the Department:

(A) A test notice not later than 21 days before the certification testing of the monitoring system, provided that the Department may establish additional requirements for adjusting test dates after this notice as part of the approval of the initial monitoring plan under OAR 340-228-0480(2)(c); and

(B) An initial certification application within 45 days after testing is complete. A monitoring system will be considered provisionally certified while the application is pending.

(c) A monitoring system is provisionally certified while the application is pending, and the system shall be deemed certified if the Department does not approve or disapprove the system within six months after the date on which the application is submitted.

(d) Whenever an audit of any monitoring certified under OAR 340-228-0400 through 340-228-0530, and a review of the initial certification or recertification application, reveal that any system or component should not have been certified or recertified because it did not meet a particular performance specification or other requirement of OAR 340-228-0400 through 340-228-0530, both at the time of the initial certification or recertification application submission and at the time of the audit, the Department will issue a notice of disapproval of the certification status of such system or component. For the purposes of this subsection, an audit shall be either a field audit of the facility or an audit of any information submitted to the Department regarding the facility. By issuing the notice of disapproval, the certification status is revoked prospectively, and the data measured and recorded shall not be considered valid quality-assured data from the date of issuance of the notification of the revoked certification status until the date and time that the WEB source completes subsequently approved initial certification or recertification tests in accordance with the procedures in OAR 340-228-0480(3). The WEB source shall apply the substitute data procedures in OAR 340-228-0480(5)(b) to replace, prospectively, all of the invalid, non-quality-assured data for each disapproved system or component.

(4) Ongoing Quality Assurance and Quality Control. The WEB source must satisfy the applicable quality assurance and quality control requirements contained in 40 CFR Part 75 (2003) or, if the WEB source is subject to a WEB protocol in Appendix A, the applicable quality assurance and quality control requirements in Appendix A on and after the date that certification testing commences.

(5) Substitute Data Procedures.

(a) For any period after certification testing is complete in which quality-assured, valid data are not being recorded by a monitoring system certified and operating in accordance with OAR 340-228-0400 through 0530, missing or invalid data must be replaced with substitute data in accordance with 40 CFR Part 75 (2003) or, if the WEB source is subject to a WEB protocol in Appendix A, with substitute data in accordance with Appendix A.

(b) For an SO<sub>2</sub> emitting unit that does not have a certified (or provisionally certified) monitoring system in place as of the beginning of the first control period for which the unit is subject to the WEB Trading Program, the owner or operator must:

(A) If the owner or operator will use a CEMS to comply with OAR 340-228-0400 through 340-228-0530, substitute the maximum potential concentration of SO<sub>2</sub> for the unit and the maximum potential flow rate, as determined in accordance with 40 CFR Part 75 (2003). The procedures for conditional data validation under 40 CFR section 75.20(b)(3) may be used for any monitoring system under this Rule that uses these 40 CFR Part 75 procedures, as applicable;

(B) If the owner or operator will use the 40 CFR Part 75 Appendix D methodology, substitute the maximum potential sulfur content, density, or gross calorific value for the fuel and the maximum potential fuel flow rate, in accordance with section 2.4 of Appendix D to 40 CFR Part 75;

(C) If the owner or operator will use the 40 CFR Part 75 low mass emissions units, substitute the SO<sub>2</sub> emission factor required for the unit as specified in 40 CFR section 75.19 and the maximum rated hourly heat input, as defined in 40 CFR section 72.2.

(D) If using a protocol in Appendix A to this Rule, follow the procedures in the applicable protocol.

(6) Compliance Deadlines.

(a) The initial monitoring plan must be submitted by the following dates:

(A) For each source that is a WEB source on or before the Program Trigger Date, the monitoring plan must be submitted 180 days after such Program Trigger Date.

(B) For any existing source that becomes a WEB source after the Program Trigger Date, the monitoring plan must be submitted by September 30 of the year following the inventory year in which the source exceeded the emissions threshold.

(C) For any new WEB source, the monitoring plan must be included with the permit application for New Source Review.

(b) A detailed monitoring plan under OAR 340-228-0480(2)(b) must be submitted no later than 45 days prior to commencing certification testing in accordance with (c) below.

(c) Emission monitoring systems must be installed, operational and meet all of the certification testing requirements of this OAR 340-228-0480 (including any referenced in Appendix A) by the following dates:

(A) For each source that is a WEB source on or before the Program Trigger Date, two years before the start of the first control period as described in OAR 340-228-0510.

(B) For any existing source that becomes a WEB source after the Program Trigger Date, one year after the due date for the monitoring plan OAR 340-228-0480(6)(a)(B).

(C) For any new WEB source (or any new unit at a WEB source under OAR 340-228-0480(c)(A) or (c)(B)), the earlier of 90 unit operating days or 180 calendar days after the date the new source commences operation.

(d) The owner or operator must submit test notices and certification applications in accordance with the deadlines set forth in OAR 340-228-0480(3)(b).

(e) For each applicable control period, the WEB source must submit each quarterly report under OAR 340-228-0480(8) by no later than 30 days after the end of each calendar quarter and must submit the annual report under OAR 340-228-0480(8) no later than 60 days after the end of each calendar year.

(7) Recordkeeping.

(a) Except as provided in OAR 340-228-0480(7)(b), the WEB source must keep copies of all reports, registration materials, compliance certifications, sulfur dioxide emissions data, quality assurance data, and other submissions under OAR 340-228-0400 through 340-228-0530 for a period of five years. In addition, the WEB source shall keep a copy of all Account Certificates of Representation for the duration of the program. Unless otherwise requested by the WEB source and approved by the Department, the copies must be kept on site.

(b) The WEB source must keep records of all operating hours, quality assurance activities, fuel sampling measurements, hourly averages for SO<sub>2</sub>, stack flow, fuel flow, or other continuous measurements, as applicable, and any other applicable data elements specified in this rule or in Appendix A to this Rule. The WEB source must maintain the applicable records specified in 40 CFR Part 75 for any SO<sub>2</sub> emitting unit that uses a Part 75 monitoring method to meet the requirements of this rule.

(8) Reporting.

(a) Quarterly Reports. For each SO<sub>2</sub> emitting unit, the Account Representative must submit a quarterly report within thirty days after the end of each calendar quarter. The report must be in a format specified by the Department to include hourly and quality assurance activity information and must be submitted in a manner compatible with the emissions tracking database designed for the WEB Trading Program. If the owner or operator submits a quarterly report under 40 CFR Part 75 to the U.S. EPA Administrator, no additional report under this paragraph (a) are required; provided, however, that the Department may require that a copy of that report (or a separate statement of quarterly and cumulative annual SO<sub>2</sub> mass emissions) be submitted separately to the Department.

(b) Annual Report. Based on the quarterly reports, each WEB source must submit an annual statement of total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source. The annual report must identify total emissions for all units monitored in accordance with OAR 340-228-0480(1)(a) and the total emissions for all units with emissions estimated in accordance with OAR 340-228-0480(1)(b). The annual report must be submitted within 60 days after the end of a control period.

(c) If the Department so directs, that any monitoring plan, report, certification or recertification, or emissions data required to be submitted under this rule, will be submitted to the Tracking System Administrator.

(d) The Department may review and reject any report submitted under this OAR 340-228-0480(7) that contains errors or fails to satisfy the requirements of this rule, and the Account Representative must resubmit the report to correct any deficiencies.

(e) Petitions. A WEB source may petition for an alternative to any requirement specified in OAR 340-228-0480(1)(a)(B). The petition requires approval by the Department and the U.S. EPA Administrator. Any

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petition submitted under this paragraph must include sufficient information for evaluating the petition, including, at a minimum, the following information:

(A) Identification of the WEB source and applicable SO<sub>2</sub> emitting unit(s);

(B) A detailed explanation of why the proposed alternative is being suggested in lieu of the requirement;

(C) A description and diagram of any equipment and procedures used in the proposed alternative, if applicable;

(D) A demonstration that the proposed alternative is consistent with the purposes of the requirement for which the alternative is proposed is consistent with the purposes of OAR 340-228-0400 through 340-228-0530, and that any adverse effect of approving such alternative will be de minimis; and

(E) Any other relevant information that the Department may require.

(f) Consistency of Identifying Information. For any monitoring plans, reports, or other information submitted under OAR 340-228-0400 through 340-228-0530, the Account Representative must ensure that, where applicable, identifying information is consistent with the identifying information provided in the most recent certificate of representation for the WEB source submitted under OAR 340-228-0440.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0490

### Allowance Transfers

(1) Procedure. To transfer allowances, the Account Representative must submit the following information to the Tracking System Administrator:

- (a) The transfer account number(s) identifying the transferor account;
- (b) The transfer account number(s) identifying the transferee account;
- (c) The serial number of each allowance to be transferred; and
- (d) The transferor's Account Representative's name, signature, and the date of submission.

(2) Allowance Transfer Deadline. The allowance transfer deadline is midnight Pacific Standard Time March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the control period. By this time, the transfer of the allowances into the WEB source's compliance account must be correctly submitted to the Tracking System Administrator in order to demonstrate compliance under OAR 340-228-0510(1) for that control period.

(3) Retirement of Allowances. To permanently retire allowances, the transferor's account representative must submit the following information to the Tracking System Administrator:

- (a) The transfer account number(s) identifying the transferor account;
- (b) The serial number of each allowance to be retired; and
- (c) The transferor's Account Representative's name, signature, and the date of submission accompanied by a signed statement acknowledging that each retired allowance as no longer available for future transfers from or to any account.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0500

### Use of Allowances from a Previous Year

(1) Any allowance that is held in a compliance account or general account remains in the account until the allowance is either deducted in conjunction with the compliance process or transferred to another account.

(2) In order to demonstrate compliance under OAR 340-228-0510(1) for a control period, WEB sources may use allowances allocated for that control period or any previous year. Because all allowances held in a special reserve compliance account for a WEB source that monitors certain units in accordance with OAR 340-228-0480(1)(b) will be deducted for compliance for each control period, no banking of such allowances for use in a subsequent year is permitted by OAR 340-228-0400 through 340-228-0530.

(3) If flow control procedures for the current control period have been triggered as outlined in Section 5.5.2.3.3(h)(2) of the State Implementation Plan, then the use of allowances that were allocated for any previous year will be limited as follows:

(a) The number of allowances that are held in each compliance account and general account as of the allowance transfer deadline for the immediately previous year and that were allocated for any previous year will be determined by the Department.

(b) The number determined in OAR 340-228-0500(3)(a) will be multiplied by the flow control ratio established in accordance with Section 5.5.2.3.3(k)(1) of the State Implementation Plan to determine the number of allowances that were allocated for a previous year that can be used without restriction for the current control period.

(c) Allowances that were allocated for a previous year in excess of the number determined in OAR 340-228-0500(3)(b) may also be used for the current control period. If such allowances are used to make a deduction, two allowances must be deducted for each deduction of one allowance required under OAR 340-228-0510.

(4) Special provisions for the year 2018. After the Department has determined compliance with the 2017 allowance limitation in accordance with OAR 340-228-0510(1), allowances allocated for any year before 2018 may not be used for determining compliance with the 2018 allowance limitation or any future allowance limitation.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0510

### Compliance

(1) Compliance with Allowance Limitations.

(a) The WEB source must hold allowances, in accordance with OAR 340-228-0510(1)(b) and 340-228-0500, as of the allowance transfer deadline in the WEB source's compliance account, (together with any current control year allowances held in the WEB source's special reserve compliance account under OAR 340-228-0480(1)(b)) in an amount not less than the total SO<sub>2</sub> emissions for the control period from the WEB source, as determined under the monitoring and reporting requirements of OAR 340-228-0480.

(A) For each source that is a WEB source on or before the Program Trigger Date, the first control period is the calendar year that is six years following the calendar year for which SO<sub>2</sub> emissions exceeded the milestone in accordance with procedures in Section 5.5.2.3.1 of the State Implementation Plan.

(B) For any existing source that becomes a WEB source after the Program Trigger Date, the first control period is the calendar year that is four years following the inventory year in which the source became a WEB source.

(C) For any new WEB source after the Program Trigger Date, the first control period is the first full calendar year that the source is in operation.

(D) If the WEB Trading Program is triggered in accordance with the year 2013 review procedures in section 5.5.2.3.1(d) of the State Implementation Plan, the first control period for each source that is a WEB source on or before the Program Trigger Date is the year 2018.

(b) An allowance may be deducted from the WEB source's compliance account only if:

(A) the allowance was allocated for the current control period or meets the requirements in OAR 340-228-0500 for use of allowances from a previous control period, and

(B) the allowance was held in the WEB source's compliance account as of the allowance transfer deadline for the current control period, or the allowance was transferred into the compliance account by an allowance transfer correctly submitted for recording by the allowance transfer deadline for the current control period.

(c) Compliance with allowance limitations must be determined as follows:

(A) The total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source that are monitored under OAR 340-228-0480(1)(b), as reported by the source in OAR 340-228-0480(8)(b) or (d), and recorded in the emissions tracking database shall be compared to the allowances held in the source's special reserve compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with OAR 340-228-0500. If the emissions are equal to or less than the allowances in such account, all such allowances shall be retired to satisfy the obligation to hold allowances for such emissions. If the total emissions from such units exceeds the allowances in such special reserve account, the WEB source shall account for such excess emissions in the following paragraph (A) of this subsection.



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(B) The total annual SO<sub>2</sub> emissions for all SO<sub>2</sub> emitting units at the source that are monitored under OAR 340-228-0480(1)(a), as reported by the source in OAR 340-228-0480(8)(b) or (d), and recorded in the emissions tracking database, together with any excess emissions as calculated in the preceding paragraph (A) of this subsection, shall be compared to the allowances held in the source's compliance account as of the allowance transfer deadline for the current control period, adjusted in accordance with OAR 340-228-0500.

(d) Deduction of Allowances.

Other than allowances in a special reserve compliance account for units monitored under OAR 340-228-0480(1)(b) to the extent consistent with OAR 340-228-0500, allowances must be deducted for a WEB source for compliance with the allowance limitation as directed by the WEB source's Account Representative. Deduction of any other allowances as necessary for compliance with the allowance limitation must be on a first-in, first-out accounting basis in the order of the date and time of their recording in the WEB source's compliance account, beginning with the allowances allocated to the WEB source and continuing with the allowances transferred to the WEB source's compliance account from another compliance account or general account. The allowances held in a special reserve compliance account pursuant to OAR 340-228-0480(1)(b) shall be deducted as specified in OAR 340-228-0510(1)(c)(A).

(e) SO<sub>2</sub> emissions violations by a source subject to (c) and (d) of this rule:

(A) Each ton of SO<sub>2</sub> by a source in excess of its allowance limitation for a control period is a violation.

(B) Each day of the control period is a separate violation, and each ton of SO<sub>2</sub> emissions in excess of a source's allowance limitation is a separate violation.

(2) Certification of Compliance.

(a) For each control period in which a WEB source is subject to the allowance limitation, the Account Representative of the source must submit to the Department a Compliance Certification report for the source.

(b) The Compliance Certification report must be submitted no later than the allowance transfer deadline of each control period and must contain the following:

(A) Identification of each WEB source;

(B) At the Account Representative's option, the serial numbers of the allowances that are to be deducted from a source's compliance account for compliance with the allowance limitation; and

(C) The Compliance Certification report according to OAR 340-228-0510(2)(c).

(c) In the Compliance Certification report, the Account Representative must certify, based on reasonable inquiry of those persons with primary responsibility for operating the WEB source in compliance with the WEB Trading Program, whether the WEB source for which the compliance certification is submitted was operated in compliance with the requirements of the WEB Trading Program applicable to the source during the control period covered by the report, including:

(A) Whether the WEB source operated in compliance with the SO<sub>2</sub> allowance limitation;

(B) Whether SO<sub>2</sub> emissions data was submitted to the Department in accordance with OAR 340-228-0480(8) and other applicable requirements, for review, revision as necessary, and finalization;

(C) Whether the monitoring plan for the WEB source has been maintained to reflect the actual operation and monitoring of the source and contains all information necessary to attribute SO<sub>2</sub> emissions to the source, in accordance with OAR 340-228-0480(1);

(D) Whether all the SO<sub>2</sub> emissions from the WEB source, were monitored or accounted for either through the applicable monitoring or through application of the appropriate missing data procedures;

(E) If applicable, whether any SO<sub>2</sub> emitting unit for which the WEB source is not required to monitor in accordance with OAR 340-228-0480(1)(a)(C) remained permanently retired and had no emissions for the entire applicable period; and

(F) Whether there were any changes in the method of operating or monitoring the WEB source that required monitor recertification. If there were any such changes, the report must specify the nature, reason, and date of the change, the method to determine compliance status subsequent to the change, and specifically, the method to determine SO<sub>2</sub> emissions.

(3) Penalties for any WEB source exceeding its allowance limitations.

(a) Allowance deduction penalties.

(A) An allowance deduction penalty will be assessed equal to two times the number of the WEB source's tons of SO<sub>2</sub> emissions in excess of

its allowance limitation for a control period, determined in accordance with OAR 340-228-0510(1). Allowances allocated for that control period in the amount of the allowance deduction penalty will be deducted from the source's compliance account. If the compliance account does not have sufficient allowances allocated for that control period, the required number of allowances will be deducted from the WEB source's compliance account regardless of the control period for which they were allocated, once allowances are recorded in the account.

(B) Any allowance deduction required under OAR 340-228-0510(1)(c) will not affect the liability of the owners and operators of the WEB source for any fine, penalty, or assessment or their obligation to comply with any other remedy for the same violation as ordered under the Clean Air Act, implementing regulations, or applicable state or tribal law. Accordingly, a violation can be assessed each day of the control period for each ton of SO<sub>2</sub> emissions in excess of its allowance limitation or for each other violation of OAR 340-228-0400 through 340-228-0530.

(4) Enforcement.

(a) WEB Source liability for non-compliance. In addition to any allowance deduction, a WEB source that violates any requirement of this rule, including those listed under (1)(e) of this section, is subject to civil and criminal penalties, including but not limited to penalties under ORS 468, 468A, the Clean Air Act, and under OAR 340-012.

(b) General liability.

(A) Any provision of the WEB Trading Program that applies to a source or an Account Representative also applies to the owners and operators of such source.

(B) Any person who violates any requirement or prohibition of the WEB Trading Program is subject to enforcement pursuant to OAR 340, division 12.

(C) Any person who knowingly makes a false material statement in any record, submission, or report under this WEB Trading Program is subject to criminal enforcement pursuant to ORS 468.953.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0520

### Special Penalty Provisions for 2018 Milestone

(1) If the WEB Trading Program is triggered as outlined in Section 5.5.2.3.1 of the State Implementation Plan, and the first control period will not occur until after the year 2018, the following provisions will apply for the 2018 emissions year.

(a) All WEB sources will register, and will open a compliance account within 180 days after the Program Trigger Date, in accordance with OAR 340-228-0450(1) and 340-228-0470.

(b) The Tracking System Administrator will record the allowances for the 2018 control period for each WEB source in the source's compliance account once the Department allocates the 2018 allowances under Section 5.5.2.3.3(a) of the State Implementation Plan.

(c) The allowance transfer deadline is midnight Pacific Standard Time on May 30, 2021. WEB sources may transfer allowances as provided in OAR 340-228-0490(1) until the allowance transfer deadline.

(d) A WEB source must hold allowances allocated for 2018 including those transferred into the compliance account or a special reserve account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO<sub>2</sub> emissions for 2018. Emissions will be determined using the pre-trigger monitoring provisions in Section 5.5.2.3.2 of the State Implementation Plan, and OAR 340-214-0400 through 340-214-0530.

(e) An allowance deduction and penalty for violation of SO<sub>2</sub> allowance limitation will be assessed and levied in accordance with OAR 340-228-0500(4), 340-228-0510(1)(d) and (e), and 340-228-0510(3) and (4), except that SO<sub>2</sub> emissions will be determined under 340-228-0520(1)(d).

(2) If the program has been triggered and OAR 340-228-0520(1) is implemented, the provisions of OAR 340-228-0520(3) will apply for each year after the 2018 emission year until:

(a) The first control period under the WEB trading program; or

(b) The Department determined, in accordance with section 5.5.2.3.1(c)(10) of the Implementation Plan, that the 2018 SO<sub>2</sub> milestone has been met.

(3) If OAR 340-228-0520(1) was implemented, the following will apply to each emissions year after the 2018 emissions year:

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(a) The Tracking System Administrator will record the allowances for the control period for the specific year for each WEB source in the source's compliance account once the Department allocates the allowances under Section 5.5.2.3.3.a of the State Implementation Plan.

(b) The allowance transfer deadline is midnight Pacific Standard Time on March 1 of each year (or if this date is not a business day, midnight of the first business day thereafter) following the end of the specific emissions year. WEB sources may transfer allowances as provided in OAR 340-228-0490(1) until the allowance transfer deadline.

(c) A WEB source must hold allowances allocated for that specific emissions year, or any year after 2018, including those transferred into the compliance account by an allowance transfer correctly submitted by the allowance transfer deadline, in an amount not less than the WEB source's total SO<sub>2</sub> emissions for the specific emissions year. Emissions are determined using the pre-trigger monitoring provisions in Section 5.5.2.3.2 of the State Implementation Plan, and OAR 340-214-0400 through 0530.

(d) An allowance deduction and penalty for violation of SO<sub>2</sub> allowance limitation will be assessed and levied in accordance with OAR 340-228-0500(4), 340-228-0510(1)(d) and (e), and 340-228-0510(3) and (4), except that SO<sub>2</sub> emissions shall be determined under 340-228-0520(3)(c).

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

## 340-228-0530

### Integration into Permits

Any WEB source that is not subject to OAR 340, division 218 at any time after OAR 340-228-0400 through 340-228-0530 becomes effective must obtain a permit under OAR 340, division 216 or modify an existing permit issued under that division that incorporates the requirements of OAR 340-228-0400 through 340-228-0530.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]  
Stat. Auth.: ORS 468.020  
Stats. Implemented: ORS 468A.035  
Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

### APPENDIX A: WEB MODEL RULE MONITORING PROTOCOLS

#### Protocol WEB-1: SO<sub>2</sub> Monitoring of Fuel Gas Combustion Devices

##### 1. Applicability.

(a) The provisions of this protocol are applicable to fuel gas combustion devices at petroleum refineries.

(b) Fuel gas combustion devices include boilers, process heaters, and flares used to burn fuel gas generated at a petroleum refinery.

(c) Fuel gas means any gas which is generated and combusted at a petroleum refinery. Fuel gas does not include: (1) natural gas, unless combined with other gases generated at a petroleum refinery, (2) gases generated by a catalytic cracking unit catalyst regenerator, (3) gases generated by fluid coking burners, (4) gases combusted to produce sulfur or sulfuric acid, or (5) process upset gases generated due to startup, shutdown, or malfunctions.

##### 2. Monitoring Requirements.

(a) Except as provided in paragraphs (b) and (c) of this Section 2, fuel gas combustion devices shall use a continuous fuel gas monitoring system (CFGMS) to determine the total sulfur content (reported as H<sub>2</sub>S) of the fuel gas mixture prior to combustion, and continuous fuel flow meters to determine the amount of fuel gas burned.

(1) Fuel gas combustion devices having a common source of fuel gas may be monitored for sulfur content at one location, if monitoring at that location is representative of the sulfur content of the fuel gas being burned in any fuel gas combustion device.

(2) The CFGMS shall meet the performance requirements in Performance Specification 2 in Appendix B to 40 CFR Part 60, and the following:

(i) Continuously monitor and record the concentration by volume of total sulfur compounds in the gaseous fuel reported as ppmv H<sub>2</sub>S.

(ii) Have the span value set so that the majority of readings fall between 10 and 95% of the range.

(iii) Record negative values of zero drift.

(iv) Calibration drift shall be 5.0% of the span.

(v) Methods 15A, 16, or approved alternatives for total sulfur, are the reference methods for the relative accuracy test. The relative accuracy test shall include a bias test in accordance with paragraph 4(c) of this section.

(3) All continuous fuel flow meters shall comply with the applicable provisions of Appendix D to 40 CFR Part 75.

(4) The hourly mass SO<sub>2</sub> emissions shall be calculated using the following equation:

$$E = (CS)(Qf)(K)$$

where: E = SO<sub>2</sub> emissions in lbs/hr

CS = Sulfur content of the fuel gas as H<sub>2</sub>S(ppmv)

Qf = Fuel gas flow rate (scfh)

K = 1.660 x 10<sup>-7</sup> (lb/scf)/ppmv

(b) In place of a CFGMS in paragraph (a) of this Section 2, fuel gas combustion devices having a common source of fuel gas may be monitored with an SO<sub>2</sub> CEMS and flow CEMS at only one location, if the CEMS monitoring at that location is representative of the SO<sub>2</sub> emission rate (lb SO<sub>2</sub>/scf fuel gas burned) of all applicable fuel gas combustion devices. Continuous fuel flow meters shall be used in accordance with paragraph (b), and the fuel gas combustion device monitored by a CEMS shall have separate fuel metering.

(1) Each CEMS for SO<sub>2</sub> and flow shall comply with the operating requirements, performance specifications, and quality assurance requirements of 40 CFR Part 75.

(2) All continuous fuel flow meters shall comply with the applicable provisions of Appendix D to 40 CFR Part 75.

(3) The SO<sub>2</sub> mass emissions for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the amount of fuel gas burned by the CEMS-monitored fuel gas combustion device to the total fuel gas burned by all applicable fuel gas combustion devices using the following equation:

$$Et = (Em)(Qt)/(Qm)$$

where: Et = Total SO<sub>2</sub> emissions in lbs/hr from applicable fuel gas combustion devices.

Em = SO<sub>2</sub> emissions in lbs/hr from the CEMS-monitored fuel gas combustion device.

Qt = Fuel gas flow rate (scfh) from applicable fuel gas combustion devices.

Qm = Fuel gas flow rate (scfh) from the CEMS-monitored fuel gas combustion device.

(c) In place of a CFGMS in paragraph (a) of this section, fuel gas combustion devices having a common source of fuel gas may be monitored with an SO<sub>2</sub> — diluent CEMS at only one location, if the CEMS monitoring at that location is representative of the SO<sub>2</sub> emission rate (lb SO<sub>2</sub>/mmBtu) of all applicable fuel gas combustion devices. If this option is selected, the owner or operator shall conduct fuel gas sampling and analysis for gross calorific value (GCV), and shall use continuous fuel flow metering in accordance with paragraph (a) of this Section 2, with separate fuel metering for the CEMS-monitored fuel gas combustion device.

(1) Each SO<sub>2</sub>-diluent CEMS shall comply with the applicable provisions for SO<sub>2</sub> monitors and diluent monitors in 40 CFR Part 75, and shall use the procedures in section 3 of Appendix F to Part 75 for determining SO<sub>2</sub> emission rate (lb/mmBtu) by substituting the term SO<sub>2</sub> for NO<sub>x</sub> in that section.

(2) All continuous fuel flow meters and fuel gas sampling and analysis for GCV to determine the heat input rate from the fuel gas shall comply with the applicable provisions of Appendix D to 40 CFR Part 75.

(3) The SO<sub>2</sub> mass emissions for all the fuel gas combustion devices monitored by this approach shall be determined by the ratio of the fuel gas heat input to the CEMS-monitored fuel gas combustion device to the total fuel gas heat input to all applicable fuel gas combustion devices using the following equation:

$$Et = (Em)(Ht)/(Hm)$$

where: Et = Total SO<sub>2</sub> emissions in lbs/hr from applicable fuel gas combustion devices.

Em = SO<sub>2</sub> emissions in lb/mmBtu from the CEMS - monitored fuel gas combustion device.

Ht = Fuel gas heat input (mmBtu/hr) from applicable fuel gas combustion devices.

Hm = Fuel gas heat input (mmBtu/hr) from the CEMS - monitored fuel gas combustion device.

##### 3. Certification/Recertification Requirements.

All monitoring systems are subject to initial certification and recertification testing as follows:

(a) The owner or operator shall comply with the initial testing and calibration requirements in Performance Specification 2 in Appendix B of 40 CFR Part 60 and paragraph 2 (a)(2) of this section for each CFGMS.

(b) Each CEMS for SO<sub>2</sub> and flow or each SO<sub>2</sub>-diluent CEMS shall comply with the testing and calibration requirements specified in 40 CFR Part 75, section 75.20 and Appendices A and B, except that each SO<sub>2</sub>-diluent CEMS shall meet the relative accuracy requirements for a NO<sub>x</sub>-diluent CEMS (lb/mmBtu).

(c) A continuous fuel flow meter shall comply with the testing and calibration requirements in 40 CFR Part 75, Appendix D.

##### 4. Quality Assurance/Quality Control Requirements.

(a) A quality assurance/quality control (QA/QC) plan shall be developed and implemented for each CEMS for SO<sub>2</sub> and flow or the SO<sub>2</sub>-diluent CEMS in compliance with Appendix B of 40 CFR Part 75.

(b) A QA/QC plan shall be developed and implemented for each continuous fuel flow meter and fuel sampling and analysis in compliance with Appendix B of 40 CFR Part 75.

(c) A QA/QC plan shall be developed and implemented for each CFGMS in compliance with sections 1 and 1.1 of Appendix B of 40 CFR Part 75, and the following:

(1) Perform a daily calibration error test of each CFGMS at two gas concentrations, one low level and one high level. Calculate the calibration error as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the error is greater than 5.0% of the span value.

(2) In addition to the daily calibration error test, an additional calibration error test shall be performed whenever a daily calibration error test is failed, whenever a monitoring system is returned to service following repairs or corrective actions that may affect the monitor measurements, or after making manual calibration adjustments.

(3) Perform a linearity test once every operating quarter. Calculate the linearity as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the linearity error is greater than 5.0 percent of a reference value, and the absolute value of the difference between average monitor response values and a reference value is greater than 5.0 ppm.

(4) Perform a relative accuracy test audit once every four operating quarters. Calculate the relative accuracy as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the relative accuracy is greater than 20.0% of the mean value of the reference method measurements.

(5) Using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

##### 5. Missing Data Procedures.

(a) For any period in which valid data are not being recorded by an SO<sub>2</sub> CEMS or flow CEMS specified in this section, missing or invalid data shall be replaced with substitute data in accordance with the requirements in Subpart D of 40 CFR Part 75.

(b) For any period in which valid data are not being recorded by an SO<sub>2</sub>-diluent CEMS specified in this section, missing or invalid data shall be replaced with substitute data on a rate basis (lb/mmBtu) in accordance with the requirements for SO<sub>2</sub> monitors in Subpart D of 40 CFR Part 75.

(c) For any period in which valid data are not being recorded by a continuous fuel flow meter or for fuel gas GCV sampling and analysis specified in this section, missing or invalid data shall be replaced with substitute data in accordance with missing data requirements in Appendix D to 40 CFR Part 75.

(d) For any period in which valid data are not being recorded by the CFGMS specified in this section, hourly missing or invalid data shall be replaced with substitute

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data in accordance with the missing data requirements for units performing hourly gaseous fuel sulfur sampling in section 2.4 of Appendix D to 40 CFR Part 75.

6. Monitoring Plan and Reporting Requirements.

In addition to the general monitoring plan and reporting requirements of Section I of this Rule, the owner or operator shall meet the following additional requirements:

(a) The monitoring plan shall identify each group of units that are monitored by a single monitoring system under this Protocol WEB-1, and the plan shall designate an identifier for the group of units for emissions reporting purposes. For purpose of submitting emissions reports, no apportionment of emissions to the individual units within the group is required.

(b) If the provisions of paragraphs 2(b) or (c) are used, provide documentation and an explanation to demonstrate that the SO<sub>2</sub> emission rate from the monitored unit is representative of the rate from non-monitored units.

## Protocol WEB-2: Predictive Flow Monitoring Systems for Kilns with Positive Pressure Fabric Filter

1. Applicability.

The provisions of this protocol are applicable to cement kilns or lime kilns that (1) are controlled by a positive pressure fabric filter, and (2) have operating conditions upstream of the fabric filter that the WEB source documents would reasonably prevent reliable flow monitor measurements.

2. Monitoring Requirements.

(a) A cement or lime kiln with a positive pressure fabric filter shall use a predictive flow monitoring system (PFMS) to determine the hourly kiln exhaust gas flow.

(b) A PFMS is the total equipment necessary for the determination of exhaust gas flow using process or control device operating parameter measurements and a conversion equation, a graph, or computer program to produce results in cubic feet per hour.

(c) The PFMS shall meet the following performance specifications:

(1) The PFMS must allow for the automatic or manual determination of failed monitors. At a minimum a daily determination must be performed.

(2) The PFMS shall have provisions to check the calibration error of each parameter that is individually measured. The owner or operator shall propose appropriate performance specifications in the initial monitoring plan for all parameters used in the PFMS comparable to the degree of accuracy required for other monitoring systems used to comply with this Rule. The parameters shall be tested at two levels, low: 0 to 20% of full scale, and high: 50 to 100% of full scale. The reference value need not be certified.

(3) The relative accuracy of the PFMS must be < 10.0% of the reference method average value, and include a bias test in accordance with paragraph 4(c) of this section.

3. Certification Requirements.

The PFMS is subject to initial certification testing as follows:

(a) Demonstrate the ability of the PFMS to identify automatically or manually a failed monitor.

(b) Provide evidence of calibration testing of all monitoring equipment. Any tests conducted within the previous 12 months of operation that are consistent with the QA/QC plan for the PFMS are acceptable for initial certification purposes.

(c) Perform an initial relative accuracy test over the normal range of operating conditions of the kiln. Using the results of the relative accuracy test audit, conduct a bias test in accordance with Appendix A to 40 CFR Part 75, and calculate and apply a bias adjustment factor if required.

4. Quality Assurance/Quality Control Requirements.

A QA/QC plan shall be developed and implemented for each PFMS in compliance with sections 1 and 1.1 of Appendix B of 40 CFR Part 75, and the following:

(a) Perform a daily monitor failure check.

(b) Perform calibration tests of all monitors for each parameter included in the PFMS. At a minimum, calibrations shall be conducted prior to each relative accuracy test audit.

(c) Perform a relative accuracy test audit and accompanying bias test once every four operating quarters. Calculate the relative accuracy (and bias adjustment factor) as described in Appendix A to 40 CFR Part 75. An out of control period occurs whenever the flow relative accuracy is greater than 10.0% of the mean value of the reference method.

5. Missing Data.

For any period in which valid data are not being recorded by the PFMS specified in this section, hourly missing or invalid data shall be replaced with substitute data in accordance with the flow monitor missing data requirements for non-load based units in Subpart D of 40 CFR Part 75.

6. Monitoring Plan Requirements.

In addition to the general monitoring plan requirements of Section I of this Rule, the owner or operator shall meet the following additional requirements:

(a) The monitoring plan shall document the reasons why stack flow measurements upstream of the fabric filter are unlikely to provide reliable flow measurements over time.

(b) The initial monitoring plan shall explain the relationship of the proposed parameters and stack flow, and discuss other parameters considered and the reasons for not using those parameters in the PFMS. The [state or tribe] may require that the subsequent monitoring plan include additional explanation and documentation for the reasonableness of the proposed PFMS.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.035

Hist.: DEQ 19-2003, f. & cert. ef. 12-12-03

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## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 113-2003(Temp)

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 11-21-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-005-0205

**Subject:** Amend rule to close trawl prawn season through year-end. Closure is consistent with Pacific Fishery Management Council (PFMC) discussion and action at November 2003 Council Meeting.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

### 635-005-0205

#### Closed Season

Effective November 21, 2003, the season for the taking of spot, side-stripe or coonstripe shrimp is closed for commercial purposes by any means other than pots or traps.

Stat. Auth.: ORS 496.116, 496.118, 506.119

Stats. Implemented: ORS 506.119, 506.129

Hist.: FWC 30-1985, f. 6-27-85, ef. 7-1-85; DFW 113-2003(Temp), f. 11-21-03, cert. ef. 11-21-03 thru 12-31-03

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**Adm. Order No.:** DFW 114-2003(Temp)

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 11-21-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-039-0090

**Subject:** Amend rules to close sport harvest of canary rockfish and lingcod, and to require marine sport fisheries to fish shoreward of 27 fathoms beginning November 21, 2003.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

### 635-039-0090

#### Inclusions and Modifications

(1) The **2003 Oregon Sport Fishing Regulations** as posted on [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the **2003 Oregon Sport Fishing Regulations**.

(2) In the waters of the Pacific Ocean, each angler aboard a vessel may continue to use angling gear until the daily limit of fish for all legally licensed and juvenile anglers aboard has been achieved. However no individual angler may exceed any personal daily bag limit.

(3) The following sport fishing regulations are effective beginning on November 21, 2003:

(a) Canary rockfish and lingcod may not be retained.

(b) All marine fish sport fisheries must fish shoreward of the 27 fathom line define by latitude/longitude waypoints in subsection (4) below.

(4) Legal definition of 27 fathom line waypoints:

(a) 46° 16.00" north latitude, 124° 12.39" west longitude.

(b) 46° 14.85" north latitude, 124° 12.39" west longitude.

(c) 46° 03.95" north latitude, 124° 03.64" west longitude.

(d) 45° 43.14" north latitude, 124° 00.17" west longitude.

(e) 45° 23.33" north latitude, 124° 01.99" west longitude.

(f) 45° 09.54" north latitude, 124° 01.65" west longitude.

(g) 44° 39.99" north latitude, 124° 08.67" west longitude.

(h) 44° 20.86" north latitude, 124° 10.31" west longitude.

(i) 43° 37.11" north latitude, 124° 14.91" west longitude.

(j) 43° 27.54" north latitude, 124° 18.98" west longitude.

(k) 43° 20.68" north latitude, 124° 25.53" west longitude.

(l) 43° 15.08" north latitude, 124° 27.17" west longitude.

(m) 43° 06.89" north latitude, 124° 29.65" west longitude.

(n) 43° 01.02" north latitude, 124° 29.70" west longitude.

(o) 42° 52.67" north latitude, 124° 36.10" west longitude.

(p) 42° 45.96" north latitude, 124° 37.95" west longitude.

(q) 42° 45.80" north latitude, 124° 35.41" west longitude.

(r) 42° 38.46" north latitude, 124° 27.49" west longitude.

(s) 42° 35.29" north latitude, 124° 26.85" west longitude.

(t) 42° 31.49" north latitude, 124° 31.40" west longitude.

(u) 42° 29.06" north latitude, 124° 32.24" west longitude.

(v) 42° 14.26" north latitude, 124° 26.27" west longitude.

(w) 42° 04.86" north latitude, 124° 21.94" west longitude.

(x) 42° 00.10" north latitude, 124° 20.99" west longitude.

(y) 42° 00.00" north latitude, 124° 21.03" west longitude.

[Publications are available from the agency.]

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC

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77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03

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**Adm. Order No.:** DFW 115-2003(Temp)

**Filed with Sec. of State:** 11-20-2003

**Certified to be Effective:** 12-1-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-041-0060

**Subject:** Amend rule to allow Treaty Indian sturgeon gillnet commercial fishery in the Bonneville Pool. Revision is consistent with Columbia River Compact action via telephone conference of November 20, 2003.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-041-0060

### Sturgeon Season

(1) Sturgeon may be taken for commercial purposes during commercial salmon, steelhead, sturgeon, or shad fishing seasons with the commercial fishing gear authorized for the taking of salmon, steelhead, sturgeon, or shad.

(2) Sturgeon must be delivered to wholesale fish dealers, canners, or fish buyers undressed (in the round).

(3) It is *unlawful* to:

(a) Take sturgeon from any setline with the intent of depriving the rightful owner of such sturgeon;

(b) Steal or otherwise molest or disturb any lawful fishing gear;

(c) 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;

(d) Remove the head or tail of any sturgeon while in transit;

(e) Remove eggs from the body cavity of sturgeon until the fish is sold;

(f) Purchase from commercial fishermen sturgeon eggs which have been removed from the body cavity prior to sale.

(4) Sturgeon between four and five feet in overall length, walleye, and carp may be taken for commercial purposes beginning 6:00 a.m., Monday, December 1, 2003 to 6:00 p.m., Sunday, December 14, 2003 from the Bonneville Pool.

(a) Gear is restricted to gillnets with 8 1/2 -inch minimum mesh size.

(b) Closed areas are set forth in OAR 635-041-0045.

(c) Salmon and steelhead may not be sold but may be retained for subsistence purposes.

(d) Setline fisheries set forth in OAR 635-041-0063 remain unchanged.

Stat. Auth.: ORS 496.118 & 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, Renumbered from 635-035-0060; 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 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 48-1988, f. & cert. ef. 6-21-88; FWC 95-1988(Temp), f. 9-27-88, cert. ef. 9-28-88; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; DFW 108-2001(Temp) f. & cert. ef. 11-14-01 thru 11-20-01; DFW 109-2001(Temp), f. 11-21-01, cert. ef. 11-23-01 thru 12-31-01; DFW 115-2003(Temp), f. 11-20-03, cert. ef. 12-1-03 thru 12-31-03

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**Adm. Order No.:** DFW 116-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 11-25-03 thru 3-31-04

**Notice Publication Date:**

**Rules Amended:** 635-065-0760

**Subject:** Amend rules to reflect correct road closure dates for two travel management areas.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-065-0760

### Other Restrictions

It is unlawful:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.

(6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2. round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: August 27 through December 1, 2003 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose and Wilson wildlife management units.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer season through the close of the last elk rifle season — That part of the Trask Unit as follows: 60 square miles in Townships 1 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Individual gated and posted roads on Alsea, Mapleton, and Waldport Ranger Districts, Siuslaw National Forest;

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: October 15 through October 24, 2003 — That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Hadsall: Permanent Closure — That part of the Siuslaw Unit as follows: 6 square miles in Township 18 South, Ranges 9 and 10 West;

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: Butte Falls and Prospect Ranger Districts, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through end of the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 67 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20, 2003 through March 31, 2004 — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1, 2003 through March 31, 2004 — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

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(r) Sun Creek: November 1, 2003 through June 30, 2004- That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: October 1 through November 30, 2003 — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1, 2003 through March 31, 2004 — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloan;

(x) Murderers Creek-Flagtail: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 84 square miles in Townships 2, 3, 4, 5, and 7 South, Ranges 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1, 2003 through April 30, 2004 — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: October 26 through November 16, 2003 — That part of the Starkey Unit as follows: 10 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: October 26 through November 16, 2003 — That part of the Starkey Unit as follows: 22 square miles in Townships 7 and 8 South, Ranges 35 and 36 East;

(gg) Indian Creek-Gorham Butte: October 26 through November 16, 2003 — That part of the Starkey Unit as follows: 20 square miles in Townships 6, 7 and 8 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: October 26, 2003 through April 30, 2004 - that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: August 27, 2003 through June 15, 2004 - That part of the Catherine Creek Unit as follows: 14 square miles in Townships 4 and 5 South, Range 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(nn) Noregaard: Three days prior to the opening of general statewide early archery season through the end of antlerless elk season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: August 1 through December 9, 2003 — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: November 5 through 16, 2003 — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallawa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 4 North, Range 48 East.

(rr) Lord Flat: Permanent Closure - That part of the Snake River Unit as follows: 120 square miles in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: October 26 through November 16, 2003 — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to the opening of general statewide early archery season through December 1 annually - That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Melhorn Reservoir: Permanent Closure: That part of the Pine Creek Unit as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork: Three days prior to the opening of archery season to the end of all elk rifle seasons- That part of the Pine Creek Unit as follows: 32 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Dutchman: Three days prior to the opening of buck deer rifle season to the end of all elk rifle seasons — That part of the Pine Creek Unit as follows: 5 square miles in Township 6 South, Range 47 East;

(xx) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons — That part of the Pine Creek Unit as follows: 22 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(yy) Little Eagle Meadows: Permanent Closure: That part of the Keating Unit as follows: 8 square miles in Townships 6 and 7 South, Ranges 44 and 45 East;

(zz) Boulder Creek: Three days prior to the opening of buck deer rifle season to the end of all elk rifle seasons — That part of the Keating Unit as follows: 6 square miles in Townships 6 and 7 South, Range 45 East;

(aaa) Holcomb Creek: Three days prior to the opening of buck deer rifle season to March 31 annually — That part of the Keating Unit as follows: 7 square miles in Townships 7 and 8 South, Ranges 44 and 45 East;

(bbb) Eagle Creek: December 1, 2003 through March 31, 2004- That part of the Keating Unit as follows: 10 square miles in Townships 7 and 8 South, Range 45 East;

(ccc) Conroy Cliff: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(ddd) Devine Ridge-Rattlesnake: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(eee) Dairy Creek: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(fff) Burnt Cabin: October 1 through October 15, 2003 and October 26 through November 16, 2003 — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ggg) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(hhh) North Paulina: Permanent Closure - That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South; Range 8 East;

(iii) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East.

(jjj) Stott Mt.-Alesa: August 29 — November 21, 2003 — All gated and/or barrier closed roads within the Alesa Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, 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.

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& ef. 8-7-86; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04

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**Adm. Order No.:** DFW 117-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 12-1-03 thru 2-29-04

**Notice Publication Date:**

**Rules Adopted:** 635-005-0048

**Rules Amended:** 635-005-0045, 635-006-0210

**Subject:** Adopt regulation that requires all commercial fishermen to report primary catch areas of Dungeness crab and amend reporting rules to include Dungeness crab catch details, as required on the Fish Receiving Ticket, at time of landing. Adopt a regulation that prohibits commercial Dungeness crab permit holders from fishing north of Grays Harbor, Washington, from December 1, 2003 through January 31, 2004. Housekeeping and technical corrections to the regulations may occur to ensure rule accuracy.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-005-0045

### Closed Season in Pacific Ocean and Columbia River

(1) In addition to any closures described in Section 3, it is unlawful to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15 through November 30. It is unlawful for any vessel operating under the authority of an Oregon permit to take, land or possess crab taken from north of Point Chehalis (46°53.00'N.lat.) before February 1, 2004.

(2) It is *unlawful* prior to January 1 to land or to receive, or to buy, Dungeness crab from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab on November 30, except as provided in section (3)(b) of this rule.

(3) Delay of Season Openings:

(a) The Northern Zone is bounded on the north by Gray's Harbor (at Oyehut) and on the south by Cascade Head, Oregon: Upon a determination by the Department that pre-season sampling indicates the consistent presence of more than 50 percent Grade II and III (softshell) crab in the samples, the Fish and Wildlife Director, in consultation with the Washington Department of Fish and Wildlife, may adopt a temporary rule delaying the opening date of the commercial crab season in all or part of the Northern Zone area until additional sampling indicates meat recovery is 23 percent or is projected to be 23 percent by the opening date.

(b) The Southern Zone is bounded on the north by Cascade Head and on the south by Point Arena: Upon a determination by the Department that pre-season sampling indicates meat recovery is projected to be less than 25 percent by December 1 in the Oregon portion of the Southern Zone, the Fish and Wildlife Director shall delay the opening date of the commercial crab fishery in all or part of the Oregon portion of the zone for 15 days and re-open December 16.

(4) In the event the season in the Northern Zone or Southern Zone is delayed, the following applies:

(a) The Director shall adopt rules identifying the boundary between, or within, the Northern and Southern zones. The boundary between or within the zones shall take into account the existence of traditional fishing patterns;

(b) If the opening date for a season is delayed for either zone, or part of a zone, fishermen electing to fish in a zone or part of a zone with a December 1 opening date may not fish in an area with the delayed opening date within the first 30 days of the delayed opening date;

(c) For the first 30 days of a fishing zone season, vessels electing to fish a zone shall be certified by officials of the State of Oregon, Washington or California to have been free of Dungeness crab on the day immediately prior to the opening day of the selected fishing zone. At the time of vessel inspection, the vessel operator shall certify the vessel has not been used to take crab in the selected fishing zone.

(4) Upon a determination by the Department that catch in Oregon's Pacific Ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Fish and Wildlife Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 135-2002(Temp)); DFW 135-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04

## 635-005-0048

### Reporting Requirements

All commercial fisherman landing Dungeness crab must report the area of primary catch to the dealer at the time of landing.

Stat. Auth.: ORS 506.119 and 506.129

Stats. Implemented: ORS 506.129

Hist.: DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04

## 635-006-0210

### Fish Receiving Ticket — All Fish

(1) Except as provided in OAR 635-006-0211, for each purchase of food fish or shellfish by a licensed wholesale fish dealer, wholesale fish bait dealer, food fish canner, or shellfish canner from a commercial fisherman or commercial bait fisherman, the dealer or canner shall prepare a Fish Receiving Ticket at time of landing. Fish receiving tickets are prenumbered in books of 50 tickets. Fish dealers shall be required to account for all fish receiving tickets received from the Department. Fish receiving tickets shall be issued in numerical sequence. The fish receiving ticket shall include the following:

(a) Fish dealer's name and license number, including the buying station and location if the food fish or shellfish were received at any location other than the licensed premises of the fish dealer;

(b) Date of landing;

(c) Fisherman's name from whom purchase is made. If not landed from a vessel, then fisherman's commercial license number shall be added. If received from a Columbia River treaty Indian, his/her tribal affiliation and enrollment number as shown on the official identification card issued by the U.S. Department of Interior, Bureau of Indian Affairs, or tribal government, shall be used in lieu of an address or commercial fishing license;

(d) Boat name, boat license number, and federal document or State Marine Board number from which catch made;

(e) Fishing gear used by the fisherman;

(f) For salmon and Dungeness crab, zone or area of primary catch;

(g) Species of food fish or shellfish received;

(h) Pounds of each species received;

(A) Pounds may be determined using any one of the following methods:

(i) Actual round weights based on certified scale measurements;

(ii) Actual round weights measured using a hopper scale;

(iii) Weights converted to round weight by multiplying the appropriate conversion weight listed in OAR 635-006-0215.

(B) Pounds shall include "weighbacks" by species. "Weighbacks" are those fish or shellfish with no commercial value.

(i) For Columbia River sturgeon the exact number of fish received and the actual round weight of that number of fish;

(j) Price paid per pound for each species received;

(k) Signature of the individual preparing the fish receiving ticket;

(l) Signature of the fisherman making the landing;

(m) Species name, pounds and value of fish retained by fisherman for personal use.

(2) Except as provided in OAR 635-006-0212 and 0213, the original of each fish receiving ticket covering food fish and shellfish received shall be forwarded within five working days of the date of landing to the Oregon Department of Fish and Wildlife, 3406 Cherry Avenue, NE, Salem, OR 97303.

(3) Wholesale fish bait dealers landing small quantities of food fish or shellfish may request authorization to combine multiple landings on one fish ticket and to deviate from the time in which tickets are due to the Department. Such request shall be in writing, and written authorization

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from the Department shall be received by the wholesale fish bait dealer before any such deviations may occur.

Stat. Auth.: ORS 496.138, 496.146, 496.162, 506.119, 506.129, 508.530 & 508.535  
Stats. Implemented: ORS 506.129, 508.025, 508.040 & 508.550  
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 274(74-6), f. 3-20-74, ef. 4-11-74; FWC 28, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0135, Renumbered from 635-036-0580; FWC 1-1986, f. & ef. 1-10-86; FWC 99-1987, f. & ef. 11-17-87; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 22-1992(Temp), f. 4-10-92, cert. ef. 4-13-91; FWC 53-1992, f. 7-17-92, cert. ef. 7-20-92; FWC 16-1995(Temp), f. & cert. ef. 2-16-95; FWC 23-1995, f. 3-29-95, cert. ef. 4-1-95; DFW 63-2003, f. & cert. ef. 7-17-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04

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**Adm. Order No.:** DFW 118-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 9-1-03

**Rules Adopted:** 635-067-0028, 635-067-0029, 635-067-0041

**Rules Amended:** 635-045-0000, 635-045-0002, 635-060-0000, 635-060-0005, 635-060-0008, 635-060-0030, 635-060-0046, 635-065-0001, 635-065-0015, 635-065-0401, 635-065-0501, 635-065-0625, 635-065-0705, 635-065-0720, 635-065-0740, 635-065-0765, 635-066-0000, 635-066-0010, 635-067-0000, 635-067-0015, 635-067-0024, 635-067-0032, 635-067-0034, 635-071-0000, 635-072-0000, 635-073-0070, 635-073-0090, 635-075-0005, 635-075-0015, 635-075-0020, 635-075-0029, 635-078-0001, 635-078-0005, 635-078-0008, 635-080-0030, 635-080-0031

**Subject:** Rules were amended to establish 2004 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations. Specific rule changes include; changes to cougar quotas; set 2004 spring bear controlled tag numbers. Rules were amended governing the Bighorn Sheep Auction Tag and Bighorn Sheep Raffle Tags. New rules were established for auction and raffle tags for pronghorn antelope, and auction and raffle tags for Rocky Mountain goats.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-045-0000

### Purpose

(1) The purpose of these rules is to list definitions pursuant to hunting seasons for big game and game birds.

(2) The documents entitled "2003-2004 Oregon Game Bird Regulations", and "2004 Oregon Big Game Regulations", are incorporated by reference into these rules. These documents are available at hunting license vendors and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 36-1988, f. & cert. ef. 6-13-88; FWC 47-1989, f. & cert. ef. 7-25-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 91-1990, f. & cert. ef. 9-4-90; FWC 42-1996, f. & cert. ef. 8-12-96; FWC 53-1997, f. & cert. ef. 9-3-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 75-1998, f. & cert. ef. 9-4-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-045-0002

### Definitions

(1) "Adult hunting license" is a resident or nonresident hunter's license, resident combination angler's and hunter's license, disabled war veteran's license, pioneer's hunting license or senior citizen's hunting and fishing license.

(2) "Agricultural lands" are lands that are not less than ten acres in extent that have been cultivated and planted or irrigated to domestic crops that are currently in use. Isolated home gardens, abandoned farmsteads, logged lands, rangelands, and tree farms, are not included in this definition.

(3) "Antler Point" is a point at least one inch in length measured from tip of point to nearest edge of beam. This definition applies only to the three-point elk and spike only elk bag limits.

(4) "Antlerless deer" means doe or fawn deer.

(5) "Antlerless elk" means cow or calf elk.

(6) "Application" means the electronic form completed and purchased to apply for a hunt where the number or distribution of hunters is limited through a public drawing or other means. Mail order applications sent to the Department along with the proper remittance are used to generate the electronic form.

(7) "Baited Area" means an area where baiting has taken place.

(8) "Baiting" means the placing, exposing, depositing, distributing, or scattering of corn, wheat, salt or other feed to constitute a lure or enticement to, on, or over an area where hunters are attempting to take game birds.

(9) "Brace Height" is the distance from the back of the bow's riser at the handgrip to the string when the bow is at rest.

(10) "Buck Deer" means a male deer with at least one visible antler.

(11) "Buck Pronghorn" means a male pronghorn antelope with visible horns and a dark cheek patch below the ear.

(12) "Bull elk" for the purposes of a bag limit definition, means a male elk with at least one visible antler.

(13) "Calendar year" means from January 1 through December 31.

(14) "Carcass" is the skinned or unskinned body, with or without entrails, of a gamebird or game mammal.

(15) "Cascade elk" means any live elk occurring in the Dixon, Evans Creek, Indigo, Keno, McKenzie, Metolius, Rogue, Santiam and Upper Deschutes units and those parts of Fort Rock and Sprague units west of Highway 97, and that part of Grizzly Unit west of Hwy 97 and south of Hwy 26.

(16) "Cervid" means any member of the family cervidae (deer), including gametes or hybrids. Species included within the family, taxonomic nomenclature, and other matters pertaining to the identification of animals within the family shall be that of Walker's Mammals of the World, Sixth Edition, Johns Hopkins University Press, Baltimore, Maryland, 1999, by Ronald M. Nowak.

(17) "Cervid Propagation License — Type 1" means a license required to hold any live cervid species other than fallow deer and reindeer except as provided in OAR 635-049-0010(1)—(3).

(18) "Cervid Propagation License — Type 2" means a license required to hold live fallow deer and reindeer except as provided in OAR 635-049-0010(1)—(3).

(19) "Closed season" is any time and place when it is not authorized to take a specific species, sex or size of wildlife.

(20) "Coast elk" means any live elk occurring in the Alsea, Applegate, Chetco, Melrose, Powers, Saddle Mountain, Scappoose, Siuslaw, Sixes, Stott Mountain, Tioga, Trask, Willamette, and Wilson units.

(21) "Commission" means the Oregon Fish and Wildlife Commission.

(22) "Controlled hunt" is a season where the number or distribution of hunters is limited through a public drawing or other means.

(23) "Department" means the Oregon Department of Fish and Wildlife.

(24) "Director" means the Oregon Fish and Wildlife Director.

(25) "Doe or fawn pronghorn" means a female pronghorn antelope without a dark cheek patch below the ear or a pronghorn fawns (young of the year) of either sex.

(26) "Eastern Oregon" means all counties east of the summit of the Cascade Range including all of Klamath and Hood River counties.

(27) "Eastern Oregon deer" means any live deer occurring east of the east boundaries of the Santiam, McKenzie, Dixon, Indigo and Rogue units.

(28) "Eligible Hunter" means someone who will be 12 years of age by the time they hunt.

(29) "Entry permit" means a permit issued by the Department to be in an area where entry is restricted by regulation.

(30) "Established airport" is one that the Aeronautics Division has licensed as a public-use airport, registered as a personal-use airport, or specifically exempted from either licensing or registration.

(31) "Evidence of lawful possession" means any license or permit allowing possession of the specified live cervid; or other documentation establishing lawful possession, including but not limited to a statement of nonrequirement for a license or permit for the specified live cervid granted by the country or state of origin.

(32) "Facility" means the location where animals are held, including the exterior perimeter fence and all pastures, paddocks, runways, buildings, and pens therein.

(33) "Feral Swine" means animals of the genus *Sus* as defined by the Oregon Department of Agriculture in OAR 603-010-0055.

(34) "Fiscal year" means from July 1 through June 30.

(35) "Furbearers" are beaver, bobcat, fisher, marten, mink, muskrat, otter, raccoon, red fox, and gray fox.

(36) "Game Birds" are any waterfowl, snipe, band-tailed pigeon, dove, pheasant, quail, partridge, grouse, or wild turkey.

(37) "Game mammals" are pronghorn antelope, black bear, cougar, deer, elk, moose, Rocky Mountain goat, bighorn sheep, and western gray squirrel.

(38) "General season" is any season open to the holder of a valid hunting license and appropriate game mammal tag without restriction as to the number of participants.

## ADMINISTRATIVE RULES

(39) "Hold" means any form of possession or control of an animal, gamete, hybrid, or part thereof.

(40) "Hunter certification" means to have met educational, safety or other requirements designated by administrative rule for participation in a hunt.

(41) "Hunt" means to take or attempt to take any wildlife by means involving the use of a weapon or with the assistance of any mammal or bird.

(42) "Husbandry" means the care given animals directly by their owners and managers, including but not limited to:

- (a) Nutrition;
- (b) Breeding program;
- (c) Veterinary medical care;
- (d) Environmental cleanliness; and
- (e) Humane handling.

(43) "Immediate family" means a landowner's spouse, children, father, mother, brother, sister, stepchildren, and grandchildren.

(44) "Inedible" means unfit for human consumption.

(45) "Landowner", as used in OAR chapter 635, division 075, means:

(a) A person who holds title in trust or in fee simple to 40 or more contiguous acres of land; provided however that a recorded deed or contract of ownership shall be on file in the county in which the land is located; and/or

(b) A corporation holding title in fee simple to 40 or more contiguous acres of land; provided however that the corporation shall be registered with the State of Oregon; and/or

(c) A partnership holding title in fee simple to 40 or more contiguous acres of land; and/or

(d) Persons who hold title as part of a time share are not eligible for landowner preference.

(46) "Low Income" means a person who is "economically disadvantaged" as defined in Section 4(8) of the Federal Job Training Partnership Act of 1982.

(47) "Mounted Wildlife" means any hide, head or whole body of wildlife prepared by a licensed taxidermist for display.

(48) "Muzzleloader" is any single-barreled (shotguns may be double barreled) long gun meant to be fired from the shoulder and loaded from the muzzle with an open ignition system and open or peep sights.

(49) "Native cervid" means mule deer, black-tailed deer, white-tailed deer, Roosevelt elk, Rocky Mountain elk and moose, including gamete or hybrid.

(50) "Nonindigenous cervid" means any member of a cervid species, including gamete or hybrid, not classified as a native cervid species.

(51) "On or within" means a straight line distance measured on a map.

(52) "One deer" means a buck, doe, or fawn deer.

(53) "One elk" means a bull, cow, or calf elk.

(54) "Open Ignition" is an ignition system where the percussion cap, or frizzen, or flint is visible and exposed to the weather at all times and is not capable of being closed or covered by any permanent piece of the weapon.

(55) "Partner" means a person in an association of two or more persons formed to carry on as co-owners for profit.

(56) "Point-of-Sale" (POS) is a computerized licensing system available at locations that sell Oregon's hunting and angling licenses. Licenses and tags are generated and issued directly to customers from a POS machine at the time of sale.

(57) "Possession" means to have physical possession or to otherwise exercise dominion or control over any wildlife or parts thereof, and any person who counsels, aids or assists another person holding such wildlife is deemed equally in possession.

(58) "Postmark" means the date of mailing as stated in a mark applied by the U.S. Postal Service to a piece of mail. Office postal machine meter marks are not valid application deadline postmarks.

(59) "Predatory animals" means coyotes, rabbits, rodents, and feral swine which are or may be destructive to agricultural crops, products and activities.

(60) "Protected wildlife" means "game mammals" as defined in OAR 635-045-0002(33), "game birds" as defined in OAR 635-045-0002(32), "furbearers" as defined in OAR 635-045-0002(31), "threatened and endangered species" as defined in OAR 635-100-0125, and "nongame wildlife protected" as defined in OAR 635-044-0130.

(61) "Pursue" means the act of trailing, tracking, or chasing wildlife in an attempt to locate, capture, catch, tree, or kill any game mammal or furbearer.

(62) "Raw pelt" means any pelt that has not been processed or converted to any usable form beyond initial cleaning, stretching, and drying.

(63) "Red deer" means any species, subspecies, or race of the elk-red deer-wapiti complex *Cervus elaphus* not indigenous to the state of Oregon.

(64) "Release" is permitting any domestically-raised or imported wildlife currently or previously in possession to exist alive outside an approved holding or propagation facility. For the purposes of OAR chapter 635, division 049, release means permitting a cervid currently or previously in possession to exist alive outside an approved holding or propagating facility, except animals that are in transit pursuant to OAR 635-049-0075

(65) "Resident" is any person who has resided in Oregon for a period of at least six months immediately prior to the date of making application for a license or tag. Members of the armed forces assigned to permanent duty status in Oregon including spouses and dependent children, and foreign exchange students attending school in Oregon under a foreign student exchange program may purchase a resident license and tags. All other persons are nonresidents.

(66) "Resident juvenile" is any "Resident" of Oregon 14 through 17 years of age.

(67) "River" is that portion of a natural water body lying below the level of bankfull stage. Bankfull stage is the stage or elevation at which overflow of the natural banks of a stream or body of water begins to inundate the upland.

(68) "Rocky Mountain elk" is any live elk occurring east of the following described line: Beginning at the California line on Highway 97; north on Highway 97 to State Highway 26 at Madras; northwest on Highway 26 to east boundary of Santiam Unit; north along east boundary of Santiam Unit to the Columbia River.

(69) "Shotgun" is a smoothbore firearm, designed for firing birdshot, and intended to be fired from the shoulder, with a barrel length of 18 inches or more, and with an overall length of 26 inches or more. Exception: Shotguns equipped with rifled slug barrels are considered shotguns when used for hunting pronghorn antelope, black bear, cougar, deer, or elk when centerfire rifles or shotguns are legal weapons.

(70) "Sight bait" is exposed flesh bait within 15 feet of any leghold trap set for carnivores.

(71) "Spike deer" is a deer with spike (unbranched) antlers.

(72) "Spike-only bull elk" means a bull elk with at least one visible unbranched antler (brow tines are not considered an antler branch under spike-only regulations).

(73) "Stockholder" is a person who owns stock within a corporation as defined in OAR 635-045-0002(41)(b).

(74) "Tag" is a document authorizing the taking of a designated kind of mammal at a specified time and place.

(75) "Take" means to kill or obtain possession or control of any wildlife.

(76) "Three point plus elk" for the purposes of a bag limit definition, means a bull elk having 3 points or more on one antler including the brow tine.

(77) "Unbarbed broadhead" is a fixed position arrowhead where the rear edge of the blade(s) forms an angle with the arrow shaft to which it is attached of 90° or greater.

(78) "Unprotected Mammals and Birds" are European starling, house sparrow, rock dove and any mammal species for which there are no closed seasons or bag limits.

(79) "Valid certification permit" is a permit for the current season that has not become invalid after taking a season limit or illegal game bird.

(80) "Visible Antler" means a velvet or hardened antler that is visible above the hairline on the skullcap and is capable of being shed.

(81) "Wait period" means the length of time a successful controlled hunt applicant must wait before reapplying for the species for which he was successful in drawing.

(82) "Waste" means to allow any edible portion of any game mammal (except cougar) or game bird to be rendered unfit for human consumption, or, to fail to retrieve edible portions, except internal organs, of such game mammals or game birds from the field. Entrails, including the heart and liver, are not considered edible.

(83) "Waterfowl" means ducks, geese, mergansers and coots.

(84) "Weapon" is any device used to take or attempt to take wildlife.

(85) "Western Oregon" means all counties west of the summit of the Cascade Range except Klamath and Hood River counties.

(86) "Western Oregon deer" is any live deer except the Columbian white-tailed deer occurring west of the east boundaries of the Santiam, McKenzie, Dixon, Indigo, and Rogue units.

(87) "Wildlife" means fish, wild birds, amphibians, reptiles, wild mammals, and feral swine.

(88) "Wildlife" means for the purposes of harassment to relieve damage described in OAR 635-043-0096 through 635-043-0115, game mammals, game birds except migratory birds protected by Federal law, furbearing mammals and wildlife declared protected by the commission.



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(89) "Wildlife" means for the purposes of scientific taking described in OAR 635-043-0023 through 635-043-0045, wild birds, wild mammals, amphibians and reptiles, including nests, eggs, or young of same.

(90) "Wildlife unit" is a geographic area described in OAR 635-080-0000 through 635-080-0077.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 47-1989, f. & cert. ef. 7-25-89; FWC 104-1989, f. & cert. ef. 9-29-89; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 22-1990, f. & cert. ef. 3-21-90; FWC 17-1991, f. & cert. ef. 3-12-91; FWC 33-1991, f. & cert. ef. 3-25-91; FWC 50-1991, f. & cert. ef. 5-13-91; FWC 57-1991, f. & cert. ef. 6-24-91; FWC 9-1993, f. & cert. ef. 2-8-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 20-1995, f. & cert. ef. 3-6-95; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 50-1996, f. & cert. ef. 8-30-96; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 53-1997, f. & cert. ef. 9-3-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-060-0000

### Purpose and General Information

(1) The purpose of these rules is to describe the requirements and procedures for controlled hunts pursuant to ORS 496.162.

(2) The documents entitled "2003-2004 Oregon Game Bird Regulations," and "2004 Oregon Big Game Regulations," are incorporated by reference into these rules. These documents are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

[Publications: Publications referenced are available from the agency.]  
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, ORS 496.146 & 496.162  
Hist.: FWC 118, f. & ef. 6-3-77; FWC 25-1978, f. & ef. 5-26-78; FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 16-1985, f. & ef. 4-11-85; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 61-1998, f. & cert. ef. 8-10-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 56-1999, f. & cert. ef. 8-13-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 51-2000, f. & cert. ef. 8-22-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 73-2001, f. & cert. ef. 8-15-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 28-2002(Temp), f. 4-1-02, cert. ef. 4-2-02 thru 9-28-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 88-2002, f. & cert. ef. 8-14-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 76-2003, f. & cert. ef. 8-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-060-0005

### Application Eligibility and Procedures

(1)(a) An applicant for game mammal controlled hunts shall have a current adult hunting license. A current and complete hunting license number shall be entered on the application for the controlled hunt.

(b) Licenses are nonrefundable, whether or not an applicant is successful in the drawing.

(2)(a) A valid controlled hunt application shall be purchased from a license agent authorized to sell controlled hunt applications. The purchase price of the application shall be a nonrefundable fee of \$3.00 per game mammal application, and a nonrefundable \$1.50 license agent processing fee.

(b) Department license agents authorized to sell applications for controlled hunts shall be connected to the department's computerized licensing system.

(3) Each controlled hunt is assigned a hunt number. The hunt number shall be entered on the application indicating area of choice and shall match the type of application purchased. All hunt numbers listed on an application shall have the same first digit, which indicates a species or group of hunts as listed below:

- (a) 100 series for controlled buck deer.
- (b) 200 series for controlled elk.
- (c) 400 series for pronghorn antelope.
- (d) 500 series for bighorn sheep.
- (e) 600 series for controlled antlerless deer.
- (f) 700 series for controlled black bear.
- (g) 800 series for controlled additional deer.
- (h) 900 series for controlled Rocky Mountain goat.

(4) If successful in the drawing, party members shall receive the same hunt choice as the party leader. If a party application exceeds the allowed party size, all applicants in the party shall be considered as individual applicants in the drawing. Party size limits are as follows:

- (a) 100 series hunts up to 18 persons.
- (b) 200 series hunts up to 18 persons
- (c) 400 series hunts up to two persons.
- (d) 500 series hunts, no parties allowed.
- (e) 600 series hunts up to 18 persons.

(f) 700 series hunts up to six persons.

(g) 800 series hunts up to 18 persons.

(h) 900 series hunts no parties allowed.

(5) Controlled Hunt applications may be submitted to the department headquarters office via telephone fax machine, US Postal Service, or hand-delivery (3406 Cherry Ave, NE, Salem, OR, 97303). Applications along with the proper fees must be submitted by telephone, fax machine, or hand-delivered received at the department headquarters office (3406 Cherry Ave, NE, Salem, OR, 97303; Fax: (503) 947-6117 no later than midnight of the deadline date described in OAR 635-060-0008(1)–(5). Applications along with proper fees submitted by U.S. Postal Service must be postmarked by the application deadline. Applications received after the specified deadline dates may be considered disqualified as described in OAR 635-060-0018(4).

(6) To apply for a controlled youth hunt for spring bear, pronghorn, deer or elk a youth must be 12-17 years old at the time they hunt.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. 2-18-81, ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82; FWC 38-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 40-1987, f. & ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; Renumbered from 635-60-017; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 54-1990, f. & cert. ef. 6-21-90; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 32-2002(Temp), f. & cert. ef. 4-17-02 thru 10-13-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-060-0008

### Application Deadline Dates

(1) The application deadline for spring black bear controlled hunts is February 10, each year.

(2) The application deadline for pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer and elk controlled hunts is May 15, each year.

(3) Applications for the controlled hunts listed in OAR 635-060-0005(1)–(5) above that are hand-delivered by the specified deadline dates or mailed through the U.S. Postal Service and postmarked by the specified deadline dates above will be considered on time (see OAR 635-060-0005(5)).

(4) In the event that tags remain from undersubscribed controlled hunts after the game mammal controlled hunt drawing, the department will issue remaining tags on a first-come, first-serve basis at authorized license agents. Tags issued in this manner are additional tags and may be exchanged for a general season tag only as authorized by OAR 635-060-0046(6) and 635-065-0501(4) and (5). A person may only purchase one first-come, first-serve tag per hunt series. Such tag may be for the person or for someone other than the person.

(5) A hunter who received a tag of his/her choice through the original game mammal controlled hunt drawing process may exchange that tag for a remaining tag in the first-come, first-serve process while tags remain available. Exchanges may be obtained only through the department's regional offices, designated district offices, or the Salem headquarters office of the department and must be made before the start of the seasons for which the tags are issued. The tag being exchanged shall not be reissued.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 54-1990, f. & cert. ef. 6-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 19-1991(Temp), f. & cert. ef. 3-12-91; FWC 14-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 6-1999(Temp), f. & cert. ef. 2-9-99 through 2-19-99; DFW 12-1999(Temp), f. & cert. ef. 2-25-99 thru 6-30-99; Administrative correction 11-17-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 32-2002(Temp), f. & cert. ef. 4-17-02 thru 10-13-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 67-2002(Temp), f. & cert. ef. 6-28-02 thru 12-20-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-060-0030

### Issuing Tags

(1) The department may, except for bighorn sheep and Rocky Mountain goat, issue tags or permits in excess of the quantity authorized by the commission to resolve documented errors made by the department. The

# ADMINISTRATIVE RULES

quantity shall not exceed an amount consistent with the management goals of the hunt.

(2) The number of controlled deer and controlled elk tags issued to nonresident applicants shall not exceed five percent of the tags authorized for each hunt. Exception: one nonresident tag may be issued for each hunt when the number of authorized tags is fewer than 35. This number does not affect the tags issued under the Landowner Preference Program (OAR chapter 635, division 075).

(3) Tags will not be issued to a party (residents or nonresidents) when, during the drawing process, the party size exceeds the number of remaining tags.

(4) Youths age 12-17 who are unsuccessful in the first controlled hunt drawing for 100, 200, or 600 series hunts may apply for one guaranteed "first time" tag per series, provided that:

(a) Youths are limited to only one "first time" tag per series in a lifetime.

(b) Within the 200 series, only hunts with antlerless only bag limits are available as "first time" tags.

(c) Hunts are only available as "first time" opportunities as follows: 100 series hunts must have had more than 200 tags available in the first drawing; 200 and 600 series hunts must have had more than 50 tags available in the first drawing.

(d) Applicants shall use forms available in the Oregon Big Game Regulations and applications must be received at the department's Salem headquarters by September 1, each year.

(e) Persons who were successful in any controlled hunt drawing for 100, 200, or 600 series hunts are never again eligible for "first time" tags in the respective hunt series.

(f) Successful "first time" applicants shall purchase tags at POS vendors by the day before the assigned season begins.

(g) Youths may not receive a "First Time" youth hunt tag in a hunt series if they applied for a point saver option in the primary big game drawing.

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

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

Hist.: FWC 18-1991, f. & cert. ef. 3-12-91; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 86-2003(Temp), f. & cert. ef. 8-29-03 thru 9-4-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-060-0046

### Lost Tags and Tag Exchanges

(1) A fee of \$5.00 and a \$1.50 license agent fee is charged to replace or exchange a tag or permit. Duplicates and exchanges may be obtained only through the Salem headquarters, regional offices of the department, and designated district offices. Exception: Replacement controlled hunt tags or permits will be issued at no charge only through the Salem headquarters or regional office of the department if the department determines that the person never received the original controlled tag or permit mailed from the Salem headquarters office.

(2) A Controlled Buck Deer Tag or Controlled Elk Tag may be exchanged for a general season tag before the opening date of the season for which either tag is valid.

(3) No controlled hunt tag shall be exchanged for another controlled hunt tag, except as described in 635-060-0008(5) and 635-075-0015(3).

(4) A Controlled Antlerless Deer Tag shall not be exchanged.

(5) In the event of the death of a successful controlled hunt applicant before the start of the season for which the tag or permit was issued, the tags of the deceased may be issued to a family member as defined by OAR 635-075-0001. Tag or permit transfer shall require a copy of the death certificate and the original controlled hunt tag or permit, and must be requested by the legal heir to the deceased which shall be presumed by possession of the tag or permit and death certificate.

(6) A "leftover" controlled hunt tag may only be exchanged for a general season tag, but only if the person does not already possess a tag authorized by OAR 635-065-0015(4)(a), (b) or (c) or OAR 635-0065-0015(5) (a), (b), (c), (d), (e), (f), (g), or (h).

(7) In situations involving national security emergency, the Commission shall accommodate individuals who lose hunting opportunities because of being called to service in the national interest:

(a) The Commission shall (as specified in paragraph (b)) accommodate the following individuals called to service because of national emergency: regular members of the United States Armed Forces (Army, Navy, Air Force, Marines, Coast Guard), members of the United States military reserves, and members of the National Guard.

(b) The Commission authorizes the Director to make such accommodation by:

(A) Allowing an individual to hunt during the same hunt period for the same species in a later year for bighorn sheep, Rocky Mountain goat, and pronghorn antelope; or

(B) Refunding general or controlled season tag fees and reinstating preference points existing for a series, plus an additional point for participating in the drawing. (Original tag must be returned to ODFW and no refund is available for the hunting license).

(c) Individuals seeking accommodation pursuant to this rule (or immediate family members acting on their behalf) must make a request in writing or in person to the Wildlife Division headquarters office within one year of loss of hunting opportunity. Each request must include a copy of military orders documenting service dates or date of service status change. Each request must include proof of tag draw success and tag purchase.

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

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

Hist.: FWC 118, f. & cert. ef. 6-3-77; FWC 32-1978, f. & cert. ef. 6-30-78; FWC 29-1979, f. & cert. ef. 6-1-81; FWC 10-1981, f. & cert. ef. 3-31-81; FWC 22-1981, f. & cert. ef. 6-29-81; FWC 21-1982, f. & cert. ef. 3-31-82; FWC 38-1982, f. & cert. ef. 6-25-82; FWC 43-1985, f. & cert. ef. 8-22-85; FWC 35-1986, f. & cert. ef. 8-7-86; FWC 11-1987, f. & cert. ef. 3-6-87; FWC 40-1987, f. & cert. ef. 7-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0001

### Purpose and General Information

(1) The purpose of these rules is to establish license and tag requirements, limits, areas, methods and other restrictions for hunting game mammals pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 065 incorporates, by reference, the requirements for hunting game mammals 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 game mammals. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 38-1988, f. & cert. ef. 6-13-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 88-2003(Temp), f. & cert. ef. 9-3-03 thru 12-31-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0015

### General Tag Requirements and Limits

(1) Big Game Tags: Any person hunting game mammals for which a tag is required must have on their person a valid tag for the dates, area and species being hunted.

(2) Any person 12 years of age or older may purchase game mammal tags if they possess an adult hunting license.

(3) A person may obtain and possess during an annual hunting season only:

(a) One valid general season black bear tag;

(b) One valid additional general black bear tag valid in management units 20-30;

(c) One valid controlled black bear tag in addition to general season bear tags issued under subsection (a) and (b) above;

(d) One valid 700 series "leftover" controlled bear tag;

(e) One valid cougar (mountain lion) tag;

(f) One valid additional general cougar (mountain lion) tag valid only in the Blue Mountain zone;

(g) One valid pronghorn antelope tag.

(4) Except as provided in OAR chapter 635, division 090, and except as provided in OAR 635-075-0010, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid deer bow tag;

(b) One valid western Oregon deer tag;

(c) One valid 100 series controlled buck hunt tag;

(d) One valid 600 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(c) and (4)(e);

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(e) One valid 800 series controlled antlerless deer tag in addition to one of (4)(a)-(4)(d);

(f) One valid 100 series "left over" controlled deer tag;

(g) One valid 600 series "left over" controlled deer tag;

(h) One valid 800 series "leftover" controlled deer tag.

(5) Except as provided in OAR chapter 635, division 090, a person may obtain and possess only one of the following tags during an annual hunting season:

(a) One valid Cascade elk tag;

(b) One valid Wilson-Trask elk tag;

(c) One valid Mid Coast-Valley elk tag;

(d) One valid Coast-Valley elk tag;

(e) One valid Rocky Mountain elk - first season tag,

(f) One valid Rocky Mountain elk - second season tag;

(g) One valid elk bow tag;

(h) One valid controlled elk hunt tag;

(6) In addition to the tags described in OAR 635-065-0015(5), a person during an annual hunting season may obtain or possess only one valid 200 series "leftover" controlled elk tag.

(7) Except as provided in OAR 635-067-0032 thru 635-067-0034, a person may obtain and possess only one bighorn sheep ram tag in a lifetime.

(8) A person may obtain and possess only one Rocky Mountain goat tag in a lifetime.

(9) It is unlawful for any person to issue or to possess any game mammal tag which has been backdated.

(10) Any game mammal tag having an issue date subsequent to the last day authorized for issue of such tag as listed in "Oregon Big Game Regulations" for the current season is a void tag. Exception: Members of the armed forces returning to the state after the deadline shall be permitted to purchase general season tags for themselves at the Salem headquarters and regional offices of the department.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 13-1988, f. & ef. 3-10-88; FWC 63-1989, f. & ef. 8-15-89, Renumbered from 635-65-780; FWC 24-1990, f. & ef. 3-21-90; FWC 20-1991, f. & ef. 3-12-91; FWC 18-1994, f. & ef. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 7-1996, f. & ef. 2-12-96; FWC 9-1997, f. & ef. 2-27-97; FWC 6-17-97, f. & ef. 6-17-97; DFW 49-1998, f. & ef. 6-22-98; DFW 1-1999, f. & ef. 1-14-99; DFW 47-1999, f. & ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & ef. 6-14-00; DFW 54-2000(Temp), f. & ef. 8-28-00 thru 12-31-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & ef. 6-13-01; DFW 52-2001(Temp), f. & ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & ef. 4-18-02; DFW 59-2002, f. & ef. 6-11-02; DFW 2-2003, f. & ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0401

### Deadline for Purchase of General Season Tags

(1) No western Oregon deer rifle tag shall be issued after 11 p.m., October 1, 2004.

(2) No deer bow tag shall be issued after 11 p.m., August 27, 2004.

(3) No bear tag shall be issued after 11 p.m. October 1, 2004.

(4) No cougar (mountain lion) tag shall be issued after 11 p.m. October 1, 2004.

(5) No Rocky Mountain Elk Rifle First Season Tag shall be issued after 11 p.m., October 26, 2004.

(6) No Rocky Mountain Elk Rifle Second Season Tag shall be issued after 11 p.m., November 5, 2004.

(7) No Wilson-Trask Elk Tag shall be issued after 11 p.m., October 15, 2004.

(8) No Mid Coast-Valley Elk Tag shall be issued after 11 p.m., November 12, 2004.

(9) No Coast-Valley Elk Tag shall be issued after 11 p.m., November 19, 2004.

(10) No Cascade Elk Rifle Tag shall be issued after 11 p.m., October 15, 2004.

(11) No elk bow tag shall be issued after 11 p.m., August 27, 2004.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, 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 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & ef. 3-10-88; FWC 38-1988, f. & ef. 6-13-88; FWC 15-1989, f. & ef. 3-28-89; FWC 63-1989, f. & ef. 8-15-89; Renumbered from 635-65-010; FWC 24-1990, f. & ef. 3-21-90; FWC 55-1990, f. & ef. 6-21-90; FWC 20-1991, f. & ef. 3-12-91; FWC 58-1991, f. & ef. 6-24-91; FWC 36-1993, f. & ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & ef. 2-27-97; FWC 38-1997, f. & ef. 6-17-97; FWC 11-1997, f. & ef. 12-29-97; DFW 1-1999, f. & ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02;

DFW 108-2002(Temp), f. & cert. ef. 9-26-02 thru 12-31-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0501

### Exchange of Deer and Elk Tags

(1) Tags may be exchanged only prior to the seasons for which both of the tags to be exchanged are valid. No tag may be exchanged after the start of the season for which it is valid.

(2) Exchanges of tags and duplicate tags may be obtained only through the department's regional offices or Salem headquarters.

(3) The fee to replace or exchange a tag is \$6.50.

(4) A "leftover" controlled hunt deer tag may only be exchanged for a general season deer tag, but only if the person does not already possess a deer tag authorized by OAR 635-065-0015(4)(a), (b), or (c).

(5) A "leftover" controlled hunt elk tag may only be exchanged for a general season elk tag but only if the person does not already possess an elk tag authorized by OAR 635-065-0015(5)(a), (b), (c), (d), (e), (f), (g) or (h).

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, 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 11-1987, f. & ef. 3-6-87; FWC 13-1988, f. & ef. 3-10-88; FWC 38-1988, f. & ef. 6-13-88; FWC 15-1989, f. & ef. 3-28-89; FWC 63-1989, f. & ef. 8-15-89; Renumbered from 635-65-022; FWC 55-1990, f. & ef. 6-21-90; FWC 58-1991, f. & ef. 6-24-91; FWC 36-1993, f. & ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & ef. 2-27-97; DFW 49-1998, f. & ef. 6-22-98; DFW 1-1999, f. & ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp), f. & ef. 6-27-01 thru 12-24-01; DFW 34-2002, f. & ef. 4-18-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0625

### Regulations on State Wildlife Areas, Refuges and Special Areas

State wildlife areas, refuges and special areas shall be open to hunting during authorized seasons, subject to the following special regulations and exceptions:

(1) Bear Valley National Wildlife Refuge (Klamath County): The Bear Valley Refuge shall be closed to all entry from November 1 through March 31 annually.

(2) Bridge Creek Wildlife Area (Umatilla County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Entry by permit only December 1 through April 30.

(3) Cascade Head Area: The Cascade Head Area shall be closed to hunting with centerfire rifles, muzzleloaders, or handguns. Hunting shall be restricted to archery and shotguns only during authorized seasons. Hunters using shotguns for elk shall use slugs (single projectile) only. The Cascade Head Area boundaries shall be defined as follows: Beginning at the Pacific Ocean at Roads End (Lincoln City); east along the northern boundary of the Lincoln City limits to U.S. Highway 101; north along U.S. Highway 101 to Highway 18; east along Highway 18 to Old Scenic Highway 101; north along Old Scenic Highway 101 to Three Rocks Road; west on Three Rocks Road to U.S. Highway 101; north on U.S. Highway 101 to Forest Service road 1861; west on Forest Service road 1861 to the Harts Cove trailhead; west on Harts Cove Trail to the Pacific Ocean; south along the Pacific Ocean coastline to Roads End (Lincoln City), point of beginning.

(4) Cold Springs Refuge (Umatilla County): The Cold Springs Refuge shall be closed to deer and elk hunting.

(5) Dean Creek Elk Viewing Area (Douglas County): Approximately 1,800 acres in the Tioga Unit including all BLM property between Hakkli Ridge Road and State Highway 38, are closed to all hunting.

(6) Denman Wildlife Area (Jackson County): The Denman Wildlife Area shall be open to hunting only during game mammal and game bird seasons. Use of rifles and handguns is prohibited at all times.

(7) Dunes National Recreational Area: Use of rifles and handguns is prohibited for all hunting in that portion of the Siuslaw Unit west of Highway 101 and north of Tahkenitch Creek.

(8) North Bank Habitat Management Area (previously known as the Dunning Ranch Area in Douglas County): 6,500 acres located approximately eight miles northeast of Roseburg. Area: All BLM lands located in T25S, R5W, Sections 35,36; T26S, R5W, Sections 1,2,11,12,13,14; T25S, R4W, Sections 31,32,33; T26S, R4W, Sections 4,5,6,7,8,18. This area shall be closed to all big game hunting except for and during controlled deer hunts specific to the management area by hunters possessing a controlled hunt tag for the area.

(9) E.E. Wilson Wildlife Area (Benton County): This area is open to deer hunting during authorized seasons, except closed to bow hunting for deer when juvenile pheasant hunts are in progress. Rabbit hunting is permitted from November 1 through February each year. Hunting by permit only. Permits are available at area headquarters and shall be filled out and

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returned each day hunted. Use of rifles, handguns, and crossbows shall be prohibited at all times.

(10) Eagle Creek: Closed to entry December 15 through March 31 annually — That part of the Keating Unit as follows: 16 square miles in Townships 7 and 8 South, Ranges 44 and 45 East;

(11) Elkhorn Wildlife Area (Baker/Union counties): Closed to all entry December 1 through April 10 annually. The Roth Tract is closed to all hunting. The Roth Tract is closed to public entry except by entry permit; an entry permit is required at all times of the year.

(12) Fern Ridge Wildlife Area (Lane County): Open to black-tailed deer hunting during authorized seasons, except that East and West Coyote units are closed after October 31, and hunting in Fisher Butte Unit after October 31 is limited to Saturdays, Sundays, Wednesdays, Thanksgiving Day, Christmas Day, New Year's Day, and Veteran's Day only. A free daily hunting permit is required for East Coyote, West Coyote, Fisher Butte, and Royal Amazon units. Permits are available at check stations located at area access points. Hunters are limited to shotguns and archery equipment only. The discharging of rifles and handguns within the wildlife area is prohibited.

(13) William Finley National Wildlife Refuge (Benton County):

(a) Portions of the refuge shall be open to deer hunting August 28 through September 26, 2004 under the regulations for bowhunting seasons.

(b) Portions of the refuge shall be open to hunting for buck deer October 2 through October 31, 2004 under regulations for the general western Oregon deer buck season. Use of rifles is prohibited.

(c) All hunters shall obtain a refuge permit and check in and out of the refuge daily. Information on open areas and special regulations are available at the refuge.

(14) Gods Valley Wildlife Area (Clatsop County): Vehicles shall be restricted to county roads.

(15) Government Island Complex (Multnomah County): Use of rifles, handguns, and shotguns with slugs or buckshot is prohibited at all times.

(16) Irrigon, Coyote Springs, Power City, and Boardman wildlife management areas (Morrow and Umatilla counties): Use of rifles and handguns are prohibited at all times.

(17) Hart Mountain National Antelope Refuge (Lake County): Portions of the refuge shall be open for hunting as prescribed under chukar season, controlled pronghorn antelope and bighorn sheep hunts, deer bowhunting season, and muzzleloader deer season.

(18) Heppner Regulated Hunt Area: Open fires and camping prohibited in posted areas. Approximately 69 square miles in Townships 2, 3, 4, 6 and 7 South, Ranges 26, 27 and 28 East;

(19) Jewell Meadows Wildlife Area (Clatsop County): The Beneke Tract and the Humbug Tract shall be open to hunting only during authorized game mammal and game bird seasons. The Beneke Tract is closed to all public entry during any open Saddle Mountain elk season. It is unlawful to shoot rifles and bows from or across open fields during any open Saddle Mountain Unit or Wilson Unit elk seasons. The Fishhawk Tract is closed to public access. Posted lands of Cavenham Forest Industries, Inc., in T5N, R7W, Sections 2, 3 and 4, 9, 10 and 11 and T6N, R7W, Sections 33 and 34, are closed to all hunting. All areas posted as Refuge are closed to public access. Entry for other purposes is only by permit obtained at the Jewell Wildlife Area Headquarters.

(20) John Day Fossil Beds National Monument: Those parts of the National Monument in the Grizzly, Biggs, Fossil, and Northside Units are closed to all hunting and trapping.

(21) John Day River Refuge: All land within 1/4 mile of the John Day River mean high water line from the Columbia River upstream to Thirty Mile Creek. The area shall be open to hunting of game birds during authorized seasons only between September 1 and October 31 annually but closed to all waterfowl hunting. Hunting of big game is allowed during authorized seasons.

(22) Klamath Wildlife Area (Klamath County): This area is closed to all deer hunting.

(23) Klamath Marsh National Wildlife Refuge: Closed to deer and elk hunting.

(24) Ladd Marsh Wildlife Area (Union County): All land north and east of Foothill Road shall be closed to all deer and elk hunting except during controlled youth deer hunts and closed to all rifle and handgun shooting.

(25) Long Ranch (Linn County): Forty-eight acres in T13S, R4E, S32 shall be closed to all hunting.

(26) Lower Deschutes Wildlife Area: Open to hunting of big game, game birds, and waterfowl during authorized seasons. Discharge of firearms prohibited the remainder of the year. Access by foot or boat only.

(27) Malheur National Wildlife Refuge (Harney County): Portions of the refuge in Blitzen Valley lying west of State Highway 205 shall be open during authorized rifle and bow deer seasons.

(28) McDonald Forest-Dunn Forest Area (Benton County): The area is closed to all hunting except during controlled hunts as authorized by the commission.

(29) McKay Creek Refuge (Umatilla County): This refuge is closed to deer and elk hunting.

(30) Metolius Wildlife Refuge (Jefferson County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within T12 and T13S, R9E, bounded by USFS road 1420 and 1419 on the west; road 1400 on the south and east; and road 1420-400, Metolius River, and posted boundary from the Metolius River to road 1400 on the north (approximately five square miles). (36 CFR 261.58(v).

(31) Mill Creek Watershed (Umatilla County): This watershed is closed to all access and hunting except by holders of a Mill Creek Watershed controlled elk tag and a Forest Service entry permit.

(32) Newberry Crater Wildlife Refuge (Deschutes County). All hunting, injuring, taking, killing, or destroying any wild bird or mammal on public land is prohibited on public lands within the rim of Newberry Crater in: T21S, R12E; T22S, R12E; T21S, R13E; T22S, R13E (approximately 15 square miles).

(33) Rimrock Springs Wildlife Area (Grizzly Unit): This area is closed to all hunting.

(34) Rogue River Area:

(a) All land within one mile of the Rogue River between Grave Creek and Lobster Creek is closed to bear hunting.

(b) All land within 1/4 mile of the Rogue River in the wild river section from Grave Creek downstream to Watson Creek is closed to all hunting except during authorized seasons.

(35) Saddle Mountain Unit (White-tailed Deer Area): That portion of Saddle Mountain Wildlife Unit north of Burlington Northern railroad tracks to Astoria is closed to all deer hunting.

(36) Sauvie Island Wildlife Area (Multnomah-Columbia counties): This area shall be open to bowhunting for black-tailed deer August 28 through September 26, 2004. Daily permits are required. Hunters shall check in and out daily. This area shall be closed to deer hunting after September 26, 2004. Oak Island shall be closed to deer hunting. Use of rifles, handguns and crossbows shall be prohibited at all times. Parking permits are required.

(37) Phillip W. Schneider Wildlife Area (Grant County): Open to public access and hunting. Motorized vehicle travel restricted to open roads. Some roads closed seasonally from December 1 through April 30, or year-round; including BLM land within the exterior boundaries of the Wildlife Area.

(38) Snake River Islands (Malheur County): Closed to hunting with centerfire rifles and centerfire handguns.

(39) South Slough National Estuarine Reserve: Specific areas are closed to hunting due to public health and safety. Contact reserve headquarters office for specific closures.

(40) Starkey Experimental Forest (Union County): That portion of The Starkey Experimental Forest within the eight foot elk-proof fence enclosure is closed to all hunting during deer and elk season except for persons possessing a controlled hunt tag for the area. A posted 1/4 mile buffer zone on the National Forest lands surrounding the enclosure is closed to all hunting with a centerfire rifle. The enclosure is open to deer and elk hunting only by permit during controlled hunts. The 12-foot right-of-way along each side of all 8-foot-high perimeter and internal game fences is closed to all motorized travel. Public entry is allowed only through the main gate. The Experimental Forest is closed to all public entry during the winter closure, which runs from the day after the controlled antlerless elk hunt until May 1 annually.

(41) Summer Lake Wildlife Area (Lake County): Open to public access and hunting during authorized mule deer and game bird hunting seasons. Closed to deer hunting during any pheasant, quail or waterfowl hunting seasons and posted refuge areas are closed to hunting. Motorized vehicle travel restricted to open roads. Some roads may be closed seasonally from Mar. 15-Aug. 15 and 3 days prior to and during waterfowl hunting seasons. Hunters must obtain a daily hunting permit and check out at the end of the day. Permits and Area maps are available at Headquarters (1.3 mi. south of the town of Summer Lake). It is unlawful to discharge firearms except during deer and game bird hunting seasons or by permit.

(42) Umatilla Refuge (Morrow County): This refuge shall be closed to deer and elk hunting except during controlled hunts specific to the refuge and emergency hunts as provided in OAR chapter 635, division 078.

(43) Wallowa Lake (Wallowa County): All land on or within 1/4 mile of the Wallowa River from Wallowa Lake upstream to the falls and within 1/4 mile along the west side of Wallowa Lake from the Wallowa Lake State Park to the Wallowa River outlet is closed to all big game hunting.

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(44) Wenaha Wildlife Area (Union County): Open to public access and hunting. Motorized vehicle travel restricted to open roads.

(45) Willamette River Greenway Parcels: Discharge of any weapon is prohibited, except that shotguns and bows may be used while hunting on select posted State Willamette Greenway properties during authorized seasons.

(46) White River Wildlife Area: Open to hunting during authorized seasons.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 28, 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 41-1987, f. & ef. 7-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 94-1988(Temp), f. & cert. ef. 9-19-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 55-1990, f. & cert. ef. 6-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0705

### Muzzleloading Rifles

During controlled muzzleloader only seasons:

(1) Hunters shall use any long gun that:

(a) Is fired from the shoulder;

(b) Is loaded from the muzzle;

(c) Has an open ignition system;

(d) Is a single shot except for muzzleloading shotguns that may be double barreled;

(e) Has only open or aperture (peep) sights.

(2) Hunters shall use only round ball, conical lead or lead alloy bullets whose length does not exceed two times the diameter.

(3) Hunters shall use only flint or percussion caps as a source of ignition.

(4) Hunters shall use only loose or granular black powder or black powder substitutes as propellants.

(5) Any .40 caliber or larger muzzleloader as described in OAR 635-065-0705(1-4) to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(6) Any .50 caliber or larger muzzleloader as described in OAR 635-065-0705(1-4) to hunt bighorn sheep, Rocky Mountain goat, or elk.

(7) Hunters shall use only number 1 or larger buckshot or bullets as described in OAR 635-065-0705(2) for hunting deer, black bear or cougar (mountain lion).

(8) Hunters shall use only single projectiles as described in OAR 635-065-0705(2) for hunting pronghorn antelope, elk, bighorn sheep, or Rocky Mountain goat

(9) Hunters may only use a legal muzzleloading firearm as described in OAR 635-065-0705. During centerfire firearms seasons where muzzleloaders are also a legal firearm, hunters may:

(a) Use any .40 caliber or larger muzzleloading firearm to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(b) Use any .50 caliber or larger muzzleloading firearm to hunt bighorn sheep, Rocky Mountain goat, or elk.

(c) Use any muzzleloader ignition type (excepting matchlock), any sight, any propellant, or any bullet type.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 21-1985, f. & ef. 5-7-85; FWC 43-1985, f. & ef. 8-22-85; FWC 11-1987, f. & ef. 3-6-87; FWC 38-1988, f. & cert. ef. 6-13-88; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 9-1997, f. & cert. ef. 2-27-97; 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 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0720

### Bows and Arrows

Hunters shall use:

(1) Any long, recurve, or compound bow with 40-pound or heavier pull rating to hunt pronghorn antelope, black bear, cougar (mountain lion), or deer.

(2) Any long, recurve, or compound bow to hunt western gray squirrels.

(3) Any long, recurve, or compound bow with a 50-pound or heavier pull rating to hunt bighorn sheep, Rocky Mountain goat, or elk.

(4) Only unbarbed fixed position blade broadheads at least 7/8-inch wide to hunt game mammals other than western gray squirrel. See 635-045-0002(72). Possession of moveable blade broadheads is prohibited when hunting game mammals, except western gray squirrels may be hunted with moveable blade broadheads.

(5) A long, recurve, or compound bow and shall not possess any crossbow while hunting within an authorized bowhunting area or season.

(6) Only a long, recurve, or compound bow during any authorized pronghorn antelope, deer or elk bowhunting season to hunt pronghorn antelope, deer, or elk.

(7) For hunting seasons designated as bowhunting, hunters shall only use the bows legal for the species being hunted. Bows may be used during controlled antlerless deer seasons. Bows shall not be used during any designated rifle hunt.

(8) Maximum let-off of any bow at full draw shall not exceed 65 percent as determined by standards of the Archery Manufacturers and Merchants Organization. (Persons unable to comply because of a disability are excepted from this rule).

(9) Hunters shall not use any electronic device(s) attached to bow or arrow.

(10) Hunters shall not use any device secured to or supported by the bow for the purpose of maintaining the bow at full draw (Persons unable to comply because of a disability are excepted from this rule).

(11) Hunters shall not use any device secured to or supported by a bow's riser which supports or guides an arrow from a point rearward of a bow's brace height (i.e. the position of the bows string when the bow is undrawn).

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 21-1982, f. & ef. 3-31-82; FWC 37-1982, f. & ef. 6-25-82; FWC 15-1983, f. & ef. 4-19-83; FWC 28, f. & ef. 7-8-83; FWC 34-1984, f. & ef. 7-24-84; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 9-1997, f. & cert. ef. 2-27-97; 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 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0740

### Hunting Prohibited

It is unlawful:

(1) To hunt with a centerfire or muzzleloading rifle during eastern Oregon controlled buck season (Oct. 2-13, 2004, Cascade bull elk season, Coast bull elk seasons, Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 20-Nov. 28, 2004) without a valid, unused tag for that species, time period and area on their person.

**EXCEPTION:** Landowners, or their agent, hunting predators on lands they own or lease may use centerfire or muzzleloading rifles to hunt on such lands.

**EXCEPTION:** Hunters may use .22 caliber or smaller centerfire rifles for hunting coyotes (*Canis latrans*) in the Juniper, Beatys Butte, Whitehorse and Owyhee units and in the Wagonire Unit south of the Lake County Road 5-14 during Rocky Mountain bull or either-sex elk seasons, or the standard Rocky Mountain unit's antlerless elk seasons (Nov. 20-Nov. 28, 2004).

(2) To hunt on any refuge closed by the state or federal government.

(3) To hunt within the corporate limits of any city or town, public park or cemetery, or on any campus or grounds of a public school, college, or university or from a public road, road right-of-way, or railroad right-of-way.

(4) Notwithstanding section (4) of this rule, controlled antlerless elk hunts are permitted within the south city limits of Seaside if the herd should become a serious problem.

(5) To hunt game mammals outside any area designated by a controlled hunt tag when such tag is required for that hunt season.

(6) To hunt in any Safety Zones created and posted by the department.

(7) To hunt protected wildlife except:

(a) By a permit or during an authorized season established by the commission.

(b) That crow, blackbirds, cowbirds, and magpies may be taken under Federal regulations for reason of depredation or health hazards as described in the Code of Federal Regulations.

(8) To pursue or assist another to pursue a cougar (mountain lion) during an authorized cougar (mountain lion) season unless in possession of an unused cougar (mountain lion) tag or accompanied by the holder of an

# ADMINISTRATIVE RULES

unused cougar (mountain lion) tag which is valid for that area and time period.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162  
Hist.: FWC 123, f. & ef. 6-9-77; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 41-1987, f. & ef. 7-6-87; FWC 15-1989, f. & cert. ef. 3-28-89; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 20-1991, f. & cert. ef. 3-12-91; FWC 58-1991, f. & cert. ef. 6-24-91; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 85-2003(Temp), f. & cert. ef. 8-27-03 thru 2-23-04; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-065-0765

### Tagging, Possession, Transportation and Evidence of Sex

(1) When the owner of any game mammal tag kills a game mammal for which a tag is issued, the owner shall immediately remove in its entirety only the month and day of kill and attach the tag in plain sight securely to the game mammal. The tag shall be kept attached to such carcass or remain with any parts thereof so long as the same are preserved.

(2) It is unlawful to have in possession any game mammal tag from which all or part of any date has been removed or mutilated except when the tag is legally validated and attached to a game mammal.

(3) It is unlawful to possess the meat or carcass of any pronghorn antelope, bighorn sheep, or Rocky Mountain goat without the animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, horns, and eyes if the animal is male.

(4) It is unlawful to possess the meat or carcass of any deer or elk without evidence of sex while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. Evidence of sex for deer and elk is:

(a) Evidence of sex for deer and elk which will be taken out of Oregon is:

(A) For Bucks and Bulls: Either the head with antlers naturally attached to at least one quarter of the carcass or testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat. For hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(B) For Does and Cows: Either the head naturally attached to at least one quarter of the carcass or vulva or udder (mammary) naturally attached to one quarter of the carcass or to another major portion of meat.

(C) For Either Sex Hunts: Either the head naturally attached to at least one quarter of the carcass or reproductive organs (testicles, scrotum, penis, vulva, udder, mammary) naturally attached to one quarter of the carcass or to another major portion of meat. For bucks or bulls killed in either sex hunts with antler restrictions, if the head is not attached to the carcass, in addition to leaving the testicles, scrotum, or penis naturally attached to one quarter of the carcass or to another major portion of meat, the head or skull plate with both antlers naturally attached shall accompany the carcass or major portions of meat while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(D) For hunts where only white-tailed deer and for hunts where only mule deer are legal: in addition to evidence of sex, either the head or tail shall remain naturally attached to one quarter of the carcass or to another major portion of meat as evidence of the species taken while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat.

(b) Evidence of sex for deer and elk which will not be taken out of Oregon is either:

(A) The animal's scalp while in the field, forest, or in transit on any of the highways or premises open to the public in Oregon, except processed or cut and wrapped meat. The scalp shall include the attached eyes and ears, if the animal is female; or ears, antlers, and eyes if the animal is male, Or;

(B) The head naturally attached to at least one quarter of the carcass or reproductive organs naturally attached to one quarter of the carcass or to another major portion of meat as described in (4)(a)(A)-(D) above.

(5) When any game mammal or part thereof is transferred to the possession of another person, a written record describing the game mammal or part being transferred indicating the name and address of the person whose tag was originally attached to the carcass and the number of that tag shall

accompany such transfer and shall remain with such game mammal or part so long as the same is preserved or until replaced by a tag or seal of the department.

(6) All game mammals in possession in the field or forest or in transit more than 48 hours after the close of the open season for such mammal must be tagged with a tag or metal seal by the department or by the Oregon State Police.

(7) All game mammals or portions thereof shipped by commercial carrier shall be tagged with a tag or metal seal provided by the department or by the Oregon State Police.

(8) It is unlawful to receive or have in possession any game mammal or part thereof which:

(a) Is not properly tagged;

(b) Was taken in violation of any wildlife laws or regulations; or

(c) Was taken by any person who is or may be exempt from the jurisdiction of such laws or regulations.

(9) No person shall possess any game mammal or part thereof which has been illegally killed, found or killed for humane reasons, except shed antlers, unless he has notified and received permission from the department or personnel of the Oregon State Police prior to transporting.

(10) No person shall possess the horns of bighorn sheep or Rocky Mountain goat that were not taken legally during an authorized season. Any horns of bighorn sheep or Rocky Mountain goat obtained by the department may be made available to scientific and educational institutions and for ceremonial purposes.

(11) Except for the following parts, importation of a cervid carcass or parts of a cervid carcass is prohibited if the cervid was killed in a state or province with a documented case of Chronic Wasting Disease:

(a) Meat that is cut and wrapped commercially or privately;

(b) Meat that has been boned out;

(c) Quarters or other portions of meat with no part of the spinal column or head attached;

(d) Hides and/or capes with no head attached;

(e) Skull plates with antlers attached that have been cleaned of all meat and brain tissue;

(f) Antlers with no tissue attached;

(g) Upper canine teeth (buglers, whistlers, ivories);

(h) Finished taxidermy heads.

(12) For the purposes of the parts and carcass import ban in subsection (11), the states or provinces with a documented case of Chronic Wasting Disease (CWD) are Alberta, Colorado, Illinois, Kansas, Minnesota, Montana, Nebraska, New Mexico, Oklahoma, South Dakota, Wisconsin, Wyoming, Utah, and Saskatchewan. The Department shall add by temporary rule any additional states or provinces when any new cases of CWD arise.

(13) The parts and carcass import ban in subsection (11) does not apply to parts or carcasses shipped to the National Fish and Wildlife Forensics Laboratory (Ashland, Oregon) for the purpose of law enforcement investigations and also does not apply to parts or carcasses of reindeer/caribou.

(14) Cervid carcasses or parts of cervid carcasses found in Oregon in violation of the parts and carcass ban in subsection (11) shall be disposed of in a manner as follows:

(a) Brain tissue, spinal columns, and whole heads or heads minus the cleaned skull plate and attached antlers, shall be disposed of either by incineration at temperatures exceeding 800 F or at lined landfills registered by Oregon Department of Environmental Quality capable of accepting animal carcasses without environmental contamination; rendering is not an allowed means of disposal.

(b) The person(s) who imported parts in violation of the parts and carcass ban in subsection (11) shall pay for appropriate disposal of cervid carcasses or parts of cervid carcasses.

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

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

Hist.: FWC 123, f. & ef. 6-9-77; FWC 33-1978, f. & ef. 6-30-78; FWC 28-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 6-1981, f. & ef. 1-23-81; FWC 11-1981, f. & ef. 3-31-81; FWC 20-1981, f. & ef. 6-19-81; FWC 37-1982, f. & ef. 6-25-82; FWC 34-1984, f. & ef. 7-24-84; FWC 43-1988, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 11-1987, f. & ef. 3-6-87; FWC 41-1987, f. & ef. 7-6-87; FWC 13-1988, f. & cert. ef. 3-10-88; FWC 63-1989, f. & cert. ef. 8-15-89; FWC 24-1990, f. & cert. ef. 3-21-90; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 90-2002(Temp), f. & cert. ef. 8-16-02 thru 2-11-03; DFW 114-2002(Temp), f. & cert. ef. 10-18-02 thru 2-11-03; DFW 126-2002, f. & cert. ef. 11-12-02; DFW 127-2002(Temp), f. & cert. ef. 11-14-02 thru 2-11-03; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 61-2003, f. & cert. ef. 7-16-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

# ADMINISTRATIVE RULES

## 635-066-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting black bear pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 066 incorporates, by reference, the requirement for black bear hunting 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 the hunting of black bear. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[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 64-1989, f. & cert. ef. 8-15-89; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-066-0010

### General Season Regulations

(1) Pursuant to ORS 497.112, annual black bear tag sales to nonresident black bear hunters for the general fall season shall be limited to no more than three percent of the total tag sales based on previous year's hunter densities.

(a) Tags shall be available at any authorized license agent and through the Salem Headquarters office on a first-come, first-served basis.

(b) The application procedure shall be as follows:

(A) An applicant may purchase a nonresident general black bear tag at any hunting license agent or;

(B) An applicant shall mail or fax copies, through the Salem Headquarters only, of his/her nonresident driver's license or adult nonresident hunting license or provide documentation which includes the following information:

(1) Applicant's full name and current address;

(2) Applicant's date of birth;

(3) Applicant's Social Security number;

(4) Applicant's telephone number;

(c) An applicant shall include a fee of \$151.50 with the application.

(d) The applicant shall state the areas for which he/she is applying in order of choice.

(2) Open Area: The entire state is open, except that lands within one mile of the Rogue River between Grave Creek and Lobster Creek are closed to all black bear hunting. Nonresidents shall be restricted to hunting black bear only in specific areas as described below.

(a) Nonresident black bear tags shall be distributed by areas as described in the Black Bear Management Plan. These areas are described as follows:

(A) Northwest: All of wildlife management units: 10, 11, 12, 14, 15, 17, and 18.

(B) Southwest: All of wildlife management units: 20, 23, 24, 25, 26, 27, 28, and 29.

(C) Cascades: All of wildlife management units: 16, 19, 21, 22, 30, 31, 34, 39, 41, and 42 and those portions of wildlife management units 33 and 77 lying west of Highway 97.

(D) Eastern: All of wildlife management units: 32, 35, 38, 40, and 43 and those portions of wildlife management units 33 and 77 lying east of Highway 97; and all other wildlife management units to the east of these units.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods, and other restrictions for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 067 incorporates, by reference, the requirements for hunting pronghorn antelope, cougar, bighorn sheep, and Rocky Mountain goat set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting prong-

horn antelope, cougar, bighorn sheep, and Rocky Mountain goat. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

(3) Controlled hunt tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Permitted arms and ammunition are established in OAR chapter 635, division 065. Controlled hunt tag numbers for 2003 are listed in **Tables 1, 2, and 3** and are adopted and incorporated into OAR chapter 635, division 067 by reference.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

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

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

Hist.: FWC 65-1989, f. & cert. ef. 8-15-89; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0015

### General Cougar Season Zone Harvest Quotas

(1) Hunt Zone: A — Hunt Name: Coast/North Cascades;

(a) Harvest Quota: 128;

(b) Hunt Area: All of Wildlife Units: 10, 11, 12, 14, 15, 16, 17, 18, 20, 24, 25, 26, 27, 39, 41, and 42;

(2) Hunt Zone: B — Hunt Name: Southwest Cascades;

(a) Harvest Quota: 146;

(b) Hunt Area: All of Wildlife Units: 19, 21, 22, 23, 28, 29, 30, and 31;

(3) Hunt Zone: C — Hunt Name: Southeast Cascades;

(a) Harvest Quota: 51;

(b) Hunt Area: All of Wildlife Units: 32, 33, 34, 35, 75, 76, and 77;

(4) Hunt Zone: D — Hunt Name: Columbia Basin;

(a) Harvest Quota: 18;

(b) Hunt Area: All of Wildlife Units: 38, 40, 43, 44, and 45;

(5) Hunt Zone: E — Hunt Name: Blue Mountains;

(a) Harvest Quota: 135;

(b) Hunt Area: All of Wildlife Units: 37, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, and 64;

(6) Hunt Zone: F — Hunt Name: Southeast Oregon;

(a) Harvest Quota: 84;

(b) Hunt Area: All of Wildlife Units: 36, 65, 66, 67, 68, 69, 70, 71, 72, 73, and 74.

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

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

Hist.: FWC 118, f. & ef. 6-3-77; FWC 32-1978, f. & ef. 6-30-78; FWC 12-1979, f. & ef. 3-28-79; FWC 29-1979, f. & ef. 8-2-79; FWC 14-1980, f. & ef. 4-8-80; FWC 19-1980, f. & ef. 4-18-80; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 21-1982, f. & ef. 3-31-82, Renumbered from 635-060-0700; FWC 15-1983, f. & ef. 4-19-83; FWC 16-1984, f. & ef. 4-6-84, ef. 4-15-84; FWC 21-1985, f. & ef. 5-7-85; FWC 29-1986, f. & ef. 7-23-86; FWC 11-1987, f. & ef. 3-6-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 57-1990, f. & cert. ef. 6-21-90; FWC 60-1991, f. & cert. ef. 6-24-91; FWC 45-1992, 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 90-1994(Temp), f. & cert. ef. 12-8-94; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; FWC 10-1995, f. & cert. ef. 2-3-95; FWC 54-1995, f. & cert. ef. 6-20-95; FWC 38-1997, f. & cert. ef. 6-17-97; DFW 49-1998, f. & cert. ef. 6-22-98; 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0024

### Controlled Pronghorn Antelope Youth Rifle Hunt Application

Hunters must be 12 to 17 years of age at the time they hunt. An adult at least 21 years of age, who may not hunt, must accompany not more than two juveniles. Juveniles must have a hunter education certificate, a valid hunting license, and a controlled hunt permit valid for that area and time period in possession while hunting.

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

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

Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0028

### Pronghorn Antelope Auction Tag

(1) One pronghorn antelope tag will be auctioned to the highest bidder annually in the manner and at such time as provided by the department. The department may contract with a sportsmen's group or organization to conduct the auction.

(2) The pronghorn antelope auction tag and auction shall be limited as follows:

# ADMINISTRATIVE RULES

- (a) Bag Limit: One buck pronghorn antelope.
- (b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.
- (c) Open Season: The season shall begin on August 1 and shall end on September 30.

(d) Open Area: Any area where pronghorn antelope hunts and tags have been authorized for the current year except for those portions of Big Game units 70 and 71 within Hart Mountain National Antelope Refuge.

(e) Auction Requirements:

(A) The minimum acceptable bid for a pronghorn antelope auction tag shall be \$2,000.00. The bid price includes the hunting license and tag fee. A valid pronghorn antelope tag will be provided to the winning bidder and a valid hunting license will be provided if the winning bidder has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(B) Any person, resident or nonresident, is eligible to bid.

(C) If the highest bid is submitted by a person other than the person who is to receive the tag, the department shall be notified within five business days of the name, address, and phone number of the individual who is to receive the license and tag and his or her position or affiliation with the corporation or organization.

(D) Acceptance of the highest bid shall be conditional until the full amount of the bid is paid. Payment shall be made to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 60 days of the date of the auction, whether conducted by the department or by a sportsman's group or organization authorized by the department to conduct the auction.

(E) If the full amount is not paid as provided in OAR 635-067-0032(2)(d)(D), the department may, at its discretion, reject the bid and offer the tag to the next highest bidder. If the department offers the tag to the next highest bidder, such next highest bidder must make payment to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 30 days of notification of his or her opportunity to obtain the tag.

(F) The department shall reserve the right to accept or reject any or all bids.

Stat. Auth.: ORS 496.012, 496.138 & 496.146  
Stats Implemented: ORS 496.012, 496.138 & 496.146  
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0029

### Controlled Pronghorn Antelope Raffle Tag

(1) One pronghorn antelope tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The pronghorn antelope raffle tag shall be limited as follows:

- (a) Bag Limit: One buck pronghorn antelope.
- (b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.
- (c) Open Season: The season shall begin on August 1 and shall end on September 30.

(d) Open Area: Any area where pronghorn antelope hunts and tags have been authorized for the current year except for those portions of Big Game units 70 and 71 within Hart Mountain National Antelope Refuge.

(3) Raffle Requirements:

- (a) There is no limit on the number of tickets that a person may purchase.
  - (A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).
  - (B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).
  - (C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).
- (b) Raffle tickets will be made available to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportmen's groups.
  - (c) Residents and nonresidents shall be eligible to purchase tickets.
  - (d) There shall be no refunds on any purchases of raffle tickets.
  - (e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by 5 p.m. one week prior to the drawing date to be announced by the department. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(g) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If

the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., July 31, it will not be issued.

(h) License and Tag Requirements: A valid pronghorn antelope tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(i) The pronghorn antelope tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

Stat. Auth.: ORS 496.012, 496.138 & 496.146  
Stats Implemented: ORS 496.012, 496.138 & 496.146  
Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0032

### Bighorn Sheep Auction Tag

(1) One bighorn sheep tag will be auctioned to the highest bidder annually in the manner and at such time as provided by the department. The department may contract with a sportsmen's group or organization to conduct the auction.

(2) The bighorn sheep auction tag and auction shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on the opening day of the first regularly scheduled bighorn sheep season for the current year and shall end on the last day of the last regularly scheduled bighorn sheep season for the current year.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the current year. The remainder of the state is closed to bighorn sheep hunting.

(e) Auction Requirements:

(A) The minimum acceptable bid for a bighorn sheep auction tag shall be \$25,000. The bid price includes the hunting license and tag fee. A valid bighorn sheep tag will be provided to the winning bidder in the auction and a valid hunting license will be provided if the winning bidder has not already purchased one, so long as the winning bidder is eligible to purchase an adult Oregon hunting license.

(B) Any person, resident or nonresident, is eligible to bid.

(C) If the highest bid is submitted by a person other than the person who is to receive the tag, the department shall be notified within five business days of the name, address, and phone number of the individual who is to receive the license and tag and his or her position or affiliation with the corporation or organization.

(D) Acceptance of the highest bid shall be conditional until the full amount of the bid is paid. Payment shall be made to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 60 days of the date of the auction, whether conducted by the department or by a sportsman's group or organization authorized by the department to conduct the auction.

(E) If the full amount is not paid as provided in OAR 635-067-0032(2)(d)(D), the department may, at its discretion, reject the bid and offer the tag to the next highest bidder. If the department offers the tag to the next highest bidder, such next highest bidder must make payment to the Oregon Department of Fish and Wildlife by cashiers check or certified check within 30 days of notification of his or her opportunity to obtain the tag.

(F) The successful bidder may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the department when and where the hunt will be conducted. The successful bidder shall be required to take appropriate steps to assure that any ram taken is marked with an identification pin by department personnel within five days of being taken.

(G) The department shall reserve the right to accept or reject any or all bids.

Stat. Auth.: ORS 496.012, 496.138, 496.146, 496.162 & 497.112  
Stats. Implemented: ORS 496.012, 496.138, 496.146, 496.162 & 497.112  
Hist.: FWC 16-1987, f. & cert. ef. 5-5-87; FWC 14-1988, f. & cert. ef. 3-10-88; FWC 16-1989, f. & cert. ef. 3-28-89; FWC 35-1989, f. & cert. ef. 6-6-89; FWC 65-1989, f. & cert. ef. 8-15-89; FWC 36-1990, f. & cert. ef. 4-25-90; FWC 128-1990, f. & cert. ef. 12-24-90; FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94; FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04



# ADMINISTRATIVE RULES

## 635-067-0034

### Bighorn Sheep Raffle Tag

(1) One bighorn sheep tag will be raffled during the current year to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The bighorn sheep raffle tag shall be limited as follows:

(a) Bag Limit: One bighorn sheep ram.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on the opening day of the first regularly scheduled bighorn sheep season for the current year and shall end on the last day of the last regularly scheduled bighorn sheep season for the current year.

(d) Open Area: Any area where bighorn sheep hunts and tags have been authorized for the current year. The remainder of the state is closed to bighorn sheep hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase. Raffle tickets shall be available for purchase in the following denominations:

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportsmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by 5 p.m. one week prior to the drawing date to be announced by the department. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(g) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 18, it will not be issued.

(h) License and Tag Requirements: A valid bighorn sheep tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(i) The bighorn sheep tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(j) The winner of the bighorn sheep tag may be required to complete a bighorn sheep hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(k) If the holder of the raffle bighorn sheep tag is successful in taking a bighorn sheep ram, that person shall present the ram to the department for permanent marking within five days of taking of the ram.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats. Implemented: ORS 496.012, 496.138 & 496.146

Hist.: FWC 127-1991, f. & cert. ef. 10-28-91; FWC 61-1992, f. & cert. ef. 7-30-92; FWC 45-1993, f. & cert. ef. 8-4-93; FWC 91-1994, f. & cert. ef. 12-15-94; FWC 53-1995, f. & cert. ef. 6-20-95; FWC 39-1996, f. 6-17-96, cert. ef. 11-1-96; 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 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 1-2000(Temp), f. & cert. ef. 1-3-00 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 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-067-0041

### Rocky Mountain Goat Raffle

(1) One Rocky Mountain goat tag will be raffled annually to an individual selected at a public drawing. The department may contract with a sportsmen's group or organization to conduct the raffle.

(2) The Rocky Mountain goat raffle tag shall be limited as follows:

(a) Bag Limit: One Rocky Mountain goat.

(b) Hunting Hours: One-half hour before sunrise to one-half hour after sunset.

(c) Open Season: The season shall begin on September 1 and shall end on October 31.

(d) Open Area: Any area where Rocky Mountain goat hunts and tags have been authorized for the current year. The remainder of the state is closed to Rocky Mountain goat hunting.

(3) Raffle Requirements:

(a) There is no limit on the number of tickets that a person may purchase.

(A) One ticket package at a cost of \$9.50 (plus a \$1.50 license agent fee).

(B) Six ticket package at a cost of \$49.50 (plus a \$1.50 license agent fee).

(C) Thirteen ticket package at a cost of \$99.50 (plus a \$1.50 license agent fee).

(b) Raffle tickets will be made available to the public through the authorized license agents in the state or through licensing in the Salem headquarters office or may be purchased through the mail using Oregon Department of Fish and Wildlife accepted forms. Tickets may be sold by department representatives at various gatherings of sportsmen's groups.

(c) Residents and nonresidents shall be eligible to purchase tickets.

(d) There shall be no refunds on any purchases of raffle tickets.

(e) Tickets purchased through license agents and handled by mail shall be received in the Salem headquarters office of the department by 5 p.m. one week prior to the drawing date to be announced by the department. Additional tickets may be purchased at the actual raffle site prior to the drawing.

(f) One winner and two alternate winners will be drawn at a public drawing; time and location to be announced by the department.

(g) The department will mail notification to the winner and two alternates. If the winner does not claim the tag by 5 p.m., July 1, the winner shall be disqualified and the department will offer the tag to the first alternate. If the first alternate does not claim the tag within 10 business days of July 1, the second alternate will be contacted. If the tag is not claimed by 5 p.m., August 31, it will not be issued.

(h) License and Tag Requirements: A valid Rocky Mountain goat tag will be provided to the winner of the raffle and a valid hunting license will be provided if the winner has not already purchased one, so long as the winner is eligible to purchase an adult Oregon hunting license.

(i) The Rocky Mountain goat tag shall be issued in the name of the person on the winning ticket provided that person meets all criteria outlined above. The tag may not be sold, assigned, or otherwise transferred.

(j) The winner of the Rocky Mountain goat tag will be required to complete a Rocky Mountain goat hunting orientation course prior to their hunt. The hunter shall inform the department as to where and when the hunt will be conducted.

(k) If the holder of the Rocky Mountain goat raffle tag is successful in taking a Rocky Mountain goat, that person shall present the animal to the department for permanent marking within five days of taking of the animal.

Stat. Auth.: ORS 496.012, 496.138 & 496.146

Stats Implemented: ORS 496.012, 496.138 & 496.146

Hist.: DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-071-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Rocky Mountain elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 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.

[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 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

# ADMINISTRATIVE RULES

## 635-072-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, and other restrictions for hunting western gray squirrels pursuant to ORS Chapter 496.

(2) OAR chapter 635, division 072 incorporates, by reference, the requirements for hunting western gray squirrel set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western gray squirrel. 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.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Hist.: FWC 43-1988, f. & cert. ef. 6-13-88; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-073-0070

### Early Eastern Oregon Bowhunting Seasons

(1) General Bowhunting Seasons — Eastern Oregon.

(a) Bag Limit: One buck deer having a visible antler and one elk;

(b) Open Season: August 28-September 26, 2004;

(c) Hunt Area: The Grizzly, Metolius, Upper Deschutes, Paulina, Sprague, Fort Rock, Heppner, Keno, Klamath Falls, Interstate, Warner, Wagontire, Juniper, Beatys Butte, Steens Mountain, Owyhee, Malheur River, Silvies, Maury, Ochoco, Murderers Creek, Beulah, Fossil, Northside, Desolation, Ukiah, Starkey, Mt. Emily, Walla Walla, Wenaha, Sled Springs, Chesnimnus, Minam, Catherine Creek, Sumpter, Lookout Mountain, Keating, Pine Creek, Innaha, Snake River, and Whitehorse units and that part of the White River Unit within the Mt. Hood National Forest except that: That part of the Whitehorse Unit south of Whitehorse Ranch Rd. and west of US Hwy 95 (Trout Creek Mts.), is closed to deer bowhunting during the general bowhunting season unless the hunter has a Trout Creek Mts. controlled bow deer tag. Approximately 40 square miles of the Starkey Experimental Forest within the Starkey Unit shall be closed to all bowhunting. The Chesnimnus Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Chesnimnus controlled bow elk tag (used or unused). The Chesnimnus Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Chesnimnus elk bow tag. The Sled Springs Unit shall be closed to deer bowhunting during the general bowhunting season unless the hunter also has a Sled Springs controlled bow elk tag (used or unused). The Sled Springs Unit shall be closed to all elk bowhunting unless the hunter has a valid, controlled Sled Springs elk bow tag. In the Walla Walla and Mt. Emily units, the bag limit is one antlerless elk or one spike bull elk having at least one antler that is a spike above the ears; in the Wenaha Unit, the bag limit is one spike bull elk only;

(2) General Bowhunting Seasons — Eastern Oregon.

(a) Bag Limit: One deer and one elk;

(b) Open Season: August 28 — September 26, 2004;

(c) Hunt Area: The Hood, Biggs, Silver Lake, Maupin, and Columbia Basin (in those portions of the unit open for bow hunting) units and that part of the White River Unit outside the Mt. Hood National Forest except that: That portion of the Columbia Basin Unit described as follows shall be closed to all bowhunting: Beginning at Heppner, north and west on State Hwy 74 to Lexington; north and east on State Hwy 207 to Butter Creek Junction; south on Butter Creek Road to Hwy 74 at Vinson; west on Hwy 74 to Heppner, point of beginning.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 57-2001, f. & cert. ef. 7-6-01; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-073-0090

### Controlled Antlerless Deer and Elk Youth Hunting Regulations

(1) General Regulations: Tags shall be issued by a controlled hunt drawing following the procedures established in OAR chapter 635, division 060. Hunters must be 12 to 17 years of age at the time they hunt. An adult at least 21 years of age, who may not hunt, must accompany not more than two juveniles. Juveniles must have a hunter education certificate, a valid hunting license, and a controlled hunt permit valid for that area and time period in possession while hunting. A hunter successful in drawing one of the controlled 600 series deer youth hunt tags may hunt in any general deer

season or controlled buck deer hunt, and as provided in OAR chapter 635, division 090; if possessing the proper tag for the area and time period being hunted. A youth hunter obtaining a "left over" tag through the first-come, first-served process also may hunt during the season for which that tag was issued.

(2) A hunter successful in drawing a controlled antlerless elk youth hunt tag shall not hunt in any other elk season, except as provided in OAR chapter 635, division 090.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 9-1997, f. & cert. ef. 2-27-97; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-075-0005

### Registration, Application and Tag Issuance Procedures and Limits for All Controlled Hunts

(1) A landowner shall submit a landowner preference registration form to be eligible for a landowner preference tag. A landowner can have only one registration form on file with the department. The registration form is an affidavit certifying ownership, number of acres owned, the county and Wildlife Management Unit where the property is located. This registration form registers the individual and remains valid until the individual registered no longer qualifies as a landowner as defined under OAR 635-045-0002, writes to the department requesting the registration form be deleted, or the department notifies the landowner that a renewal is required.

(2) In addition to having a landowner preference registration form on file with the department, a landowner shall submit a tag distribution form annually. The tag distribution form shall list the names of the landowner, stockholder(s), partner(s), and their immediate family members to receive tags for pronghorn antelope, and the names of the landowner, stockholder(s), partner(s), their immediate family members, and those persons of the landowners' choosing to receive landowner preference tags for deer and elk.

(3) Landowners shall submit registration forms and tag distribution forms prior to September 15 for all controlled 100 series buck deer and bull elk hunts, and through the day prior to the season openings for 600 and 800 series antlerless deer, antlerless elk, and doe/fawn pronghorn antelope hunts.

(4) Registration forms and tag distribution forms are available at no charge in any office of the department.

(5) Registration forms, tag distribution forms, and applications shall be received at the Salem headquarters office of the department prior to issuance of any landowner preference tag, except as provided for in OAR 635-075-0007. Landowners are not required to submit proof of ownership with their registration form. Landowners shall be required to submit proof of ownership at the request of the department or the Oregon State Police acting on behalf of the department.

(6) A landowner, stockholder(s), partner(s), and immediate family and those persons of the landowners' choosing wishing to also apply for controlled hunt tags shall apply by the May 15 controlled hunt deadline. Listing a hunt choice other than a landowner preference choice is not required.

(7) Everyone shall follow controlled hunt application procedures and regulations as described in OAR Division 060.

(8) The number of landowner preference tags issued is based upon a landowner's acreage. Landowner Preference tags shall be allocated by the following minimum acreage requirements: [Table not included. See ED. NOTE.]

(9) Landowner preference tags for the hunting of deer or elk may be issued to any person of the landowner's choosing, and shall be used for the taking of antlerless animals except as described in OAR 635-075-0005(8). Season dates of the transferred landowner preference tags shall be the same dates as the original tag.

(10) Landowner preference tags for the hunting of antlered deer or elk that are issued to a person of the landowner's choosing who is not a member of the landowner's, partner's, or stockholder's immediate family may be used to take an antlered animal only as follows:

(a) If the landowner is eligible for one preference tag, that tag may not be so used.

(b) If the landowner is eligible for two, three, or four preference tags, one of those tags may be so used.

(c) If the landowner is eligible for five, six or seven preference tags, two of those tags may be so used.

(d) If the landowner is eligible for eight, nine or 10 preference tags, three of those tags may be so used.

(11) A landowner who is qualified to receive landowner hunting preference tags may request two additional tags for providing public access and/or two additional tags for wildlife habitat programs. This request shall be made to the Access and Habitat Board with supporting evidence that the

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access is significant and the habitat programs benefit wildlife. The board may recommend that the commission grant the request. These tags may not be applied to the options as defined in OAR 635-075-0005(8).

(12) No one shall receive both a controlled hunt tag and a landowner preference tag for the same type of hunt. Landowner hunting preference tags shall not be issued to any person successful in the controlled hunt drawing for the same type of hunt.

(13) Landowner preference tags, except as described in OAR 635-075-0007, 635-075-0010, and 635-075-0015 shall only be issued from the headquarters office of the department following the controlled hunt drawings.

[ED. NOTE: Table 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 35-1982, f. & ef. 6-7-82; FWC 43-1985, f. & ef. 8-22-85; FWC 35-1986, f. & ef. 8-7-86; FWC 48-1987, f. & ef. 7-6-87; FWC 20-1988, f. & cert. ef. 3-10-88; FWC 45-1988, f. & cert. ef. 6-13-88; FWC 98-1988, f. & cert. ef. 10-6-88; FWC 14-1990, f. & cert. ef. 2-2-90; FWC 99-1992, f. & cert. ef. 9-25-92; FWC 10-1994, f. & cert. ef. 2-24-94; FWC 14-1994(Temp), f. & cert. ef. 3-1-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 7-1996, f. & cert. ef. 2-12-96; FWC 38-1997, f. & cert. ef. 6-17-97; 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 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-075-0015

### Exchanging Landowner Preference Tags That Do Not Fall Under the Category of a Damage Situation

(1) The landowner hunting preference tag may be exchanged for another landowner hunting preference controlled hunt of the same hunt type provided the controlled hunt area includes the same landowner's property. For example, a landowner may exchange a landowner preference controlled bull tag for a landowner preference controlled antlerless elk tag.

(2) The landowner hunting preference tag, except controlled antlerless deer tag, may be exchanged for a general season tag.

(a) Tags must be exchanged prior to the season(s) for which such tags are valid.

(3) Landowners (635-045-0002) and immediate family (635-045-0002) currently listed on a landowner's tag distribution list may exchange a controlled hunt tag for an LOP tag before the opening date of the season for which either tag is valid.

(4) Exchanges may be made at the Salem headquarters or regional offices of the department for no charge.

(5) Landowner preference tag exchanges may be made for no charge at the Salem headquarters, regional, and district offices of the department, if the landowner is only exchanging his/her antlered tag for an antlerless tag for his/her own use. All other landowner preference tag exchanges may only be made at the Salem headquarters or regional offices of the department.

(6) Tags must be exchanged prior to the general or limited entry season in the landowner's unit.

(7) Landowner preference tags for the hunting of pronghorn antelope may not be exchanged and may not be used for the taking of buck antelope.

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

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

Hist.: FWC 14-1990, f. & cert. ef. 2-2-90; FWC 7-1996, f. & cert. ef. 2-12-96; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-075-0020

### Landowner Hunting Preference Tags in Special Seasons

(1) During controlled elk hunts with a bag limit of spike or better in units where the usual bag limit for bull elk is spike only, landowner hunting preference tags shall be limited to five tags or 10 percent of the total controlled hunt tags whichever is greater; with a bag limit of spike or better.

(2) If landowner preference tags remain from the controlled hunts described in 635-075-0020(1) after the game mammal controlled hunt drawing, the Department will issue remaining tags to qualified landowners in the following manner:

(a) The tags shall be issued on a first-come, first-served basis.

(b) The Department will set the time and date for the sale of the tags.

(c) Tags issued are additional tags. A qualified landowner may purchase only one first-come, first-served tag per hunt series. Such a tag may be for the landowner or for someone other than the landowner listed on their tag distribution form.

(d) For the purposes of OAR 635-075-0020(2), "qualified landowner" is a landowner who registered their land through the landowner preference program for the Wildlife Management Unit which includes the controlled hunt and who has a current tag distribution form filed with the Department.

(5) A hunter who received a tag of his or her choice through the original game mammal controlled hunt drawing process may exchange that tag

for a remaining tag in the first-come, first-served process while tags remain available. Tag purchases and exchanges may be obtained only through ODFW Salem Headquarters and must be made before the start of the seasons for which the tags are issued. The tag being exchanged shall not be reissued.

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

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

Hist.: FWC 10-1994, f. & cert. ef. 2-24-94; FWC 40-1994, f. & cert. ef. 6-28-94; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 4-2003, f. 1-17-03, cert. ef. 4-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-075-0029

### Tag Purchasing Requirements

(1) The department will notify outfitters and guides of the drawing results by December 31 of each year.

(2) On or before April 15 of each year Outfitters and Guides who are successful in the drawing must:

(a) Submit to the department the names, addresses, proof of nonresidency, and hunting license numbers (if already purchased) of the nonresidents for whom tags are to be issued. For the purpose of these rules: Proper identification for nonresident documents includes an out-of-state driver's license. If an applicant does not have a driver's license, then a combination of three pieces of identification are required including utility bill, rent receipt, passport, birth certificate, social security card, major credit card, medical card, marriage license, voter's registration card, library card, or military ID. One piece must show name and current address outside the state of Oregon.

(b) Submit to the department all required fees. Outfitters and guides must submit all fees; they will not be accepted from nonresident applicants to whom the tags will be issued. The department shall not issue a tag to any person who does not have a valid nonresident Oregon hunting license.

Note: Fees for Outfitter and Guides tags are twice the amount of a nonresident tag as described in ORS 497.112.

(c) No later than July 31 the department will issue to outfitters and guides all requested tags for which they have met requirements.

Stat. Auth.: ORS 496.012, 496.138 & 497.112

Stats. Implemented: ORS 496.012, 496.138 & 497.112

Hist.: FWC 73-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 27-2003(Temp), f. & cert. ef. 3-28-03 thru 6-6-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-078-0001

### Emergency Hunt List (Commission Approval)

(1) After first determining that acute game mammal damage problems to agricultural or other resources are occurring and that an emergency exists requiring more than 50 hunters, temporary rules shall be adopted in accordance with ORS Chapter 183 establishing:

(a) Open periods for taking game mammals in areas designated by the commission;

(b) Manner of taking game mammals;

(c) Numbers and sex to be taken.

(2) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt: the list is to be effective for one year. Each hunter less than 18 years of age shall have an adult hunting license and be accompanied by a responsible adult (21 years of age or older) when hunting. Applications will be accepted and kept on file at the headquarters office of the Department of Fish and Wildlife, 3406 Cherry Ave, NE, Salem, OR, 97303. Beginning July 1 of each year, the hunter's name will be placed on the eligible list in the order received. No fee is required for applicants to be placed on the emergency hunt list. Applications may be made on a form available at department offices and in the annual regulations document, and up to two hunters may apply on the form as a party. Each applicant shall list their name, address and telephone number where they can be contacted and the county for which they are applying.

(b) At such time as the commission determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from regional or district office of the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Certified Master Hunters applying during July 1 shall be randomized and moved to the top of the emergency hunt list. Applications received after July 31 each year will be prioritized as received.

(3) It is unlawful to take game mammals in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on one's person.

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(4) Upon killing a game mammal pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required.

(5) Eligibility and fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: Renumbered from 635-060-0800; FWC 23-1982, f. & ef. 4-1-82; FWC 34-1984, f. & ef. 7-24-84; FWC 7-1986, f. & ef. 2-19-86; FWC 35-1986, f. & ef. 8-7-86; FWC 52-1992, f. & cert. ef. 7-15-92; FWC 5-1995, f. & cert. ef. 1-23-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-078-0005

### Emergency Hunt List (Director's Approval)

(1) After determining that acute game mammal damage to agriculture or other resources is occurring and that an emergency exists requiring an immediate response using no more than 50 hunters to alleviate the damage situation, the commission may authorize the director to issue permits and tags for:

(a) Taking pronghorn antelope, deer, and elk in designated areas from August 15 to March 31; and taking mountain lion (cougar) and black bear in designated areas all year.

(b) The manner of taking game mammals.

(c) Numbers and sex to be taken.

(2) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt. The list is to be effective for one year. Each hunter less than 18 years of age shall have an adult hunting license and be accompanied by a responsible adult (21 years of age or older). Applications will be accepted at the office of the Department of Fish and Wildlife, 3406 Cherry Ave, NE, Salem, OR, 97303. Hunters may submit emergency hunt applications beginning July 1 of each year. No fee is required for applicants to be placed on the emergency hunt list. Applications may be made on a form available at department offices and up to two hunters may apply on the form as a party. Each applicant shall list their name, address, and telephone number, where they can be contacted and the county for which they are applying.

(b) At such time as the director determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Applications received after July 31 each year will be prioritized as received.

(3) It is unlawful to take game mammals in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on ones person.

(4) Upon killing a game mammal pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required.

(5) Fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

(6) The director shall notify the commission of the results of any hunts set forth in section (1) of this rule.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162  
Hist.: FWC 34-1984, f. & ef. 7-24-84; FWC 7-1986, f. & ef. 2-19-86; FWC 35-1986, f. & ef. 8-7-86; FWC 52-1992, f. & cert. ef. 7-15-92; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-078-0008

### District Emergency Hunts

(1) Upon determination that acute game mammal damage to agriculture or other resources is occurring, and that an emergency exists requiring an immediate response to alleviate the damage situation, the commission authorizes district wildlife biologists to issue permits and tags for:

(a) Taking pronghorn antelope, deer and elk in designated areas from August 1 to March 31;

(b) The manner of taking game mammals;

(c) Numbers and sex to be taken.

(2) The method of determining who shall be eligible to participate in the emergency hunts set forth in section (1) of this rule shall be as follows:

(a) Hunters who wish to be eligible for emergency hunts shall have their names placed on the emergency hunt list for the county in which they wish to hunt. The list is to be effective for one year. Each hunter less than 18 years of age shall have an adult hunting license and be accompanied by a responsible adult (21 years of age or older). Applications will be accepted at the office of the Department of Fish and Wildlife, 3406 Cherry Ave,

NE, Salem, OR, 97303. Beginning July 1 of each year, the hunter's name will be placed on the eligible list in the order received. No fee is required for applicants to be placed on the emergency hunt list. Applications may be made on a form available at department offices and up to two hunters may apply on the form as a party. Each applicant shall list their name, address, and telephone number, where they can be contacted and the county for which they are applying.

(b) At such time as the district wildlife biologist determines that a need for such emergency hunt exists, those numbers of hunters for which permits are available shall be notified to obtain their permits from the department. Hunt lists will be prioritized by a random sort of the applications received during July of each year. Applications received after July 31 each year will be prioritized as received.

(3) It is unlawful to take game mammals in and during the emergency hunt set forth in section (1) of this rule without having an emergency hunt permit/tag authorized for the species, area, and season on one's person.

(4) Upon killing a game mammal pursuant to these rules, the hunter shall immediately notify the local ODFW representative (or designee), and pay the appropriate fee for the tag required.

(5) Fees for such tags shall be the same as the tag fees established by species in ORS 497.112.

(6) No more than 250 hunters in aggregate, per county may be used to alleviate emergency damage between August 1—March 31 annually.

(7) The director shall notify the commission of the results of any hunts set forth in section (1) if this rule.

Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162  
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Hist.: FWC 15-1992, f. 3-10-92, cert. ef. 3-13-92 (and corrected 3-13-92); FWC 52-1992, f. & cert. ef. 7-15-92; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 17-1996, f. 4-10-96, cert. ef. 4-15-96; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-080-0030

### Rogue Unit

The Rogue Unit, number 30, is that area beginning at Medford; north on State Highway 62 to State Highway 230; northeast on State Highway 230 to Diamond Lake State Highway 138; south and east on State Highway 138 to Pacific Crest Trail; south along Pacific Crest Trail to boundary of Crater Lake National Park; west, south and east along Crater Lake National Park boundary to Pacific Crest Trail; south along Pacific Crest Trail; south-east on Forest Trail 993 along Fourmile Lake; south on Forest Road 3661 to State Highway 140; west on State Highway 140 to Forest Road 3601; south Forest Road 3601 to Dead Indian Road; southwest on Dead Indian Road to Jackson-Klamath county line; south along Jackson-Klamath county line to State Highway 66; west on State Highway 66 to Copco Road; south on Copco Road to Oregon-California state line; west along Oregon-California state line to Interstate Highway 5; north on Interstate Highway 5 to Medford, point of beginning.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 28-1983, f. & ef. 7-8-83; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 64-1990, f. & cert. ef. 6-21-90; FWC 6-1995, f. 1-23-95, cert. ef. 4-1-95; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

## 635-080-0031

### Keno Unit

The Keno Unit, number 31, is that area beginning at Klamath Falls; south on U.S. Highway 97 to Oregon-California state line; west along Oregon-California state line to Copco Road; north on Copco Road to State Highway 66; east on State Highway 66 to Jackson-Klamath county line; north on Jackson-Klamath county line to Dead Indian Road; northeast on Dead Indian Road to Forest Road 3601; north on Forest Road 3601 to State Highway 140; east on State Highway 140 to Forest Road 3661; north on Forest Road 3661 to Fourmile Lake; northwest on Forest Trail 993 to Pacific Crest Trail; north on Pacific Crest Trail to south boundary of Crater Lake National Park; east along south boundary of Crater Lake National Park to State Highway 62; southeast on State Highway 62 to U.S. Highway 97; south on U.S. Highway 97 to Klamath Falls, point of beginning.

Stat. Auth.: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Stats. Implemented: ORS 496.012, ORS 496.138, ORS 496.146 & ORS 496.162  
Hist.: FWC 119, f. & ef. 6-3-77; FWC 26-1978, f. & ef. 5-26-78; FWC 21-1979, f. & ef. 6-5-79; FWC 72-1989, f. & cert. ef. 8-15-89; FWC 64-1990, f. & cert. ef. 6-21-90; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04

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**Adm. Order No.:** DFW 119-2003  
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# ADMINISTRATIVE RULES

**Rules Amended:** 635-060-0055, 635-070-0000

**Subject:** Rules were amended to establish 2004 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-060-0055

### Documents Required in Field

(1) A person hunting in any controlled game mammal hunt shall have on his or her person a valid hunting license, Hunter Education Certificate (for persons less than 18 years old), and a controlled hunt tag (if applicable) for the area and season being hunted. The hunting license number shall be the same as that indicated on the controlled hunt tag. Exception: Controlled hunts continuing or occurring after December 31, 2004 will have a 2004 hunting license number on the controlled hunt tag.

(2) A tag or permit holder for a hunt after December 31, 2004 shall have on his or her person a valid 2005 hunting license.

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

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

Hist.: FWC 32-1978, f. & ef. 6-30-78; FWC 29-1979, f. & ef. 8-2-79; FWC 33-1980, f. & ef. 6-30-80; FWC 7-1981, f. & ef. 6-1-81; FWC 10-1981, f. & ef. 3-31-81; FWC 22-1981, f. & ef. 6-29-81; FWC 38-1982, f. & ef. 6-25-82; 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 11-1987, f. & ef. 3-6-87; FWC 12-1988, f. & cert. ef. 3-10-88; FWC 37-1988, f. & cert. ef. 6-13-88; FWC 14-1989, f. & cert. ef. 3-28-89; FWC 48-1989, f. & cert. ef. 7-25-89; FWC 23-1990, f. & cert. ef. 3-21-90; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 14-1992, f. & cert. ef. 3-13-92 (and corrected 3-13-92); FWC 36-1993, f. & cert. ef. 6-14-93; FWC 51-1993, f. & cert. ef. 8-25-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 45-1994(Temp), f. & cert. ef. 7-29-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 21-1996, f. & cert. ef. 5-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. & cert. ef. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 4-2003, f. & cert. ef. 1-17-03, cert. ef. 4-1-03; DFW 119-2003, f. & cert. ef. 12-4-03, cert. ef. 4-1-04

## 635-070-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting Cascade and Coast elk pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 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 "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR Chapter 635, to determine all applicable requirements for hunting western Oregon elk. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 41-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. & cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. & cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 2-2003, f. & cert. ef. 1-17-03; DFW 9-2003(Temp), f. & cert. ef. 1-28-03 thru 6-16-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 119-2003, f. & cert. ef. 12-4-03, cert. ef. 4-1-04

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**Adm. Order No.:** DFW 120-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 6-16-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 635-065-0760

**Subject:** Rules were amended to establish 2004 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-065-0760

### Other Restrictions

It is unlawful:

(1) To take or hold in captivity the young of any game mammal.

(2) To hold in captivity any wildlife of this state for which a permit is required without first securing a permit.

(3) To release without a permit any wildlife brought from another state or country, or raised in captivity in this state.

(4) To resist game law enforcement officers.

(5) To refuse inspection of any license, tag or permit by an employee of the department; any person authorized to enforce the wildlife laws; or a landowner or agent of the landowner on his land.

(6) To take or attempt to take any game mammals, game birds, migratory waterfowl or any protected wildlife species of any size or sex or amount, by any method or weapon, during any time or in any area not prescribed in these rules.

(7) To disturb, damage, remove, alter or possess any official department signs.

(8) To sell, lend, or borrow any big game tag.

(9) It is unlawful to operate or to be transported in a motor-propelled vehicle in violation of Cooperative Travel Management Areas. "Motor-propelled vehicle" includes aircraft not landing on designated airstrips. Through cooperative agreement, motor vehicle use is limited to specific roads during the dates for the areas listed below. There are two methods of posting road access information; 1. signs showing road closed, or 2. round green reflectors marking roads open to motorized travel. Unit descriptions may be found in OAR 635-080-0000 through 635-080-0077. The following closures shall be effective during the specified periods each year:

(a) North Coast Access Area: August 25 through December 1, 2004 — Applies to all gated, posted, and/or barrier-closed roads within the Saddle Mountain, Scappoose and Wilson wildlife management units.

(b) Upper Tualatin-Trask: Three days prior to the opening of controlled buck deer rifle season through the close of all bull elk rifle seasons — That part of the Trask Unit as follows: 60 square miles in Townships 1 North and 1 South, and Ranges 5 and 6 West;

(c) Rickreall Regulated Hunt Area: November 1 through November 30 annually — That part of Stott Mt. Unit as follows: 12 square miles in Townships 7 and 8 South, Ranges 6 and 7 West;

(d) Luckiamute: Permanent Closure — Those parts of the Stott Mt./Alsea Units as follows: 9 square miles in Townships 8 and 9 South, Ranges 7 and 8 West.

(e) Mid-Coast: Permanent Closure — That part of the Alsea Unit as follows: Individual gated and posted roads on Alsea, Mapleton, and Waldport Ranger Districts, Siuslaw National Forest;

(f) Smith Ridge: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 13 and 14 South, Ranges 6 and 7 East;

(g) Chucksney Mountain: September 1 through November 30 annually — That part of the McKenzie Unit as follows: 6 square miles in Township 19 South, Range 5 1/2 East;

(h) Skookum Flat: Permanent Closure — That part of the McKenzie Unit as follows: 8 square miles in Townships 19 and 20 South, Range 6 East;

(i) Eagle Creek: October 13 through October 22, 2004 — That part of the McKenzie Unit as follows: 66 square miles in Townships 21 and 22 South, Ranges 5, 5 1/2 and 6 East;

(j) Scott Creek: Permanent Closure — That part of the McKenzie Unit as follows: 51 square miles in Townships 14, 15, and 16 South, Ranges 6 and 7 East;

(k) Hadsall: Permanent Closure — That part of the Siuslaw Unit as follows: 6 square miles in Township 18 South, Ranges 9 and 10 West;

(l) Coos Bay BLM: Permanent Closure — That part of the Tioga Unit as follows: Individual posted roads on lands administered by BLM, Coos Bay District.

(m) Upper Rogue: Three days prior to the general Cascade elk season through the end of the general Cascade elk season — That part of the Rogue Unit as follows: Butte Falls and Prospect Ranger Districts, Rogue River National Forest;

(n) Jackson: Three days prior to the general Cascade elk season through end of the general Cascade elk season through April 30 annually — That part of the Rogue, Dixon, and Evans Creek units as follows: 67 square miles in Townships 32, 33, 34, and 35 South, Ranges 1 and 2 West and 1 and 2 East; off-road motor vehicle travel is prohibited at all times;

(o) Pokegama: November 20 through March 31 annually — That part of the Keno Unit as follows: 97 square miles in Townships 40 and 41 South, Ranges 4, 5, and 6 East;

(p) Lower Klamath Hills: Permanent Closure — That part of the Klamath Unit as follows: 3 square miles in Township 40 South, Range 9 East;

(q) Goodlow Mountain Area Closure: December 1 through March 31 annually — That part of the Klamath Unit as follows: 17 square miles in Townships 38 and 39 South, Ranges 12 and 13 East;

## ADMINISTRATIVE RULES

(r) Sun Creek: November 1 through June 30 annually — That part of the Sprague Unit as follows: 14 square miles in Township 32 South, Ranges 6 and 7 1/2 East;

(s) Fox Butte: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Paulina Unit as follows: 230 square miles in Townships 20, 21, 22, 23, and 24 South, Ranges 14, 15, and 16 East;

(t) Timbers: Permanent Closure — That part of the Paulina Unit as follows: 25 square miles in Townships 23 and 24 South, Ranges 9 and 10 East;

(u) Rager: September 29 through November 28, 2004 — That part of the Ochoco Unit as follows: 352 square miles south of U.S. Highway 26 and west of the South Fork John Day River.

(v) White River Wildlife Area: December 1 through March 31 annually — That part of the White River Unit as follows: 59 square miles along the eastern edge of the Mt. Hood National Forest in the southern half of the White River Unit;

(w) Lower Deschutes: Permanent Closure — That part of the Biggs Unit as follows: 12 square miles along lower 17 miles of Deschutes River except the county access road to Kloans;

(x) Murderers Creek-Flagtail: September 29, 2004 through October 13, 2004 and October 24, 2004 through November 14, 2004 — That part of the Murderers Creek Unit as follows: 185 square miles in Townships 13, 14, 15, 16, and 17 South, Ranges 26, 27, 28, and 29 East;

(y) Camp Creek: September 29, 2004 through October 13, 2004 and October 24, 2004 through November 14, 2004 — That part of the Northside Unit as follows: 54 square miles in Townships 10, 11, and 12 South, Ranges 31, 32, and 33 East.

(z) Heppner Regulated Hunt Area: Year-round, unless posted otherwise. That part of the Heppner Unit as follows: Approximately 84 square miles in Townships 2, 3, 4, 5, and 7 South, Ranges 26, 27, and 28 East;

(aa) Bridge Creek Wildlife Area: December 1 through April 30 annually — That part of the Ukiah Unit as follows: 20 square miles in Townships 5 and 6 south, Ranges 31 and 32 East in the Southwest corner of Ukiah Unit;

(bb) Dark Canyon: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 20 square miles in Townships 11 and 12 South, Ranges 40 and 41 East;

(cc) Patrick Creek: Three days prior to the opening of controlled buck deer season through the close of the last elk season encompassing this travel management area. That part of the Sumpter Unit as follows: 8 square miles in Townships 10 and 11 South, Ranges 35 1/2 and 36 East;

(dd) Dry Beaver/Ladd Canyon: Permanent Closure — That part of the Starkey Unit as follows: 125 square miles in Townships 4, 5 and 6 South, Ranges 35, 36, 37 and 38 East;

(ee) Clear Creek: October 24 through November 14, 2004 — That part of the Starkey Unit as follows: 21 square miles in Township 5 South, Ranges 37 and 38 East;

(ff) Trail Creek: October 24 through November 14, 2004 — That part of the Starkey Unit as follows: 29 square miles in Townships 6 and 7 South, Ranges 35 1/2 and 36 East;

(gg) Indian Creek-Gorham Butte: October 24 through November 14, 2004 — That part of the Starkey Unit as follows: 24 square miles in Townships 6 and 7 South, Ranges 36 and 37 East;

(hh) Elkhorn Wildlife Area: Permanent Closure — Those parts of the Starkey and Sumpter units as follows: 7 square miles in Township 6 South, Range 38 East;

(ii) Starkey Experimental Forest Enclosure: Permanent Closure — That part of the Starkey Unit as follows: 40 square miles in Townships 3 and 4 South, Range 34 East;

(jj) Hall Ranch: October 24, 2004 through April 30, 2005 — that part of the Catherine Creek Unit as follows: 3 square miles in Township 5 South, Range 41 East;

(kk) Little Catherine Creek: August 25, 2004 through May 31, 2005 — That part of the Catherine Creek Unit as follows: 17 square miles in Townships 4 and 5 South, Range 41 East;

(ll) Walla Walla: Permanent Closure — Those parts of Walla Walla, Wenaha, and Mt. Emily units as follows: All gated, posted, and closed roads within the Walla Walla Ranger District of the Umatilla National Forest.

(mm) Wenaha Wildlife Area: Permanent Closure — That part of the Wenaha Unit as follows: 17 square miles in Townships 5 and 6 North, Ranges 42 and 43 East along eastern edge of Umatilla Forest in northeast corner of Wenaha Unit;

(nn) Noregaard: Three days prior to the opening of archery season through the end of antlerless elk season. That part of the Sled Springs Unit as follows: 175 square miles in west one-third of Sled Springs Wildlife Unit.

(oo) Shamrock: August 4 through December 13, 2004 — That part of the Sled Springs Unit as follows: 20 square miles in Township 4 North, Range 44 East;

(pp) Chesnimnus: November 3 through 14, 2004 — That portion of the Chesnimnus Wildlife Unit within the boundaries of the Wallowa-Whitman National Forest;

(qq) Cemetery Ridge Road: Permanent Closure — That part of the Chesnimnus Unit as follows: Cemetery Ridge Road north of the south boundary of Section 4, Township 4 North, Range 48 East.

(rr) Lord Flat Trail (#1774): Three days prior to archery season through the end of all elk rifle seasons — 15 miles of road in Townships 1 South and 1 and 2 North, Ranges 49 and 50 East;

(ss) Grouse-Lick Creeks: October 24 through November 14, 2004 — That part of the Imnaha Unit as follows: 100 square miles in Townships 2, 3, 4, and 5 South, Ranges 46, 47 and 48 East;

(tt) Clear Lake Ridge: Three days prior to the opening of general statewide early archery season through December 1 annually — That part of the Imnaha Unit as follows: Five square miles in Township 2 South, Range 47 East, Sections 3 and 4 and Township 1 South, Range 47 East, Sections 28, 15, 33, 34 and 22.

(uu) Melhorn Reservoir: Permanent Closure: That part of the Pine Creek Unit as follows: 26 square miles in Township 6 South, Ranges 45 and 46 East;

(vv) Lake Fork: Three days prior to the opening of archery season to the end of all elk rifle seasons — That part of the Pine Creek Unit as follows: 32 square miles in Townships 6 and 7 South, Ranges 46 and 47 East;

(ww) Dutchman: Three days prior to the opening of buck deer rifle season to the end of all elk rifle seasons — That part of the Pine Creek Unit as follows: 5 square miles in Township 6 South, Range 47 East;

(xx) Okanogan-Fish: Three days prior to the opening of buck deer rifle season to the end of elk rifle seasons — That part of the Pine Creek Unit as follows: 22 square miles in Township 6 and 7 South, Ranges 46 and 47 East;

(yy) Little Eagle Meadows: Permanent Closure: That part of the Keating Unit as follows: 8 square miles in Townships 6 and 7 South, Ranges 44 and 45 East;

(zz) Boulder Creek: Three days prior to the opening of buck deer rifle season to the end of all elk rifle seasons — That part of the Keating Unit as follows: 6 square miles in Townships 6 and 7 South, Range 45 East;

(aaa) Holcomb Creek: Three days prior to the opening of buck deer rifle season to March 31 annually — That part of the Keating Unit as follows: 7 square miles in Townships 7 and 8 South, Ranges 44 and 45 East;

(bbb) Eagle Creek: December 15 through March 31 annually — That part of the Keating Unit as follows: 10 square miles in Townships 7 and 8 South, Range 45 East;

(ccc) Conroy Cliff: September 29 through October 13, 2004 and October 24 through November 14, 2004 — That part of the Malheur River Unit as follows: 46 square miles in Townships 16, 17, and 18 South, Ranges 32 1/2, 34, and 35 East;

(ddd) Devine Ridge-Rattlesnake: September 29 through October 13, 2004 and October 24 through November 14, 2004 — That part of the Malheur River Unit as follows: 59 square miles in Townships 20 and 21 South, Ranges 31, 32, 32 1/2 East;

(eee) Dairy Creek: September 29 through October 13, 2004 and October 24 through November 14, 2004 — That part of the Silvies Unit as follows: 98 square miles in Townships 19, 20, 21, and 22 South, Ranges 24, 25, and 26 East;

(fff) Burnt Cabin: September 29 through October 13, 2004 and October 24 through November 14, 2004 — That part of the Silvies Unit as follows: 22 square miles in Townships 18 and 19 South, Ranges 26 and 27 East;

(ggg) Walker Rim: Three days prior to the opening of controlled buck deer season through the close of the controlled buck deer season — That part of the Fort Rock Unit as follows: 113 square miles in Townships 24, 25, and 26 South, Ranges 8, 9, and 10 East;

(hhh) North Paunina: Permanent Closure — That part of the Fort Rock Unit as follows: 12 square miles in Townships 25 and 26 South, Range 8 East;

(iii) Sugarpine Mountain: Permanent Closure — That part of the Fort Rock Unit as follows: 40 square miles in Township 28, Ranges 9 and 10 East;

(jjj) Stott Mt.-North Alsea: August 27 — November 26, 2004 — All gated and/or barrier closed roads within the Alsea Unit north of US Hwy 20 and west of State Hwy 233 (Kings Valley Hwy); and in the Stott Mt. Unit. Cooperators require: day use only on private lands, no ATV use on private lands and designated state lands, no vehicle may block any road or gate. Access may be closed during extreme fire danger;

# ADMINISTRATIVE RULES

(kkk) Spring Butte: Permanent Closure — That part of the Paulina Unit as follows: 30 square miles in Township 23 South, Range 11 East;

(lll) Wildhorse Ridge/Teepee Butte: Three days prior to archery season through the end of all elk rifle seasons. Cross country travel only. Posted and gated roads north of 46 road in Chesnimnus Unit are closed;

(mmm) Hells Canyon National Recreation Area — Permanent Closure. Those parts of the Chesnimnus, Imnaha, Snake River, and Pine Creek Units in Eastern Wallowa County that are closed by the National Recreation Area;

(nnn) PO Saddle Road — Three days prior to archery season through June 15th, annually — Three miles of road in Townships 3 and 4 South, Range 48 East;

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

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

Hist.: FWC 123, f. & cert. 6-9-77; FWC 33-1978, f. & cert. 6-30-78; FWC 28-1979, f. & cert. 6-30-79; FWC 33-1980, f. & cert. 6-30-80; FWC 6-1981, f. & cert. 1-23-81; FWC 11-1981, f. & cert. 3-31-81; FWC 20-1981, f. & cert. 6-19-81; FWC 37-1982, f. & cert. 6-25-82; FWC 28, f. & cert. 7-8-83; FWC 34-1984, f. & cert. 7-24-84; FWC 43-1985, f. & cert. 8-22-85; FWC 35-1986, f. & cert. 8-7-86; FWC 15-1989, f. & cert. 3-28-89; FWC 63-1989, f. & cert. 8-15-89; FWC 24-1990, f. & cert. 3-21-90; FWC 55-1990, f. & cert. 6-21-90; FWC 58-1991, f. & cert. 6-24-91; FWC 36-1993, f. & cert. 6-14-93; FWC 18-1994, f. 3-30-94, cert. ef. 5-1-94; FWC 4-1995, f. 1-23-95, cert. ef. 7-1-95; FWC 30-1995, f. & cert. ef. 4-17-95; FWC 18-1996, f. 4-10-96, cert. ef. 8-1-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. & cert. ef. 1-1-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 5-2003, f. 1-17-03, cert. ef. 7-1-03; DFW 116-2003(Temp), f. & cert. ef. 11-25-03 thru 3-31-04; DFW 120-2003, f. 12-4-03, cert. ef. 6-16-04

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**Adm. Order No.:** DFW 121-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 1-19-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 635-068-0000

**Subject:** Rules were amended to establish 2004 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-068-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting western Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2003 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 068 by reference.

(3) OAR chapter 635, division 068 incorporates, by reference, the requirements for hunting western Oregon deer set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting western Oregon deer. The annual Oregon Big Game Regulations are available at authorized license agents and regional, district, and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 39-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 3-2003, f. 1-17-03, cert. ef. 1-20-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 121-2003, f. 12-4-03, cert. ef. 1-19-04

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**Adm. Order No.:** DFW 122-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 2-2-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 635-069-0000, 635-073-0000

**Subject:** Rules were amended to establish 2004 hunting regulations for game mammals, including season dates, open areas, locations of cooperative travel management areas, and other rules including general hunting and controlled hunt regulations.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-069-0000

### Purpose and General Information

(1) The purpose of these rules is to establish season dates, bag limits, areas, methods and other restrictions for hunting eastern Oregon deer pursuant to ORS Chapter 496.

(2) Controlled hunt tag numbers for 2003 are listed in Tables 1 and 2 and are adopted and incorporated into OAR chapter 635, division 069 by reference.

(3) OAR chapter 635, division 069 incorporates, by reference, the requirements for hunting eastern Oregon deer set out in the document entitled "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations" in addition to OAR chapter 635, to determine all applicable requirements for hunting eastern Oregon deer. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

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

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

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

Hist.: FWC 40-1988, f. & cert. ef. 6-13-88; FWC 35-1996, f. & cert. ef. 6-7-96; FWC 9-1997, f. & cert. ef. 2-27-97; FWC 38-1997, f. & cert. ef. 6-17-97; FWC 71-1997, f. & cert. ef. 12-29-97; DFW 49-1998, f. & cert. ef. 6-22-98; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 32-1999(Temp), f. & cert. ef. 5-4-99 thru 10-31-99; DFW 34-1999(Temp), f. & cert. ef. 5-12-99 thru 10-31-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 20-2000(Temp), f. 4-12-00, cert. ef. 4-12-00 thru 6-30-00; DFW 30-2000, f. & cert. ef. 6-14-00; DFW 82-2000, f. 12-21-00, cert. ef. 1-1-01; DFW 47-2001, f. & cert. ef. 6-13-01; DFW 121-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 59-2002, f. & cert. ef. 6-11-02; DFW 7-2003, f. 1-17-03, cert. ef. 2-1-03; DFW 50-2003, f. & cert. ef. 6-13-03; DFW 122-2003, f. 12-4-03, cert. ef. 2-2-04

## 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 "2004 Oregon Big Game Regulations," into Oregon Administrative Rules. Therefore, persons must consult the "2004 Oregon Big Game Regulations," in addition to OAR Chapter 635, to determine all applicable requirements for bow and muzzleloader hunting and controlled deer and elk youth hunts. The annual Oregon Big Game Regulations are available at hunting license agents and regional, district and headquarters offices of the Oregon Department of Fish and Wildlife.

[ED. NOTE: Tables referenced in this rule are available from the agency.]

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

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

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**Adm. Order No.:** DFW 123-2003(Temp)

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 12-11-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 635-014-0090

**Rules Suspended:** 635-014-0090(T)

**Subject:** Amend rules relating to coho salmon seasons and bag and annual limits for specific coastal lake systems.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-014-0090

### Inclusions and Modifications

(1) The 2003 Oregon Sport Fishing Regulations as posted on the Department's web page [www.dfw.state.or.us](http://www.dfw.state.or.us) provide requirements for the Northwest Zone. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the 2003 Oregon Sport Fishing Regulations.

(2) Big Creek downstream from the suspended cable is open for chinook salmon and adipose fin-clipped steelhead January 1, 2003 through

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March 31, 2003, May 10, 2003 through August 31, 2003, and October 1, 2003 through December 31, 2003.

(3) Gnat Creek upstream from Aldrich Pt. Road Bridge to Barrier Falls which is located 1/4 mile upstream from Hwy. 30 is open for chinook salmon and adipose fin-clipped steelhead January 1, 2003 through March 31, 2003, May 10, 2003 through August 31, 2003, and October 1, 2003 through December 31, 2003.

(4) The Klaskanine River including tidewater, North Fork upstream to hatchery, and South Fork is open to chinook salmon and adipose fin-clipped steelhead January 1, 2003 through March 31, 2003, and May 10, 2003 through December 31, 2003.

(5) The Lewis and Clark River upstream to fish ladder located 200 feet downstream from Warrenton Reservoir Dam is open for adipose fin-clipped steelhead and chinook salmon January 1, 2003 through March 31, 2003, and May 10, 2003 through December 31, 2003.

(6) Youngs River including tidewater is open for adipose fin-clipped steelhead and chinook salmon January 1, 2003 through March 31, 2003, and May 10, 2003 through December 31, 2003.

(7) Effective May 24, 2003, the angling deadline on Three Rivers is approximately 65 feet below the ladder entrance at the Cedar Creek Hatchery weir structure; the deadline is marked with a signed cable crossing the river.

(8) Three Rivers is open for fin-clipped spring chinook salmon May 24, 2003 through June 30, 2003, and closed to all angling from the mouth upstream to the hatchery weir July 1, 2003 through September 30, 2003.

(9) During the seasons and times for angling for adipose fin-clipped coho in the following tributaries of the Columbia River: Youngs Bay, Klaskanine River, Lewis and Clark River, Youngs River, Bear Creek, Gnat Creek, and Big Creek, as described in the 2003 Oregon Sport Fishing Regulations pamphlet, notwithstanding the daily bag limit for adult salmon and steelhead, anglers may retain one additional adult adipose fin-clipped coho per day effective September 13, 2003.

(10) During the seasons and times for angling for adipose fin-clipped coho in the following waters draining directly to the Pacific Ocean: Nehalem Bay, North Fork Nehalem River, Tillamook Bay, Trask River and Salmon River, as described in the 2003 Oregon Sport Fishing Regulations pamphlet, notwithstanding the daily bag limit for adult salmon and steelhead, anglers may retain one additional adult adipose fin-clipped coho per day effective September 13, 2003.

(11) The North Fork Alsea River is open to angling for adipose fin-clipped steelhead from December 1, 2003 through March 31, 2004, from the mouth upstream to 100 feet below the Alsea Hatchery fishway, and from 100 feet above the Alsea Hatchery fishway upstream 600 feet to an angling deadline marker.

(12) Siltcoos Lake is open to angling for coho salmon from December 11, 2003 through December 31, 2003. The open area is upstream from the Highway 101 Bridge and downstream of both the railroad trestle on the Maple Creek arm and the Fivemile Road on the Fiddle Creek arm. The daily bag limit is one adult coho salmon and one jack coho salmon with an annual limit of five adult coho salmon in combination with Tahkenitch Lake.

(13) Tahkenitch Lake is open to angling for coho salmon from December 11, 2003 through December 31, 2003. The open area is upstream of the Highway 101 Bridge and downstream of both Fivemile Creek Road on the Leitel Creek arm and Snare Point on the Fivemile Creek arm. The daily bag limit is one adult coho salmon and one jack coho salmon with an annual limit of five adult coho salmon in combination with Siltcoos Lake. The harvest card location code for Tahkenitch Lake is 93.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert.

ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04 (Suspended by DFW 123-2003); DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03

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**Adm. Order No.:** DFW 124-2003(Temp)

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 1-1-04 thru 4-15-04

**Notice Publication Date:**

**Rules Amended:** 635-004-0027

**Subject:** Amends rule regarding the 2004 Yaquina Bay commercial roe herring fishery quota. Establishes a 2004 quota of 106,000 pounds (53 short tons).

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-004-0027

### Inland Waters Herring Season

There is no closed season for the commercial taking of herring in inland waters except:

(1) In all inland waters except Yaquina Bay, herring taken during the period January 1 through April 15 may only be sold for use as bait.

(2) In Yaquina Bay:

(a) The open season for the taking of herring is January 1 through December 31;

(b) The yearly harvest quota for the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 shall not exceed 20% of the available spawning biomass as established in the Yaquina River Basin Fish Management Operating Principles and Objectives 635-500-0665(2). The 2004 harvest quota for the Yaquina Bay commercial roe herring fishery is 106,000 pounds (53 short tons). Only fishers with a limited entry permit issued pursuant to ORS 508.765 may participate in this fishery.

(c) The factor used to convert an equivalent amount of "whole fish" resource in the Yaquina Bay commercial roe herring fishery during the period of January 1 through April 15 to the equivalent amount of herring eggs on kelp fishery is 0.2237;

(d) During the period January 1 through April 15 it is *unlawful* to:

(A) Fish commercially from midnight Friday through midnight Sunday with nets;

(B) Use any fishing gear or method of harvest for the taking of herring other than a purse seine with a maximum length of 50 fathoms (300 feet), defined as the maximum distance from the first to last pursing rings on the purse line; lampara net; hook and line "jigging"; or eggs-on-kelp method.

Stat. Auth.: ORS 506.109, ORS 506.119, ORS 506.129, & ORS 508.765

Stats. Implemented:

Hist.: FWC 50-1979, f. & ef. 11-1-79; FWC 67-1980, f. & ef. 12-3-80; FWC 4-1983, f. 1-28-83, ef. 2-1-83; FWC 8-1983(Temp), f. & ef. 2-15-83; FWC 8-1984(Temp), f. & ef. 3-5-84, FWC 29-1984, f. & ef. 7-3-84; FWC 9-1985(Temp), f. & ef. 2-20-85; FWC 5-1986(Temp), f. & ef. 2-11-86; FWC 6-1989(Temp), f. 2-15-89, cert. ef. 2-16-89; FWC 18-1990(Temp), f. 2-23-90, cert. ef. 2-24-90; FWC 13-1991(Temp), f. & cert. ef. 2-22-91; FWC 21-1995(Temp), f. 3-7-95, cert. ef. 3-8-95; FWC 10-1996(Temp), f. & cert. ef. 3-5-96; FWC 14-1997(Temp), f. & cert. ef. 3-10-97; DFW 11-2003, f. & cert. ef. 2-10-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 124-2004(Temp), f. 12-10-03, cert. ef. 1-1-04 thru 4-15-04

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**Adm. Order No.:** DFW 125-2003

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 6-1-03

**Rules Amended:** 635-011-0100, 635-011-0101, 635-013-0003, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-039-0080, 635-039-0090

**Rules Repealed:** 635-014-0090(T)

**Subject:** Amend rules to adopt sport fishing regulations for finfish, shellfish and marine invertebrates for 2004.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-011-0100

### General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2004 Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time, and,



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to the extent of any inconsistency, they supersede the 2004 Oregon Sport Fishing Regulations.

Stat. Auth.: ORS 496.138, 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129  
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-011-0101

### 2004 Sport Fishing Regulations Pamphlet Amendment

Notwithstanding OAR 635-011-0100, 016-0080 the **2004 Sport Fishing Regulations** pamphlet shall be the officially incorporated version referenced in the rules.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129  
Hist.: DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 3-2002(Temp), f. & cert. ef. 1-3-02 thru 1-23-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 74-2003(Temp), f. 8-1-03, cert. ef. 8-3-03 thru 8-7-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-013-0003

### Purpose and Scope

(1) The purpose of division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for 2003, included in the **Pacific Fishery Management Council — Adopted 2003 Ocean Salmon Management Measures and Impacts, dated April 2003**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2004 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting ODFW at (503) 947-6200.

(5) Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

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

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129  
Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-013-0004

### Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2004 Oregon Sport Fishing Regulations**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**, and the **2004 Oregon Sport Fishing Regulations** contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supercede the published federal regulations and the **2004 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subparts A and H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: No modifications to this category of regulations in the **Code of Federal Regulations, Title 50, Part 660, Subparts A and H**, and the **2004 Oregon Sport Fishing Regulations**.

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

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119  
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129  
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97,

cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp), f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert. ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-014-0080

### Purpose and Scope

(1) The purpose of division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to Divisions 011 and 014 to determine all applicable sport fishing requirements for the Northwest Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119  
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-014-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, ORS 496.146 & ORS 506.119  
Stats. Implemented: ORS 496.162 & ORS 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 5-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-016-0080

### Purpose and Scope

(1) The purpose of division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 016 to determine all applicable sport fishing requirements for the Southwest Zone.

Stat. Auth.: ORS 496.138, ORS 496.146, ORS 497.121 & ORS 506.119  
Stats. Implemented: ORS 496.004, ORS 496.009, ORS 496.162 & ORS 506.129  
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-016-0105 - 635-016-0325; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-

# ADMINISTRATIVE RULES

2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-016-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138 & ORS 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, cert. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-017-0080

### Purpose and Scope

(1) The purpose of division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 017 to determine all applicable sport fishing requirements for the Willamette Zone.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-017-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. The Willamette Zone is described in OAR 635-017-0100. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

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

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00,

cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02, cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03, cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-018-0080

### Purpose and Scope

(1) The purpose of division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 018 to determine all applicable sport fishing requirements for the Central Zone.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-018-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138 & ORS 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-019-0080

### Purpose and Scope

(1) The purpose of division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 019 to determine all applicable sport fishing requirements for the Northeast Zone.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

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01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-019-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

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

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 1-5-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-021-0080

### Purpose and Scope

(1) The purpose of division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 021 to determine all applicable sport fishing requirements for the Southeast Zone.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-021-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 183.325, ORS 496.138 & ORS 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-023-0080

### Purpose and Scope

(1) The purpose of division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates, by reference, the **2004 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-023-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

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

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f. 8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-00, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp), f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64-2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02, cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02, cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03, cert. ef. 6-30-03 thru 12-26-03; DFW 72-2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-039-0080

### Purpose and Scope

(1) The purpose of division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates, by reference:

(a) Sport fishing regulations of the State, included in the document entitled **2004 Oregon Sport Fishing Regulations**. Therefore, persons must

# ADMINISTRATIVE RULES

consult the **2004 Oregon Sport Fishing Regulations** in addition to divisions 011 and 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates; and

(b) Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC), included in the **Pacific Council News**, and to the extent they are consistent with these rules, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996)**, as amended to incorporate the standards in the **Pacific Council News**. Therefore, persons must also consult the **Pacific Council News and Federal Regulations**, or the **Pacific Halibut Fishery Regulations 2004** as published by IPHC to determine all rules applicable to the taking of halibut.

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

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

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

## 635-039-0090

### Inclusions and Modifications

The **2004 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04

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**Adm. Order No.:** DFW 126-2003(Temp)

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 1-1-04 thru 3-31-04

**Notice Publication Date:**

**Rules Amended:** 635-014-0090

**Subject:** Amend rules relating to steelhead angling on the North Fork Alsea River in the Northwest zone.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-014-0090

### Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) The North Fork Alsea River is open to angling for adipose fin-clipped steelhead from January 1, 2004 through March 31, 2004, from the mouth upstream to 100 feet below the Alsea Hatchery fishway, and from 100 feet above the Alsea Hatchery fishway upstream 600 feet to an angling deadline marker.

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

Stats. Implemented: ORS 496.162 & ORS 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-

1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f. 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003, f. 1-1-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04

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**Adm. Order No.:** DFW 127-2003

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 6-1-03

**Rules Amended:** 635-001-0105

**Subject:** Rules related to bass and walleye tournaments were amended to clarify the procedures for the dispersal of live fish after weigh-in and to define how fish that die during or as a result of tournament activities are disposed of. Rules also were amended to clarify the number of anglers and boats allowed in large and small tournaments.  
**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-001-0105

### Bass Fishing Tournaments

Black bass or walleye fishing tournaments are subject to provisions of ORS 498.279 and the following rules:

(1) Permit Application and Processing; General Provisions.

(a) Requests for tournament permits, other than those specified in (2)(c), will be processed in order of time of receipt at an ODFW office beginning December 15 of the year preceding the year in which the proposed tournament will be held.

(b) Parties requesting conflicting tournaments are encouraged to resolve the conflict among themselves. Parties may submit an amended tournament request that resolves conflicts among competing applicants that reserves the priority date of the original requests.

(c) At the request of the Commission, the sponsor of the event shall report the results of the event to the Commission, on a form provided by the Commission not later than 30 days after the end of the event.

(d) The Commission may order closure of any waters to competitions or contests when the Commission considers such action necessary to protect wildlife resources.

(e) Live fish must be released in scattered locations at least one mile from the weigh-in site or at locations designated by ODFW. The tournament director or a designee may exceed possession limits for the purpose of transporting fish from the weigh-in site to release sites on the same water.

(f) No bass or walleye may be retained by tournament sponsors or participants after a tournament ends except as specified in subsection (1)(g).

(g) The tournament director may dispose of fish that die during or as a result of tournament activities in the following manner:

(A) donated in accordance with local bag and possession limits to individuals at the weigh-in site not participating in or with the tournament. The tournament sponsor must issue a receipt for donated fish that must stay with the fish. The receipt must include the name of the recipient and the species and number of fish donated;

(B) the tournament director may exceed the bag or possession limit in order to transport the fish to donate them in a manner detailed in OAR 635-002-0005.

(2) Large Tournaments.

(a) Large tournaments are those with more than 24 boats or 49 individuals participating.

(b) A permit from ODFW is required. Sponsors must apply for permits at least 30 days prior to the event. Permit applications must include a written description of the manner in which the competition or contest is to be conducted. Such description shall include the location, dates and times of the event, the maximum number of boats participating, the amounts of prizes, and the equipment and methods to be used by contestants to keep fish taken in a live and healthy condition. Permits must be in possession of the sponsor or a designated representative at the tournament location, and must be shown to OSP or ODFW employees on request.

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(c) Requests for bass tournament permits from the annual tournament scheduling workshop sponsored by the Oregon Bass Federation submitted to the Department by December 31 for tournaments the following year will be given priority so long as that workshop is widely advertised and equally open to all persons desiring to participate.

(d) The frequency of bass tournaments and number of participants is limited. Surface areas of tournament waters will be based on Atlas of Oregon Lakes (OSU Press, 1985). (See Table 1). No more large competitions or contests for bass may be held on any particular body of water than provided by table 1, and no more often than once in any 13-day period except on the Columbia River downstream from Bonneville Dam, including the Willamette River upstream to Willamette Falls, and on Columbia River impoundments, where a competition or contest may not be held at launch sites less than 10 river miles apart more often than once in any 13-day period. Distance between launch sites will be determined from the River Mile Index for the Main Stem Columbia River (Hydrology Subcommittee of the Columbia Basin Inter-Agency Committee, 1962) and the Willamette River Recreation Guide (Oregon State Marine Board and Oregon Parks and Recreation Department, 1998).

(e) Notwithstanding restrictions set forth in the Oregon Sport Fishing regulations published annually, the following catch and possession restrictions apply to participants in bass fishing tournaments. Participants competing as individuals may continue to fish while holding five bass of any size in the livewell, as long as one bass is released immediately upon catching a bass. Two person teams may continue to fish while holding 10 bass of any size in the livewell, regardless of the number of bass caught by each angler, as long as one bass is released immediately when either team member catches a bass. The released bass may be either the bass just caught, or from the livewell. However, if the number of participants on any single boat is three or more anglers, the possession limit per boat is limited to 10 bass of any size.

(f) Frequency of walleye tournaments is limited to one in each 13-day period, and the total number of tournaments is further limited as provided in Table 2, however, a competition or contest for walleye on the Columbia River downstream from Bonneville Dam, including the Willamette River upstream to Willamette Falls, and on Columbia River impoundments, may not be held at launch sites less than 10 river miles apart more often than once in any 13-day period. Distance between launch sites will be determined from the River Mile Index for the Main Stem Columbia River (Hydrology Subcommittee, 1962) and the Willamette River Recreation Guide (Oregon State Marine Board and Oregon Parks and Recreation Department, 1998).

(g) There is no limit on the number of participants in a walleye tournament.

(3) Small Bass or Walleye Tournaments.

(a) Small black bass or walleye fishing tournaments are those which have fewer than 50 participants and 25 participating boats.

(b) Sponsors must notify the local ODFW District fish biologist and OSP office of the location, date and time of the event at least 10 days prior to the commencement of the event.

(c) Tournament participant boats must be clearly marked as "Contestant" or "Tournament" in a manner visible without magnification from a minimum distance of 50 yards.

(d) Notwithstanding restrictions set forth in the Oregon Sport Fishing regulations published annually, the catch and possession restrictions in subsection (2)(e) of these rules apply to participants in small bass fishing tournaments.

[ED. NOTE: Tables and publications referenced are available from the agency.]

Stat. Auth.: ORS 498.118, 496.138 & 496.146

Stats. Implemented: ORS 498.279 & 498.284

Hist.: FWC 96-1987, f. & ef. 11-17-87; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; DFW 78-2001, f. & cert. ef. 8-24-01; DFW 127-2003, f. 12-11-03, cert. ef. 1-1-04

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**Adm. Order No.:** DFW 128-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 635-004-0005, 635-004-0018, 635-04-0033, 635-004-0036, 635-006-0140, 635-006-0150, 635-006-0850, 635-039-0090

**Subject:** Adopt the 2004 groundfish and halibut recreational and commercial fishery regulations and adopt rules consistent with actions taken by the Pacific Management Council.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-004-0005

### Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, Pacific Halibut Fishery Regulations of the International Pacific Halibut Commission (IPHC), and in addition to the extent they are consistent with these regulations, **Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996, as amended)**. Therefore, persons must consult the **Federal Regulations** and the **Pacific Halibut Fishery Regulations 2004** as published by IPHC in addition to division 004 to determine all rules applicable to halibut fishing requirements. It is *unlawful* to take halibut for commercial purposes except as set by the **IPHC** and in accordance with a valid permit issued by the **IPHC**.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FC 241, f. 4-5-72, ef. 4-15-72, Renumbered from 625-010-0725, Renumbered from 635-036-0330; FWC 25-1989(Temp), f. & cert. ef. 4-5-89; FWC 51-1989, f. & cert. ef. 7-28-89; FWC 32-1990(Temp), f. & cert. ef. 4-4-90; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-004-0018

### Scope of Rules

Division 004 incorporates into Oregon Administrative Rules, by reference, the annual groundfish specifications and management measures for 2004 included in the *Pacific Council News*, **volume 27, number 3, September 2003**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660, Subpart G (61FR34572, July 2, 1996, as amended** to incorporate the standards in Vol. 27, No. 3 of the *Pacific Council News*). Therefore, persons must consult the *Pacific Council News* and *Federal Regulations* in addition to division 004 to determine all applicable groundfish fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the *Pacific Council News* and the **Federal Regulations** may be obtained by contacting Pacific Council News at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1384.

Stat. Auth.: ORS 496.138 & ORS 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 71-1996, f. 12-26-96, cert. ef. 1-1-97; DFW 1-1998, f. & cert. ef. 1-9-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-004-0033

### Groundfish Restrictions

(1) The season for most species of ocean food fish is open year-round, until catch quotas are met (where applicable). Regulations for the following species or species groups of ocean food fish change throughout the season and the Oregon Administrative Rules and federal regulations should be consulted before fishing:

(a) Minor Nearshore Rockfish;

(b) Minor Shelf Rockfish (excluding tiger rockfish and vermilion rockfish);

(c) Minor Slope Rockfish;

(d) Black Rockfish;

(e) Cabezon;

(f) Canary Rockfish;

(g) Greenling;

(h) Tiger Rockfish;

(i) Vermilion Rockfish;

(j) Widow Rockfish;

(k) Yelloweye Rockfish;

(l) Yellowtail Rockfish;

(m) Darkblotched Rockfish;

(n) Pacific Ocean Perch;

(o) Longspine Thornyhead;

(p) Shortspine Thornyhead;

(q) Arrowtooth Flounder;

(r) Dover Sole;

(s) Petrale Sole;

(t) Rex Sole;

(u) Other Flatfish;

(v) Lingcod;

(w) Sablefish;

(x) Pacific Whiting.

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(2) For the purpose of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year. For 2004, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 111.9 metric tons, of which no more than 108 metric tons may be black rockfish.

(b) Other nearshore rockfish, 16.0 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) No vessel may land more than 2,000 pounds of cabezon; 350 pounds of greenling; 3,000 pounds of nearshore rockfish (no more than 900 pounds of which may be species other than black rockfish or blue rockfish) for commercial purposes during any cumulative catch period described in subsection 635-004-0033(4).

(4) The cumulative catch periods are: January 1–February 28 (29); March 1–April 30; May 1–June 30; July 1–August 31; September 1–October 31; and November 1–December 31.

Stat. Auth.: ORS 506.109 & ORS 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 73-1982(Temp), f. & ef. 10-27-82; FWC 1-1983 (Temp), f. & ef. 1-6-83; FWC 10-1983, f. & ef. 3-1-83; FWC 23-1983(Temp), f. & ef. 6-14-83; FWC 41-1983(Temp), f. & ef. 9-6-83; FWC 3-1984 f. & ef. 1-26-84; FWC 18-1984 (Temp), f. 5-4-84, ef. 5-6-84; FWC 36-1984(Temp), f. 7-31-84, ef. 8-1-84; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 18-1985(Temp), f. 4-26-85, ef. 4-27-85; FWC 52-1985(Temp), f. 8-30-85, ef. 9-1-85; FWC 65-1985 (Temp), f. & ef. 10-4-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 50-1986(Temp), f. & ef. 8-29-86; FWC 81-1986, f. 12-31-86, ef. 1-1-87; FWC 57-1987(Temp), f. & ef. 7-24-87; FWC 104-1987, f. 12-18-87, ef. 1-1-88; FWC 97-1988(Temp), f. & cert. ef. 1-6-88; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 49-1989(Temp), f. & cert. ef. 7-26-89; FWC 69-1990 (Temp), f. 7-24-90, cert. ef. 7-25-90; FWC 122-1990, f. 11-26-90, cert. ef. 11-29-90; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 48-1991(Temp), f. & cert. ef. 5-3-91; FWC 82-1991(Temp), f. 7-30-91, cert. ef. 7-31-91; FWC 83-1991, f. 8-1-91, cert. ef. 7-31-91; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 9-1992, f. 2-20-92, cert. ef. 2-21-92; FWC 58-1992(Temp), f. & cert. ef. 7-29-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 10-1993, f. & cert. ef. 2-10-93; FWC 1-1994, f. & cert. ef. 1-14-94; FWC 32-1994, f. & cert. ef. 6-3-94; FWC 44-1994, f. 7-26-94, cert. ef. 8-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 94-1995(Temp), f. 12-29-95, cert. ef. 1-1-96; FWC 9-1996, f. 3-5-96, cert. ef. 3-8-96; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 119-2002(Temp), f. 10-24-02, cert. ef. 10-25-02 thru 12-31-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 14-2003(Temp), f. 2-20-03, cert. ef. 2-21-03 thru 8-19-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 60-2003(Temp), f. 7-15-03, cert. ef. 7-16-03 thru 12-31-03; DFW 79-2003(Temp), f. & cert. ef. 8-18-03 thru 12-31-03; DFW 102-2003(Temp), f. 9-30-03, cert. ef. 10-1-03 thru 12-31-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-004-0036

### Black Rockfish Management Areas

(1) In addition to catch restrictions set forth in the Code of Federal Regulations, Title 50 Parts 660 and 663, and OAR 635-004-0033, the following trip limit applies to black rockfish (*Sebastes melanops*) taken with all commercial gears except trawl:

(a) It is unlawful to take or retain more than 200 pounds of black rockfish or 65 fish, whichever is greater, per vessel from a single fishing trip within one of the following areas:

(A) Tillamook Head (45°56'45" N latitude) to Cape Lookout (45°20'15" N latitude);

(B) Cascade Head (45°03'50" N latitude) to Cape Perpetua (44°18' N latitude);

(C) From a point (43°30' N latitude), approximately 8 1/2 nautical miles north of the Coos Bay north jetty, to a point (43°03' N latitude) adjacent to the mouth of Four-mile Cr.;

(D) Mack Arch (42°13'40" N latitude) to the Oregon-California border (42°00' N latitude).

(b) No vessel shall take, retain, possess, or land more than the allowed trip limit when fishing occurs for any species of fish within one of these restricted areas.

Stat. Auth.: ORS 506.119

Stats Implemented: ORS 506.129

Hist.: DFW 117-2002, f. & cert. ef. 10-21-02; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-006-0140

### Boat License

(1) A boat license is issued in accordance with ORS 508.035 and 508.260 of the commercial fishing laws and is required for the owner or operator of any boat used in taking food fish or shellfish for commercial purposes, except for the taking of clams or crayfish.

(2) A pair of decals bearing the last two numbers of the year for which the license is issued is included with the license for placement on the licensed boat. The license year decals shall be affixed to the licensed boat in a conspicuous place on each side of the boat on the superstructure as near midship as practicable.

(3) In accordance with subsection (3) of ORS 508.260, the assigned identification number of each licensed commercial fishing boat shall be as follows:

(a) The federal document number (all vessels five registered net tons and over);

(b) The state vessel registration number (all vessels not having a federal document number).

(4) Licensed commercial fishing boats which are federally documented shall have the document identification number displayed on each side of the boat adjacent to the current year license decal in not less than 3-inch high block numbers either placed on the boat or on an identification plate attached to the boat.

(5) Licensed commercial fishing boats which are state registered shall have their identification number displayed on each side of the bow as required by the appropriate laws or rules for displaying such number.

(6) Except as authorized by OAR 635-006-0132 or for fishers having a current Oregon Wholesale Fish Dealer license and Fish Buyer license, it is *unlawful* to transfer or sell commercially caught food fish, shellfish, or parts thereof, from a commercial fishing vessel to other than an Oregon Wholesale Fish Dealer or Fish Bait Dealer.

(7) As a license condition, owners or operators of commercial fishing vessels must cooperate with Department or Federal fishery observers, or observers collecting data for the Department or Federal agency, when asked, by the Department, to carry and accommodate an observer on fishing trips at no charge to the sponsoring agency.

(a) If observer coverage of a trip is denied by the owner or operator of a vessel, the Department shall require an explanation in writing from the owner or operator. This explanation shall be received by the Department within 15 days of written request by the Department for an explanation.

(b) The Department may request that the Commission revoke fishing permits or licenses for failure to cooperate in the observer program, after first allowing the owner or operator to meet with the Manager of Marine Program, or his representative, to provide an explanation for the denial.

(c) The Department shall not require the vessel operator or owner to provide an observer with meals or a subsistence allowance on observed fishing trips, but the vessel operator shall accommodate the observer with regard to reasonable eating and working conditions and access to pertinent fishing information and fishery data while aboard the vessel.

(d) Failure to provide reasonable eating and working conditions or access to pertinent fishing information or fishery data to observers, or actions taken by a vessel owner or operator against an observer that is prohibited pursuant to subsection (f), on observed fishing trips may lead to revocation of the vessel's fishing permits or licenses following the procedure outlined in subsection (b) above.

(f) To ensure that observer objectives may be reasonably and safely achieved, consistent with federal groundfish observer rules, it is unlawful for any person to:

(A) forcibly assault, resist, oppose, impede, intimidate, sexually harass, bribe, or interfere with an observer;

(B) interfere with or bias the sampling procedure employed by an observer, including physical, mechanical, or other sorting or discarding of any catch before sampling;

(C) tamper with, destroy or discard an observer's collected samples, equipment, or personal gear, without the express consent of the observer;

(D) prohibit or bar by command, impediment, threat, coercion, or refusal of reasonable assistance, an observer collecting samples, making observations, or otherwise performing the observers duties;

(E) harass an observer by conduct that has sexual connotations, has the purpose or effect of interfering with the observer's work performance, or otherwise creates an intimidating, hostile or offensive environment; or

(F) require, pressure, coerce, or threaten an observer to perform duties normally performed by crew members.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 508.025, ORS 508.035 & ORS 508.260

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 26, f. 11-28-75, ef. 1-1-76, Renumbered from 625-040-0060, Renumbered from 635-036-0540; FWC 142-1991, f. 12-31-91, cert. ef. 1-1-92; DFW 38-1999, f. & cert. ef. 5-24-99; DFW 97-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-006-0150

### Single Delivery License

(1) The single delivery license is issued in accordance with ORS 508.035 for a one-time landing of food fish and is in lieu of the commercial fishing and boat license described in OAR 635-006-0140 and 635-006-0145. Where "commercial fishing license" is used in ORS 508.235 and "boat license" is used in ORS 508.260, this license may be substituted.

(2) In the absence of a commercial fishing and boat license, it is *unlawful* to engage in the taking or landing of food fish in waters of this state without a single delivery license.

(3) No food fish shall be removed from a boat requiring a single delivery license until the fee for such license is received and such license has been issued by an authorized agent of the Department of Fish and Wildlife. The license shall be on board the boat and available for inspection by the

# ADMINISTRATIVE RULES

State Police or a representative of the Department of Fish and Wildlife whenever food fish are being unloaded.

(4) Single delivery licenses shall be forfeited upon landing to the wholesale fish dealer, who shall attach the license document to the appropriate fish ticket. Vessels taking fish outside of state waters may substitute the license fee at the time of landing for the license document.

(5) Vessels operating under a single delivery license must comply with OAR 635-006-0140(7), when requested by the Department.

Stat. Auth.: ORS 506.119, 506.129, 508.235 & 508.260

Stats. Implemented: ORS 508

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-040-0085, Renumbered from 635-036-0550; FWC 81-1985, f. 12-16-85, ef. 1-1-86; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-006-0850

### Developmental Fisheries Species List

(1) The Developmental Fisheries species, permit and gear restrictions, and landing requirements for renewal of Category A permits are as follows:

(a) FISH:

(A) Pacific hagfish (*Eptatretus stouti*) fishery has a qualifying requirement of five landings. Annual renewal requirements are five landings of at least 1,000 pounds each or a total of 25,000 pounds. In addition, landings must be made in at least three different months. There are 25 permits for harvest of which there are no trawl permits;

(B) Blue shark (*Prionace glauca*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 10 permits for harvest of which there are no high seas drift net permits and no large mesh gill net permits. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(C) Swordfish (*Xiphias gladius*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Permits are valid for and renewal requirements are calculated from February 1 through January 31 of the following year. There are 20 permits for harvest by floating longline and 10 permits for harvest by other gear. Specially adapted drift/gill net may be permitted. Experimental gear permits may be required. Five single-delivery permits will be issued to those who applied by annual filing date, but did not receive a Developmental Fishery Permit. Gill net gear must conform to California gear restrictions;

(D) Northern anchovy (*Engraulis mordax*) and Pacific herring (*Clupea pallasii*) fishery has a qualifying and annual renewal requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. There are 15 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. No permit is needed for hand lines or hand harvest. Experimental gear permits may be required;

(E) Pacific sardine (*Sardinops sagax*) fishery has a qualifying requirement of either five landings consisting of at least 500 pounds each landing or one landing consisting of at least 5000 pounds. Annual renewal requirements are five landings totaling at least 80,000 pounds or landings totaling at least \$25,000, based on ex-vessel price. There are 20 permits for ocean harvest. Specially adapted small mesh drift/gill net may be permitted. Experimental gear permits may be required. This rule incorporates, by reference, the sardine management measures for 2004 included in the Pacific Council List of Decisions for the November 2003 PFMC meeting, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations, Title 50 Part 660**, as amended to incorporate the standards recommendations of the Pacific Council. Therefore, persons must consult the Federal Regulations in addition to this rule to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone. A copy of the Pacific Council decisions and the Federal Regulations may be obtained by contacting the Fish Division at (503) 947-6200;

(b) INVERTEBRATES:

(A) Box crab (*Lopholithodes foraminatus*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 25 permits for harvest with pots only;

(B) Grooved tanner crab (*Chionoecetes tanneri*), Oregon hair crab (*Paralomis multispina*) and scarlet king crab (*Lithodes couesi*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest with pots only;

(C) Spot prawn (*Pandalus platyceros*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing or one landing consisting of at least 1000 pounds. After 2002, new permits for trawl gear will not be issued and trawl permits may be renewed as pot permits. After 2003, permits will be

issued for pot gear only; no new permits will be issued until the number of permits issued is below 10, after which there may continue to be 10 permits. Permits are area specific. Experimental gear permits may be required. Permits are issued geographically, split at Heceta Head with 50 percent issued north and 50 percent issued south of Heceta Head, until after the date of the lottery;

(D) Coonstripe shrimp (*Pandalus danae*) and sidestripe shrimp (*Pandalopsis dispar*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds (round weight) each landing. There are 10 permits for harvest by pot gear;

(E) Bay clams including cockle clams (*Clinocardium nuttallii*), butter clams (*Saxidomus giganteus*), gaper clams (*Tresus capax*), native littleneck clams (*Protothaca staminea*), and softshell clams (*Mya arenaria*) fishery has no qualifying and annual renewal requirements for intertidal hand harvest, an unlimited number of permits, and a \$25 permit fee. There are 11 permits (individual or vessel) for subtidal dive harvest, effective March 18, 1997-December 31, 1997, and 10 permits thereafter for statewide harvest and five permits for harvest south of Heceta Head. Qualifying requirements are either five landings consisting of at least 200 pounds each landing or an annual total of 2500 pounds for one calendar year during the qualifying period of January 1, 1990 through October 16, 1995. Annual renewal requirements are either five landings consisting of at least 100 pounds each landing or an annual total of 2500 pounds. An incidental catch of one gaper clam per eight butter clams, or 25 pounds of gaper clams per 100 pounds of butter clams, whichever allows the greater gaper clam incidental catch, is allowed during the closed season notwithstanding OAR 635-005-0020;

(F) Giant octopus (*Octopus dofleini*) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for harvest using octopus pots only;

(G) Marine snails (various species) fishery has a qualifying and annual renewal requirement of five landings consisting of at least 100 pounds each landing. There are 10 permits for subtidal harvest only;

(H) Flat abalone (*Haliotis walallensis*) fishery has a single permit authorized, a 3,000 pound annual quota limit, an annual renewal requirement of 10 landings of at least 20 pounds each landing, a 4-1/2 inch minimum size, year-round season, taken from nonintertidal areas with an abalone iron, and such additional permit conditions as the Director deems appropriate as required by OAR 635-006-870 and OAR 635-006-0880.

(2) The Developmental Fisheries Species List, Category "B," is as follows:

(a) FISH:

(A) Salmon shark (*Lamna ditropis*);

(B) Carp (*Cyprinus carpio*);

(C) Black hagfish (*Eptatretus deani*);

(D) Yellow perch (*Perca flavescens*);

(E) Eelpouts (family Zoarcidae);

(F) Brown bullhead (*Ameiurus nebulosus*);

(G) Skilfish (*Erilepis zonifer*);

(H) Northern squawfish (*Ptychocheilus oregonensis*);

(I) Pacific saury (*Cololabis saira*);

(J) Pacific sandfish (*Trichodon trichodon*);

(K) Eulachon (*Thaleichthys pacificus*), whitebait smelt (*Allosmerus elongatus*), night smelt (*Spirinchus starksi*), longfin smelt (*Spirinchus thaleichthys*) and surf smelt (*Hypomesus pretiosus*);

(L) Pacific pomfret (*Brama japonica*);

(M) Slender sole (*Eopsetta exilis*).

(b) INVERTEBRATES:

(A) Pacific sand crab (*Emerita analoga*);

(B) Freshwater mussels (families Margaritifera, Anodonta, Gonidea, and Corbicula);

(C) Ocean cockle clams (*Clinocardium nuttallii*);

(D) California market squid (*Loligo opalescens*) and other squid (several species);

(E) Fragile urchin (*Allocentrotus fragilis*);

(F) Sea cucumber (*Parastichopus* spp.).

(3) The Developmental Fisheries Species List, Category "C," is as follows:

(a) FISH:

(A) Spiny dogfish (*Squalus acanthias*);

(B) Soupfin shark (*Galeorhinus zyopterus*);

(C) Skate (family Rajidae);

(D) American shad (*Alosa sapidissima*);

(E) Pacific cod (*Gadus macrocephalus*);

(F) Pacific flatnose (*Antimora microlepis*);

(G) Pacific grenadier (*Coryphaenoides acrolepis*);

(H) Jack mackerel (*Trachurus symmetricus*);

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- (I) Chub (Pacific) mackerel (*Scomber japonicus*);
  - (J) Greenstriped rockfish (*Sebastes elongatus*);
  - (K) Redstripe rockfish (*Sebastes proriger*);
  - (L) Shortbelly rockfish (*Sebastes jordani*);
  - (M) Sharpchin rockfish (*Sebastes zacentrus*);
  - (N) Splitnose rockfish (*Sebastes diploproa*);
  - (O) Pacific sanddab (*Citharichthys sordidus*);
  - (P) Butter sole (*Pleuronectes isolepis*);
  - (Q) English sole (*Pleuronectes vetulus*);
  - (R) Rex sole (*Errex zechirus*);
  - (S) Rock sole (*Pleuronectes bilineatus*);
  - (T) Sand sole (*Psetichthys melanostictus*);
  - (U) Curlfin (lemon) sole (*Pleuronichthys decurrens*);
  - (V) Spotted ratfish (*Hydrolagus colliiei*);
  - (W) Wolf-eel (*Anarrhichthys ocellatus*);
  - (X) Walleye pollock (*Theragra chalcogramma*).
- (L) Chub (Pacific) mackerel (*Scomber japonicus*);

## (b) INVERTEBRATES:

- (A) Red rock crab (*Cancer productus*);
- (B) Purple sea urchins (*Strongylocentrotus purpuratus*);
- (C) Crayfish (*Pacifastacus leniusculus*).

Stat. Auth.: ORS 506.109 & ORS 506.119

Stats. Implemented: ORS 506.129, 506.450, 506.455, 506.460 & 506.465

Hist.: FWC 85-1994, f. 10-31-94, cert. ef. 11-1-94; FWC 87-1995, f. 11-17-95, cert. ef. 11-20-95; FWC 1-1997, f. & cert. ef. 1-16-97; FWC 18-1997(Temp), f. & cert. ef. 3-18-97; FWC 34-1997, f. 6-11-97, cert. ef. 6-15-97; DFW 3-1998, f. & cert. ef. 1-12-98; DFW 17-1998(Temp), f. & cert. ef. 3-6-98 thru 7-31-98; DFW 93-1998, f. & cert. ef. 11-25-98; DFW 85-1999, f. & cert. ef. 11-1-99; DFW 89-1999, f. & cert. ef. 11-15-99; DFW 76-2000, f. 11-21-00, cert. ef. 1-1-01; DFW 30-2001, f. & cert. ef. 5-4-01; DFW 119-2001, f. & cert. ef. 12-24-01; DFW 116-2002, f. & cert. ef. 10-21-02; DFW 117-2002, f. & cert. ef. 10-21-02; DFW 135-2002, f. 12-23-02, cert. ef. 1-1-03; DFW 25-2003, f. & cert. ef. 3-26-03; DFW 41-2003(Temp), f. & cert. ef. 5-12-03 thru 6-21-03; DFW 112-2003, f. & cert. ef. 11-14-03; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

## 635-039-0090

### Inclusions and Modifications

(1) The **2004 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2004 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule a "harvest cap" is defined as the total catch for a given species, or species group, that may be taken in a single calendar year by the ocean boat fishery. For 2004 the sport harvest caps are:

- (a) Black rockfish and blue rockfish combined of 382.5 metric tons, of which no more than 342 metric tons may be black rockfish.
- (b) Other nearshore rockfish, 11.4 metric tons.
- (c) Cabezon, 15.8 metric tons.
- (d) Greenling, 5.2 metric tons.

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

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

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp), f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04

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**Adm. Order No.:** DFW 129-2003

**Filed with Sec. of State:** 12-15-2003

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**Notice Publication Date:** 11-1-03

**Rules Adopted:** 635-500-6000, 635-500-6010, 635-500-6020, 635-500-6030, 635-500-6040, 635-500-6050, 635-500-6060

**Rules Amended:** 635-500-1820, 635-500-1830, 635-500-1850, 635-500-1920, 635-500-1930, 635-500-3120

**Subject:** Amend rules to adopt policies and objectives for fish management including the direction of summer steelhead, spring chi-

nook, sockeye salmon, bull trout and pacific lamprey in the Upper Deschutes Subbasin.

**Rules Coordinator:** Mike Lueck—(503) 947-6033

## 635-500-1820

### Metolius River and Tributaries

(1) The following policies apply for fish management in the Metolius River and its tributaries:

(a) Indigenous redband trout, kokanee salmon, mountain whitefish, and introduced brown and brook trout shall be managed for natural production consistent with Wild Fish Management Alternative for trout;

(b) No hatchery fish shall be stocked in the Metolius River and tributaries;

(c) Provide a fishery for hatchery rainbow trout in an off-channel pond.

(2) The following objectives apply for fish management, habitat, and public access in the Metolius River and its tributaries:

(a) Maximize protection of genetic diversity, adaptiveness, and abundance of redband trout, kokanee, and mountain whitefish in the Metolius River and tributaries;

(b) Provide angling opportunities for a diverse fishery on naturally produced redband trout, brook trout, brown trout, kokanee salmon, and mountain whitefish;

(c) Develop a site and provide an opportunity for juveniles to angle for trout on a standing water body in the vicinity of Camp Sherman;

(d) Provide angling opportunities;

(e) Develop subbasin specific knowledge that integrates fish distribution and abundance information, habitat characteristics, habitat restoration opportunities, and sensitive watershed areas into the Department's Habitat Database system;

(f) Protect, enhance, and restore wild fish habitat in the Metolius River Basin;

(g) Maintain bank angler access to the Metolius River;

(h) Develop an education project in the Metolius Basin to inform the public about the benefits of natural ecosystem restoration and enhancement, including fish and habitat management.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FWC 40-1996, f. 7-9-96, cert. ef. 7-10-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-1830

### Blue and Suttle Lakes

(1) The following policies apply for fish management in Blue and Suttle Lakes:

(a) Kokanee, mountain whitefish and introduced brown trout and brook trout in Suttle Lake and Link Creek shall be managed for natural production consistent with the Basic Yield Management Alternative for trout;

(b) Rainbow trout in Blue Lake shall be managed for hatchery production consistent with the Basis Yield Management Alternative for trout. No other hatchery fish shall be stocked;

(2) The following objectives apply for fish management in Blue and Suttle Lakes:

(a) Maintain genetic diversity, adaptiveness, and abundance of kokanee, brown trout, brook trout, and mountain whitefish in Suttle Lake and Link Creek;

(b) Provide consumptive angling opportunities for naturally-reproducing kokanee, brown trout, and mountain whitefish in Suttle Lake;

(c) Provide consumptive angling opportunities for hatchery rainbow trout in Blue Lake;

(d) Protect fish rearing and spawning habitat in Suttle Lake, Link Creek and Blue Lake.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FWC 40-1996, f. 7-9-96, cert. ef. 7-10-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-1850

### Crooked River Subbasin

(1) The following policies apply for habitat management throughout the Crooked River Subbasin:

(a) Work cooperatively with public and private landowners to protect, restore and maintain habitats for natural production of native and introduced fishes in the Crooked River basin;

(b) Restore anadromous and migratory resident fish to their historic range in the Crooked River basin by improving upstream and downstream passage over artificial barriers;

(c) Reconnect isolated and fragmented populations of redband trout by restoring and improving passage over manmade barriers;

(d) Require passage over all proposed dams on fish bearing streams.



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(2) The following objectives apply for habitat improvement in the Crooked River basin:

(a) Protect, restore, and enhance fish habitat in the Crooked River basin, Willow Creek, and reservoirs;

(b) Maintain or improve instream flow for fish production in the Crooked River and tributaries, and Willow Creek;

(c) Improve the water quality of the Crooked River basin, Willow Creek and reservoirs;

(d) Prevent fish losses at unscreened diversions and provide adequate upstream and downstream passage for fish at dams, culverts and other artificial obstructions in the Crooked River basin and Willow Creek;

(e) If passage is restored successfully over Pelton, Round Butte, and Opal Springs hydroelectric dams, evaluate passage over Ochoco and Bowman dams.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FWC 40-1996, f. 7-9-96, cert. ef. 7-10-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-1920

### Lake Billy Chinook

(1) The following policies apply for fish management at Lake Billy Chinook:

(a) Redband trout, brown trout, and mountain whitefish shall be managed for natural production consistent with the Basic Yield Management Alternative for trout;

(b) Kokanee salmon shall be managed for natural production consistent with the Intensive Use Management Alternative for trout;

(c) Smallmouth and largemouth bass, black crappie and bluegill shall be managed for natural production consistent with the Basic Yield Management Alternative for warmwater fish;

(d) Crayfish shall be managed for natural production and Basic Yield.

(2) The following objectives apply for fish management and public access at Lake Billy Chinook:

(a) Protect or enhance genetic diversity, adaptiveness and abundance of indigenous kokanee, redband trout, whitefish, and introduced brown trout in Lake Billy Chinook;

(b) Provide angling opportunities for a consumptive fishery on naturally produced kokanee, redband, and brown trout;

(c) Provide angling opportunities for smallmouth and largemouth bass, bluegill, and black crappie in Lake Billy Chinook;

(d) Provide better boat access at Lake Billy Chinook during low water conditions and peak use periods;

(e) Provide tribal, recreational, and commercial fisheries for crayfish in Lake Billy Chinook.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FWC 40-1996, f. 7-9-96, cert. ef. 7-10-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-1930

### Lake Simtustus

(1) The following policies apply for fish management at Lake Simtustus:

(a) Kokanee salmon shall be managed for natural and hatchery production consistent with the Basic Yield Management Alternative for trout;

(b) Rainbow trout and summer steelhead shall be managed for hatchery production consistent with the Basic Yield Management Alternative for trout;

(2) The following objectives apply for fish management and public access at Lake Simtustus:

(a) Provide angling opportunities for consumptive fisheries on naturally and hatchery produced kokanee, hatchery produced rainbow trout and hatchery produced summer steelhead juveniles;

(b) Prevent the movement of non-indigenous trout or of trout that pose a genetic risk to Deschutes River rainbow trout downstream from Lake Simtustus into the lower Deschutes River;

(c) Maintain and/or improve boat access at Lake Simtustus.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.109 & 506.129

Hist.: FWC 40-1996, f. 7-9-96, cert. ef. 7-10-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-3120

### Deschutes River from Bend (North Canal Dam) to Lake Billy Chinook Including the Tributaries Tumalo and Squaw Creeks

Policies and objectives for fish management in Deschutes River from Bend (North Canal Dam) to Lake Billy Chinook including the tributaries Tumalo and Squaw Creeks of the upper Deschutes River Subbasin.

(1) Policies for fish management in Deschutes River from Bend (North Canal Dam) to Lake Billy Chinook including the tributaries Tumalo and Squaw Creeks:

(a) Redband trout and introduced brown trout shall be managed for natural production consistent with the Featured Species Management Alternative for trout. No hatchery trout shall be stocked in the Deschutes River or its tributaries from Bend to Lake Billy Chinook;

(b) Mountain whitefish shall be managed for natural production consistent with the Wild Fish Management Alternative for trout;

(c) Brook trout shall be managed for natural production consistent with the Basic Yield Alternative for trout.

(2) Objectives for fish management in Deschutes River from Bend (North Canal Dam) to Lake Billy Chinook including the tributaries Tumalo and Squaw Creeks:

(a) Maintain genetic diversity, adaptiveness, and abundance of redband trout, mountain whitefish, brown trout, and brook trout;

(b) Provide diverse angling opportunities for a fishery on redband trout, mountain whitefish, brown trout, kokanee, and brook trout;

(c) Protect, enhance, and restore trout and whitefish habitat;

(d) Maintain and improve access.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: FWC 59-1996, f. 9-27-96, cert. ef. 10-1-96; DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6000

### Applicability

OAR 635-500-6000 through 635-500-6060 apply to the upper Deschutes River subbasin including: the Crooked River subbasin upstream to Bowman and Ochoco Dams; the Metolius River subbasin including Suttle Lake, Blue Lake, and Link Creek; the Deschutes River subbasin upstream to Big Falls including Squaw Creek; Lake Billy Chinook, and Lake Simtustus. These areas are located on the east side of the Cascade Mountains in Central Oregon primarily in Deschutes, Jefferson, and Crook Counties.

Stat. Auth.: ORS 496.138, 496.14 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6010

### Organization of Rules

(1) Administrative rules for the Upper Deschutes Subbasin anadromous fish management policies and objectives are organized as follows: Rule Number — Subject.

(2) OAR 635-500-6020 covers policies and objectives for summer steelhead management in the upper Deschutes subbasin.

(3) OAR 635-500-6030 covers policies and objectives for spring chinook management in the upper Deschutes subbasin

(4) OAR 635-500-6040 covers policies and objectives for sockeye salmon management in the upper Deschutes subbasin

(5) OAR 635-500-6050 covers policies and objectives for bull trout management in the upper Deschutes subbasin

(6) OAR 635-500-6060 covers policies and objectives for lamprey management in the upper Deschutes subbasin.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6020

### Summer Steelhead

(1) The following policies apply to summer steelhead management in the upper Deschutes subbasin:

(a) Only specific pathogen free hatchery reared eggs or juvenile summer steelhead will be released into the upper Deschutes River subbasin until they return as adults to the Pelton Trap.

(b) Only summer steelhead adults known to have originated upstream of Round Butte Dam or reared in a *M. cerebralis* free environment will be released above the dam until passage measures are proven successful.

(c) Summer steelhead of any origin may be considered for passage upstream of Round Butte Dam once it has been determined the population is able to sustain itself.

(d) The upper Deschutes River subbasin will be managed for native summer steelhead consistent with the Native Fish Conservation Policy (OAR 635-007-0503).

(2) The following objectives apply to summer steelhead management in the upper Deschutes subbasin:

(a) Maintain self-sustaining populations of naturally produced summer steelhead upstream of Round Butte Dam. A stock recruitment model will be developed for native summer steelhead to determine specific escapement numbers necessary to meet conservation goals.

(b) Provide a non-consumptive recreational fishery above Pelton if naturally produced summer steelhead spawner escapement exceeds conservation goals in five consecutive years.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 506.109 & 506.129  
Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6030

### Spring Chinook

(1) The following policies apply to spring chinook management in the upper Deschutes subbasin:

(a) Only specific pathogen free hatchery reared eggs or juvenile spring chinook will be released into the upper Deschutes River subbasin until they return as adults to the Pelton Trap.

(b) Only spring chinook adults known to have originated upstream of Round Butte Dam or reared in a *M. cerebralis* free environment will be released above the dam until passage measures are proven successful.

(c) Spring chinook of any origin may be considered for passage into habitats upstream of Round Butte Dam once it has been determined the population is able to sustain itself.

(d) The upper Deschutes River subbasin will be managed for native spring chinook consistent with the Native Fish Conservation Policy (OAR 635-007-0503).

(2) The following objectives apply to spring chinook management in the upper Deschutes subbasin:

(a) Maintain conservation levels of self-sustaining populations of naturally produced spring chinook upstream of Round Butte Dam. A stock recruitment model will be developed for spring chinook to determine specific escapement numbers necessary to meet conservation goals.

(b) Provide opportunity to harvest spring chinook if spawner escapement goal is exceeds conservation goals in five consecutive years.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 506.109 & 506.129  
Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6040

### Sockeye Salmon

(1) The following policies apply to sockeye salmon management in the upper Deschutes subbasin:

(a) Sockeye will be introduced into the Metolius River and tributaries including Suttle Lake and Link Creek through the release of hatchery reared specific pathogen free gametes and smolts into the Metolius and its tributaries.

(b) Adult sockeye arriving at the Pelton Ladder that are from a freshwater lineage will be spawned to provide the source of gametes and smolts for introduction into the Metolius River and its tributaries.

(c) Only selected adults of known Metolius River origin will be released upstream of Round Butte and Pelton Dams until passage measures are proven successful.

(d) Sockeye salmon of any origin may be considered for passage upstream of Round Butte Dam once it has been determined the population is able to sustain itself.

(e) The upper Deschutes River subbasin will be managed for hatchery and naturally produced sockeye in the Metolius River and tributaries consistent with the Native Fish Conservation Policy (OAR 635-007-0503).

(2) The following objectives apply to sockeye salmon management in the upper Deschutes subbasin:

(a) Achieve and maintain a self-sustaining population of naturally produced sockeye salmon in the Metolius River and its tributaries.

(b) Manage for a population level that allows for a naturally established equilibrium between resident kokanee and sockeye salmon in the Metolius River.

(c) Sockeye salmon in the lower Deschutes River will be managed to produce a fishery opportunity after recruits per spawner ratios have demonstrated a harvestable surplus in three successive years or after a predictive model has been established based on escapement.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 506.109 & 506.129  
Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6050

### Bull Trout

(1) The following policies apply to bull trout management in the upper Deschutes subbasin:

(a) Bull trout populations in the upper and lower Deschutes subbasins will be reconnected through passage at the Pelton-Round Butte Hydroelectric Project.

(b) The Deschutes River basin will be managed for naturally produced bull trout consistent with the Native Fish Conservation Policy (OAR 635-007-0503).

(2) The following objectives apply to bull trout management in the upper Deschutes subbasin:

(a) Maintain naturally produced self-sustaining populations of bull trout in the Deschutes River basin.

(b) Bull trout in the upper and lower Deschutes subbasins will be managed to provide fisheries opportunities when conservation management objectives are met in three successive years. Fisheries opportunities will be assessed by population sub-unit.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 506.109 & 506.129  
Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

## 635-500-6060

### Pacific Lamprey

(1) The following policies apply to pacific lamprey management in the upper Deschutes subbasin:

(a) Pacific lamprey will be re-introduced into habitats in the upper Deschutes Basin. Adult lamprey will be passed above the Pelton-Round Butte Hydroelectric Project.

(b) Manage pacific lamprey in the Deschutes River and its tributaries for naturally produced sustainable populations consistent with the Native Fish Conservation Policy (OAR 635-007-0503), and the species protected status (OAR 635-044-0130).

(2) The following objective applies to pacific lamprey management in the upper Deschutes subbasin: Protect pacific lamprey in the Deschutes River basin.

Stat. Auth.: ORS 496.138, 496.146 & 506.119  
Stats. Implemented: ORS 506.109 & 506.129  
Hist.: DFW 129-2003, f. & cert. ef. 12-15-03

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

**Adm. Order No.:** CWP 38-2003(Temp)

**Filed with Sec. of State:** 11-19-2003

**Certified to be Effective:** 11-19-03 thru 5-17-04

**Notice Publication Date:**

**Rules Amended:** 413-130-0125

**Subject:** This Adoption Assistance rule is being changed to provide clarification to the temporary rule that was adopted effective November 1, 2003.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-130-0125

### Budgetary Reductions of Adoption Assistance

(1) In the event that legislative or executive branch actions impacting DHS's budget or expenditure authority makes it necessary for DHS to implement budget reductions to the Adoption Assistance Program, DHS shall notify all recipients of Adoption Assistance of the following:

(a) The reason for the reduction;

(b) The percentage or amount that Adoption Assistance will be reduced; and

(c) The effective date of the reduced Adoption Assistance payment.

(2) Reductions to Adoption Assistance payments pursuant to this rule shall be applied uniformly to all recipients of Adoption Assistance.

(3) Reductions to Adoption Assistance payments pursuant to this rule shall not be subject to negotiation between DHS and the adoptive family.

(4) Reductions to Adoption Assistance payments pursuant to this rule are not subject to a contested case hearing.

(5) Reductions to Adoption Assistance pursuant to this rule shall not constitute a change in circumstances warranting a change in the recipient's Adoption Assistance benefits.

(6) If legislative or executive branch actions impacting DHS's budget or expenditure authority give DHS the ability and authority to restore, in whole or in part, Adoption Assistance that has been reduced by operation of this rule, DHS will notify all recipients who were affected by the corresponding reduction of Adoption Assistance of the percentage of or amount of the increase and the effective date of the increase. Any payment increase under this rule will be applied uniformly to all recipients of Adoption Assistance who were affected by the corresponding reduction.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.330-418.340

Hist.: CWP 16-2003, f. 1-21-03, cert. ef. 2-1-03; CWP 38-2003(Temp), f. & cert. ef. 11-19-03 thru 5-17-04

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**Adm. Order No.:** CWP 39-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 11-25-03 thru 5-21-04

**Notice Publication Date:**

**Rules Amended:** 413-120-0115

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**Subject:** This Adoption Assistance rule is being changed to the correct name of the Department and provide clarification on documents required for the consent of the adoption.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0115

### Procedures

(1) When adoption assistance has been approved, and the adoptive parent(s) decides to use a "Qualified Vendor" attorney, the Adoption Assistance staff shall send the family a Qualified Vendor Agreement and the Qualified Vendor Attorney List. The family and the attorney shall sign the Qualified Vendor Agreement and return it to the central Adoptions Services Unit. Upon receipt of the adoption decree, the adoption assistance staff shall prepare the request to reimburse the attorney (per contract with the attorney).

(2) If the adoptive parent(s) chooses to use an attorney that is not on the Qualified Vendor Attorney List, the adoption assistance staff shall send the adoptive parent(s) a Non Vendor Agreement. The adoptive parent(s) shall sign this and return it to the Adoption Services Unit. Upon receipt of the adoption decree, the adoption assistance staff shall reimburse the adoptive parent at the same rate as for a vendor attorney. The adoptive parent is responsible for any additional charges billed by the attorney, and is responsible to reimburse the attorney for these charges.

(3) In accordance with ORS 418.295, no Department employee shall recommend an attorney serve as counsel for the prospective parent(s).

(4) When the central office Adoptions Services Unit has received the request for consent to the adoption and the vendor or non-vendor agreement, the adoption assistance is in place, and the Legal Assistance Specialist has given approval, the Adoptions Services Unit will prepare the consent to be signed by the adoption Services Manager or another person designated by the Assistant Director for Children, Adults and Families. In addition to the Consent to the Adoption, the Department's Adoption Services Unit will provide the following documents to be filed with the petition:

(a) A certified copy of the court orders or the original release and surrender documents which show that the Department has permanent custody of the child and the authority to consent to the child's adoption;

(b) ICWA correspondence, if applicable;

(c) Statement of verification that the birth parent(s) and the petitioner(s) have been advised of the voluntary adoption registry;

(d) Documentation regarding compliance with the Interstate Compact on Placement of Children, if applicable;

(e) A copy of a signed legally enforceable Post Adoption Communication Agreement if available; and

(f) Affidavits, if applicable.

(5) After receiving the documents listed in (4), the Department will send the Consent to Adopt to the attorney for the adoptive family. Within 30 calendar days of the date the Department sends the Consent to Adopt, the attorney shall file the petition (unless a petition is not required under ORS 419.B529). After the central office Adoptions Services Unit receives a copy of the petition filed with the court, the Department will provide the court with the written court report waiving the 90 day waiting period.

(6) After the Department sends the Consent to Adopt to the attorney, after the attorney prepares the petition if required and files it with the court, and the Department sends the written court report to the court, within 30 days the attorney shall prepare a decree and send it to the court or schedule and Adoption Ceremony.

(7) Per ORS 109.307(4), the court granting the adoption decree shall provide the central office Adoption Services Unit with a copy of the adoption decree.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 109.307, ORS 109.309 & ORS 109.316

Hist.: SCF 6-1996, f. & cert. ef. 9-17-96; SOSCF 7-1999, f. & cert. ef. 5-14-99; SOSCF 22-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 39-2003(Temp), f. & cert. ef. 11-25-03 thru 5-21-04

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**Adm. Order No.:** CWP 40-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 11-25-03 thru 5-21-04

**Notice Publication Date:**

**Rules Amended:** 413-120-0175

**Subject:** This Adoption Assistance rule has been updated with documents required that the Department send to the attorney for filing with the court for the adoption decree to be issued.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-120-0175

### Court Filing Requirements

When the requirements of OAR 413-120-0165 have been met, the Adoption Services Unit will send the following to the attorney selected by the adoptive family, and the attorney should file with the court:

(1) A written consent to the adoption.

(2) A placement report requesting the juvenile court to enter a decree of adoption.

(3) Indian Child Welfare Act statement, ORS 109.309(10)(a-b).

(4) Statement regarding Voluntary Adoption Registry Notification, ORS 109.35.

(5) Documentation regarding compliance with the Interstate Compact on Placement of Children, Article IV, ORS 417.200.

(6) Adoption Disclosure Statement, form CF 960.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 419B.529

Hist.: SOSCF 12-1999, f. & cert. ef. 7-6-99; CWP 40-2003(Temp), f. & cert. ef. 11-25-03 thru 5-21-04

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**Adm. Order No.:** CWP 41-2003

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

**Certified to be Effective:** 12-12-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 413-050-0200, 413-050-0210, 413-050-0220, 413-050-0230, 413-050-0240, 413-050-0250, 413-050-0260, 413-050-0270, 413-050-0280, 413-050-0290, 413-050-0300

**Subject:** The Supportive or Remedial Day Care rules have been revised to allow the child welfare related day care program to use the same provider approval process as the department's self sufficiency day care program. This process provides a background check for criminal history and for child protective services history that would indicate a potential safety risk to children in a provider's care. The rules for this process are contained in OAR 461-165-0400 through 461-165-0420. The department day care provider approval process. These rules are intended to clarify the integration of child welfare and self-sufficiency day care programs within the department and to clarify that department child care providers are not exempt from Child Care Division requirements.

**Rules Coordinator:** Barbara J. Carranza—(503) 945-6649

## 413-050-0200

### Purpose

The purpose of these rules is to define key terms, describe eligibility criteria and rate payment policies related to the Department of Human Services Supportive or Remedial Day Care program. Expenditures by the Department under these rules are subject to the availability of state or federal funds, as applicable, and are subject to immediate curtailment by the Department if the necessary state or federal authorizations or funding are curtailed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0210

### Definition

(1) "**Authorized Absence**" means the temporary absence from the facility by a child who is expected to return to care.

(2) "**Department**" means the Department of Human Services.

(3) "**CCD**" means the Child Care Division of the Employment Department.

(4) "**SDA**" means Service Delivery Area of the Department.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0220

### Eligibility Criteria

(1) The Department may purchase Supportive or Remedial Day Care Services for children under 13 years of age who are receiving Preventive/Restorative services, Child Protective Services, Substitute Care, or Adoption Services when the child(ren)'s physical, social, mental or emotional needs are not being met and day care will reduce the need for substitute care placement.

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(2) Supportive or Remedial Day Care is to be used in the following priority order:

(a) When a child would be able to remain at home as an alternative to substitute care, or to return home from substitute care through specialized day care planning;

(b) When a foster care or adoptive placement is in jeopardy due to a foster or adoptive parent's illness, or there is a need for temporary respite due to extreme care demands of the child;

(c) When a parent is unable to meet the child's needs due to extreme physical or emotional stress;

(d) When a child's physical, social, mental, or emotional development is being retarded or is at risk due to lack of proper care or stimulation.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0230

### Service Authorization

(1) Case Record Documentation:

(a) The service worker must review the appropriateness of day care service as a component of the total service plan. The day care service must be part of a coordinated, goal oriented, time limited casework plan to reduce the need for substitute care;

(b) The case record must document how the service will support or assist in achieving the service plan objectives. The use of day care services must be approved by the service supervisor;

(c) Each service is to be coded per IIS code sheet showing the relationship to prevention of substitute care.

(2) Limits of Eligibility:

(a) The maximum time the Department will authorize Supportive or Remedial Day Care for any one child is eight hours a day, five days a week;

(b) The use of the day care service shall be reviewed by the service worker and supervisor at least once every three months. The service authorization may be extended for three months at a time to assist in meeting the service goal to a maximum of 12 months;

(c) The service may be used more than 12 months only to prevent imminent foster care or prevent shelter care. Extension past 12 months shall be reviewed and approved by the local Department Substitute Care Review Committee;

(d) If all allocated funds are expended, service workers are to document unmet needs and notify the SDA Manager or designee.

(3) Select a Provider:

(a) Day Care Home or Center. The Department shall assist the parent in evaluating day care providers in order to select the provider which most closely matches the needs of the child and the family. The family should participate in selecting a day care provider regulated by the Child Care Division (CCD), or if exempt from CCD requirements, a provider approved for payment as a day care, foster care or relative care provider. The child welfare worker shall make the final selection of the provider based on the needs of the child and goals of the case plan.

(b) In-Home Care provided in the child's home:

(A) Prior to authorizing in-home care the Department worker shall:

(i) Determine if the person is known to the Department using the Central Provider and Client Index; and

(ii) Determine that the provider is at least 18 years of age and is willing and able to provide the quantity and quality of care needed by the child.

(iii) If the provider is exempt from CCD regulation they must be approved as a Department day care, foster care or relative care provider. Other valid reasons for not using a person include behavior which may have a detrimental effect on a child, or physical or mental problem which would adversely affect a child.

(iv) Obtain a provider number (see IIS User's Guide, Provider Subsystem); and

(v) Explain to the provider the CF 977, "Payment Policies and Procedures."

(B) Care in the child's home may be authorized when:

(i) A child, who is ordinarily in day care purchased by the Department, is ill. This is limited to no more than five days of care in one calendar month and shall not exceed the number of hours per day already authorized; or

(ii) A handicapped child requires care and no out-of-home day care is available or can be developed; or

(iii) The plan for care in the child's home does not exceed the cost of out-of-home day care.

(C) The provider in the child's home will be paid at the Oregon minimum wage.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 13-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0240

### Payment Process

The Department payment is subject to Department established eligibility conditions described in these rules.

(1) The Department will pay only for day care authorized by the Department.

(2) If a child is in day care when the service plan is made, payment shall be made only from the date the service is authorized.

(3) SOSCF The Department will make payments for temporary absences if requested by the provider, subject to the following requirements and limits:

(a) The provider must use the same policy for all families, including those served and not served by the Department;

(b) The child must be expected to continue in day care with the same provider after the absence;

(c) The Department will not make payment for absence(s) exceeding a total of five days in any calendar month; and

(d) Absence days, or portions thereof, will include only the time(s) for which care has been authorized by the Department.

(4) Department payments will only be made to a day care provider who is a CCD regulated provider, or a CCD exempt provider who is a Department approved day care, foster care, or relative care provider. Child Care Division of the Employment Department approved provider, a Department approved day care provider, or foster care provider, or relative care provider.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0250

### Payment Authorization

(1) Complete a "Supportive or Remedial Day Care Payment Authorization/Termination Notice" (CF 116) and a "Plan/Service Authorization" (CF 308). Distribute the CF 116 and input information from the CF 308 into IIS.

(2) Invoices (See the Integrated Information System (IIS) User's Guide, Client Subsystem):

(a) A "Day Care Invoice" (CPO 350FI-A) will be generated automatically and mailed to the provider from the Department when information from the CF 308 has been input no later than the seventh working day prior to the end of the service month;

(b) If information from the CF 308 has not been input within the above stated time, or a supplemental payment is to be made, local Department staff shall send a CF 283, "Supplemental Client Invoice-Day Care," to the care provider;

(c) Checks are written up to the amount authorized. Authorization should be input into IIS prior to service provision whenever possible. The worker will be notified of a discrepancy between authorization and billing amounts by the Department Accounting Services.

(A) If the provider billed the Department for additional care that was authorized but not input, the local Department must prepare a CF 283, "Supplemental Invoice." Complete the invoice for the difference to be paid showing the unit, rate, and amount. Local Department staff shall sign the provider's name and their own name and mail it to the Department Accounting Services;

(B) If the provider did not bill the Department for additional care that was authorized but not input, the local Department staff must send a CF 283 to the provider to complete and mail to Department Accounting Services;

(C) A CF 308 must also be completed to authorize additional service. For additional service the "Type of Service" code is DSUP for out-of-home providers and DISP for care provided in the child's home.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0260

### Payment Revision or Plan Closure

(1) When a child is no longer in care or the client becomes ineligible prior to the projected end date, the service worker must notify the provider and the client that the Department will no longer pay for care. This is done

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by sending a copy of the most recent CF 116 with the termination section completed.

(2) When a child who is ordinarily in day care purchased by the Department is ill an additional payment may be made to a substitute provider, who is either a regulated CCD provider, or if exempt from CCD regulation a Department approved day care, foster care or relative care provider.

(3) Any time there is an overpayment the worker must initiate overpayment and/or fraud procedures. See OAR 413-310-0000 through 0100 (Department child welfare policy III-B.1).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0270

### Billing Method

(1) Department payments for day care are made by check to the provider on behalf of the client after all care for the month has been given. The invoice is to be submitted to the Department Central Office by the provider for payment.

(2) Family day care providers must bill at an hourly rate (with the exception that they may bill at a daily rate for before and/or after school care) not to exceed the total authorized.

(3) Center and group home providers may bill at an hourly, daily, weekly, or monthly rate not to exceed the total authorized.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0280

### Determining Day Care Rates for Payment

(1) The Department will pay the provider's standard rate for all children or the Department Supportive Remedial Day Care maximum rate (see OAR 413-050-0290), whichever is less. The allowable rate shall be entered on the CF 116, "Supportive or Remedial Day Care Payment Authorization/Termination Notice."

(2) The provider shall not ask for, or accept, directly or indirectly, any additional payment for care provided to a Department eligible family unless there is a written agreement between the Department and the provider. (See CF 116A, "Request for an Exception.")

(3)(a) When the infant rate has been authorized for a child and the child reaches 30 months of age, the rate must be revised. Department workers are responsible for making this change effective no later than the first of the month after the child reaches 30 months of age.

(b) The Department worker shall send the provider a revised CF 116, and revise the Type of Service and authorized amounts on the CF 308 and input into IIS.

(4)(a) Although there are no special day care rates for children who are physically, developmentally and/or emotionally disabled, when a child 30 months of age or over functions below chronological age, the Department may authorize up to the infant rate for the care of the identified child.

(b) The Department worker, with supervisory approval, must document in the case record why the infant rate is being authorized for a child 30 months or older. Documentation must include the following:

(A) That effort was made to locate a resource at the Department non-infant rate; and

(B) Description of the specific problem which requires services above those covered by the non-infant rate.

(5) Rates charged to the Department for day care services may not exceed rates charged for comparable services to children not served by the Department:

(a) Donations and subsidies of cash or in-kind services may be used to reduce charges which would otherwise be made for day care services;

(b) Such donations and subsidies must be used to reduce charges for all children in care unless the donor specifies in writing that the donation is to be used for either a specific family or category of families;

(c) Separate records shall be kept by the provider for all donations and subsidies received and disbursed.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0290

### Maximum Rates

(1) The maximum rates the Department of Human Services pays for Supportive or Remedial Day Care are determined annually and will be furnished upon request.

(2) Care in the child's home: Minimum wage for care in a child's own home is governed by the state minimum wage law. It may not be negotiated. Overtime at one-and-one-half times the regular rate must be paid for all hours worked in excess of 40 hours in a work week (seven sequential days). Overtime shall not be paid to a provider who lives in the child's home.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

## 413-050-0300

### Exceptions

(1) Specific exceptions to any section of these rules may be granted for good and just cause by the Department.

(a) The exception must be requested in writing and show how the intent of the rule will be met.

(b) No exception will be granted which may jeopardize the health, safety, and well-being of any child in care.

(c) No exceptions will be allowed to use a provider who is not regulated by the Child Care Division, or if exempt from CCD regulation, a provider who is not approved by the Department as a day care, foster care, or relative care provider.

(d) No exceptions will be allowed to the minimum standards for the use of alternate care givers in Foster Care, Relative Care and Adoptive Families, established in OAR 413-200-0301 through 0401, "Safety Standards for Foster Care, Relative Care and Adoptive Families (Client Services Manual II-B.1).

(2) All exceptions must be approved by the person designated by the Department and be on file in the case record. The granting of an exception shall not constitute a precedent for any other provider or client.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 14-2002(Temp), f. & cert. ef. 12-19-02 thru 6-17-03; CWP 24-2003(Temp) f. & cert. ef. 6-18-03 thru 12-14-03; CWP 41-2003, f. & cert. ef. 12-12-03

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

**Adm. Order No.:** OMAP 83-2003(Temp)

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 12-1-03 thru 4-15-04

**Notice Publication Date:**

**Rules Amended:** 410-121-0300

**Subject:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. Rule 410-121-0300 is being amended to update the CMS Federal Upper Limits for Drug Payments listing. This filing is to update Transmittal #37, with Title XIX State Agency Letter Number 03-06, changes to the list are effective for services rendered on or after November 2, 2003, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0300

### CMS Federal Upper Limits for Drug Payments

(1) The CMS Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993. The development of the current Federal Upper Limit (FUL) listing has been accomplished by computer. Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit which CMS has determined to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs. The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A.

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The most current Transmittals and subsequent changes are posted to the CMS website at <http://www.cms.hhs.gov/medicaid/drugs/drug10.asp>. The FUL price listing will be updated approximately every six months.

(2) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 03-06, with changes to be effective November 2, 2003, and is available for downloading on OMAP's Website, (<http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/>). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp), f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp), f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04

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**Adm. Order No.:** OMAP 84-2003  
**Filed with Sec. of State:** 11-25-2003  
**Certified to be Effective:** 12-1-03  
**Notice Publication Date:** 11-1-03  
**Rules Adopted:** 410-121-0021

**Rules Amended:** 410-121-0040, 410-121-0140

**Subject:** The Pharmaceutical Services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for pharmaceutical products and services provided to clients. Rule 410-121-0021 is adopted to define requirements to provide pharmaceutical prescription services for pharmacies, rural health clinics and other medical organizations. Rule 410-121-0040 is amended to require prior authorization (PA) on Triptans. Rule 410-121-0140 was Temporarily amended effective November 1, 2003 and is now permanently amended effective December 1, 2003 to remove the language from definitions that requires unit dose and modified unit dose (institutional) pharmacies to credit OMAP for all unused medications.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0021

### Organizations Authorized to Provide Pharmaceutical Prescription Services

(1) Pharmacies, rural health clinics, and other medical organizations may provide drug prescription services for fee-for-service OMAP clients and receive reimbursement from OMAP by complying with all the following requirements:

- (a) Comply with all applicable Federal and State statutes, regulations and rules;
- (b) Meet all current licensing and regulatory requirements;
- (c) Be enrolled as a pharmacy provider with OMAP;
- (d) Have a current National Association of the Board of Pharmacy (NABP) number to bill OMAP; and
- (e) Comply with OMAP pharmacy billing requirements.

(2) Refer to OAR 410-120-1260 for enrollment details.

Statutory Authority: ORS 409

Statutes Implemented: ORS 414.065

Hist.: OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03

## 410-121-0040

### Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization for the following drugs and products:

- (a) Isotretinoin (Accutane) and Retinoic Acid (Retin A);
- (b) Growth hormone;
- (c) Oral Nutritional supplements;
- (d) Antihistamines (selected);
- (e) Nasal inhalers (selected);
- (f) Antifungals (selected);
- (g) Weight reduction drugs;
- (h) Excessive daily doses;
- (i) Excessive drug therapy duration;
- (j) Coal tar preparation;
- (k) Topical antibiotics;
- (l) Topical antibiotics;
- (m) Topical testosterone;
- (n) Dronabinol (marinol);
- (o) Drugs with cosmetic indications;
- (A) Emollients;
- (B) Dermtologicals;
- (C) Hair growth products;
- (p) Proton Pump Inhibitors (PPI):

(A) Non-Practitioners Managed Prescription Drug Plan (PMPDP) PPI category listed drug on the initial prescription;

(B) PMPDP PPI category listed drugs after eight weeks of acute anti-ulcer therapy.

(q) Gabapentin (Neurontin);

(r) Triptans, quantity limits;

(2) Over-the-counter medications not mentioned above are limited to two prescriptions per therapeutic class per month.

(3) Psychotropic prescriptions for children under 6, cannot be processed when a default 999999 provider number has been entered.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 22-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03

## 410-121-0140

### Definition of Terms

(1) Actual Acquisition Cost: The net amount paid per invoice line item to a supplier. This net amount does not include separately identified discounts for early payment.

(2) Automated Information System (AIS): A computer system which provides on-line Medicaid eligibility information. Accessed through the provider's touch-tone telephone. The AIS is accessed by dialing 1-800-522-2508.

(3) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules.

(4) Community Based Living Facility: For the purposes of the OMAP Pharmacy Program, "community based living facilities" include:

- (a) Supportive Living Facilities;
- (b) 24-Hour Residential Services;
- (c) Foster Care;
- (d) Semi-independent Living Programs;
- (e) Assisted Living and Residential Care Facilities.

(5) Compounded Prescriptions: A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient which must be a compensable item or a legend drug in a therapeutic amount. Compounded prescription is further defined to include the Board of Pharmacy definition of Compounding.

(6) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist.

(7) Drug Order/Prescription:

(a) A written prescription, dated and signed by the prescribing practitioner, the elapsed time between the date of writing and date of filling must be reasonable and appropriate for the drug and to the conditions for which it is ordinarily required; or

(b) An order on a nursing facility chart, dated and signed by the prescribing practitioner; or

(c) A telephone (verbal) order from the prescribing practitioner, or his agent, to the pharmacist and filed in the pharmacist's place of business;

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(d) All prescriptions/drug orders shall be filed in the pharmacist's place of business according to State Board of Pharmacy rules and regulations.

(8) Durable Medical Equipment and supplies (DME): Equipment that can stand repeated use and is primarily and customarily used to serve a medical purpose. Examples include wheelchairs, respirators, crutches, custom built orthopedic braces. Medical supplies are nonreusable items used in the treatment of illness or injury. Examples of medical supplies include diapers, syringes, gauze bandages, tubing.

(9) Estimated Acquisition Cost (EAC): The estimated cost at which the pharmacy can obtain the product. In the absence of actual cost data, OMAP will determine Estimated Acquisition Cost as the lesser of:

(a) Centers for Medicare and Medicaid Services (CMS) Federal upper limits for drug payment. These prices will be the upper limit on EAC for the CMS designated drugs as specified by OMAP;

(b) Oregon Maximum Allowable Cost (OMAC);

(c) Current AWP discount as designated in OAR 410-121-0155.

(10) Managed Access Program (MAP): The OMAP Managed Access Program, through its designated agent, First Health Services, utilizes a system of clinical protocols to evaluation drug therapy selected in drug categories. A prescriber or licensed medical personnel in a prescriber's office may request prior authorization on selected drug categories by calling the MAP Help Desk.

(11) Nursing Facilities: The term "Nursing Facility" refers to an establishment which is licensed and certified by DHS Seniors and People with Disabilities cluster as a Nursing Facility.

(12) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies which provide on-line, real-time claims adjudication.

(13) Prescription Splitting: Any one or a combination of the following actions:

(a) Reducing the quantity of a drug prescribed by a licensed practitioner. In situations where greater than a 34-day supply is prescribed, a pharmacist may dispense a 34-day supply (See OAR 410-121-0146);

(b) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing for the quantity dispensed;

(c) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients which, when combined together would represent the prescribed drug, with the exception of compounded medications (see OAR 410-121-0146);

(d) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice.

(14) Prescription Volume Survey: A survey used by pharmaceutical providers which determine the providers dispensing rate. This survey documents for each pharmacy the total prescriptions dispensed, the total prescriptions dispensed to OMAP clients, and if used, the types of unit dose system.

(15) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the State Board of Pharmacy.

(16) Unit Dose Delivery System:

(a) OMAP currently recognizes two types of unit dose dispensing systems:

(A) True Unit Dose. A True Unit Dose Delivery System requires that:

(i) Each nursing facility or community based living facility patient's medication be delivered a minimum of five days weekly, or delivery of medical carts every other day with daily (seven-days-a-week) service available;

(ii) Only the actual number of drug units used by the client during the billing period can be billed to OMAP;

(iii) Resumption of the same medication after a "stop order" or discontinuance ("DC") order constitutes a new prescription;

(iv) The closing date for the monthly billing period shall remain the same for all clients;

(v) Small quantity prescriptions are allowed only when the closing date for the monthly billing period is interrupted, e.g., hospitalization, new patient admit, etc.

(B) Modified Unit Dose. A Modified Unit Dose Delivery System requires that:

(i) A pharmacy must deliver each nursing facility or community based living facility client's medication in a sealed single-or multi-dose packages;

(ii) A pharmacy must dispense the greater of the quantity prescribed or a 30-day supply, except when short-term therapy is specified by the prescriber;

(iii) Only the actual number of drug units used by the client during the monthly billing period or during the prescribed medication period can be billed to OMAP;

(iv) OMAP will be billed for the date of dispensing within the timely filing limit;

(v) Manufacturer's Unit Dose packaging of drugs is not reimbursable.

(b) 30-Day Card:

(A) A 30-day blister pack, bingo or punch card containing multiple sealed single doses of medication. The pharmacy must have a system for dispensing and recovery of unused doses that has been approved by the State Board of Pharmacy;

(B) A 30-day card system which does not meet the requirements of the State Board of Pharmacy for recovery of unused doses, or for other reasons does not qualify for payment is not considered a True or Modified Unit Dose Delivery System.

(c) True and Modified Unit Dose providers must:

(A) Supply OMAP with a list of the facilities it will serve under this system;

(B) Sign an agreement to abide by the requirements of the program;

(C) Keep a separate, detailed Medication Administration (MAR) of all medications dispensed for each facility client served.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 28-1982, f. 6-17-81, ef. 7-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 11-1987, f. 3-3-87, ef. 4-1-87; AFS 2-1989(Temp), f. 1-27-89, cert. ef. 2-1-89; AFS 17-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 42-1989, f. & cert. ef. 7-20-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0010; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0190; HR 52-1991(Temp), f. 11-29-91, cert. ef. 12-1-91; HR 6-1992, f. & cert. ef. 1-16-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 14-1993, f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 49-2001, f. 9-28-01, cert. ef. 10-1-01 thru 3-15-02; OMAP 59-2001, f. & cert. ef. 12-11-01; OMAP 37-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 9-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 18-2003(Temp), f. 3-14-03, cert. ef. 4-1-03 thru 9-1-03 (Suspended by OMAP 27-2003, f. 3-31-03, cert. ef. 4-1-03 thru 4-15-03); OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 42-2003(Temp), f. 5-30-03, cert. ef. 6-1-03 thru 11-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 72-2003(Temp), f. 9-23-03, cert. ef. 11-1-03 thru 4-15-04; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03

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**Adm. Order No.:** OMAP 85-2003

**Filed with Sec. of State:** 11-25-2003

**Certified to be Effective:** 12-1-03

**Notice Publication Date:**

**Rules Amended:** 410-129-0080

**Subject:** The Speech-Language, Pathology, Audiology and Hearing Aids services program administrative rules govern Office of Medical Assistance Programs (OMAP) payments for products and services provided to clients. Rule 410-129-0080 is revised to centralize prior/payment authorizations of Speech-language pathology, Audiology, and Hearing Aids services. Services that are currently authorized by branch offices will be authorized by OMAP's Medical Unit, effective December 1, 2003. Services currently authorized by the Medically Fragile Children's Unit will continue to be authorized by that unit. Prior/payment authorization for clients in the FFS (fee-for-service) Medical Case Management Program are authorized by OMAP's Medical Case Management contractor.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

**410-129-0080**

**Prior Authorization of Payment**

(1) Payment authorization (PA) is approval by Office of Medical Assistance Programs (OMAP), the Medically Fragile Children's Unit (MFCU), the Fee-For-Service (FFS) Medical Case Management (MCM) Contractor or the Managed Care Organizations (MCOs) for services which are medically appropriate.

(2) Payment authorization is required for speech-language pathology, audiology and hearing aid services as indicated in the Procedure Codes section of the OMAP Speech-Language, Pathology, Audiology and Hearing Aid Services rules. For services requiring authorization from OMAP or MFCU, providers must contact OMAP or MFCU for authorization within five working days following initiation of services. Authorization will be given based on medical appropriateness and appropriateness of the therapy given. Hearing aids and other devices must be authorized prior to delivery of any services. For services requiring payment authorization from the FFS Medical Case Management (MCM) Contractor, authorization must be

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obtained prior to the initiation of services. For FFS MCM clients, OMAP will not reimburse for a service that requires payment authorization if provided prior to receiving authorization from the Medical Case Management Contractor. It is the provider's responsibility to obtain a payment authorization.

(3) Services for clients identified on the OMAP Medical Care Identification as having an "OMAP Contracted Plan" will be authorized by the plan. Contact the Managed Care Organization to determine their procedures.

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

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1982, f. 2-16-82, ef. 3-1-82; AFS 49-1982, 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 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 67-1985, f. 11-19-85, ef. 12-1-85; AFS 7-1988, f. & cert. ef. 2-1-88; HR 5-1991, f. 1-18-91, cert. ef. 2-1-91; Renumbered from 461-021-0310; HR 11-1992, f. & cert. ef. 4-1-92; HR 27-1993, f. & cert. ef. 10-1-93; OMAP 36-1999, f. & cert. ef. 10-1-99; OMAP 38-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 39-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 85-2003, f. 11-25-03 cert. ef. 12-1-03

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**Adm. Order No.:** OMAP 86-2003  
**Filed with Sec. of State:** 11-25-2003  
**Certified to be Effective:** 12-1-03  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 410-142-0300

**Subject:** The Hospice Services Rules govern Office of Medical Assistance Programs payment for services provided to clients. Medicaid hospice rates are calculated based upon the annual hospice rates established by Centers for Medicine and Medicaid Services (CMS). These rates are authorized by section 1814 of the Social Security Act. New Hospice rates, effective 10/01/03, have been received by the Office of Medical Assistance Programs. Rule 410-142-0300, temporarily amended on October 10, 2003 is permanently amended to update the Hospice Rates in compliance with federal regulations.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-142-0300

### Billing and Rate Information

(1) Hospice care is defined as a group of services and is therefore paid on a per diem basis dependent upon the level of care being provided. If the client is enrolled in a prepaid health plan, the hospice must contact the plan and bill according to their instructions.

(2) When the client has the "OHP Standard or OHP Plus" benefit package but is not enrolled in a prepaid health plan, bill with the appropriate Revenue Codes using the instructions on how to complete the UB-92.

(3) If the client is enrolled in Medicare Part A, do not bill OMAP unless no Medicare certified Hospice is available.

(4) If the client is enrolled in Medicare Part B, enter NC or MC in Form Locator 84.

(5) If the client is enrolled in Medicare Part A and you are not a Medicare-certified hospice, and there is no Medicare-certified hospice available in the area, enter NC or MC in Form Locator 84.

(6) Submit your claim to OMAP on a hard copy UB-92 or electronically:

(a) Send paper UB-92 claims to: Office of Medical Assistance Programs (OMAP);

(b) For information about electronic billing (EMC), contact OMAP. Electronic billing (EMC) information is also available at OMAP's website, [www.omap.hr.state.or.us](http://www.omap.hr.state.or.us).

(7) When billing for hospice services, the provider must bill the rate based upon the geographic location in which the care is furnished. See Table 142-0300: (Hospice Rate Chart — Revised 10/01/03. Rates were calculated per CMS State Agency Letter Number 03-05 dated September 25, 2003.)

[ED. NOTE: Tables referenced in this rule are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 9-1994, f. & cert. ef. 2-1-94; HR 16-1995, f. & cert. ef. 8-1-95; OMAP 47-1998, f. & cert. ef. 12-1-98; OMAP 40-1999, f. & cert. ef. 10-1-99; OMAP 34-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 55-2001(Temp) f. 10-31-01, cert. ef. 11-1-01 thru 4-15-02; OMAP 65-2001, f. 12-28-01, cert. ef. 1-1-02; OMAP 41-2002(Temp), f. & cert. ef. 10-1-02 thru 3-15-03; OMAP 15-2003, f. & cert. ef. 2-28-03; OMAP 80-2003(Temp), f. & cert. ef. 10-10-03 thru 3-15-04; OMAP 86-2003, f. 11-25-03 cert. ef. 12-1-03

**Adm. Order No.:** OMAP 87-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 5-15-04

**Notice Publication Date:**

**Rules Amended:** 410-121-0040

**Subject:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs payment for services provided to clients. Rule 410-121-0040 is temporarily amended to change the prior authorization requirement for non-PMPDP proton pump inhibitors (PPI) from the initial prescription to after eight weeks of acute anti-ulcer therapy. This will require the same therapeutic PA for all PPI products as previously established.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0040

### Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners are responsible for obtaining prior authorization for the following drugs and products:

(a) Isotretinoin (Accutane) and Retinoic Acid (Retin A);

(b) Growth hormone;

(c) Oral Nutritional supplements;

(d) Antihistamines (selected);

(e) Nasal inhalers (selected);

(f) Antifungals (selected);

(g) Weight reduction drugs;

(h) Excessive daily doses;

(i) Excessive drug therapy duration;

(j) Coal tar preparations;

(k) Topical antibiotics;

(l) Topical antivirals (selected);

(m) Topical testosterone;

(n) Dronabinol (marinol);

(o) Drugs with cosmetic indications;

(A) Emollients;

(B) Dermatologicals;

(C) Hair growth products;

(p) Proton Pump Inhibitors (PPI) after eight weeks of acute anti-ulcer therapy;

(q) Gabapentin (Neurontin);

(r) Triptan quantity limits.

(2) Over-the-counter medications not mentioned above are limited to two prescriptions per therapeutic class per month.

(3) Psychotropic prescriptions, for children under six years of age, cannot be processed when a default 999999 provider number has been entered.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04

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**Adm. Order No.:** OMAP 88-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 5-15-04

**Notice Publication Date:**

**Rules Amended:** 410-133-0090

**Subject:** The School-Based Health Services (SBHS) program administrative rules govern the Office of Medical Assistance Program (OMAP) payment for products and services provided to clients. Rule 410-133-0090 is temporarily amended to describe billing and payment for the SBHS cost-sharing program. This rule requires the state share from the public school medical providers to be public funds based on the Federal Medical Assistance Percentage (FMAP).  
**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-133-0090

### Provider Payment

(1) Payment will be made to the enrolled public education entity as the performing provider for those services provided by the employed staff



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person. While the education entity shall hold primary responsibility for providing these services with its own qualified staff, it may also contract, on a supplemental basis only, for covered services with individuals or organizations that meet qualifications for medical staff as outlined in OAR 410-133-0120.

(2) Signing the Provider Enrollment Agreement sets forth the relationship between the State of Oregon, Department of Human Services and the public school medical provider and constitutes agreement by the provider to comply with all applicable rules of the Medical Assistance Program, federal and state laws or regulations.

(3) The public school medical provider will bill according to OAR 410 division 133 rules. Payments will be made through the Medical Management Information System (MMIS).

(4) SBHS for public school medical providers is a cost-sharing (Federal Financial Participation matching) program. In addition to the requirements set forth in subsections (1)-(3) of this rule, and pursuant to 42 CFR 433.10, DHS may monthly, but will no less than quarterly, invoice the public school medical provider for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The public school medical provider shall pay the amount stated in the invoice within 30 days of the date of the invoice.

(a) The public school medical provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions: The public funds are transferred to DHS from public agencies; and, the public funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

(b) The public school medical provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the public school medical provider.

(c) The public school medical provider shall submit to OMAP an original signed document certifying that the public funds transferred to OMAP (for the non-federal matching share) by the public school medical provider under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(5) Failure to timely remit the non-federal share described in subsections (4) will constitute an overpayment, and will make the provider subject to overpayment recoupment or other remedy pursuant to OMAP General Rules, OAR 410-120-1400 through 410-120-1685.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065  
Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04

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**Department of Human Services,  
Mental Health and Developmental Disability Services  
Chapter 309**

**Adm. Order No.:** MHD 8-2003(Temp)

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03 thru 6-7-04

**Notice Publication Date:**

**Rules Amended:** 309-044-0100, 309-044-0110, 309-044-0120, 309-044-0130, 309-044-0140, 309-044-0150, 309-044-0160, 309-044-0170, 309-044-0180, 309-044-0190, 309-044-0200, 309-044-0210

**Subject:** The Medically Fragile Children Services (MFCS) rules, Chapter 309, Division 044, are being temporarily amended effective December 11, 2003. These rulemaking actions are being taken to (a) designate the required assessment tool, DHS Form 0519, with scoring instructions, to establish a score for participation in the CIIS behavior program for consistent application of the assessment process; and (b) correspond caregiver training and education to current funding constraints.

**Rules Coordinator:** Patricia F. Bougher—(503) 945-6398

## 309-044-0100

### Mission Statement, Purpose and Statutory Authority

(1) Mission Statement. The mission of the State of Oregon, Department of Human Services, Seniors and People with Disabilities is to provide support services that will enhance the quality of life of persons with developmental disabilities and to provide specialized services for children with severe physical and medical impairments.

(2) Purpose. These rules establish the policy of and prescribe the standards and procedures for the provision of Medically Fragile Children (MFC) Services. These Administrative Rules are established to ensure that MFC Services augment and support independence, empowerment, dignity, and development of the child through the provision of flexible and efficient services to eligible families. MFC Services are exclusively intended to allow a child who is medically fragile to have a permanent and stable familial relationship. The services provide the support necessary to enable the family to meet the needs of caring for a medically fragile child. MFC Services are intended to supplement families' natural supports and services.

(3) Statutory Authority. These rules are authorized by ORS 430.041 and 409.050 and carry out the provisions of ORS 430.215 and 427.005 to 427.007.

Stat. Auth.: ORS 409.050, 417.340 - 417.355 & 430.041  
Stats. Implemented: ORS 430.215, 427.005-007 & 417.340-355  
Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0110

### Definitions

(1) "Activities of Daily Living (ADL)" means tasks usually performed in the course of a normal day in a child's life; such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, usual developmental tasks, such as play and social development.

(2) "Aide" means a nonlicensed caregiver who may or may not be certified as a Certified Nursing Assistant.

(3) "Billing Provider" means an organization that enrolls with the Department and contracts with the Department to provide MFC In-Home Daily Care (IHDC) through its employees and bills the Department for the performing provider's services.

(4) "Child" means a person who is under the age of 18 and accepted for services by the MFCU.

(5) "Clinical Criteria" means the assessment tool, Form DHS 0519, used by the MFCU to evaluate the intensity of the care and IHDC needs of children.

(6) "Comprehensive Plan of Care (CPC)" means a written document developed by the service coordinator with the family or foster family that describes the needs of the child and the needs of the family that impact the child and how those needs will be met. It includes the Nursing Care Plan when one exists.

(7) "Cost Effective" means that in the opinion of the MFCU service coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(8) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation occurs only after assessment of the specific situation, the abilities of the unlicensed person, teaching the task and ensuring supervision. Delegation shall only occur to the extent allowed by Oregon Board of Nursing's administrative rules. Delegation by physicians is also allowed.

(9) "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, or are elderly or have physical disabilities.

(10) "Eligible Range" means that the score on the Clinical Criteria is at or above 50.

(11) "Hospital Model Waiver" means the waiver program granted by the federal Health Care Financing Administration that allows Title XIX funds to be spent on children in their family home who otherwise would have to be served in a hospital if the waiver program was not available.

(12) "In-Home Daily Care (IHDC)" means essential supportive shift care delivered by a qualified provider which enables a child to remain and/or return to his/her family's home.

(13) "Medically Fragile Children (MFC)" means children who have a health impairment which requires long term, intensive, specialized services on a daily basis and have been accepted for services by the MFCU.

(14) "Medically Fragile Children's Unit (MFCU)" means the program administered by the Department of Human Services for MFC.

(15) "Nurse" means a person who holds a valid, current license as an Registered Nurse (RN) or Licensed Practical Nurse (LPN) from the Oregon Board of Nursing.

(16) "Nursing Care Plan" means a plan of care developed by the 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 and/or delegated to the qualified provider or family. When one exists, it becomes a part of the Comprehensive Plan of Care.

(17) "Nursing Tasks or Services" means the care or services that require the education and training of a licensed professional nurse to perform. They may be delegated.

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(18) "Primary Caregiver" means the parent or foster parent who provides the direct care of the child at the times that a provider is not available.

(19) "Provider or Performing Provider" means the individual who is qualified to receive payment from the Department for In-Home Daily Care and meets the requirements of OAR 309-044-0170. Performing Providers work directly with MFC children. Providers may be employees of Billing Providers, employees of the family or independent contractors.

(20) "Service Coordinator" means a person who ensures a child's eligibility for MFCU services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

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

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

Stats. Implemented: ORS 430.215, 427.005-007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0120

### Eligibility

(1) In order to be eligible for MFC Services, the child must meet the following criteria:

- (a) Be eligible for Title XIX (Medicaid) or Title XXI (CHIPS); and
- (b) Be under the age of 18; and
- (c) Be accepted by the MFCU as eligible for MFC services by having a condition:

- (A) That is likely to last for more than 2 months; and
- (B) That makes MFC services medically necessary as defined by scoring 50 or greater on the Clinical Criteria; and
- (d) Residing in the family or foster home; and
- (e) Be capable of being safely served in the family or foster home, including, but not limited to, parents or foster parents demonstrating the willingness, skills, and ability to provide the direct care not paid for in the Comprehensive Plan of Care as determined by the service coordinator within the limitations of 309-044-0160.

(2) Children who reside in a hospital, school, sub-acute facility, nursing facility, ICF/MR, residential facility, or other institution are not eligible for MFC Services.

(3) Children who have sufficient family, government and/or community resources available to provide for their care are not eligible for MFC Services; also children not safely served in their homes as per OAR 309-044-0120(e) are not eligible for MFC services. The services are not available to replace care provided by a parent or foster parent or to replace other governmental or community services.

(4) Children who meet the following criteria will be transitioned out of MFC services within three months and will no longer be eligible for MFC services:

- (a) Have been previously eligible for MFC services; and
- (b) The needs of the child have decreased; and
- (c) The score on the clinical criteria remains at 30 or less.

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

Stats. Implemented: ORS 430.215, 427.005-007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0130

### Comprehensive Plan of Care

(1) The MFC service coordinator shall perform the following duties:

- (a) Assessment: The service coordinator will assess the service needs of the client by identifying the services for which the child is currently eligible, services currently being provided, and available family, community, private health insurance and government resources meeting any, some, or all of the child's needs. The service coordinator shall interview the parents or other caregivers and, when appropriate, other interested persons to assess the child's support needs.

- (b) Care Planning: The service coordinator will prepare, with the input of the family and any person at family's request, a written Comprehensive Plan of Care that:

- (A) Defines the needs of the child and the family;
- (B) Identifies the methods, resources and strategies which address some or all of those needs;
- (C) Identifies the number of hours of MFC Services authorized for the child; and
- (D) Identifies other services authorized by the Department for the child.

(2) The Comprehensive Plan of Care will:

- (a) Note the maximum hours to be reimbursed for those services; and
  - (b) Estimate the cost of the care.
- (3) The plan will describe the estimated number of hours that a MFC aide will be authorized and the number of hours that a licensed nurse will be authorized.

(4) The Nursing Care Plan, when one exists, will be included in the Comprehensive Plan of Care.

(5) The plan will be reviewed with the family prior to implementation and a copy provided to the family.

(6) The plan will include the date of the next planned review which, at a minimum, will be every 6 months.

(7) Significant changes in the needs of the child shall be reflected in the revised Nursing Care Plan, if one exists, and the Comprehensive Plan of Care and a copy provided to the family.

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

Stats. Implemented: ORS 430.215, 427.005-007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0140

### Scope and Limitations of MFC Services

(1) Parents and foster parents are the primary caregiver(s) and the services are intended to support, not supplant the natural supports supplied by the family.

(2) MFC Services may include, for a child on the Hospital Model Waiver, a combination of the following based upon the needs of the child as determined by the service coordinator consistent with the child's Comprehensive Plan of Care:

- (a) In-Home Daily Care;
- (b) Minor Home Adaptations; or
- (c) Goods, services, and supplies.

(3) MFC Services for a child not on the Hospital Model Waiver are limited to In-Home Daily Care only.

(4) All services authorized by the Department must be included in a written Comprehensive Plan of Care in order to be eligible for payment.

(5) The Comprehensive Plan of Care will use the most cost-effective services for safely meeting that child's needs as determined by the MFC service coordinator.

(6) The average monthly payment for the MFC services authorized in the Comprehensive Plan of Care will not exceed the limits established for the child's service level as follows:

(a) Level I:

(A) Children that are eligible for Level I services:

- (i) Must be ventilator-dependent for 24 hours per day;
- (ii) Have a score on the Clinical Criteria of 70 or greater; and
- (iii) Require awake staff/family for the full 24 hours.

(B) The average monthly cost for Level I shall be based on the Comprehensive Plan of Care and will not exceed \$18,000.

(b) Level II:

(A) Children that are eligible for Level II services:

- (i) Must be ventilator-dependent for at least 6 hours per day; and
- (ii) Have a score on the Clinical Criteria between 60 and 69; and
- (iii) Require awake staff/ family for the full 24 hours.

(B) The average monthly cost for Level II will be based on the Comprehensive Plan of Care and shall not exceed \$12,500.

(c) Level III:

(A) Children that are eligible for Level III services:

- (i) Have a score on the Clinical Criteria between 50 and 59; and
- (ii) Require awake staff/family for the full 24 hours.

(B) The average monthly cost of Level III will be based on the Comprehensive Plan of care and shall not exceed \$9,500.

(d) Level IV:

(A) Children that are eligible for Level IV services:

- (i) Have a score on the Clinical Criteria of less than 50; and
- (ii) Must meet the other eligibility criteria of OAR 309-044-0120; and
- (iii) Have not been transitioned out of services.

(B) The average monthly cost of Level IV will be based on the Comprehensive Plan of Care and shall not exceed \$4,500.

(e) Exceptions by the Department to the above cost limitations in service may only be made in the following circumstances:

(A) In order to prevent a hospitalization, the service coordinator can authorize increased costs for a short, time-limited period.

(B) In order to provide initial teaching of new care needs, the service coordinator can authorize additional costs for a time-limited period, not to exceed 60 days.

(C) The service coordinator can authorize additional costs when the service coordinator determines that documentation of a significant medical condition in the primary caregiver indicates that the condition prevents or seriously impedes the primary caregiver from rendering services.

(7) MFC Services will only be authorized to enable the family to meet the needs of caring for the medically fragile child.

(8) Minor home adaptations will only be authorized which are necessary to ensure the health, welfare and safety of the child or which enable the child to function with greater independence in the home. Adaptations or

# ADMINISTRATIVE RULES

improvements to the home which are of general utility and are not of direct medical or remedial benefit to the child are excluded. Adaptations which add to the total square footage of the home are excluded.

(9) All minor home adaptations must be provided in accordance with applicable state or local building codes by licensed contractors.

(10) For minor home adaptations that exceed \$5000, the Department may protect its interest through liens or other legally available means.

(11) Minor home adaptations that are provided in a rental structure must be authorized in writing by the owner of the structure prior to initiation of the work.

(12) Goods, services, and supplies may include any combination of the following:

(a) Homemaker. Homemaker Services consist of general household activities.

(b) Respite. Respite Services are furnished on a short-term basis because of the absence or need for relief for the primary caregiver.

(c) Transportation. Transportation is to gain access to community services, activities and resources as specified in the CPC. Family members can not be paid to provide this transportation. This shall not replace medical transportation furnished by OHP in which family members can be paid.

(d) Specialized medical equipment and supplies. Items could include, among others, communication devices, adaptive clothing, adaptive eating equipment, or adaptive sensory or habilitation devices or supplies. Items furnished by the Oregon Health Plan are excluded.

(e) Chore. Chore services are those needed to maintain the home in a clean, sanitary, and safe manner. These services include heavy household chores such as window washing or carpet cleaning. These services shall be provided only in situations where no one else in the household or other persons capable of performing or providing these.

(f) Family training. Training and counseling services for the families of MFC children which increase the family's capability to care for their child.

(g) Consultation by a physical therapist, occupational therapist, speech and language therapist, dietitian or other professional. Services covered by the Oregon Health Plan are excluded.

(h) Special diets. Special diets shall be ordered by a physician and periodically monitored as necessary by a dietitian. Special diets shall not constitute a full nutritional regime.

(i) Other goods, services, and supplies that are directly related to the child's disability included in an approved comprehensive Plan of Care, and required to help the family to continue to meet the needs of caring for the child.

(13) Goods, services and supplies paid for by the Department shall be documented by receipts and the receipts maintained by the Department for 5 years. If no receipt is available, the family shall submit to the Department in writing a statement that they obtained goods, service or supplies, the date that it was obtained, and the cost that was incurred.

(14) The Department may expend its funds for minor home adaptations or goods, services, and supplies through contract, purchase order, use of credit card, payment directly to the family or vendor, or any other legal payment mechanism.

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

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0150

### Denial of Services, Amount of Services, or Eligibility

(1) The Department must notify every applicant or recipient of services, unless the action is part of the CPC and the parent has agreed, in writing at the time of denial of a request for eligibility, or at the time of any action to terminate, suspend, or reduce MFCU eligibility or covered services, of the right to a hearing, of the method to obtain a hearing, and that the applicant may represent himself or herself, or use legal counsel, a relative, a friend, or other spokesperson. A notice concerning termination, suspension, or reduction of existing services shall be mailed to or served personally upon the child's parent or legal guardian not later than ten days before the effective date of action.

(2) The parent or legal guardian and foster parent may appeal a denial of a request for additional or different services only if the request has been made in writing and submitted to MFCU, SPD, 500 Summer Street NE, First Floor, Salem, OR 97301. If the Department denies a written request for additional or different services, it must notify the parent or guardian in writing at the time of the denial of the information specified in paragraph (3) of this section.

(3) A notice required by paragraphs (1)(b) or (2) of this section shall be served upon the parent or legal guardian and foster parent personally or by certified mail. The notice shall state:

(a) A statement of what action the Department 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) A statement of the child's right to a contested case hearing;

(e) A statement that the Department'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) A statement that the notice becomes a final order upon default if the child fails to request a hearing within a specified time;

(g) In cases 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 MFCU services will be continued if a hearing is requested.

(4) If the child or representative disagrees with the decision of the Department, the child or representative may request a contested case hearing as provided in ORS 183. The request for a hearing must be in writing on **Form AFS 443** and signed by the parent or the child's representative. To be considered timely, the request must be received by the Department within 30 days from the date of the Department's notice of denial.

(5) The family will be offered an opportunity for informal review by the Department or the designee.

(6) If the family requests an expedited hearing to occur within 30 days of the request for a hearing, the Department will waive its right, once per family, to recovery of benefits expended if the Department's reduction or termination of services is sustained by the hearing decision.

(7) Expedited hearings are requested using **AFS Form 443**.

(8) The performing or billing provider shall submit relevant documentation to the Department within five working days at the request of the Department when a hearing has been requested.

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

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

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0160

### Scope and Limitations of In-Home Daily Care Services

(1) MFC In-Home Daily Care services may include a combination of assistance with ADLs, nursing services, or other supportive services as determined by the MFCU service coordinator consistent with the child's Comprehensive Plan of Care. The extent of the services may vary, but the extent of service is limited as described in OAR 309-044-0140. The services include:

(a) Basic personal hygiene — including assisting with bathing and grooming;

(b) Toileting/bowel and bladder care — including assisting in the bathroom, diapering, external cleansing of perineal area, and care of catheters, ostomies and bags;

(c) Mobility — including transfers, comfort, positioning, and assistance with range of motion exercises;

(d) Nutrition — including preparing meals, special diets, gastrostomy feedings, monitoring intake and output, feeding;

(e) Skin care — including dressing changes and ostomy care;

(f) Respiratory — including monitoring and administering of oxygen, applying and adjusting ventilators and other respiratory equipment, providing inhalation therapies, monitoring and responding to apnea monitors and oximeters;

(g) Cardiovascular — including monitoring of vital signs and monitoring, and replacement and flushing of vascular access sites;

(h) Neurological — Monitoring of seizures, administering medication, observing status; and

(i) Other Nursing or Personal Care Tasks or Services.

(2) When any of the services listed in Subsection (1)(a) through (I) of this section are essential to the health and welfare of the child, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the child in a healthy and safe environment;

(b) Arranging for necessary medical equipment, supplies, and medications;

(c) Arranging for necessary medical appointments;

(d) Accompanying the child to appointments, outings, and community-based activities; and

(e) Activities to enhance development or learning.

(3) The number of service hours will be based upon the projected amount of time to perform the specified assistance for the child. The hours may be spread throughout the time authorized in the voucher or used in large blocks as the family determines.

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(4) Hours will be authorized only to support a family or foster family in their primary caregiving role.

(5) Hours will not be authorized that will supplant the services available from family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives. Hours will not be authorized solely to allow a parent to work, attend school, or attend any other activity.

(6) When two or more children in the same home or setting qualify for MFCU Services, the same provider will provide services to all qualified children if services can be safely delivered by a single provider, as determined by the MFCU service coordinator.

(7) The Comprehensive Plan of Care will not authorize RN hours when an LPN can safely perform the duties and RN or LPN hours when an aide can safely perform the duties.

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

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0170

### Provider Qualifications for In-Home Daily Care

(1) A performing provider is an individual, 18 years or older, who provides evidence satisfactory to the Department or its designee that demonstrates, by background, education, references, skills, and abilities, that he/she is capable of safely and adequately providing the services authorized.

(2) A provider shall maintain a drug-free work place, pass a criminal history check as defined by OAR 411-009-0000 through 411-009-0110, and be free of convictions or founded allegations of abuse and/or neglect by the appropriate agency, including but not limited to Children and Families, Child Welfare Services and Seniors and People with Disabilities.

(3) A prospective performing provider shall consent to a criminal record check by MFCU or the Department prior to enrolling as a provider. MFCU or the Department may require a criminal record check for any provider having regular unsupervised contact with children in the home. MFCU or the Department may require that the provider provide fingerprints and processing fees for the purpose of a criminal record check.

(4) A provider shall not be a parent, stepparent or foster parent of the child.

(5) A performing provider must sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any In-Home Daily Care Services.

(6) A provider who is providing services as a nurse must have:

(a) A current Oregon Nursing license; and

(b) Be in good standing with appropriate professional associations and boards.

(7) A provider is not an employee of the Department or the State of Oregon and is not eligible for state benefits and immunities, including but not limited to PERS or other state benefit programs.

(8) If the performing or billing provider is an independent contractor, during the terms of the contract, the performing or billing provider shall maintain in force at his/her own expense Professional Liability Insurance with a combined single limit of not less than \$1,000,000 each claim, incident or occurrence. The provider shall furnish evidence of insurance coverage to MFCU prior to beginning work. This insurance is to cover damages caused by error, omission, or negligent acts related to the professional services. There shall be no cancellation of insurance coverage(s) without 30 days written notice to MFCU.

(9) If the performing provider is an employee of the family, the provider shall submit to the Department documentation of immigration status required by Federal Statute. The Department will maintain documentation of immigration status required by Federal Statute, as a service to the family/employer.

(10) A Billing Provider that wishes to enroll with the Department must maintain and submit evidence upon initial application and upon request by the Department of the following:

(a) A current, valid, non-restricted Oregon Nurses' licenses for each employee who is providing services as a nurse;

(b) Current criminal history checks on each employee who will be providing services in a home or foster home showing that the employee has no disqualifying criminal convictions;

(c) Professional Liability Insurance that meets the requirements of OAR 309-044-0170(8); and

(d) Any licensure required of the agency by the State of Oregon or federal law or regulation.

(11) A provider shall immediately notify the family and MFCU 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 service required by the child for whom services are being provided.

(12) Providers described in ORS Chapter 419 (Licensed Practical Nurses and Registered Nurses) are required to report suspected child abuse to their local office of the State Office of Children and Family Services or police in the manner described in ORS 419.

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

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0180

### Prior Authorization for In-Home Daily Care

(1) Except in cases of unforeseeable medical emergency, payment for services must be authorized by the Department before services begin. Payment will be based on these rules, the service needs of the child as documented in the Comprehensive Plan of Care and the cost effectiveness of the proposed services.

(2) Prior to authorization of services that are to be provided by a nurse, there shall be a physician's order for the nursing services. However, MFCU shall determine whether payment of nursing services or the hours of service as ordered by the physician will be authorized for payment according to these rules.

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

Stats. Implemented: ORS 430.215, 427.005 - 427.007 & 417.340-355

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0190

### Documentation Needs for In-Home Daily Care

(1) Accurate timesheets signed by the individual provider of services shall be maintained and submitted to the MFCU with any request for payment for services.

(2) Requests for payment for services must:

(a) Include a copy of the voucher that prior authorized the services;

(b) Be signed by the parent or foster parent of the MFCU child, verifying that the services were delivered as billed; and

(c) Be signed by the provider or billing provider, acknowledging agreement upon request with the terms and condition of the voucher.

(3) Documentation of provided services must be provided to the service coordinator upon request and maintained in the child's place of residence or the place of business of the provider of services. Payment will not be made for services where the documentation of the duties provided does not support the level of service that was provided.

(4) If In-Home Daily Care is provided by a nurse, a Nursing Care Plan must be developed within seven days of the initiation of services and submitted to the MFCU for approval.

(5) The Nursing Care Plan must be reviewed, updated and resubmitted to the MFCU in the following instances:

(a) Every three months;

(b) Within seven working days of a change of the nurse who writes the Nursing Care Plan;

(c) With any request for authorization of an increase in hours of service; or

(d) After any significant change of condition. Examples of significant changes of condition include, but are not limited to, hospital admission or change in health status.

(6) The Nursing Care Plan must be shared with the family by the provider.

(7) If In-Home Daily Care is provided by a nurse, documentation of the child's status and services provided must be maintained in a format acceptable to the MFCU, contain information required by the MFCU, and submitted to MFCU upon request.

(8) Delegation, teaching and assignment of nursing tasks and performance of nursing care must be in accordance with the Oregon Board of Nursing regulations.

(9) MFCU must be notified by the provider within one working day of the death of any MFCU child.

(10) Vouchers and timesheets will be retained by the Department for at least five years from the date of service.

(11) Documentation of provided services will be maintained by the billing provider for at least seven years from the date of service. If a performing provider is a nurse and does not use a billing provider, that performing provider will either maintain for at least five years documentation of provided services or will send the documentation to the Department.

(12) Upon written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit or Health Care Financing Administration or their authorized representatives, providers or billing providers will furnish requested documentation immediately or within the timeframe specified in the written request. Failure to comply with the request may be deemed by the Department as reason to deny or recover payments.

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(13) Access to records by the Department inclusive of medical/nursing records and financial records, does not require authorization or release by the MFC child or family.

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

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

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0200

### Payment for In-Home Daily Care

(1) Payment will be made after services are delivered as authorized by the service coordinator.

(2) Rates will be individually negotiated by the Department, based on the individual needs of the child.

(3) Authorization must be obtained prior to the delivery of any services for those services to be eligible for reimbursement.

(4) Providers must request payment authorization for services provided for an unforeseeable medical emergency on the first business day following the emergency service. The service coordinator will determine if the service is eligible for payment.

(5) The Department will make payment to the employee of the family on behalf of the parent. The following will be ancillary contributions:

(a) The Department will pay the employer's share of FICA and withhold the employee's share of FICA as a service to the family/employer.

(b) The Department will cover real and actual costs to the Employment Department, in lieu of the family/employer paying unemployment tax.

(6) The delivery of authorized services must occur so that any individual employee of the parent shall not exceed forty hours per workweek. Services will not be authorized that require the payment of overtime, without written prior authorization by the supervisor of the Medically Fragile Children's Unit.

(7) Holidays are paid at the same rate as non-holidays.

(8) Travel time to reach the job site is not reimbursable.

(9) Requests for payments must be submitted to the Department within 6 months of the delivery of services in order to be eligible for payment.

(10) Payment by the Department for In-Home Daily Care will be considered full payment for the services rendered under Title XIX or Title XXI. Under no circumstances shall the performing provider or billing providers demand or receive additional payment for these services from the family or any other source unless the payment is the financial responsibility (spend-down) of the child under the Medically Needy Program.

(11) Medicaid funds are the payor of last resort. The provider or billing provider must bill all third party resources before Medicaid unless another arrangement is agreed upon by the Department in the Comprehensive Plan of Care.

(12) The Department reserves the right to make a claim against any third party payer before or after making payment to the provider of service.

(13) Prior authorizations which have been issued may be voided in the event of any of the following:

(a) Change in the status of the child. Examples include, but are not limited to, death, hospitalization, and improvement in health status;

(b) Decision of the family to change providers;

(c) Inadequate services, inadequate documentation, or other failure to perform expected duties;

(d) Any situation, as determined by the MFC service coordinator that puts the child's health or safety at risk.

(14) Upon submission of the voucher for payment, the provider agrees that it has complied with:

(a) All rules of the Department; and

(b) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973; and

(c) Title II and Title III of the Americans with Disabilities Act of 1991; and

(d) Title VI of the Civil Rights Act of 1964.

(15) All billings must be for services provided within the provider's licensure.

(16) It is the responsibility of the provider to submit true and accurate information on the voucher. Use of a billing provider does not abrogate the performing provider's responsibility for the truth and accuracy of submitted information.

(17) No person will submit to the Department:

(a) A false voucher for payment;

(b) A voucher for payment which has been or is expected to be paid by another source; or

(c) Any voucher for services which have not been provided.

(18) The Department will make payment only to the enrolled provider who actually performs the service or the provider's enrolled billing provider. Federal regulations prohibit the Department from making payment to collection agencies.

(19) Payments may be denied if any provisions of OAR 309-044-0100 through 309-044-0210 are not complied with.

(20) Overpayments shall be recouped. The amount to be recovered:

(a) Will be the entire amount determined or agreed to by the Department; and

(b) Is not limited to amount(s) determined by criminal or civil proceedings.

(c) Will include interest to be charged at allowable State rates.

(21) The Department will deliver to the provider by registered or certified mail or in person a request for repayment of the overpayment or notification of recoupment of future payments.

(22) Payment schedules with the interest may be negotiated at the discretion of the Department.

(23) If recoupment is sought from a family who received services, contested hearing rights in OAR 309-044-0150 shall apply.

(24) Payment for services provided to more than one child in the same setting at the same time will not exceed the maximum hourly rate for one child.

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

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

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

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 309-044-0210

### Provider Sanctions for MFC Services

(1) Sanction(s) may be imposed on a provider when a following condition is determined by the Department to have occurred:

(a) Convicted of any crime that would have resulted in an unacceptable criminal history check upon hiring or issuance of a provider number;

(b) Convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(c) Had his/her health care license suspended, revoked, or otherwise limited, or surrendered his/her license;

(d) Has failed to safely and adequately provide the services authorized;

(e) Has had an allegation of abuse or neglect substantiated against them;

(f) Failed to cooperate with any investigation and/or grant access to or furnish, as requested, records or documentation;

(g) Billed excessive or fraudulent charges or convicted of fraud;

(h) Has made a false statement concerning conviction of crime or substantiation of abuse;

(i) Falsified required documentation; or

(j) Been suspended or terminated as a provider by another agency within the Department of Human Services (DHS).

(2) The following sanctions may be imposed on a provider by the Department:

(a) The provider may be terminated from participation in the MFC program;

(b) The provider may be suspended from participation for a specified length of time and/or until specified conditions for reinstatement are met and approved by the state; and

(c) The Department may withhold payments to the provider.

(3) If the Department makes a decision to sanction a provider, the provider will be notified 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.

(4) For an appeal 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.

(5) At the discretion of the Department, providers who have previously been terminated or suspended by any agency within DHR may not be re-enrolled as providers of Medicaid services.

(6) The provider may appeal a sanction by requesting an administrative review by the Administrator of the Department and/or a contested case hearing.

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

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

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

# ADMINISTRATIVE RULES

## Department of Human Services, Public Health Chapter 333

**Adm. Order No.:** PH 20-2003

**Filed with Sec. of State:** 12-2-2003

**Certified to be Effective:** 12-8-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 333-064-0070

**Rules Amended:** 333-064-0005, 333-064-0010, 333-064-0015, 333-064-0025, 333-064-0030, 333-064-0035, 333-064-0040, 333-064-0060, 333-064-0065

**Rules Repealed:** 333-064-0005(T), 333-064-0010(T), 333-064-0015(T), 333-064-0025(T), 333-064-0030(T), 333-064-0035(T), 333-064-0040(T), 333-064-0060(T), 333-064-0065(T), 333-064-0070(T)

**Subject:** Retroactively amends rules for accrediting environmental testing laboratories to: 1) Correct agency names and titles to conform to changes in the Department of Human Services; 2) Change the standards from the NELAC 1999 to NELAC 2000 Standards as required to maintain national recognition of the Oregon Environmental Laboratory Accreditation Program by the U.S. Environmental Protection Agency's National Environmental Laboratory Accreditation Program; 3) Increase fees to cover costs of operating the Program; 4) Add clarifying language to help avoid misinterpretation.

**Rules Coordinator:** Jana Fussell—(503) 731-4000, ext. 822

### 333-064-0005

#### Purpose

These rules are for the purpose of implementing Oregon Revised Oregon Statutes (ORS) 438.605 to 438.620, 448.280 and the Oregon Drinking Water Quality Act of 1981. ORS 438.610 states that the Oregon Department of Human Services shall by adopting standards in concurrence with the Accrediting Authority, implement an environmental laboratory accreditation program hereafter referred to as the Oregon Environmental Laboratory Accreditation Program (ORELAP). These rules establish requirements for the accreditation of laboratories analyzing environmental samples under the guidance of the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and the Resource, Conservation and Recovery Act (RCRA). The Oregon Department of Human Services shall accept ORELAP accreditation for ORS 448.150(1) that states that water samples from public water systems shall be analyzed in a laboratory approved by the Oregon Department of Human Services.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

### 333-064-0010

#### Scope

(1) These rules apply to environmental laboratories seeking accreditation and performing environmental testing.

(2) Accreditation as described in these rules is required for all environmental laboratories reporting drinking water analysis results to the Oregon Department of Human Services except for Oregon Department of Agriculture Laboratory, Oregon Department of Environmental Quality Laboratory and the Office of Oregon State Public Health Laboratories which must be certified by the United States Environmental Protection Agency for drinking water analysis.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

### 333-064-0015

#### Adoption by Reference

All standards, listings and publications referred to in these rules are, by those references, made a part of these rules as though fully set forth. Copies are available through the Oregon Department of Human Services, Office of the Oregon State Public Health Laboratories.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

### 333-064-0025

#### Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Accrediting Authority" means the official accrediting authority for the Oregon Environmental Laboratory Accreditation Program comprised of the Administrator of the Office of Oregon State Public Health Laboratories or designee, the Laboratory Administrator of the Department of Environmental Quality or designee and the Laboratory Administrator of the Department of Agriculture or designee.

(2) "Clean Air Act (CAA)" means the enabling legislation, **42 U.S.C. 7401 et seq. (1974), Public Law 91-604, 84 Stat. 1676 Public Law 95-95, 91 Stat., 685 and Public Law 95-190, 91 Stat., 1399**, that empowers the EPA to promulgate air quality standards, monitor and enforce them.

(3) "Clean Water Act (CWA)" means the enabling legislation under **33 U.S.C. 1251 et seq., Public Law 92-50086, Stat. 816** that empowers the EPA to set discharge limitations, write discharge permits, monitor and bring enforcement action for non-compliance.

(4) "Environmental laboratory" means a fixed location or mobile facility that analyzes environmental samples in a controlled and scientific manner.

(5) "National Environmental Laboratory Accreditation Conference (NELAC)" means the voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish mutually acceptable standards for accrediting environmental laboratories.

(6) "National Environmental Laboratory Accreditation Program (NELAP)" means the program established and administered by the EPA to oversee the implementation of the NELAC Standards.

(7) "NELAC Standards" means the adopted **June 2000 NELAC Constitution, By-Laws, and Standards (EPA 600/R-00/084)** document describing the elements of laboratory accreditation that was developed and established by the consensus principles of NELAC and meets with the approval requirements of NELAC procedures and policies.

(8) "NELAP approved accrediting authority" means a state or federal department/agency that has been approved by NELAP as being an entity whose accreditation and assessment program meets all of the requirements of the NELAC Standards.

(9) "On-site assessment" means an on-site visit to the environmental laboratory to verify items addressed in the ORELAP application and to evaluate the facility and analytical performance for conformance with the NELAC Standards.

(10) "ORELAP approved assessor" means an assessor whose qualification has been evaluated by ORELAP and found to meet NELAC Standards for laboratory on-site assessors.

(11) "Primary Accreditation" means accreditation by a NELAP approved accrediting authority based on a laboratory's compliance to NELAC Standards after a review of the laboratory's application, Quality Manual, PT results and on-site inspection results as described in the NELAC Standards.

(12) "Proficiency testing (PT)" means the analysis of samples obtained from providers that meet the NELAC standards for PT providers. The composition of the sample is unknown to the laboratory performing the analysis, and is used in part to evaluate the ability of the laboratory to produce precise and accurate results.

(13) "Public water system" means a water system as defined in OAR 333-061-0010.

(14) "Quality Manual (QM)" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of a laboratory to ensure the quality of its product and the utility of its product to its users.

(15) "Resource Conservation and Recovery Act (RCRA)" means the enabling legislation 42 U.S.C. section 6901 et seq.(1976) that requires the EPA to protect human health and protecting and monitoring the environment by regulating hazardous waste disposal practices.

(16) "Safe Drinking Water Act (SDWA)" means the SDWA enacted in 1974 and the Safe Drinking Water Amendments of 1986, 42 U.S.C. 300f et seq., Public Law 93-523, that is the enabling legislation that requires the EPA to protect the quality of drinking water in the U.S. by setting maximum allowable contaminant levels, monitoring, and enforcing violations.

(17) "Secondary Accreditation" means the recognition by reciprocity for the fields of testing, methods and analytes for which the laboratory holds current primary accreditation by another NELAP recognized accrediting authority.

(18) "These rules" means the Oregon Administrative Rules encompassed by OAR 333-064-0005 through 333-064-0065.

(19) "Third party assessor" means an ORELAP approved assessor who has a current contract with the Oregon Department of Human Services to perform on-site assessments of laboratories for ORELAP and is not

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employed by the state agencies comprising ORELAP's accrediting authority.

(20) "United States Environmental Protection Agency (EPA)" means the federal government agency with the responsibility for protecting public health and safeguarding and improving the natural environment (i.e., air, water, and land) upon which human life depends.

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

Stat. Auth.: ORS 184, 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & .620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 5-2003, f. 5-15-03, cert. ef. 7-1-03; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0030

### Schedule for Requesting Accreditation, Period of Accreditation

(1) Laboratories in Oregon will be considered to be accredited by ORELAP after the laboratory has requested accreditation, been evaluated by ORELAP and has met all criteria in accordance with OAR 333-064-0035.

(2) The accreditation period for each laboratory is for one year with subsequent accreditation periods beginning from the first day the laboratory is granted accreditation.

(3) Laboratories must reapply for ORELAP approval annually, with the application to be received by ORELAP 120 calendar days prior to the expiration of the current accreditation period.

(4) ORELAP-accredited laboratories may apply for accreditation of additional parameters at any time during their accreditation period with accreditation for such parameters expiring with the current accreditation period.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.610 & 438.615

Stats. Implemented: ORS 438.605, 438.610 & 438.615

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0035

### Approval Requirements

(1) This rule and the NELAC Standards describe the procedure for obtaining and maintaining accreditation.

(2) ORELAP accreditation can be granted, denied, suspended, or revoked in total or in part as described in the NELAC Standards.

(3) In no case shall a laboratory be accredited that does not comply with the NELAC Standards as specified in this rule. This requires laboratories to comply with the standard at the time of rule change.

(4) The elements for accreditation shall include but are not restricted to:

(a) Application for accreditation:

(A) ORELAP will make applications available to all laboratories requesting an application.

(B) The laboratory must request ORELAP accreditation by completing and submitting to ORELAP an acceptable application that includes all elements as required by the NELAC Standards. For primary accreditation this includes a completed application with all required documents. For secondary accreditation this includes a completed application with all of the required documents plus proof of accreditation from a primary accrediting authority.

(b) Laboratory's participation in a biennial on-site assessment(s) as required by the NELAC Standards;

(c) Laboratory's participation in Proficiency Testing (PT) and the obtaining of acceptable PT results according to the NELAC Standards;

(d) A Quality Manual (QM) that includes all elements as set forth in the NELAC Standards;

(e) Laboratory staff members that meet the NELAC Standards for training and experience for their responsibilities within the environmental laboratory;

(f) Creation and retention of all records pertaining to samples and analyses, including chain of custody documents, log books, work sheets, raw data, calculations, quality assurance data, and reports according to NELAC Standards;

(g) Laboratory's full payment of all appropriate fees as described in section 333-064-0060 of this rule.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b)(2), 438.605, 438.610, 438.615, 438.620

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & .620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0040

### Action Response for Laboratory Drinking Water Analysis Results

(1) The laboratory must notify the water system and, if authorized by the public water system, the Oregon Department of Human Services of all valid sample results that exceed the maximum contaminant levels in OAR 333-061-0030 within one working day.

(2) The laboratory must notify the public water system and, if authorized by the water system, the Oregon Department of Human Services of all unregulated contaminants detected and their concentrations from each specific method used to measure the regulated contaminants.

(3) The laboratory must use report forms that have been approved by the Oregon Department of Human Services for reporting drinking water test results to the Oregon Department of Human Services.

Stat. Auth.: ORS 184, 448.150(1) & 448.131

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & .620

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0060

### Fee Schedule

Fees will be charged to environmental laboratories according to the following schedule.

(1) Payment of a non-refundable application fee must accompany each application.

(a) For laboratories located in Oregon, one of three levels of fees, Tier 1 at \$450, Tier 2 at \$900 and Tier 3 at \$1,600 will be charged. The Tiers will be determined by the total number of points derived from the number of Fields of Testing requested for accreditation listed in section (2)(a) through (c) of this rule.

(A) Each Basic Field of Testing has a multiplier of 1.

(B) Each Moderate Field of Testing has a multiplier of 3.

(C) Each Complex Field of Testing has a multiplier of 5.

(D) The total number of points is determined by first summing the number of Fields of Testing within each category (Basic, Moderate or Complex) and then multiplying the sums by their appropriate multiplier as given in this rule. The sum of these results determines the total number of points for each laboratory. Laboratories with a total of 1-10 points are to be considered Tier 1 laboratories, 11 to 25 points are Tier 2 laboratories and 26 or more points are Tier 3 laboratories.

(b) For each out-of-state laboratory requesting primary or secondary accreditation through Oregon, one of three levels of fees, Tier 1 at \$1,250, Tier 2 at \$2,000 and Tier 3 at \$3,000 will be charged with each Tier determined according to section (1)(a) of this rule.

(c) If a laboratory fails to submit an acceptable application after two attempts, the application will be rejected and the laboratory may reapply and must pay a new non-refundable application fee as determined in this rule.

(d) If a new owner acquires the laboratory and wishes the laboratory to remain accredited, the laboratory must submit a new application, pay the application fee and be subject to a new on-site inspection and payment of assessment and on-site fees as described in this rule.

(2) Upon ORELAP's review of a laboratory's application, each laboratory requesting primary accreditation through ORELAP, when ORELAP personnel will be used for the assessment, the laboratory will be charged an assessment fee based on the number Fields of Testing and Programs as follows:

(a) \$90 will be charged for each of the following Basic Fields of Testing requested for accreditation:

(A) Gravimetric;

(B) Chromofluorogenic (Microbiology);

(C) Membrane Filter and/or Heterotrophic Plate Count (Microbiology);

(D) Multiple Tube Fermentation/Most Probable Number (MPN) (Microbiology);

(E) Microscopy;

(F) Physical;

(G) Probe.

(b) \$350 will be charged for each of the following Moderate Fields of Testing requested for accreditation:

(A) Atomic absorption — flame;

(B) Atomic absorption — furnace;

(C) Automated colorimetric;

(D) Gas chromatography — volatiles;

(E) Gas chromatography — extractables;

(F) High pressure liquid chromatography;

(G) Immunoassay;

(H) Instrumental;

(I) Ion chromatography;

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- (J) Manual colorimetric;
- (K) Radiation;
- (L) Toxicity testing.

(c) \$500 will be charged for each of the following Complex Fields of Testing requested for accreditation:

- (A) Gas chromatography/mass spectrometry — volatiles;
- (B) Gas chromatography/mass spectrometry — extractables;
- (C) Inductively coupled plasma;
- (D) Inductively coupled plasma/mass spectrometry;
- (E) X-ray.

(d) An additional cost of \$10 for Basic Fields of Testing, \$40 for Moderate Fields of Testing and \$75 for Complex Fields of Testing will be charged for each additional Program per Field of Testing for which the laboratory has requested approval. The Programs are:

- (A) CAA;
- (B) CWA;
- (C) SDWA;
- (D) RCRA.

(e) Assessment fees must be paid during the accreditation period in which the on-site assessment is to be performed but must be paid before the on-site assessment will be scheduled.

(3) All Oregon environmental laboratories requesting primary accreditation through ORELAP where Oregon state assessor(s) will perform the on-site assessment, must pay an on-site trip fee for each on-site assessment.

(a) On-site trip fees are \$350 for Tier 1, \$500 for Tier 2 and \$1,000 for Tier 3 laboratories with the Tiers determined according to section (1) (a) of this rule.

(b) All laboratories must pay the appropriate on-site trip fee prior to scheduling and performing each required on-site assessment and additional assessments as requested by the laboratory for approval for additional Fields of Testing and/or Program.

(c) All laboratories must pay the appropriate on-site trip fee per on-site assessment performed due to just cause according to NELAC Standards.

(4) All environmental laboratories located in Oregon requesting primary accreditation through ORELAP where ORELAP has determined that third party assessors will be used, must pay all ORELAP assessment fees plus all third party assessors costs. ORELAP may require the laboratory to pay the on-site assessment costs directly to the third party assessor according to the schedule of the assessor for all required on-site assessments.

(5) All out-of-state environmental laboratories must pay all on-site assessment costs incurred by ORELAP approved assessors to perform the on-site assessment including but not limited to transportation, per diem and wages during travel. If third party assessors are used, ORELAP may require the lab to pay the on-site assessment costs directly to the assessor according to the schedule of the assessor for all required inspections.

(6) Accredited laboratories requesting additions to their fields of testing during the accreditation period must pay:

- (a) The difference in cost of the application fee;
- (b) The difference in cost of the assessment fee;

(c) An on-site trip fee, as described in 3 (a) and 5 of this rule, based only on the additional parameters if ORELAP determines that an on-site assessment is required.

Stat. Auth.: ORS 438.605, 438.610, 438.615, 438.620, 448.280(1)(b) & (2)  
Stats. Implemented: ORS 438.605, 438.610, 438.615 & 438.620  
Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0065

### Civil Penalties

(1) In addition to any other penalty provided by law, the Oregon Department of Human Services, in collaboration with the Accrediting Authority, may impose a civil penalty not to exceed \$500 per day per violation upon any and all laboratories that willfully or negligently commit any of the following:

- (a) Falsely purport to be ORELAP accredited;
- (b) Improperly use their ORELAP accreditation status in order to mislead;

(c) Use the NELAC/NELAP logo in catalogs, advertisements, business solicitations, proposals, quotations, laboratory reports and other materials without proper authorization.

(2) The Oregon Department of Human Services reserves the right to pursue other remedies and may take any other disciplinary action against alleged violators.

(3) In establishing the amount of the penalty for each violation, the Oregon Department of Human Services will consider, but not be limited to the following factors:

- (a) The gravity and magnitude of the violation;
- (b) The laboratory's previous record of complying or failing to comply with this rule.

(c) The laboratory's history in taking all feasible steps or in following all procedures necessary or appropriate to correct the violation; and,

(d) Such other considerations as the Oregon Department of Human Services may consider appropriate.

(4) The Oregon Department of Human Services in collaboration the Accrediting Authority may deny, suspend or revoke accreditation of any laboratory that fails to pay on demand a civil penalty that has become due and payable, provided that it first gives the laboratory an opportunity for a hearing as outlined in ORS 183.

Stat. Auth.: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620  
Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620  
Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

## 333-064-0070

### Effective Date

The effective date for rules 333-064-0005, 333-064-0010, 333-064-0015, 333-064-0025, 333-064-0030, 333-064-0035, 333-064-0040, 333-064-0060 and 333-064-0065 shall be October 10, 2002.

Stat. Auth.: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620  
Stats. Implemented: ORS 448.150(1), 448.131, 448.280(1)(b) & (2)  
Hist.: PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03

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

**Adm. Order No.:** SSP 30-2003(Temp)

**Filed with Sec. of State:** 12-1-2003

**Certified to be Effective:** 12-1-03 thru 4-30-04

**Notice Publication Date:**

**Rules Amended:** 461-135-0301

**Subject:** Rule 461-135-0301 is being amended to add new language that allows DHS to re-open the Emergency Assistance (EA) program effective December 1, 2003.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 461-135-0301

**Closure of the Emergency Assistance (EA) Program Effective January 1, 2003; Reopening of the EA Program Effective December 1, 2003**

(1) Effective January 1, 2003, the EA program is not funded. Notwithstanding other rules of the Department, the program is closed effective that date.

(2) Effective December 31, 2002, all persons eligible for or receiving benefits of the program become ineligible for the program. The Department will not authorize or provide any benefit for any period after December 31, 2002 except as provided below in this rule.

(3) Effective December 1, 2003, the EA program is funded. The program is open effective that date for any person who meets the eligibility requirements on or after December 1, 2003.

Stat. Auth.: ORS 411.060  
Stats. Implemented: ORS 411.060  
Hist.: AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 30-2003(Temp), f. & cert. ef. 12-1-03 thru 4-30-04

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**Adm. Order No.:** SSP 31-2003(Temp)

**Filed with Sec. of State:** 12-1-2003

**Certified to be Effective:** 12-1-03 thru 12-31-03

**Notice Publication Date:**

**Rules Amended:** 461-135-1130, 461-180-0105

**Rules Suspended:** 461-135-1130(T)

**Subject:** 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 461-180-0105 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.

**Rules Coordinator:** Annette Tesch—(503) 945-6067



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## 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, ORS 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

## 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 appeal.

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

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

**Adm. Order No.:** SPD 18-2003(Temp)

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03 thru 6-7-04

**Notice Publication Date:**

**Rules Amended:** 411-030-0020, 411-030-0033, 411-030-0040, 411-030-0060, 411-030-0065

**Subject:** The In-Home Services rules under Chapter 411, Division 030 are being temporarily amended effective December 11, 2003. These rulemaking actions are being taken to (a) make a correction that hourly homecare workers (HCW) are not subject to overtime laws; (b) update definitions; (c) allow a client to share a rental agreement with a non-relative provider and still be considered for in-home services; (d) add the General Assistance program back to the eligibility criteria section since the funding for this program was partially restored; (e) clarify that residents of all long-term care facilities are ineligible for in-home services, not only those in licensed community-based services; (f) clarify that it is not mandatory for the Client/Employer to create a job description for a potential employee; (g) explain that when a service plan has more than one live-in HCW, the 24-hour paid leave will be prorated based on the amount of time each HCW worked; and (h) indicate additional payment for Title XIX-covered services in prohibited and that additional payment from other sources for non-Title XIX-covered services is allowed.

**Rules Coordinator:** Sonya Plummer—(503) 945-6398

## 411-030-0020

### Definitions

As used in these rules:

(1) "Activities of Daily Living" (ADL) means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities may include eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in 411-020-0000 through 411-020-0050.

(3) "Architectural Resources" means any service leading to the modification of the structure of a dwelling to meet a specific service need of the client.

(4) "Area Agency on Aging" (AAA) means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(5) "Burden of proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(6) "Business days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(7) "Case Management" means the service provided by a Department or Area Agency on Aging employee, which ensures the effective provision of services to the client.

(8) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(9) "Client" means the individual eligible for in-home services.

(10) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR 411-030-0060.

(11) "Cognition" means functions of the brain, which assist in orientation to person, place and time, decision-making, learning, and memory.

(12) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws.

(13) "Contracted In-Home Care" means a service provided through a con-

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tractor, which consists of minimal or substantial assistance with activities of daily living and self-management tasks. (14) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(15) "Contracted In-Home Care Specialist" means an employee of a Contracted In-Home Care Agency who has recognized capability to provide the in-home care service tasks authorized for the clients they serve.

(16) "Cost Effective" means that a specific service meets the client's service needs while costing less over the long- or short-term than other service options considered.

(17) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(18) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(19) "Exception" means a granting of the unusual use of or payment for a service that is expressly or implicitly prohibited within the In-Home Services rules, OAR chapter 411, division 030.

(20) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(21) "Full Assistance" means the client is unable to do any part of an activity of daily living or task; i.e., it must be done entirely by someone else.

(22) "General Household Work" means, according to federal law, housecleaning, chore services, and other tasks provided by an employee that benefits non-client members of the household.

(23) "Health and Safety Emergencies" means the occurrence of a sudden change in a medical condition or an event of an accidental nature that requires evacuation from the premises, administration of prescription medication or first aid, or immediate treatment by medical personnel.

(24) "Homecare Worker" means a provider, as described in OAR 411-030-0020 and 411-030-0060, who is directly employed by the client and provides either hourly or live-in services to eligible clients. Homecare Workers also include providers in the Spousal Pay Program.

(25) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, which are provided at regularly scheduled times.

(26) "Imminent Danger" means there is reasonable cause to believe a person's life or physical well-being is in danger if no intervention is initiated immediately.

(27) "Independent" means the client can perform the task without help.

(28) "In-Home Services" means those services that assist a client to stay in his/her own home.

(29) "Lack of skills, knowledge and ability to adequately or safely perform the required work" means the Homecare Worker does not possess the skills to perform services needed by Department clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(30) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. To ensure continuity of care for the client, live-in service plans should include at least one HCW providing 24-hour care for a minimum of five (5) days in a work-week. (31) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(32) "Office of Administrative Hearings" means the panel established within the Employment Department under section 9, chapter 849, Oregon Laws, 1999, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(33) "Oregon Project Independence" (OPI) means the program of in-home services defined in OAR chapter 411, division 032.

(34) "Preponderance of the evidence" means that one party's evidence is more convincing than the other party's.

(35) "Provider" means the individual who actually renders the service.

(36) "Provider enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a provider number.

(37) "Provider number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through the Department.

(38) "Provider Payments Unit" means the Seniors and People With Disabilities unit responsible for processing provider number requests.

(39) "Recognized Capability" means observed ability to competently perform an authorized task.

(40) "Registered Nurse Plan of Care" means a document completed by an RN identifying the tasks which must be provided to meet the client's assessed needs.

(41) "Respite" means securing a paid temporary replacement worker to perform the authorized duties normally performed by the primary provider, in order to allow the primary provider interim relief from providing care to the client.

(42) "Self-Management" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(43) "Seniors and People With Disabilities (SPD)" means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

(44) "Service Need" means those functions or activities with which the client requires the Department or Area Agency on Aging support.

(45) "Service Priority" means the order in which Department clients are found eligible for nursing home care, Home and Community-Based Services waiver programs, the Spousal Pay Program, and Oregon Project Independence.

(46) "Services are not provided as required" means the Homecare Worker does not provide the services to the client as described in the service plan authorized by the Department.

(47) "Substantial Assistance" means a client can perform only a small portion of a task and requires assistance with a majority of a task.

(48) "Technological Resources" means those commodities or equipment considered likely to meet a client's service need.

(49) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

(50) "Unacceptable conduct at work" means the Homecare Worker has repeatedly engaged in one of the following behaviors: delay in their arrival to work or absences from work not prior-scheduled with the client, which are either unsatisfactory to the client or which neglect the client's care needs; or inviting unwelcome guests or pets into the client's home, which results in the client's dissatisfaction or inattention to the client's required care needs.

(51) "Unacceptable criminal history" means that a criminal history check and fitness determination have been conducted pursuant to Administrative Rules 411, Division 009, finding the Homecare Worker unfit.

(52) "Violation of a drug-free workplace" means there was a substantiated complaint against the Homecare Worker using illicit drugs while responsible for the care of the client, or while in the client's home.

(53) "Violations of Protective Service and abuse laws" means the Homecare Worker violated protective service and abuse laws as described in 411-020-0002, Section 1. Abuse includes physical assault, use of inappropriate or derogatory language, financial exploitation, inappropriate sexual advances, neglect of care, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 5-1983, f. 6-7-83, ef. 7-1-83; SSD 3-1985, f. & ef. 4-1-85; SSD 5-1987, f. & ef. 7-1-87; SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 411-030-0033

### Program Scope

(1) The In-Home Services Program is designed to provide essential supportive services that enable an individual to remain in his/her own home. The services range from assistance with general household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time.

(2) In-home services may be provided either through the Client-Employed Provider Program, Spousal Pay Program, Independent Choices

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Program, or Oregon Project Independence Program. A description of these program options is contained in the OAR chapter 411, division 030, In-Home Services rules.

(3) A client residing in any of the following living arrangements may be considered for in-home services:

(a) A home, apartment, duplex, or condominium the client owns, leases, or rents.

(b) Both the client and the provider have their names on the lease, mortgage, or property manager's rental agreement.

(c) The client lives with relatives or others, but receives paid hourly in-home services from someone who resides outside the home.

(d) The client moved in with a relative who:

(A) Owns, leases, or rents the home in which the client lives; and

(B) Is providing paid in-home care services; and

(C) Is sharing a portion of shelter costs according to a rental or lease agreement with the client; and

(D) The intent of the client moving in was for reasons other than receiving paid care services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 411-030-0040

### Eligibility Criteria

(1) In-home services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the client. Care plans will be based upon the least costly means of providing adequate care.

(2) Clients must be included in one of the following groups:

(a) Current recipients of OSIPM or General Assistance who reside in one of the living arrangements described in OAR 411-030-0033(3) and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement; or

(c) Persons who are eligible for:

(A) Oregon Project Independence as defined in OAR chapter 411, division 032;

(B) Independent Choices as defined in OAR chapter 411, division 036; or

(C) Spousal Pay Program as defined in OAR 411-030-0080.

(3) Residents of licensed community-based care and nursing facilities are not eligible for the In-Home Services Program.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 3-1985, f. & ef. 4-1-85; SSD 4-1993, f. 4-30-93, cert. ef. 6-12-93; Renumbered from 411-030-0001; SPD 2-2003(Temp), f. 1-31-03, cert. ef. 2-1-03 thru 7-30-03; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 411-030-0060

### Client-Employed Provider Program

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each client/employer, in cooperation with the case manager, or if present, contracted Registered Nurse, may create a job description for the potential employee. Such descriptions will make it clear that general household work will comprise less than 20% of the live-in employee's time.

(3) Employee's Liabilities: Employees bear sole responsibility for state and federal income taxes due on earnings as an employee of the client/employer. Both the employer and the Department explicitly deny any responsibility for deducting personal income tax withholdings from the employee's check. The employee is not covered by Workers' Compensation under Oregon Law. Additionally, under Oregon law the employee is not covered by any other state-defined benefit as a state employee. This exclu-

sion includes but is not limited to the Public Employees Retirement System.

(4) Interruption of Services

(a) When a client is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider, who is the only live-in provider for a client, may be retained to ensure his/her presence upon the client's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(b) The required meals and lodging expenses of the provider, while providing these services fifty miles or more from the client's residence, will be covered. Such expenses, including mileage allowed under Section (11) of this rule, will be covered by the Office of Medical Assistance Programs, whenever possible.

(5) Selection of Employee: The client carries primary responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Immigration and Naturalization Service Rules.

(6) Employment Agreement: The client/employer retains the full right to establish the employer/employee relationship at any time after Immigration and Naturalization Service papers have been completed and identification photocopied. No guarantee of payment for those services will be made by the Department until all acceptable employee standards have been verified and both the employer and employee have been formally notified in writing that payment by the Department is authorized.

(7) Termination of Employment: Terms of dismissal or resignation notice are the sole responsibility of the employer to establish at the time of employment.

(8) Provider Enrollment

(a) Enrollment Standards: A Homecare Worker must meet the following standards to be enrolled with the Department's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place;

(B) The Homecare Worker must have an acceptable criminal history as defined in OAR chapter 411, division 009;

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work;

(D) The Homecare Worker's U.S. employment authorization must be verified; and

(E) The Homecare Worker must be 18 years of age or older, unless the local DHS/AAA office has received approval from DHS Central Office to enroll a Homecare Worker who is at least sixteen years of age.

(b) The Department may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service, abuse and neglect laws;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant has an unacceptable criminal history;

(E) The applicant is not 18 years of age;

(F) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal health care programs; or

(G) The Department has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(9) Paid Leave

(a) Live-in Home Care Workers: When a live-in employee or Spousal Pay Provider is the only employee during the course of a month, or if that employee is the only employee for the beginning or end of a month due to termination or initiation of employment with that employer, the Department will authorize one twenty-four hour period of leave each month. For any part of a month worked, the employee will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one provider for a client.

(b) Accumulation and Usage: A provider may not accumulate more than 144 hours of accrued leave. The employer, employee, and case manager will coordinate the timely use of these hours. Usage may be in one-hour increments.

(c) Transferability of Paid Leave: The employee retains the right to earned paid leave when terminating employment with one employer, so long as the employee is employed with another employer as a live-in within one year of termination.

(d) Hourly Homecare Workers: Effective July of each year, active Homecare Workers who worked eighty (80) authorized and paid hours in any one (1) of the three (3) previous months of active employment will be

# ADMINISTRATIVE RULES

credited with eight (8) hours of paid leave to use during the current fiscal year (July 1 through June 30). Such leave will not be cumulative from year to year. Such time off must be utilized in one (1) eight (8)-hour block subject to authorization. If the Homecare Worker's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block. If the accrued hours are not used within the fiscal year, the balance will be reduced to zero (0). Homecare Workers will not be compensated for paid leave unless the time off work is actually taken.

(10) Department Fiscal and Accounting Responsibility.

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all client-employed in-home services, whether authorized by a Department or Area Agency on Aging local Office. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee to demand or receive additional payment for these Title XIX-covered services from the client or any other source.

(b) Ancillary Contributions:

(A) Acting on behalf of the Client/Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the provider/employee contribution from payments;

(ii) Refund previously withheld amounts when it is determined the provider/employee is not subject to withholdings; and

(iii) Submit the Client/Employer contribution and the amounts withheld from the provider/employee to the Social Security Administration.

(B) The Department will pay the employer's share of the Unemployment Tax.

(C) The Department will not pay the client for food and shelter expenses associated with employing a live-in provider.

(D) A hardship shelter allowance may be authorized for a client having a live-in provider on or after September 1, 1995, if one of the following conditions is met:

(i) The client will be forced to move from their current dwelling and his/her current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(ii) Service costs would significantly increase as a result of the client being unable to provide living quarters for a necessary live-in provider.

(c) Ancillary Withholdings. For purposes of Section (10)(c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Department will deduct from the provider's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department will pay the deducted amount monthly to the designated labor organization.

(11) Employee Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the published state mileage rate when they use their own car for care plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Volunteer transportation and other transportation services included in the service plan will be considered a prior resource.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

Hist.: SSD 4-1993, f. 4-30-93, cert. ef. 6-1-93; SSD 6-1994, f. & cert. ef. 11-15-94; SSD 8-1995, f. 8-31-95, cert. ef. 9-1-95; SSD 10-1995(Temp), f. & cert. ef. 9-8-95; SSD 4-1996, f. 3-29-96, cert. ef. 4-1-96; SSD 2-1997, f. 8-29-97, cert. ef. 9-1-97; SPD 14-2003, f. & cert. ef. 7-31-03; SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

## 411-030-0065

### Administrative Review and Hearing Rights

This rule establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

(1) Exclusions to Appeal and Hearings Rights:

(a) The following are excluded from this administrative review and hearing rights process:

(A) Terminations based on criminal history. The Homecare Worker has the right to a hearing within OAR 411-009-0000 through 411-009-0110.

(B) Homecare Workers that have not worked in the last twelve months. The provider enrollment may become inactivated but will not be

suspended or terminated. To activate the provider enrollment number, the HCW must complete an application and criminal history clearance

(C) Homecare Workers that fail to complete a criminal history recheck.

(D) Homecare workers that are denied a provider enrollment number at the time of initial application.

(b) These rules only apply to Homecare Workers as defined in OAR 411-030-0060. These rules do not include any other providers enrolled, licensed or otherwise registered by the Department of Human Services.

(2) Violations Suspending or Terminating Provider Enrollment

(a) The Department may suspend or terminate the Homecare Worker's provider enrollment number when a Homecare Worker:

(A) Violates the requirement to maintain a drug-free work place;

(B) Has an unacceptable criminal history as defined in OAR chapter 411, division 009,

(C) Lacks the skills, knowledge, and ability to adequately or safely perform the required work,

(D) Violates protective service and abuse laws, as defined in OAR chapter 411, division 020;

(E) Commits fiscal improprieties;

(F) Fails to provide services as required; or

(G) Engages in unacceptable conduct at work.

(3) Suspension: The Department may suspend a provider enrollment immediately, prior to the outcome of the administrative review when an alleged violation presents imminent danger to current or future clients. The Homecare Worker may file an appeal of this decision directly to DHS Central Office.

(4) Administrative Review Process: The Administrative Review process allows an opportunity for the program manager or DHS Central Office to review and reconsider a decision affecting the Homecare Worker. The appeal may include the provision of new information or other actions that may result in the Department changing its decision. The Homecare Worker should be offered an informal conference to discuss the allegation and provide any information that may change the outcome of the Department's decision. The informal conference may be held by telephone.(a) At the time a suspension or proposed termination of the Homecare Worker's provider enrollment is made, the Department will issue a written notice that will include:

(A) An explanation of the reasons for suspension or proposed termination of the provider enrollment;

(B) The alleged violation as listed in OAR 411-030-0065; and

(C) The Homecare Worker's appeal rights, including the right to union representation, and where to file the appeal.

(b) For suspensions or terminations based on substantiated protective services complaint, the letter may only contain the limited information allowed by law.

(c) The Homecare Worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within ten (10) business days of the decision affecting the worker. The Homecare Worker may file an appeal in the following order:

(A) The Program Manager (or designee) at the local office;

(B) DHS Central Office;

(C) Office of Administrative Hearings:

(i) A Homecare Worker can file a request for a hearing with the Office of Administrative Hearings if all levels of review have been exhausted, and the worker continues to dispute the Department's decision. The request can be filed through the local office with the Office of Administrative Hearings, as described in OAR 137, division 003. The request for the hearing must be filed within 30 calendar days of the written notice from DHS Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings will determine whether the Departments' decision to terminate the provider enrollment number is affirmed or reversed. The ALJ will issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to Homecare Workers by this rule, other than the right to a hearing on the Department's decision to terminate the Homecare Worker's provider enrollment number.

(d) In the first two steps of the administrative review process, a written response of the outcome of the review will be sent to the Homecare Worker within ten business days of the review date.

(5) Termination if No Appeal Filed: The decision of the reviewer will become final if the Homecare Worker does not appeal within ten business days of the notice of the decision affecting the Homecare Worker.

(6) Request for Extension to Deadline: The Department or the Homecare Worker may request an extension of the 10-day deadline for circumstances beyond their control, if further information needs to be gath-

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ered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070  
Hist.: SPD 15-2003 f. & cert. ef. 9-30-03; SPD 18-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

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**Adm. Order No.:** SPD 19-2003(Temp)

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03 thru 6-7-04

**Notice Publication Date:**

**Rules Amended:** 411-300-0110

**Subject:** The Children's Intensive In-Home Services (CIIS) rules are being temporarily amended effective December 11, 2003 to clarify the intent and consistent application of the assessment process. This revision will align the rule to be in compliance with new Department of Human Services (DHS) standards. Rule 411-300-0110(3) is being proposed for amendment to designate the required assessment tool, DHS Form 0521, with scoring instructions, to establish a score for participation in the CIIS behavior program.

**Rules Coordinator:** Sonya Plummer—(503) 945-6398

## 411-300-0110

### Definitions

(1) "Activities of Daily Living (ADL)" means tasks usually performed in the course of a normal day in a child's life; such as eating, dressing, bathing and personal hygiene, mobility, bowel and bladder control, usual developmental tasks, such as play and social development

(2) "Aide" means a caregiver who is hired by the family or a billing provider to provide In-Home Daily Care (IHDC).

(3) "Behavior Criteria" means the assessment tool, Form DHS-0521, used by the CIIS to evaluate the intensity of the challenges presented by children.

(4) "Behavior Consultant" means a contractor with specialized skills who assesses the child, the needs of the family, and the environment in terms of the behavioral support and related issues, develops a Behavior Support Plan, trains parents and providers, and monitors and revises the Behavior Support Plan as needed.

(5) "Billing Provider" means an organization that enrolls with the Department and contracts with the Department to provide services through its employees and bills the Department for the performing provider's services.

(6) "Child" means a person who is under the age of 18, eligible for developmental disability services and accepted for services under the Model Waiver for Children with Intense Behavior Needs.

(7) "Complete Plan of Care (CPC)" means a written document developed by the service coordinator with the family that describes the needs of the child and the needs of the family that impact the child and how those needs will be met. It includes the Nursing Care Plan when one exists.

(8) "Cost Effective" means that in the opinion of the service coordinator a specific service meets the child's service needs and costs less than or is comparable to other service options considered.

(9) "Delegation" means that a registered nurse authorizes an unlicensed person to perform nursing tasks and confirms that authorization in writing. Delegation occurs only after assessment of the specific situation, the abilities of the unlicensed person, teaching the task and ensuring supervision. Delegation by a registered nurse shall only occur to the extent allowed by Oregon Board of Nursing's administrative rules. Delegation by physicians is also allowed.

(10) "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 person that have developmental disabilities, or are elderly or have physical disabilities.

(11) "Developmental Disability (DD)" for children five years and younger is always provisional 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 OAR 411-300-0110(11)(a)

(12) "Developmental Disability (DD)" for children six years and older is always provisional and means:

(a) There is a diagnosis of mental retardation or developmental disability; and;

(b) There is a significant adaptive behavior 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, which requires training or supports similar to that required by individuals with mental retardation; and;

(c) Must not otherwise primarily be attributed to mental illness, substance abuse, an emotional disorder, Attention Deficit and Hyperactivity Disorder (ADHD), a learning disability, or sensory impairment; and

(d) The individual is expected to need multiple, specialized supports indefinitely.

(13) "Eligible Range" means that the score on the Behavior Criteria is at or above 200.

(14) "Family Home" means the residence of the child, which is not a foster home, group home, or other residential service funded with public funds.

(15) "ICF/MR Model Waiver" means the waiver program granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children in their family home who otherwise would have to be served in an ICF/MR if the waiver program was not available.

(16) "In-Home Daily Care (IHDC)" means essential supportive daily care delivered by a qualified provider who enables a child to remain and/or return to his/her family's home.

(17) "Parent" means biological parent, adoptive parent or legal guardian.

(18) "Primary Care giver" means the parent or relative or other non-paid parental figure that provides the direct care of the child at the times that a provider is not present.

(19) "Provider or Performing Provider for In-Home Daily Care" means the individual who is qualified to receive payment from the Department for In-Home Daily Care and meets the requirements of OAR 411-300-0170. Performing Providers work directly with children. Providers may be employees of Billing Providers, employees of the family or independent contractors.

(20) "Respite" means short-term care provided for the relief of the primary caregiver.

(21) "Service Coordinator" means an employee of the Department/Children's Intensive In-home Services who ensures a child's eligibility for CIIS services and provides assessment, case planning, service implementation, and evaluation of the effectiveness of the services.

Stat. Auth.: ORS 409.050, 417.340 – 417.350

Stats. Implemented: ORS 430.215, 427.007, 417.340 – 417.350

Hist.: SDDS 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04

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## Department of Justice Chapter 137

**Adm. Order No.:** DOJ 13-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 137-001-0070

**Rules Repealed:** 137-001-0085

**Subject:** The rule changes add to the information that must be contained in a petition to amend or repeal an agency rule and require the agency to seek public input on less costly ways to achieve the rule's goals. The rule on periodic review of all agency rules is repealed in response to legislative repeal of the related statutes.

**Rules Coordinator:** Carol Riches—(503) 378-6313

### 137-001-0070

#### Petition to Promulgate, Amend, or Repeal Rule

(OAR 137-001-0070 was adopted by the Attorney General as required by ORS 183.390. Agencies must apply this rule without further adoption or amendment.)

(1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule.

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The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:

(a) The rule petitioner requests the agency to adopt, amend, or repeal. When a new rule is proposed, the petition shall set forth the proposed language in full. When an amendment of an existing rule is proposed, the rule shall be set forth in the petition in full with matter proposed to be deleted enclosed in brackets and proposed additions shown by boldface;

(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;

(c) All propositions of law to be asserted by petitioner.

(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:

(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;

(b) The continued need for the existing rule;

(c) The complexity of the existing rule;

(d) The extent to which the existing rule overlaps, duplicates or conflicts with other state or federal rules and with local government regulations; and

(e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.

(3) If a petition requests the amendment or repeal of a rule, before denying a petition, the agency must invite public comment upon the rule, including whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

(4) The agency:

(a) May provide a copy of the petition, together with a copy of the applicable rules of practice, to all persons named in the petition;

(b) May schedule oral presentations;

(c) Shall, in writing, within 90 days after receipt of the petition, either deny the petition or initiate rulemaking proceedings.

Stat. Auth.: ORS 183.390

Stats. Implemented: ORS 183.390

Hist.: IAG 14, f. & ef. 10-22-75; IAG 1-1981, f. & ef. 11-17-81; JD 6-1983, f. 9-23-83, ef. 9-26-83; JD 2-1986, f. & ef. 1-27-86; JD 5-1989, f. 10-6-89, cert. ef. 10-15-89; JD 7-1991, f. & cert. ef. 11-4-91; JD 6-1995, f. 8-25-95, cert. ef. 9-9-95; DOJ 12-2003(Temp), f. & cert. ef. 10-10-03 thru 4-7-04; DOJ 13-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** DOJ 14-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 137-004-0800

**Subject:** OAR 137-004-0800 implements ORS 192.445 by describing the procedures for submitting a written request for nondisclosure of specified personal information. The 2003 Legislative Assembly amended ORS 192.445 to add an electronic mail address to the personal information for which a person may submit a written request for nondisclosure, and made nonsubstantive grammatical amendments to the statute. This rule amendment is necessary to reflect the amendments made to the statute.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-004-0800

### Public Records Personal Safety Exemption

(1) An individual may request that a public body not disclose the information in a specified public record that indicates the home address, personal telephone number or personal electronic mail address of the individual. If the individual demonstrates to the satisfaction of the public body that the personal safety of the individual or the personal safety of a family member residing with the individual is in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection, the public body may not disclose that information from the specified public record, except in compliance with a court order, to a law enforcement agency at the request of the law enforcement agency, or with the consent of the individual.

(2) A request under subsection (1) of this rule shall be submitted to the custodian of public records for the public record that is the subject of the request. The request shall be in writing, signed by the requestor, and shall include:

(a) The name or a description of the public record sufficient to identify the record;

(b) A mailing address for the requestor;

(c) Evidence sufficient to establish to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the

personal safety of the requestor or of a family member residing with the requestor. Such evidence may include copies of the following documents:

(A) An affidavit, medical records, police reports or court records showing that the requestor or a family member residing with the requestor has been a victim of domestic violence;

(B) A citation or an order issued under ORS 133.055 for the protection of the requestor or a family member residing with the requestor;

(C) An affidavit or police reports showing that a law enforcement officer has been contacted concerning domestic violence, other physical abuse or threatening or harassing letters or telephone calls directed at the requestor or a family member residing with the requestor;

(D) A temporary restraining order or other no-contact order to protect the requestor or a family member residing with the requestor from future physical abuse;

(E) Court records showing that criminal or civil legal proceedings have been filed regarding physical protection for the requestor or a family member residing with the requestor;

(F) A citation or a court's stalking protective order pursuant to ORS 163.735 or 163.738, issued or obtained for the protection of the requestor or a family member residing with the requestor;

(G) An affidavit or police reports showing that the requestor or a family member residing with the requestor has been a victim of a person convicted of the crime of stalking or of violating a court's stalking protective order;

(H) A conditional release agreement issued under ORS 135.250-260 providing protection for the requestor or a family member residing with the requestor;

(I) A protective order issued pursuant to ORS 135.873 or 135.970 protecting the identity or place of residence of the requestor or a family member residing with the requestor;

(J) An affidavit from a district attorney or deputy district attorney stating that the requestor or a family member residing with the requestor is scheduled to testify or has testified as a witness at a criminal trial, grand jury hearing or preliminary hearing and that such testimony places the personal safety of the witness in danger;

(K) A court order stating that the requestor or a family member residing with the requestor is or has been a party, juror, judge, attorney or involved in some other capacity in a trial, grand jury proceeding or other court proceeding and that such involvement places the personal safety of that individual in danger; or

(L) Such other documentary evidence that establishes to the satisfaction of the public body that disclosure of the requestor's home address, personal telephone number or personal electronic mail address would constitute a danger to the personal safety of the requestor or of a family member residing with the requestor.

(3) A public body receiving a request under this rule promptly shall review the request and notify the requestor, in writing, whether the evidence submitted is sufficient to demonstrate to the satisfaction of the public body that the personal safety of the requestor or of a family member residing with the requestor would be in danger if the home address, personal telephone number or personal electronic mail address remains available for public inspection. The public body may request that the requestor submit additional information concerning the request.

(4) If a public body grants the request for exemption with respect to records other than a voter registration record, the public body shall include a statement in its notice to the requestor that:

(a) The exemption remains effective for five years from the date the public body received the request, unless the requestor submits a written request for termination of the exemption before the end of the five years; and

(b) The requestor may make a new request for exemption at the end of the five years. If a public body grants the request for exemption with respect to a voter registration record, the public body shall include a statement in its notice to the requestor that:

(A) The exemption remains effective until the requestor must update the individual's voter registration, unless the requestor submits a written request for termination of the exemption before that time; and

(B) The requestor may make a new request for exemption from disclosure at that time.

(5) A person who has requested that a public body not disclose his or her home address, personal telephone number or personal electronic mail address may revoke the request by notifying, in writing, the public body to which the request was made that disclosure no longer constitutes a danger to personal safety. The notification shall be signed by the person who submitted the original request for nondisclosure of the home address, personal telephone number or personal electronic mail address.

(6) This rule does not apply to county property and lien records.

(7) As used in this rule:

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- (a) "Custodian" has the meaning given that term in ORS 192.410(1);  
(b) "Public body" has the same meaning given that phrase in ORS 192.410(3).

Stat. Auth.: ORS 192.445  
Stats. Implemented: ORS 192.445  
Hist.: JD 6-1993, f. 11-1-93, cert. ef. 11-4-93; JD 8-1995, 8-25-95, cert. ef. 9-9-95; DOJ 8-2001, f. & cert. ef. 10-3-01, Renumbered from 137-004-0100; DOJ 14-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** DOJ 15-2003  
**Filed with Sec. of State:** 12-9-2003  
**Certified to be Effective:** 12-9-03  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 137-008-0000

**Subject:** This rule provides for notice to the public of rulemaking by the Department of Justice. The amendment clarifies that the rule applies to notice of adoption, amendment or repeal of any permanent rule, rather than to any rulemaking.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## **137-008-0000** **Notice of Proposed Rule**

(1) Prior to the adoption, amendment, or repeal of any permanent rule, including the Model Rules, the Attorney General shall give notice of the proposed adoption, amendment, or repeal:

(a) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(b) By mailing a copy of the Notice to persons on the Attorney General's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule;

(c) By mailing a copy of the Notice to the legislators specified in ORS 183.335(14) at least 49 days before the effective date of the rule; and

(d) By mailing or furnishing a copy of the Notice to:

- (A) The Oregon State Bar;
- (B) The Associated Press; and
- (C) The Capitol Press Room.

(2) When the Department of Justice adopts, amends or repeals rules specifically applicable to one of its programs listed below, notice in addition to that required by section (1) of this rule shall be provided by mailing a copy of the notice to the individual(s) or organization(s) listed in this section for the program:

(a) For the Crime Victims' Compensation Program, to:

- (A) The Workers' Compensation Board;
- (B) Each district attorney in the state; and
- (C) Each person on the program's mailing list established pursuant to

ORS 183.335(7).

(b) For the Crime Victims Assistance Program to:

(A) Each city attorney that has a certified, comprehensive victims assistance program;

(B) Each district attorney in the state; and

(C) Each person on the program's mailing list established pursuant to

ORS 183.335(7).

(c) For the Division of Child Support to:

- (A) Oregon Legal Services Corporation;
- (B) Multnomah County Legal Aid Service;
- (C) Oregon District Attorneys Association;
- (D) Each Division of Child Support branch office, to be posted in the area most frequently visited by the public;

(E) The Child Support Section of the Department of Human Resources; and

(F) Each person on the Division's mailing list established pursuant to

ORS 183.335(7).

(d) For the Charitable Activities Section:

(A) For professional fund raising regulation, to all professional fund raising firms registered pursuant to ORS 128.821;

(B) For charitable organization regulation, to all charitable corporations and trusts registered pursuant to ORS 128.650;

(C) For bingo game regulation, to all bingo licensees licensed pursuant to ORS 167.118 and 464.250, et seq.;

(D) For raffle game regulation, to all raffle licensees licensed pursuant to ORS 167.118 and 464.250 et seq.;

(E) For Monte Carlo regulation, to all Monte Carlo licensees licensed pursuant to ORS 167.118 and 464.250, et seq.; and

(F) Each person on the section's mailing list established pursuant to

ORS 183.335(7) for the appropriate program identified in A-E above.

(e) For the Criminal Intelligence Unit, Organized Crime Section, of the Criminal Justice Division:

- (A) Each District Attorney in the state;
- (B) Each Sheriff in the state;
- (C) Each Chief of Police in the state;
- (D) The Superintendent of the Oregon State Police; and
- (E) Each attendee of the Basic Officer's Intelligence Course conducted by the Criminal Justice Division.

(f) For the Child Abuse Multidisciplinary Intervention Account:

(A) Persons on the Advisory Council on Child Abuse Assessment;

(B) All county multidisciplinary child abuse teams receiving money from the Child Abuse Multidisciplinary Intervention Account;

(C) The Oregon network of child abuse intervention centers;

(D) The regional assessment centers; and

(E) Each person on the Child Abuse Multidisciplinary Intervention

Account's mailing list established pursuant to ORS 183.335(8).

Stat. Auth.: ORS 183.341(2) & ORS 183.341(4)

Stats. Implemented: ORS 183.341(4)  
Hist.: 1AG 13, f. & ef. 10-21-75; JD 3-1983, f. & ef. 6-22-83; JD 8-1983, f. & ef. 11-10-83; JD 7-1989, f. 12-21-89, cert. ef. 12-20-89; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 1-2003, f. 2-28-03, cert. ef. 3-1-03; DOJ 15-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** DOJ 16-2003  
**Filed with Sec. of State:** 12-9-2003  
**Certified to be Effective:** 12-9-03  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 137-008-0010

**Subject:** This rule establishes the fees the Department may charge to reimburse its costs of providing public records and also establishes the prices of Department publications. Amendments are necessary to reflect changes to hourly billing rates of Department and staff, as approved by the 2003 Legislative Assembly, and to reflect an increase in the price for purchasing a set of bound volumes of Attorney General Opinions.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## **137-008-0010** **Fees for Public Records and Publications**

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

- (a) Assistant Attorney General; \$98/hr;
- (b) Alternative Dispute Resolution Coordinator; \$80/hr;
- (c) Investigator; \$76/hr;
- (d) Paralegal; \$69/hr;
- (e) Law Clerk; \$46/hr;
- (f) General Clerical; \$44/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents.

(3) The Department shall estimate the costs of making records available for inspection or providing copies of records to requestors. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available

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publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

- (a) Attorney General's Public Law Conference Papers; \$65;
  - (b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; \$30;
  - (c) Attorney General's Model Public Contract Rules Manual; \$40;
  - (d) Attorney General's Public Records and Meetings Manual; \$20;
  - (e) Attorney General Opinions:
    - (A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; \$921;
    - (B) Future Bound Volumes; \$70;
    - (C) Slip Opinion Service (yearly); \$60;
    - (D) Letters of Advice Index, 1969-83; \$20;
    - (E) Letters of Advice Index, 1983-88; \$40;
    - (F) Letters of Advice Index, 1988-93; \$40;
    - (G) Future Letters of Advice Indices; \$40.
- Stat. Auth.: ORS 192.430(2) & ORS 192.440(3)  
Stats. Implemented: ORS 192.440(3)  
Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** DOJ 17-2003

**Filed with Sec. of State:** 12-9-2003

**Certified to be Effective:** 12-9-03

**Notice Publication Date:**

**Rules Adopted:** 137-045-0055

**Rules Amended:** 137-045-0010, 137-045-0015, 137-045-0030, 137-045-0035, 137-045-0050, 137-045-0060, 137-045-0070, 137-045-0080, 137-045-0090

**Subject:** Allows more exemptions from the Attorney General's legal sufficiency review of state contracts. Rule -0055 makes new special public contract exemptions available to agencies. Special exemptions are in addition to class exemptions under Rule -0060 and exemptions that apply to all agencies across the board under Rule -0050. Agencies could prioritize types of contracts eligible for special exemption in collaboration with the Attorney General. After responsible agency representatives received training and certification from the Attorney General for certain types of contracts, the contracts would be exempt from Attorney General review so long as they included provisions required to be included and did not include prohibited clauses. Agencies would not be limited to using fill-in-the-blank forms.

Amendments to rule -0050 provide new and expanded across-the-board exemptions. New exemptions include adoption assistance agreements, contracts prescribed in procurement documents, certain federal contracts, purchase order contracts, and settlement agreements. Exemptions for contract amendments are expanded.

Other amendments streamline the criteria for review of contracts (Rule -0015) and procurement documents (Rule -0035). Amendments to Rules -0080 and -0090 streamline processes for Attorney General approval and agency ratification where services are performed under a contract before legal sufficiency approval. Other streamlining amendments: (1) delegate authority to the Attorney in Charge, Business Transactions Section to approve matters previously required to be approved by the Chief Counsel, General Counsel Division and (2) permit executive officers responsible for public contracts to request approvals previously required to be requested by agency directors.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-045-0010

### Definitions

The following definitions shall apply to all Oregon Administrative Rules contained in OAR chapter 137, division 045:

- (1) "**Act**" means ORS 291.045, 291.047, and 291.049.
- (2) "**Agency**" means any state officer, board, commission, department, institution, branch, or agency that is subject to the Act and whose costs are paid wholly or in part from funds held in the State Treasury. Agency does not include the Legislative Assembly or the courts and their officers and committees.

(3) "**Agency Contract Administration**" means an action undertaken by an Agency in accordance with the terms of a Public Contract that does not change the Public Contract. Agency Contract Administration does not include an assignment of rights or delegation of duties under a Public Contract to a third party. Examples of Agency Contract Administration include, but are not limited to, actions that result in:

(a) A notice to proceed, the exercise of an option, or any other exercise of a contractual right, whereby the Agency causes a Public Contract to be implemented in accordance with its terms; and

(b) A purchase order or a similar ordering instrument issued under a Requirements Contract or under a Variable Delivery Contract.

(4) "**Architecture and Engineering Services Contract**" means a Public Contract for Architectural, Engineering or related personal services that are:

(a) Provided in the planning, design, engineering or oversight of public improvement projects or components thereof; and

(b) Performed by professionals including, but not limited to, architects, landscape architects, engineers, space planners, land surveyors, cost estimators, appraisers, material testers, mechanical system balancers, energy managers, asbestos evaluation and abatement consultants, commissioning agents, construction managers and project managers.

(5) "**Assistant Attorney General**" means a person appointed by the Attorney General under ORS Chapter 180 as an Assistant Attorney General or as a Special Assistant Attorney General and who is authorized in writing by the Chief Counsel, General Counsel Division, to review and approve Public Contracts for legal sufficiency. Such authorization may be limited by the Public Contract type and amount.

(6) "**Attorney in Charge, Business Transactions Section**" means the Assistant Attorney General the Attorney General appoints as Attorney in Charge of the Business Transactions Section, General Counsel Division, Department of Justice or an alternate designated by the Chief Counsel, General Counsel Division.

(7) "**Attorney General**" means the Attorney General of the State of Oregon.

(8) "**Chief Counsel, General Counsel Division**" means the Assistant Attorney General the Attorney General appoints as Chief Counsel of the General Counsel Division, Department of Justice or an alternate designated by the Attorney General.

(9) "**Emergency**" means circumstances that create a substantial risk of loss, damage to property, interruption of services or threat to public health or safety that require prompt execution of a Public Contract to deal with the risk.

(10) "**Entity**" means a natural person capable of being legally bound, sole proprietorship, limited liability company, corporation, partnership, limited liability partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision. Entity does not include an Agency.

(11) "**Federal Cooperative Agreement**" means a Public Contract under which an Agency receives money or property from a federal agency for the purpose of supporting or stimulating an Agency program or activity and substantial involvement is expected between the federal agency and the Agency when carrying out the program or activity contemplated in the agreement. A Federal Cooperative Agreement does not include a procurement contract under 31 U.S.C. section 6303.

(12) "**Grant**" means:

(a) A Public Contract under which an Agency receives money or property from a grantor for the purpose of supporting or stimulating an Agency program or activity, and in which no substantial involvement by grantor is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions; or

(b) A Public Contract under which an Agency provides money or property to a recipient for the purpose of supporting or stimulating a program or activity of the recipient, and in which no substantial involvement by Agency is anticipated in the contemplated program or activity other than activities associated with monitoring compliance with Grant conditions.

(13) "**Information Technology Contract**" means a Public Contract for the acquisition, disposal, repair, maintenance or modification of hardware, software, or services for data processing, office automation, or Telecommunications.

(14) "**Interagency Agreement**" means any agreement solely between Agencies or between an Agency and the Legislative Assembly or the courts, or their officers and committees.

(15) "**Intergovernmental Agreement**" means any agreement between an Agency and unit of local government of this state, the United States, a United States governmental agency, an American Indian tribe or



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an agency of an American Indian tribe and includes Interstate Agreements and International Agreements.

(16) "**International Agreement**" means any agreement between an Agency and a nation or a public agency in any nation other than the United States.

(17) "**Interstate Agreement**" means any agreement between an Agency and a unit of local government or state agency of another state.

(18) "**Last Reviewed Contract**" means a Public Contract that has been approved for legal sufficiency under the Act and rules adopted thereunder, and includes all Public Contract amendments that have been approved for legal sufficiency or that were effective prior to a Public Contract amendment that has been approved for legal sufficiency.

(19) "**Non-Negotiable Public Contract**" means a Public Contract that is a preprinted form of contract comprised of terms and conditions offered to an Agency for acceptance without a commercially reasonable opportunity to negotiate and that is attached to or included with products that are available to the public for purchase at retail, through the mail or direct sales. Examples of a Non-Negotiable Public Contract include, but are not limited to, a shrink-wrapped or click-wrapped license agreement attached to or included with a packaged or electronic copy of computer software.

(20) "**Personal Services Contract**" means, for Agencies subject to the provisions of ORS 279.712, any Public Contract designated as a personal services contract by the Department of Administrative Services under administrative rules adopted pursuant to ORS 279.051. For those Agencies not subject to the provisions of ORS 279.712, "Personal Services Contract" means a Public Contract the Attorney General determines is for personal services, using the principles established by the Department of Administrative Services in administrative rules adopted pursuant to ORS 279.051.

(21) "**Price Agreement**" means an agreement for the procurement of goods or services at a set price or prices, or at a price or prices established using a method prescribed by the agreement, with:

(a) No guarantee of a minimum or maximum purchase; or

(b) An initial order or minimum purchase combined with a continuing obligation to provide goods or services with no guarantee of a minimum or maximum additional purchase. Price Agreements are sometimes referred to as flexible services agreements, agreements to agree and retainer agreements.

(22) "**Procurement Documents**" means an invitation to bid, request for proposals, request for quotations, or similar solicitation document, including, when available, the anticipated Public Contract, and including addenda that modify the anticipated Public Contract. However, a request for statements of qualification, a prequalification of bidders, a request for product prequalification, or a similar document that does not customarily include a sample Public Contract is not a Procurement Document, and an addendum that modifies only Technical Specifications is not a Procurement Document.

(23) "**Public Contract**" means any contract, including any amendments, entered into by an Agency for the acquisition, disposition, purchase, lease, sale or transfer of rights of real or personal property, public improvements, or services, including any contract for repair or maintenance. An Intergovernmental Agreement entered into for any of the foregoing actions is a Public Contract. An Interagency Agreement is not a Public Contract. Agency Contract administration is not a Public Contract.

(24) "**Public Improvement Contract**" means any Public Contract for construction, reconstruction, or major renovation on real property by or for an Agency.

(25) "**Requirements Contract**" means a Public Contract that requires that all of the purchaser's requirements for the goods or services specified in the Public Contract for the period of time, or for the project(s) specified in the Public Contract, shall be purchased exclusively from the seller.

(26) "**Statement of Work**" means all provisions of a Public Contract that specifically describe the services or work to be performed or goods to be delivered by either the contractor, its subcontractor(s), or the Agency, as applicable, including any related Technical Specifications, deadlines, or deliverables.

(27) "**Technical Specifications**" with respect to equipment, materials and goods, means descriptions of dimensions, composition and manufacturer and quantities and units of measurement that describe quality, performance, and acceptance requirements. With respect to services, "Technical Specifications" means quantities and units of measurement that describe quality, performance, and acceptance requirements.

(28) "**Telecommunications**" means 1-way and 2-way transmission of information over a distance by means of electromagnetic systems, electro-optical systems, or both.

(29) "**Variable Delivery Contract**" means a Public Contract that, during its term, uses purchase orders or similar ordering instruments to pro-

vide for incremental delivery of the amount of goods or services, or both, that is specified in the Public Contract. A Variable Delivery Contract identifies goods or services by any method that is both commercially reasonable and in accordance with industry standards, including but not limited to, Technical Specifications, time of delivery, place of delivery, manufacturer, form of delivery, or any combination of the foregoing.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.045, ORS 291.047, ORS 291.049

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0015

### Legal Sufficiency Approval

(1) This rule is adopted to provide guidance to Agencies regarding criteria used for, and factors excluded from, the Attorney General's legal sufficiency approval of Public Contracts. Legal sufficiency approval pursuant to these rules does not affect any other applicable review or approval requirement, including without limitation, review of Interstate Agreements under ORS 190.430 or International Agreements under ORS 190.490.

(2) The Attorney General, through Assistant Attorneys General, provides legal sufficiency approval of a Public Contract solely for the benefit of Agencies, to determine compliance with this rule. Approval of a Public Contract for legal sufficiency is based upon the individual determination by the Assistant Attorney General reviewing the Public Contract and shall not preclude the State of Oregon from later asserting any legally available claim or defense arising from or relating to the Public Contract.

(3) Approval of a Public Contract for legal sufficiency shall be noted in written form by the Assistant Attorney General reviewing the Public Contract and shall be either affixed directly to the Public Contract or set forth in a separate correspondence that identifies the Public Contract with particularity.

(4) Except as provided in section (5) of this rule, approval for legal sufficiency means that the reviewing Assistant Attorney General finds that:

(a) The Public Contract has been reduced to written form;

(b) The subject matter, promised performance and consideration of the Public Contract are within the Agency's statutory authority;

(c) The Public Contract, on its face, contains all the essential elements of a legally binding contract, such as a description of consideration (money, performance, or forbearance) when consideration is required;

(d) The Public Contract, on its face, complies with federal and State of Oregon statutes and administrative rules regulating the Public Contract, and that all provisions required by Oregon law to be incorporated have been included;

(e) The Public Contract includes and requires execution of any certification required by Oregon law;

(f) The Public Contract, on its face, does not violate any State of Oregon constitutional limitation or prohibition, such as by creating unlawful "debt" under section 7, Article XI, of the Oregon Constitution, or impermissibly binding a future Legislative Assembly to fund the Public Contract, or any federal constitutional provision;

(g) The Statement of Work or comparable provisions and business or commercial terms are sufficiently clear and definite under the circumstances applicable to the Public Contract to be enforceable; and

(h) The Public Contract allows the Agency, if appropriate, to terminate the Public Contract, declare defaults, and pursue its rights and remedies.

(5) Approval for legal sufficiency does not include:

(a) Consideration of facts or circumstances that are not apparent on the face of the Public Contract, unless the Assistant Attorney General reviewing the Public Contract has current, actual knowledge of those facts or circumstances;

(b) A determination that the individual signing the Public Contract on behalf of the Agency possesses lawful authority to do so;

(c) A determination that the technical provisions, used in the Public Contract, that are particular to a profession, trade or industry reflect the Agency's intentions, are appropriate to further the Agency's stated objectives or are sufficiently clear and definite to be enforceable;

(d) A determination that the Public Contract is a good business deal for the Agency, weighing relative risks and benefits, although the Assistant Attorney General reviewing the Public Contract may provide advice regarding significant risks and issues in any particular transaction. The Agency remains responsible for risk assessment and the decision whether to proceed with a Public Contract despite exposure to risks;

(e) A determination that any particular remedy, whether or not expressly set forth in the Public Contract, will be available to the Agency. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the availability of specific remedies;

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(f) A determination that the Public Contract complies with grant conditions or federal funding requirements or contains terms or assurances required under a grant or federal funding program. The requesting Agency may request the Assistant Attorney General reviewing the Public Contract to address the compliance with grant conditions, federal funding requirements, or required assurances; or

(g) A stylistic or grammatical review, including spelling, punctuation and the like, unless such errors create ambiguity or otherwise are substantive. The Assistant Attorney General reviewing the Public Contract may address matters of this nature as time allows; however, these matters are primarily the responsibility of the Agency submitting a Public Contract for review.

Stat. Auth.: ORS 291.045(7)

Stats. Implemented: ORS 291.045 & ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0010(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 5-1999(Temp), f. 9-14-99, cert. ef. 9-15-99 thru 3-13-00; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0030

### Review of Public Contracts

(1) Except as described in section (2) of this rule, before a Public Contract is binding on the State of Oregon, and before any service may be performed or payment may be made under the Public Contract, the Attorney General must approve for legal sufficiency in accordance with these rules:

(a) Any Personal Services Contract, any Architecture and Engineering Services Contract and any Information Technology Contract providing for payment in excess of \$75,000; and

(b) Any other Public Contract providing for payment in excess of \$100,000.

(2) The legal sufficiency approval requirement described in section (1) of this rule does not apply to Public Contracts that are exempt from legal sufficiency approval under these Division 045 rules.

(3) For purposes of determining whether a Public Contract exceeds the amounts set forth in section (1) of this rule, a Public Contract calls for or provides for payments in excess of the applicable amount if:

(a) The Public Contract expressly provides that the Agency will make or receive payments in money, services or goods over the term of the Public Contract with a value that will, in aggregate, exceed the applicable threshold, whether or not the total amount or value of the payments is expressly stated;

(b) The Public Contract expressly provides for a guaranteed maximum price, or a maximum not to exceed amount with a value that exceeds the applicable threshold;

(c) At the time the parties enter into the Public Contract, the Agency reasonably contemplates amending the Public Contract to provide for payment in money, services or goods, a guaranteed maximum price, or maximum not to exceed amount with a value that the parties anticipate will, in aggregate, exceed the applicable threshold over the term of the Public Contract;

(d) At any time during the term of the Public Contract, an amendment is made to the Public Contract that increases the payment in money, services or goods, a guaranteed maximum price, or a maximum not to exceed amount under the Public Contract to an amount with a value that, in aggregate, exceeds the applicable threshold; or

(e) Based on historical or other data available to the contracting Agency at the time of entering into the Public Contract, the contracting Agency determines that the value of payments in money, services or goods to be made or received by the Agency under the Public Contract will likely exceed the applicable threshold.

(4) An Agency shall not fragment or segregate into separate purchase orders or work orders any goods or services contemplated under a single invitation to bid or request for proposals for purposes of circumventing the legal sufficiency approval requirement.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0030(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0035

### Review of Anticipated Public Contract

(1) If an Agency expects the resulting Public Contract to require legal sufficiency approval, an Agency must also submit to the Attorney General any associated Procurement Documents for review of the anticipated Public Contract prior to release of the Procurement Documents. This requirement for submission of Procurement Documents may be waived in writing by the Attorney in Charge of the Business Transactions Section if the reviewing Assistant Attorney General determines that the resulting Public Contract is

legally sufficient and resolicitation of the Public Contract would not materially reduce the risk to the State.

(2) The reviewing Assistant Attorney General may require changes to the Procurement Documents necessary for compliance with these rules. If the reviewing Assistant Attorney General determines that nothing in the Procurement Documents would prevent approval of the anticipated Public Contract for legal sufficiency, the Assistant Attorney General shall authorize release of the Procurement Documents. The Assistant Attorney General may condition an authorization to release procurement documents as necessary for compliance with these rules. Authorization to release the Procurement Documents does not ensure subsequent legal sufficiency approval of the Public Contract contemplated by the procurement and any accepted response. Authorization to release does not include a determination that the solicitation process complies with applicable statutes or rules.

Stat. Auth.: ORS 291.047(3)

Stats. Implemented: ORS 291.047

Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0050

### Exemptions from Legal Sufficiency Approval Based on Risk Assessment

The Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts within the types of Public Contracts listed below. The Attorney General exempts from the legal sufficiency approval requirement under the Act the Public Contracts falling within the types of Public Contracts listed below:

(1) **Adoption Assistance Agreements.** A document of understanding between the Department of Human Services and adoptive parents of a special needs child as defined under title IV-E at section 473(c) of the Social Security Act.

(2) **Amendments to Non-Public Improvement Contracts.** A written amendment to a Public Contract that is not a Public Improvement Contract, if all of the following apply:

(a) The original Public Contract was approved for legal sufficiency.

(b) The amendment only modifies one or both of the following, and modifies the payment obligations as necessary:

(A) The Statement of Work to require the contractor to provide additional services within the general scope of the Last Reviewed Contract and modifies the Agency's payment obligations as necessary.

(B) The expiration date of the Public Contract; Technical Specifications; time, place, or form of delivery.

(c) The aggregate increase in payments scheduled to be made by the Agency, or the aggregate decrease in payments scheduled to be received by the Agency, under the amendment, and all prior amendments exempted from the legal sufficiency approval requirement under this subsection subsequent to the Last Reviewed Contract, do not exceed \$75,000.

(3) **Amendments to Public Improvement Contracts.**

(a) A written change order to a Public Improvement Contract, other than as provided in subsections (b) and (c) of this section, if all of the following apply:

(A) The original Public Improvement Contract was approved for legal sufficiency.

(B) The change order is within the general scope of the Public Improvement Contract.

(C) The change order is implemented in accordance with the change order provisions of the Public Improvement Contract.

(D) Any increase in Agency payments under the change order does not exceed ten percent (10%) of the total amount of Agency payments scheduled to be made under the Last Reviewed Contract, and the aggregate increase in Agency payments scheduled to be made under that change order and all prior change orders subsequent to the Last Reviewed Contract do not exceed thirty-three percent (33%) of that total amount.

(b) The amendment (whether in the form of a change order or amendment) is modifying the guaranteed maximum price (GMP) in a Construction Manager/General Contractor (CM/GC) contract (as defined in OAR 137-040-0510) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%).

(c) The amendment (whether in the form of a change order or amendment) is modifying the GMP in a Design-Build contract (as defined in OAR

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137-040-0510) or in the construction phase of an energy savings performance contract (as defined in Or Laws 2003, ch 562 §1) if all of the following apply:

(A) The original contract and any amendment that established the original GMP were approved for legal sufficiency.

(B) The amendment is made under the terms of the Last Reviewed Contract.

(C) The amendment does not increase the GMP by more than \$500,000 or five percent (5%) of the GMP established under the Last Reviewed Contract (whichever is less).

(D) The amendment and all prior amendments subsequent to the Last Reviewed Contract in the aggregate do not increase the GMP established under the Last Reviewed Contract by more than ten percent (10%) or \$500,000 (whichever is less).

(4) **Bonds and Certificates of Participation.** A Public Contract that relates to the issuance of a bond, certificate of participation or other debt obligation of the State of Oregon if the Oregon State Treasurer has issued or authorized the bond, certificate of participation or other debt obligation and if bond counsel appointed in accordance with applicable law has issued an authorized opinion for the benefit or use of the bond, certificate of participation or other debt obligation purchasers with respect to the enforceability of the bond, certificate of participation or other debt obligations upon closing of the transaction.

(5) **Employment Agreements.** Employment agreements; collective bargaining agreements negotiated under applicable federal or state laws, including collective bargaining agreements entered into pursuant to ORS 410.612; or notices of appointment provided in accordance with OAR chapter 580, division 021. Agreements with third-party providers of temporary services are not exempt.

(6) **Federal Contracts.** A contract with a federal agency consisting substantially of provisions prescribed in Federal Acquisition Regulations or federal agency supplemental acquisition clauses (48 CFR), except a contract allowed under Section 211 of the federal E-Government Act of 2002.

(7) **Federal Cooperative Agreements.** A Federal Cooperative Agreement.

(8) **Federal Grants.** A grant from a federal agency under which an Agency is the grantee, provided that the Agency has a grants coordinator.

(9) **Federal Pass-Through Grants.** A grant under which an Agency passes through to another recipient all or a portion of the money or property received by the Agency under a grant from a federal agency, provided that:

(a) The Agency does not add to or modify the federal grant except as necessary to provide for proper administration; and

(b) The grant contains a clause substantially in the following form: "The recipient of grant funds, pursuant to this agreement with the State of Oregon, shall assume sole liability for recipient's breach of the conditions of the grant, and shall, upon recipient's breach of grant conditions that causes or requires the State of Oregon to return funds to the grantor, hold harmless and indemnify the State of Oregon for an amount equal to the funds which the State of Oregon is required to pay to grantor."

(10) **Foster Care Agreements.** An agreement between the Department of Human Services and a foster parent for the provision of foster care to an individual under the age of 21, or a youth placed with the Department of Human Services pursuant to ORS 419C.478.

(11) **Home Care Services Agreements.** An agreement for the provision of and payment for home care services as defined in ORS 410.600(6).

(12) **Membership Agreements.** A Public Contract that calls for the payment of dues or fees in consideration of membership in a club, institution, or association and in which the State of Oregon acquires no ownership interest.

(13) **Non-Negotiable Public Contracts.** A Non-Negotiable Public Contract.

(14) **Prescribed Contracts.** A Public Contract that is in the form prescribed in Procurement Documents, provided that the Procurement Documents were approved unconditionally for release under OAR 137-045-0035. Prescribed Contracts do not vary from the form prescribed in Procurement Documents other than to fill in blanks in the form, as is commonly done with invitations to bid for goods and services other than personal services.

(15) **Purchase Order Contracts.** A Public Contract formed by a purchase order or a similar ordering instrument for the purchase of goods or services under a Price Agreement, provided that the Price Agreement was approved by an Assistant Attorney General and the purchase order or similar instrument complies with any conditions of the approval.

(16) **Reinstated Public Contracts.** A Public Contract entered into solely for the purpose of reinstating an expired Personal Services Contract in accordance with OAR 125-020-0550 if, when required under the Act, the

expired Public Contract and all amendments to the expired Public Contract were approved for legal sufficiency.

(17) **Settlement Agreements.** Agreements settling disputed claims, provided that they do not have the effect of amending Public Contracts that are subject to the legal sufficiency approval requirement under the Act.

Stat. Auth.: ORS 291.047(4)

Stats. Implemented: ORS 291.047

Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0050(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0055

### Special Public Contract Exemption Program for Exemptions from Legal Sufficiency Approval Based on Risk Assessment

(1) In addition to the Public Contracts described in OAR 137-045-0050, the Attorney General has determined that the degree of risk assumed by Agencies is not materially reduced by legal review and approval of individual Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule. The Attorney General exempts from the legal sufficiency approval requirement under the Act the Public Contracts that satisfy the requirements of the Special Public Contract Exemption Program and fall within the types of contract described in this rule.

(2) The requirements of the Special Public Contract Exemption Program are:

(a) The Agency's representative responsible for the Public Contract must satisfactorily complete the Attorney General's initial and any continuing, as it is scheduled, legal sufficiency review training for that type of contract, which may be specifically tailored for that Agency, and hold a current legal sufficiency review exemption certificate for that type of contract issued by the Attorney in Charge, Business Transactions Section.

(b) The Public Contract must be substantially composed of provisions that have been preapproved by an Assistant Attorney General for use in the Special Public Contract Exemption Program and any modifications to such provisions as may be communicated to the Agency by an Assistant Attorney General.

(c) The Agency must agree that the Attorney in Charge, Business Transactions Section may:

(A) Periodically, select any Public Contract that is exempted from legal sufficiency review under the Special Public Contract Exemption Program for a quality control review; and

(B) Depending upon the results of any such review, provide comments to the Agency about the review, require changes to preapproved provisions, or suspend the Agency's or an Agency's representative's eligibility to participate in the Special Public Contract Exemption Program until further training or other reasonable conditions are met by the Agency or Agency representative.

(d) Costs for the activities specified in subsection (2)(c) of this rule shall be at the expense of the Agency unless otherwise agreed.

(e) An Agency must delete, modify with the specific advice of an Assistant Attorney General, or include only with the specific advice of an Assistant Attorney General, any provision in a proposed Public Contract that is substantially in any of the following forms:

(A) Governing law or choice of law: The laws of a state other than Oregon govern this contract.

(B) Jurisdiction or venue: A lawsuit to enforce, or arising out of, this contract must be brought in a state or federal court located outside Oregon.

(C) Arbitration: This contract is subject to binding arbitration.

(D) Indemnity, Hold Harmless: The State of Oregon or the Agency shall indemnify or hold harmless the other party.

(E) Responsibility: The State of Oregon or the Agency shall be responsible for the acts of its employees, unless this obligation is subject to the limits of Oregon law, including Article XI, section 7 of the Oregon Constitution and the Oregon Tort Claims Act.

(F) Attorney fees or collection costs: The State of Oregon or the Agency shall pay the other party's attorney fees or the prevailing party in any lawsuit recovers its attorney fees from the losing party.

(G) Punitive or exemplary damages: The State of Oregon or the Agency shall pay punitive, exemplary, or treble damages for the breach of contract or for any claims arising out of the contract.

(H) Interest: The State of Oregon or the Agency is obligated to pay interest on an overdue account if the payment is less than forty-five days overdue or the interest is higher than eight per cent per annum.

(I) Third party beneficiary: A person not a party to the contract is stated to be a beneficiary of the contract or has the right to bring a legal action under the contract or to enforce the contract.

(J) Commitment to pay for performance beyond the end of the current biennium or with funds not currently available: The State of Oregon or the Agency has an unconditional (i.e., not limited by the potential non-appro-

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priation or non-allotment of funds) obligation to pay funds that are not currently available for expenditure for that obligation by the Agency.

(K) Taxes: The State of Oregon or the Agency must pay taxes incident to the contract that are not directly imposed upon the State of Oregon or the Agency.

(L) Confidentiality: The State of Oregon or the Agency is obligated to keep information confidential unless the obligation is made subject to the provisions of the Oregon Public Records Law.

(M) Statute of Limitations: The State of Oregon or the Agency must file a legal action arising out of the contract within a specified time period.

(N) Contractor as agent: The contractor is deemed to be an agent of the State of Oregon or the Agency for liability or other purposes.

(f) Unless otherwise requested by the Agency, the Assistant Attorney General will not provide advice regarding provisions in the proposed Public Contract that are not affected by modifying or including the provisions in subsection (e).

(3) Public Contracts for the following types of transactions are eligible for exemption from legal sufficiency review under the Special Public Contract Exemption Program:

(a) The purchase or lease of commercial off-the-shelf goods for a total payment that does not exceed \$500,000, excluding Information Technology Contracts, lease purchases and other financing agreements, and contracts requiring services.

(b) Classes of Public Contracts identified by the Attorney in Charge, Business Transactions Section, based on risk assessments developed in collaboration with an executive officer of an Agency who is responsible for oversight of Public Contracts.

Stat. Auth.: ORS 291.047(4)  
Stats. Implemented: ORS 291.047  
Hist.: DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0060

### Class Exemptions Based on Attorney General's Pre-Approval

The Attorney General may exempt Public Contracts falling within a class from the legal sufficiency approval requirement under the Act. The Attorney General delegates to the Attorney in Charge, Business Transactions Section, the authority to exempt Public Contracts falling within a class, and to otherwise act on behalf of the Attorney General, in accordance with this rule.

(1) An Agency requesting an exemption for Public Contracts falling within a class must submit a written exemption request to the Attorney in Charge, Business Transactions Section, for approval. The exemption request must be signed by an executive officer of the Agency who is responsible for oversight of Public Contracts and must be accompanied by:

(a) A statement that the exemption request is made pursuant to this rule;

(b) Citation to the requesting Agency's statutory authority for procuring and entering into the Public Contracts within the class;

(c) A description of the nature of the business transacted with the Public Contracts within the class;

(d) A description of the circumstances in which the Public Contracts within the class will be used;

(e) Samples of form Public Contracts used for the Public Contracts within the class and any form of amendment to be used in connection with the Public Contracts within the class;

(f) A description of the Agency's internal contract approval process and signatures required for the Public Contracts within the class; and

(g) A statement by the Agency that:

(A) The nature of the business transacted under Public Contracts within the class is substantially the same from transaction to transaction; and

(B) The form of Public Contract and any form of amendment submitted in accordance with OAR 137-045-0060(1)(e) do not vary from transaction to transaction, other than one or more of the following: the expiration date or project completion date of the Public Contract; Technical Specifications; time, place, or form of delivery; quantity of services or goods; or any payment modifications related to modifying the foregoing; and

(C) The Agency will not modify the form of Public Contract and any form of amendment, other than as specifically provided for in OAR 137-045-0060(1)(g)(B) above, without review and approval for legal sufficiency by the Attorney General, nor will the Agency use such Public Contract other than in transactions described in the exemption request; and

(h) Any other information that the Attorney General or the Attorney in Charge, Business Transactions Section, requests in connection with the exemption request.

(2) If the Attorney General has determined that the degree of risk assumed by an Agency is not materially reduced by legal review and approval of individual Public Contracts falling within a class reviewed by

the Attorney General in accordance with section (1) of this rule, the Attorney General will provide the Agency a written exemption, subject to any terms, conditions or limitations the Attorney General deems appropriate, including but not limited to, the duration of the exemption, restrictions on the use of the submitted forms of Public Contract, form of purchase order or similar instrument or any form of amendment.

(3) The Attorney General may at any time review an exemption granted under section (2) of this rule. The Attorney General may revoke or modify such exemption at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that the exemption be revoked or modified. Revocation or modification of an exemption granted under this rule shall not affect the validity of Public Contracts entered into under the exemption prior to the revocation or modification.

Stat. Auth.: ORS 291.047(5)  
Stats. Implemented: ORS 291.047(5)(a)  
Hist.: JD 4-1997(Temp), f. & cert. ef. 10-3-97; JD 5-1997(Temp), f. & cert. ef. 10-17-97; 137-045-0060(Temp) repealed by DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 3-1998, f. & cert. ef. 4-1-98; DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0070

### Emergency Public Contract Exemption

(1) Upon the Agency's compliance with the procedures set forth in this rule, a Public Contract entered into in an Emergency shall be exempt from the legal sufficiency approval requirement under the Act.

(2) Within 10 business days after execution of the Public Contract, an executive officer of the Agency who is responsible for oversight of the Public Contract must prepare and sign a written report that contains:

(a) A concise summary of the circumstances that constitute the Emergency and the character of the risk of loss, damage, interruption of services or threat to public health or safety created or anticipated to be created by the Emergency circumstances;

(b) A statement of the reason or reasons why the prompt execution of the proposed Public Contract was required to deal with the risk created or anticipated to be created by the Emergency circumstances;

(c) A brief description of the services or goods to be provided under the Public Contract, together with its anticipated cost; and

(d) A brief explanation of how the Public Contract, in terms of duration, services or goods provided under it, was restricted to the scope reasonably necessary to adequately deal only with the risk created or anticipated to be created by the Emergency circumstances.

(3) The Agency shall maintain a copy of the report in the Agency's Emergency Public Contract file. The Agency shall provide a copy of the report to the Attorney General and to the Administrator of the Department of Administrative Services' State Procurement Office within thirty (30) days after preparing the report.

Stat. Auth.: ORS 291.047(5)  
Stats. Implemented: ORS 291.047(5)(b)  
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

## 137-045-0080

### Authorization of Services Prior to Legal Sufficiency Approval

At an Agency's request and upon the Agency's compliance with the procedures set forth in this rule, the Attorney General, through the Attorney in Charge, Business Transactions Section, may authorize services to be performed under specific types of written Public Contracts or under written Public Contracts for specific Agency programs, before legal sufficiency approval as follows:

(1) An Agency requesting authorization for performance of services under Public Contracts prior to legal sufficiency approval must submit a written authorization request signed by an executive officer of the Agency who is responsible for oversight of the Public Contracts to the Attorney in Charge, Business Transactions Section. The request must include:

(a) A statement that the authorization request is made pursuant to this rule;

(b) A description of the specific type of Public Contracts within the authorization request and a description of the circumstances in which the Agency will use these Public Contracts, or a description of the specific program for which the Agency will use the Public Contracts to be covered by the authorization;

(c) A citation to the requesting Agency's statutory authority for entering into the specific type of Public Contracts to be covered by the authorization;

(d) The form of Public Contracts comprising the type of Public Contracts within the exemption request or the form of Public Contracts used for the specific Agency program;

(e) A description of the Agency's internal contract approval process and the signatures required for the type of Public Contracts within the authorization request; and

(f) Any other information that the Attorney General requests in connection with the authorization request.

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(2) If the Attorney General determines that the authorization for performance of services prior to legal sufficiency approval will not result in undue risk to the State of Oregon under the type of Public Contracts within the authorization request or under Public Contracts used for the specific Agency program described in accordance with section (1), above, the Attorney General may authorize the services under those Public Contracts prior to legal sufficiency approval.

(3) If the Attorney General authorizes services under a Public Contract prior to legal sufficiency approval, the Attorney General, through the Attorney in Charge, Business Transactions Section, will provide the Agency with a written pre-approval service authorization, subject to any conditions or limitations the Attorney General deems appropriate, including but not limited to a condition that the Public Contract may not be amended prior to legal sufficiency approval.

(4) Any Public Contract under which the Attorney General authorizes services to be performed before approval for legal sufficiency must be submitted to the Attorney General, through the Attorney in Charge, Business Transactions Section, for legal sufficiency approval within a reasonable time after the Public Contract is signed by the parties, but in all cases before the Agency makes any payments under the Public Contract. As a condition for legal sufficiency approval, the Attorney in Charge, Business Transactions Section may require that the Public Contract be amended as necessary to make it legally sufficient.

(5) After the Public Contract has been approved for legal sufficiency, the Agency may make payments on the Public Contract even if the payments are for services rendered prior to legal sufficiency approval. An Agency is not authorized to make payments on the Public Contract before the Public Contract is approved for legal sufficiency and all other required approvals are obtained.

(6) The Attorney General, through the Attorney in Charge, Business Transactions Section, may at anytime review an authorization for pre-approval services granted under this rule. The Attorney General, through the Attorney in Charge, Business Transactions Section, may revoke or modify such authorization at any time upon written notice to the Agency that it is in the best interest of the State of Oregon that such authorization be revoked or modified. Revocation or modification of an authorization for pre-approval services granted under this rule shall not affect the validity of Public Contracts entered into under the authorization prior to the revocation or modification.

Stat. Auth.: ORS 291.047(3), 291.047(6)  
Stats. Implemented: ORS 291.047(6)  
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01

## 137-045-0090

### Ratification of Public Contracts

(1) Before ratifying a Public Contract under ORS 291.049, an Agency shall do all of the following:

(a) Submit to the Attorney in Charge, Business Transactions Section, a copy of the Public Contract and the proposed ratification document, to be executed by an executive officer of an Agency who is responsible for oversight of the Public Contract, that contains:

(A) An explanation of why the Public Contract was not submitted to the Attorney General for legal sufficiency approval before performance began;

(B) A description of the steps being taken to prevent similar occurrences in the future; and

(C) A proposed ratification of the Public Contract.

(b) Obtain approval of the Public Contract for legal sufficiency from the Attorney General, through the Attorney in Charge, Business Transactions Section;

(c) Obtain all other approvals required for the Public Contract.

(2) Except as provided in section (3) of this rule, the Agency shall provide a copy of the ratified Public Contract and the Agency's ratification document to the Director, Secretary of State Audits Division, and to the Director, Department of Administrative Services, within 30 days after the Public Contract is ratified or fully executed, whichever is later.

(3) The requirements of section (2) of this rule do not apply to an amendment to a Public Contract when the Agency concludes that it failed to obtain legal sufficiency review before performance began under the amendment due to excusable neglect or reasonable belief that legal sufficiency review was not required and provides reasons for its conclusion in the ratification document. For purposes of this section, "excusable neglect" means that the person responsible for obtaining legal sufficiency review of the Public Contract took reasonable action to submit the Public Contract to the Attorney General for legal sufficiency approval or reasonably relied upon a subordinate to do so. The mere fact that a person responsible for obtaining legal sufficiency review believed that someone else had done so or the fact that it was the person's usual practice to do so is not sufficient to establish excusable neglect.

Stat. Auth.: ORS 291.049(3)  
Stats. Implemented: ORS 291.049  
Hist.: DOJ 2-2001, f. & cert. ef. 1-18-01; DOJ 17-2003, f. & cert. ef. 12-9-03

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**Adm. Order No.:** DOJ 18-2003(Temp)

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 12-10-03 thru 6-1-04

**Notice Publication Date:**

**Rules Amended:** 137-008-0010

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

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-008-0010

### Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

(a) Assistant Attorney General; \$98/hr;

(b) Alternative Dispute Resolution Coordinator; \$80/hr;

(c) Investigator; \$76/hr;

(d) Paralegal; \$69/hr;

(e) Law Clerk; \$46/hr;

(f) General Clerical; \$44/hr;

(g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents.

(3) The Department shall estimate the costs of making records available for inspection or providing copies of records to requestors. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

(a) Attorney General's Public Law Conference Papers; \$65;

(b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; \$40;

(c) Attorney General's Model Public Contract Rules Manual; \$40;

(d) Attorney General's Public Records and Meetings Manual; \$20;

(e) Attorney General Opinions:

(A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; \$921;

(B) Future Bound Volumes; \$70;

(C) Slip Opinion Service (yearly); \$60;

(D) Letters of Advice Index, 1969-83; \$20;

(E) Letters of Advice Index, 1983-88; \$40;

(F) Letters of Advice Index, 1988-93; \$40;

(G) Future Letters of Advice Indices; \$40.

Stat. Auth.: ORS 192.430(2) & ORS 192.440(3)

Stats. Implemented: ORS 192.440(3)

Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998,

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f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04

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**Adm. Order No.:** DOJ 19-2003

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

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 137-003-0000, 137-003-0501, 137-003-0510, 137-003-0515, 137-003-0520, 137-003-0525, 137-003-0528, 137-003-0530, 137-003-0535, 137-003-0540, 137-003-0545, 137-003-0555, 137-003-0560, 137-003-0565, 137-003-0570, 137-003-0572, 137-003-0573, 137-003-0575, 137-003-0580, 137-003-0585, 137-003-0590, 137-003-0595, 137-003-0600, 137-003-0605, 137-003-0610, 137-003-0615, 137-003-0625, 137-003-0630, 137-003-0635, 137-003-0640, 137-003-0645, 137-003-0650, 137-003-0655, 137-003-0660, 137-003-0665, 137-003-0670, 137-003-0675, 137-003-0690, 137-003-0695

**Subject:** These changes revise terminology to implement Or. Laws 2003, Ch. 057 (House Bill 2526 (2003)). The legislature changed the statutory title "Hearing Officer Panel" to "Office of Administrative Hearings" and changed "hearing officer" to "administrative law judge." These rules mirror those changes. In addition the rules clarify the rule about prehearing motions to remove agency authority to require an ALJ to transmit a legal question to the agency; require agencies to serve written responses to legal questions on all parties; and add findings of fact to changes that agencies must identify and explain in a final order.

**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-003-0000

### Applicability of Rules in OAR 137, Division 3

(1) An agency that does not use an administrative law judge assigned from the Office of Administrative Hearings to conduct contested case hearings for the agency may choose to adopt any or all of the Model Rules for Contested Cases in OAR 137-003-0000 to 137-003-0092 or in 137-003-0501 to 137-003-0700. The agency may adopt these rules by reference without complying with the rulemaking procedures under ORS 183.335. Notice of such adoption shall be filed with the Secretary of State in the manner provided by ORS 183.355.

(2) When an administrative law judge assigned from the Office of Administrative Hearings conducts a contested case hearing for the agency, the proceedings shall be conducted pursuant to OAR 137-003-0501 to 137-003-0700, unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of such rules in whole or in part. These rules need not be adopted by the agency to be effective.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0501

### Rules for Office of Administrative Hearings

(1) OAR 137-003-0501 to 137-003-0700 apply to the conduct of all contested case hearings conducted for an agency by an administrative law judge assigned from the Office of Administrative Hearings unless:

(a) The case is not subject to the procedural requirements for contested cases; or

(b) The Attorney General, by order, has exempted the agency or a category of the agency's cases from the application of these rules in whole or in part.

(2) Any procedural rules adopted by the agency related to the conduct of hearings shall not apply to contested case hearings conducted for the agency by an administrative law judge assigned from the Office of Administrative Hearings unless required by state or federal law or specifically authorized by these rules or by order of the Attorney General. An agency may have rules specifying the time for requesting a contested case hearing, the content of a hearing request, any requirement for and content of a response to the contested case notice, the permissible scope of the hearing and timelines for issuance of a proposed or final order. The agency's substantive rules, including those allocating the burden of proof, shall apply to all of its hearings.

(3) If permitted by law, the agency may delegate to an administrative law judge any of the agency's functions under these rules, including the authority to issue a final order. This delegation must be in writing and may be for a category of cases or on a case-by-case basis.

Stat. Auth.: ORS 183.341

Stats. Implemented: OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0510

### Rights of Parties in Contested Cases

(1) In addition to the information required to be given under ORS 183.413(2), before commencement of a contested case hearing, the agency shall inform a party, if the party is an agency, corporation, partnership, limited liability company, trust, government body or an unincorporated association, that such party must be represented by an attorney licensed in Oregon, unless statutes applicable to the contested case proceeding specifically provide otherwise.

(2) The agency may request the administrative law judge to provide any or all of the information required to be given under ORS 183.413(2) or section (1) of this rule to each party in writing or orally before the commencement of the hearing.

(3) Unless otherwise precluded by law, the party(ies) and the agency, if participating in the contested case hearing, may agree to use alternative methods of dispute resolution in contested case matters. Such alternative methods of resolution may include arbitration or any collaborative method designed to encourage the agency and the parties to work together to develop a mutually agreeable solution, such as negotiation, mediation, use of a facilitator or a neutral fact-finder or settlement conferences, but may not include arbitration that is binding on the agency.

(4) Final disposition of contested cases may be by a final order following hearing or, unless precluded by law, by stipulation, agreed settlement, consent order or final order by default. A stipulation, agreed settlement or consent order disposing of a contested case must be in writing and signed by the party or parties. By signing such an agreement, the party or parties waive the right to a contested case hearing and to judicial review. The agency or administrative law judge shall incorporate the disposition into a final order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0515

### Agency Referral to Office of Administrative Hearings

(1) When referring a contested case to the Office of Administrative Hearings, the agency shall provide written notice of the referral to the Office of Administrative Hearings that includes the name of the agency and the name and address of each party and its counsel. The notice may also include the agency case number, the name and address of the agency staff person or the assigned Assistant Attorney General, if any, upon whom pleadings and other papers should be served, and any other information requested by the Office of Administrative Hearings.

(2) The agency referral notice must be accompanied by a copy of the agency's contested case notice in the case, a copy of any request for hearing and copies of motions or petitions filed with the agency and orders issued by the agency in the contested case.

(3) The agency shall provide a copy of the referral notice to each party or their counsel, if any. The agency may include additional copies of documents already sent to or received from the parties or their counsel with the copy of the referral notice.

(4) After a case has been referred by the agency to the Office of Administrative Hearings, the agency may withdraw the case from the Office of Administrative Hearings if the agency notifies the parties in writing that:

(a) The agency is withdrawing its contested case notice;

(b) All of the issues in the case have been resolved without the need to hold a hearing; or

(c) The agency has determined that it is not appropriate for the case to proceed to a hearing at that time and the reason therefor.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0520

### Filing and Service of Pleadings and Other Documents in Contested Case

(1) Notwithstanding any other provision of these rules, a hearing request is considered filed when actually received by the agency.

(2) Unless otherwise provided by these rules, any documents, correspondence, motions including motions for a discovery order, pleadings, rul-

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ings and orders filed for the record in the contested case shall be filed as follows:

(a) With the agency before the case is referred by the agency to the Office of Administrative Hearings;

(b) With the Office of Administrative Hearings or assigned administrative law judge after the agency has referred the case to the Office of Administrative Hearings and before the assigned administrative law judge issues a proposed order;

(c) With the agency after the assigned administrative law judge issues a proposed order, or with the administrative law judge if the administrative law judge has authority to issue the final order.

(3) The agency shall refer to the Office of Administrative Hearings or the assigned administrative law judge any motion or other matter filed with the agency that is not within the agency's jurisdiction.

(4) The Chief Administrative Law Judge or assigned administrative law judge shall refer to the agency any motion or other matter filed with the Office of Administrative Hearings or assigned administrative law judge that is not within the jurisdiction of the Office of Administrative Hearings.

(5) The person or agency filing any pleading, motion, correspondence or other document with the agency, the Office of Administrative Hearings or administrative law judge assigned to the case shall simultaneously provide copies of the documents to the agency and the parties, or their counsel if the agency or parties are represented.

(a) Copies shall be provided to the agency and the parties, or their counsel if the agency or parties are represented, by hand delivery, by facsimile, by mail or as otherwise permitted by the agency by rule or in writing, or as otherwise directed by the administrative law judge with the agreement of the agency and the parties.

(b) The agency may by rule or in writing waive the right to receive copies of documents filed under this rule if the administrative law judge is authorized to issue the final order or if the agency is not a participant in the contested case hearing.

(6) Each party shall notify all other parties, the agency and the administrative law judge of any change in the party's address or withdrawal or change of the party's representatives, including legal counsel. If an attorney withdraws from representing a party, the attorney shall provide written notice of the withdrawal to the administrative law judge, all other parties and the agency, unless the agency has waived the right to receive notice.

(7) The agency shall notify all parties and the administrative law judge of any change in the agency's address or withdrawal or change of the agency's representatives, including legal counsel.

(8) Motions, pleadings and other documents sent through the U.S. Postal Service to the agency, Office of Administrative Hearings or assigned administrative law judge shall be considered filed on the date postmarked. Documents sent by fax or hand-delivered are considered filed when received by the agency, Office of Administrative Hearings or assigned administrative law judge. If the agency permits or the administrative law judge directs alternative means of filing, the agency or the administrative law judge should determine when filing is effective for each alternative method permitted or directed.

(9) Documents sent through the U.S. Postal Service by regular mail are presumed to have been received by the addressee, subject to evidence to the contrary.

(10) In computing any period of time prescribed or allowed by these rules, the day of the act or event from which the designated period of time begins to run shall not be included. The last day of the time period shall be included, unless it is a Saturday or a legal holiday, including Sunday, in which event the time period runs until the end of the next day that is not a Saturday or a legal holiday. Legal holidays are those identified in ORS 187.010 and 187.020.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0525

### Scheduling Hearings

(1) Subject to the approval of the agency, the Office of Administrative Hearings or assigned administrative law judge shall:

(a) Set the date and time of the hearing, including a postponed or continued hearing;

(b) Determine the location of the hearing; and

(c) Determine whether cases shall be consolidated or bifurcated.

(2) Unless otherwise provided by law, the Office of Administrative Hearings or assigned administrative law judge may postpone a hearing:

(a) For good cause; or

(b) By agreement of the parties and the agency, if the agency is participating in the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0528

### Late Hearing Requests

(1)(a) When a party requests a hearing after the time specified by the agency but before entry of a final order by default or, if a final order by default is entered, on or before 60 calendar days after the entry of the final order by default, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party, unless other applicable statutes or agency rule provides a different timeframe or standard.

(b) If a final order by default has already been entered, the party requesting the hearing shall deliver or mail within a reasonable time a copy of the hearing request to all persons and agencies required by statute, rule or order to receive notice of the proceeding.

(c) In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit or other writing that explains why the request for hearing is late and may conduct such further inquiry as it deems appropriate.

(d) The agency by rule or in writing may provide a right to a hearing on whether the late filing of a hearing request should be accepted. If a hearing is held, it shall be conducted pursuant to these rules by an administrative law judge from the Office of Administrative Hearings.

(e) If the late hearing request is allowed by the agency, it shall enter an order granting the request and refer the matter to the Office of Administrative Hearings to hold a hearing on the underlying matter. If the late hearing request is denied by the agency, the agency shall enter an order setting forth reasons for the denial.

(f) If the agency or another party disputes the facts contained in the explanation of why the request for hearing is late, the agency shall provide a right to a hearing on the reasons why the hearing request is late. The administrative law judge shall issue a proposed order recommending that the agency grant or deny the late hearing request.

(2) Except as otherwise provided by law, if a final order by default has been entered, that order remains in effect during consideration of a late hearing request unless the final order is stayed under OAR 137-003-0690.

(3) When a party requests a hearing more than 60 calendar days (or other time period set by statute) after the agency or administrative law judge has entered a final order by default, the agency shall not grant the request unless a statute or agency rule permits the agency to consider the request.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341

Hist.: DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0530

### Late Filing and Amendment of Documents

(1) Unless otherwise provided by law, when a party or agency fails to file any document for the contested case proceeding, except a hearing request, within the time specified by agency rules or these rules of procedure, the late filing may be accepted if the agency or administrative law judge determines that there was good cause for failure to file the document within the required time.

(2) The decision whether a late filing will be accepted shall be made:

(a) By the agency if OAR 137-003-0520 requires the document to be filed with the agency, or

(b) By the administrative law judge if OAR 137-003-0520 requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(3) The agency or administrative law judge may require a statement explaining the reasons for the late filing.

(4) Notwithstanding any other provision of these rules, at any time after the issuance of the notice required by ORS 183.415, an agency may issue an amended notice. If an agency issues an amended notice, any party may obtain, upon request, a continuance determined to be reasonably necessary to enable the party to file an amended response, if required by agency rules, or to respond to any new material contained in the amended notice. If the agency files an amended notice after the evidentiary record has been closed, the agency shall inform the administrative law judge, who will reopen the record and conduct any further hearing or listen to additional argument required by new matters in the amended notice. If the administrative law judge has issued a proposed order, the administrative law judge shall prepare an amended proposed order after completion of any further hearing.

(5) Unless otherwise provided by law, when a party or agency files any document for the contested case proceeding, the agency or the admin-

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istrative law judge may permit the party or agency to file an amended document if the agency or administrative law judge determines that permitting the amendment will not unduly delay the proceeding or unfairly prejudice the parties or the agency.

(6) The decision whether an amended document will be accepted shall be made:

(a) By the agency if OAR 137-003-0520(2) requires the document to be filed with the agency, or

(b) By the administrative law judge if OAR 137-003-0520(2) requires the document to be filed with the Office of Administrative Hearings or the assigned administrative law judge.

(7) The agency or administrative law judge may require a statement explaining the reasons for the amendment.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0535

### Participation as Party or Limited Party

(1) The agency may by rule or in writing identify persons or entities who shall be parties or limited parties.

(2) Persons who have an interest in the outcome of the agency's contested case proceeding or who represent a public interest in such result may request to participate as parties or limited parties. Unless otherwise provided by law, a person requesting to participate as a party or limited party shall file a petition with the agency and shall include a sufficient number of copies of the petition for service on all parties.

(3) The petition shall be filed at least 21 calendar days before the date set for the hearing, unless the agency by rule has set a different deadline or unless the agency and the parties agree to a different deadline. Petitions untimely filed shall not be considered unless the agency determines that good cause has been shown for failure to file within the required time.

(4) The petition shall include the following:

(a) Names and addresses of the petitioner and of any organization the petitioner represents;

(b) Name and address of the petitioner's attorney, if any;

(c) A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;

(d) If the petitioner seeks to protect a personal interest in the outcome of the agency's proceeding, a detailed statement of the petitioner's interest, economic or otherwise, and how such interest may be affected by the results of the proceeding;

(e) If the petitioner seeks to represent a public interest in the results of the proceeding, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the proceeding, and the petitioner's qualifications to represent such public interest;

(f) A statement of the reasons why existing parties to the proceeding cannot adequately represent the interest identified in subsection (4)(d) or (e) of this rule.

(5) The agency shall serve a copy of the petition on each party personally or by mail. Each party shall have seven calendar days from the date of personal service or agency mailing to file a response to the petition.

(6) If the agency determines under OAR 137-003-0530 that good cause has been shown for failure to file a timely petition, the agency at its discretion may:

(a) Shorten the time within which responses to the petition shall be filed; or

(b) Postpone the hearing until disposition is made of the petition.

(7) If a person is granted participation as a party or a limited party, the hearing may be postponed or continued to a later date if necessary to avoid an undue burden to one or more of the parties in the case.

(8) In ruling on petitions to participate as a party or a limited party, the agency shall consider:

(a) Whether the petitioner has demonstrated a personal or public interest that could reasonably be affected by the outcome of the proceeding;

(b) Whether any such affected interest is within the scope of the agency's jurisdiction and within the scope of the notice of contested case hearing;

(c) When a public interest is alleged, the qualifications of the petitioner to represent that interest;

(d) The extent to which the petitioner's interest will be represented by existing parties.

(9) The agency may treat a petition to participate as a party as if it were a petition to participate as a limited party.

(10) If the agency grants a petition, the agency shall specify areas of participation and procedural limitations as it deems appropriate.

(11) An agency ruling on a petition to participate as a party or as a limited party shall be by written order and served promptly on the petitioner, all parties and the Office of Administrative Hearings or assigned administrative law judge. If the petition is allowed, the agency shall also provide petitioner with the notice of rights required by ORS 183.413(2) or request the administrative law judge to do so.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(4), 183.450(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0540

### Agency Participation as Interested Agency or Party

(1) At any time after an agency refers a contested case to the Office of Administrative Hearings, the agency may also notify the parties that it intends to name any other agency that has an interest in the outcome of that proceeding as a party or as an interested agency, either on its own initiative or upon request by that other agency.

(2) Each party shall have seven calendar days from the date of service of the notice to file objections. The agency may establish a shorter or longer period of time for filing objections.

(3) The agency decision to name an agency as a party or as an interested agency shall be by written order and served promptly on the parties, the named agency and the Office of Administrative Hearings or assigned administrative law judge.

(4) An agency named as a party or as an interested agency has the same procedural rights and shall be given the same notices as any party in the proceeding. An interested agency, unlike a party, has no right to judicial review.

(5) An agency may not be named as a party under this rule without written authorization of the Attorney General.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 180.060, 180.220, 183.341, 183.415(4) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0545

### Representation of Agency by Attorney General or Agency Representative

(1) An agency may be represented at a contested case hearing by the Attorney General.

(2) An agency may be represented at a contested case hearing by an officer or employee of the agency if the Attorney General has consented to that representation in a particular hearing or class of hearings and the agency, by rule, has authorized an agency representative to appear on its behalf in the particular type of contested case hearing involved.

(3) The administrative law judge shall not allow an agency representative appearing under section (2) of this rule to present legal argument as defined in this rule.

(a) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(4) If the administrative law judge determines that statements or objections made by an agency representative appearing under section (2) involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the agency representative to consult the Attorney General and permit the Attorney General to present argument at the hearing or to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.413, 183.415 & OL 1999, Ch. 448, 599 & 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04



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## 137-003-0555

### Authorized Representative of Parties Before Designated Agencies

(1) For purposes of this rule, the following words and phrases have the following meaning:

(a) "Agency" means State Landscape Contractors Board, Office of Energy and the Energy Facility Siting Council, Environmental Quality Commission and the Department of Environmental Quality; Insurance Division of the Department of Consumer and Business Services for proceedings in which an insured appears pursuant to ORS 737.505; the Department of Consumer and Business Services and any other agency for the purpose of proceedings to enforce the state building code, as defined by ORS 455.010; the State Fire Marshal in the Department of State Police; Division of State Lands for proceedings regarding the issuance or denial of fill or removal permits under ORS 196.800 to 196.990; Public Utility Commission; Water Resources Commission and the Water Resources Department; Land Conservation and Development Commission and the Department of Land Conservation and Development; State Department of Agriculture for purposes of hearings under ORS 215.705; and the Bureau of Labor and Industries.

(b) "Authorized Representative" means a member of a partnership, an authorized officer or regular employee of a corporation, association or organized group, an authorized officer or employee of a governmental authority other than a state agency or other authorized representatives recognized by state or federal law;

(c) "Legal Argument" includes arguments on:

(A) The jurisdiction of the agency to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to an agency;

(C) The application of court precedent to the facts of the particular contested case proceeding.

(d) "Legal Argument" does not include presentation of motions, evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the statutes or rules to the facts in the contested case;

(B) Comparison of prior actions of the agency in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case;

(D) The admissibility of evidence; and

(E) The correctness of procedures being followed in the contested case hearing.

(2) A party or limited party participating in a contested case hearing before an agency listed in subsection (1)(a) of this rule may be represented by an authorized representative as provided in this rule if the agency has by rule specified that authorized representatives may appear in the type of contested case hearing involved.

(3) Before appearing in the case, an authorized representative must provide the administrative law judge with written authorization for the named representative to appear on behalf of a party or limited party.

(4) The administrative law judge may limit an authorized representative's presentation of evidence, examination and cross-examination of witnesses, or presentation of factual arguments to insure the orderly and timely development of the hearing records, and shall not allow an authorized representative to present legal argument as defined in subsection (1)(c) of this rule.

(5) When an authorized representative is representing a party or limited party in a hearing, the administrative law judge shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver or the duty to make timely objection. Where such objections may involve legal argument as defined in this rule, the administrative law judge shall provide reasonable opportunity for the authorized representative to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.457 & OL 1999, Ch. 448, 599 & 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0560

### Emergency License Suspension, Refusal to Renew

(1) If the agency finds there is a serious danger to the public health or safety, it may, by order, immediately suspend or refuse to renew a license. For purposes of this rule, such an order is referred to as an emergency suspension order. An emergency suspension order must be in writing. It may be issued without prior notice to the licensee and without a hearing prior to the emergency suspension order.

(2)(a) When the agency issues an emergency suspension order, the agency shall serve the order on the licensee either personally or by registered or certified mail;

(b) The order shall include the following statements:

(A) The effective date of the emergency suspension order;

(B) Findings of the specific acts or omissions of the licensee that violate applicable laws and rules and are the grounds for revocation, suspension or refusal to renew the license in the underlying proceeding affecting the license;

(C) The reasons the specified acts or omissions seriously endanger the public's health or safety;

(D) A reference to the sections of the statutes and rules involved;

(E) That the licensee has the right to demand a hearing to be held as soon as practicable to contest the emergency suspension order; and

(F) That if the demand for hearing is not received by the agency within 90 calendar days of the date of notice of the emergency suspension order the licensee shall have waived its right to a hearing regarding the emergency suspension order.

(3)(a) If timely requested by the licensee, the agency shall refer the matter to the Office of Administrative Hearings to hold a hearing on the emergency suspension order as soon as practicable;

(b) The agency may decide whether the hearing on the emergency suspension order shall be combined with any underlying agency proceeding affecting the license.

(c) At the hearing regarding the emergency suspension order, the administrative law judge shall consider the facts and circumstances including, but not limited to:

(A) Whether the acts or omissions of the licensee pose a serious danger to the public's health or safety; and

(B) Whether circumstances at the time of the hearing justify confirmation, alteration or revocation of the order.

(4) Following the hearing, the administrative law judge shall issue a proposed order consistent with OAR 137-003-0645 unless the administrative law judge has authority to issue a final order without first issuing a proposed order. Any proposed order shall contain a recommendation whether the emergency suspension order should be confirmed, altered or revoked. The final order shall be consistent with OAR 137-003-0665 and shall be based upon the criteria in section (3)(c) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.430 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0565

### Use of Collaborative Dispute Resolution in Contested Case Hearing

(1) When an agency issues a contested case notice, the party(ies) and the agency, if participating in the contested case hearing, may agree to participate in a collaborative dispute resolution (DR) process to resolve any issues relevant to the notice. Neither a party's request, nor any agreement by the agency, to participate in such a process tolls the period for filing a timely request for a contested case hearing.

(2) The agency, if participating in the contested case hearing, or the administrative law judge, if the agency is not participating in the contested case hearing, may establish a deadline for the conclusion of the collaborative DR process.

(3) The participants in the collaborative DR process may sign an agreement containing any of the provisions listed in OAR 137-005-0030 or such other terms as may be useful to further the collaborative DR process.

(4) If the party(ies), and the agency if participating in the contested case hearing, have agreed to participate in a collaborative DR process and a party makes a timely request for a contested case hearing, the hearing shall be suspended until the collaborative DR process is completed, the agency or the party opts out of the collaborative DR process, or the deadline, if any, for the conclusion of the collaborative process is reached.

(5) Collaborative dispute resolution may occur at any time before issuance of a final order. Any informal disposition of the contested case shall be consistent with ORS 183.415(5) and OAR 137-003-0510(4).

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.415(5) & 183.502

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0570

### Discovery in Contested Case Hearing

(1) Discovery by the agency or any party may be permitted in appropriate contested cases. Any party or the agency may file a motion pursuant to the requirements in this rule for an order requiring discovery. Before requesting a discovery order, a party or the agency must seek the discovery through an informal exchange of information.

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(2) A motion for an order requiring discovery should be filed with and decided by the agency or the administrative law judge, as required by OAR 137-003-0520(2).

(3) Any party seeking an order from the administrative law judge requiring discovery shall send a copy of the motion to the agency, unless the agency has waived notice, and to all other parties. If the agency seeks an order requiring discovery, the agency shall send a copy of the motion to all parties. A request for an order requiring discovery must include a description of the attempts to obtain the requested discovery informally.

(4) After receiving a written request for an order requiring discovery, the agency or the administrative law judge shall issue a written order to require or deny discovery, or the agency may issue an order to require discovery on the agency's own motion.

(5) Discovery may include but is not limited to one or more of the following methods:

(a) Disclosure of names and addresses of witnesses expected to testify at the hearing;

(b) Production of documents, which may but need not be limited to documents that the party producing the documents plans to offer as evidence;

(c) Production of objects for inspection;

(d) Permission to enter upon land to inspect land or other property;

(e) Up to 20 requests for admission, including subparts, unless otherwise authorized by the administrative law judge or the agency;

(f) Up to 20 written interrogatories, including subparts, unless otherwise authorized by the administrative law judge or the agency;

(g) Prehearing conferences, as provided in OAR 137-003-0575.

(6) Any discovery request must be reasonably likely to produce information that is generally relevant and necessary to the case, or is likely to facilitate resolution of the case. If the relevance or necessity of the requested discovery is not apparent, the agency or the administrative law judge may require the party or agency requesting discovery to explain how the request is likely to produce information that is relevant and necessary, or likely to facilitate resolution of the case.

(7) The agency or the administrative law judge may authorize the requested discovery if the agency or the administrative law judge determines that is generally relevant to the case and necessary, or likely to facilitate resolution of the case. Upon request of a party, a witness, or the agency, the agency or the administrative law judge may deny, limit, or condition discovery to protect any party, any witness, or the agency from annoyance, embarrassment, oppression, undue burden or expense, or to limit the public disclosure of information that is confidential or privileged by statute or rule. In making a decision, the agency or administrative law judge shall consider any objections by the party, the witness or the agency from whom the discovery is sought.

(8) If the agency or the administrative law judge authorizes discovery, the agency or the administrative law judge shall control the methods, timing and extent of discovery. The agency or the administrative law judge may limit discovery to a list of witnesses and the principal documents upon which the agency and parties will rely. The agency may adopt rules governing discovery in the agency's contested cases as long as those rules are not in conflict with the requirements of this rule. Upon request of a party or the agency, the administrative law judge or the agency may issue a protective order limiting the public disclosure of information that is confidential or privileged by law.

(9) Only the agency may issue subpoenas in support of a discovery order. The agency or the party requesting the discovery may apply to the circuit court to compel obedience to a subpoena. (Subpoenas for attendance of witnesses or production of documents at the hearing are controlled by OAR 137-003-0585.)

(10) Unless otherwise prohibited by law, the agency may delegate to an administrative law judge its authority to issue subpoenas in support of a discovery order and control discovery. The delegation must be by rule or in writing, and it may be limited.

(11) The administrative law judge may refuse to admit evidence that was not disclosed in response to a discovery order, unless the party or agency that failed to provide discovery offers a satisfactory reason for having failed to do so, or unless excluding the evidence would violate the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge admits evidence that was not disclosed as ordered, the administrative law judge may grant a continuance to allow an opportunity for the agency or other party to respond.

(12) Failure to respond to a request for admissions required by a discovery order shall be deemed an admission of matters that are the subject of the request for admissions, unless the party or agency failing to respond offers a satisfactory reason for having failed to do so, or unless excluding additional evidence on the subject of the request for admissions would vio-

late the duty to conduct a full and fair inquiry under ORS 183.415(10). If the administrative law judge does not treat failure to respond to the request for admissions as admissions, the administrative law judge may grant a continuance to enable the parties and the agency to develop the record as needed.

(13) Nothing in this rule shall be construed to require the agency or any party to provide information that is confidential or privileged under state or federal law, except that upon request the agency or any party must disclose all documents that the agency or party intends to introduce at the hearing.

(14) A party or agency dissatisfied with an administrative law judge's discovery order may ask the Chief Administrative Law Judge for immediate review of the order. A request for review by the Chief Administrative Law Judge must be made in writing within 10 days of the date of the discovery order. The Chief Administrative Law Judge shall review the order and independently apply the criteria set out above in subsection seven of this rule. The Chief Administrative Law Judge's order shall be in writing and shall explain any significant changes to the discovery order.

(15) If a party is dissatisfied with the Chief Administrative Law Judge's discovery order, the party may request that the agency review the order. A request for review must be made in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(16) If the agency is dissatisfied with the Chief Administrative Law Judge's discovery order, the agency may review the order on its own motion. Any decision to review the order must be stated in writing within 10 days of the filing of the Chief Administrative Law Judge's discovery order. The agency shall review the order and independently apply the criteria set out above in subsection seven of this rule. The agency order shall be in writing and shall explain any significant changes to the Chief Administrative Law Judge's discovery order.

(17) The Chief Administrative Law Judge or the agency may designate in writing a person to exercise their respective responsibilities under this rule.

(18) In addition to or in lieu of any other discovery method, a party may ask an agency for records under the Public Records Law. The party making a public records request of the agency before which the contested case is pending should serve a copy of the public records request upon the agency representative or the attorney representing the agency.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.425 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0572

### Depositions in Contested Cases

(1) Depositions may not be taken in contested cases without agency authorization.

(2) A party or an attorney representing the agency may petition the agency for an order to take a deposition of a witness. A copy of the petition shall be sent to all other parties and the administrative law judge. The petition shall include the name and address of the witness, explain why the witness's testimony is material to the proceedings and explain why no other means of obtaining the witness's testimony for the hearing is adequate. As used in this rule, materiality means the testimony sought tends to make the existence of any fact that is of consequence to the determination of the issues more or less probable.

(3) The agency shall consider the petition and issue a written order either granting or denying the deposition. If the agency grants the deposition, the deposition shall be taken on such terms as the agency may order including, but not limited to, location, manner of recording, time of day, persons permitted to be present and duration.

(4) Examination and cross-examination of deponents may proceed as permitted at hearing.

(5) The testimony of the deponent shall be recorded.

(6) All objections made at the time of the examination shall be noted on the record.

(7) At any time during the taking of a deposition, upon motion and a showing by a party, the agency or a deponent that the deposition is being conducted or hindered in bad faith or in a manner not consistent with these rules or in such manner as unreasonably to annoy, embarrass or oppress the deponent, the agency or any party, the agency may order the examination to cease or may limit the scope or manner of the taking of the deposition. The taking of the deposition shall be suspended for the time necessary to make a motion under this subsection.

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(8) Documents and things produced for inspection during the examination of the witness shall, upon the request of a party or the agency, be marked for identification and annexed to and returned with the deposition, and may be inspected and copied by any party or the agency.

(9) Deposition of a non-party may be compelled by a subpoena issued by the agency. The agency or the party requesting the deposition may apply to circuit court to compel obedience to a subpoena issued to compel a deposition.

(10) Unless otherwise prohibited by law, the agency may delegate to the administrative law judge its authority to authorize or limit depositions. Unless expressly required by law or expressly stated in the delegation by the agency, an administrative law judge may not require the agency to pay for any deposition taken by a party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.425 & OL 1999, Ch. 849

Hist.: DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0573

### Individually Identifiable Health Information

(1) This rule is intended to facilitate the issuance of a Qualified Protective Order (QPO) by an administrative tribunal in a contested case proceeding. The process described in this rule may be used by an agency or party to a contested case proceeding to request information from Covered Entities by using a QPO. This rule is intended to comply with federal requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA Privacy Rules in 45 CFR Parts 160 and 164 to protect the privacy of Protected Health Information. This rule should be construed to implement and not to alter the requirements of 45 CFR § 164.512(e).

(2) For purposes of this rule, capitalized terms used but not otherwise defined in this rule have the meaning given those terms in the HIPAA Privacy Rules in 45 CFR Parts 160 and 164.

(a) An agency or administrative law judge who conducts a contested case hearing on behalf of an agency is an "administrative tribunal," as that term is used in 45 CFR § 164.512(e).

(b) The HIPAA Privacy Rules define "Covered Entity" to include the following entities, as further defined in the HIPAA Privacy Rules:

(A) A Health Insurer or the Medicaid program;

(B) A Health Care Clearinghouse; or

(C) A Health Care Provider that transmits any Individually Identifiable Health Information using Electronic Transactions covered by HIPAA.

(3) An administrative tribunal may issue a QPO at the request of a party, a Covered Entity, an Individual, or the agency.

(a) A request for a QPO may be accompanied by a copy of the subpoena, discovery request, or other lawful process that requests Protected Health Information from a Covered Entity.

(b) If the Individual has signed an authorization permitting disclosure of the Protected Health Information for purposes of the contested case proceeding, the administrative tribunal need not issue a QPO.

(4) A QPO is an order of the administrative tribunal that:

(a) Prohibits the use or disclosure of Protected Health Information by the agency or parties for any purpose other than the contested case proceeding or judicial review of the contested case proceeding;

(b) Requires that all copies of the Protected Health Information be returned to the Covered Entity or destroyed at the conclusion of the contested case proceeding, or judicial review of the contested case proceeding, whichever is later; and

(c) Includes such additional terms and conditions as may be appropriate to comply with federal or state confidentiality requirements that apply to the Protected Health Information.

(5) This rule addresses only the process for requesting a QPO from an administrative tribunal in a contested case hearing. This rule does not address any claims or defenses related to the admissibility or confidentiality of Protected Health Information for purposes of discovery or the hearing.

(6) The provisions of this rule do not supercede any other provisions of the HIPAA Privacy Rules that otherwise permit or restrict uses or disclosure of Protected Health Information without the use of a QPO.

(7) This rule applies to all contested cases that are either pending or initiated on or after April 14, 2003.

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

Stat. Auth.: ORS 183.341, HIPAA 1996, 45 CFR part 160 & 164

Stats. Implemented: ORS 183.341, Or. Law 1999, 849

Hist.: DOJ 2-2003, f. 3-19-03, cert. ef. 4-1-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0575

### Prehearing Conferences

(1) Prior to hearing, the administrative law judge may conduct one or more prehearing conferences to facilitate the conduct and resolution of the case. The administrative law judge may convene the conference on the initiative of the administrative law judge or at the agency's or a party's request.

(2) Prior to the conference, the administrative law judge shall notify the party(ies) and the agency, if participating, of the purposes of the conference and the matters to be considered. The agency may add additional matters to be considered at the conference by providing notice in writing to the administrative law judge and the parties.

(3) The party(ies) and the agency, if participating in the contested case hearing, shall appear at a prehearing conference through legal counsel or through persons authorized to represent the party or the agency in the contested case hearing.

(4) The purposes of a prehearing conference may include, but are not limited to the following:

(a) To facilitate discovery and to resolve disagreements about discovery;

(b) To identify, simplify and clarify issues;

(c) To eliminate irrelevant or immaterial issues;

(d) To obtain stipulations of fact and to admit documents into evidence;

(e) To provide to the administrative law judge, agency and parties, in advance of the hearing, copies of all documents intended to be offered as evidence at the hearing and the names of all witnesses expected to testify;

(f) To authenticate documents;

(g) To decide the order of proof and other procedural matters pertaining to the conduct of the hearing;

(h) To assist in identifying whether the case might be appropriate for settlement or for a collaborative dispute resolution process and, if the agency agrees that the case is appropriate, to refer the case to the agency for settlement discussions or for exploration or initiation of a collaborative dispute resolution process;

(i) To schedule the date, time and location of the hearing or for any other matters connected with the hearing, including dates for pre-filed testimony and exhibits; and

(j) To consider any other matters that may expedite the orderly conduct of the proceeding.

(5) The prehearing conference may be conducted in person or by telephone.

(6) The failure of a party or the agency to appear at a prehearing conference convened by the administrative law judge shall not preclude the administrative law judge from making rulings on any matters identified by the administrative law judge in the notice issued under section (2) of this rule, and discussion of any of these matters at the conference in the absence of the agency or a party notified of the conference does not constitute an ex parte communication with the administrative law judge.

(7) The administrative law judge conducting the prehearing conference must make a record of any stipulations, rulings and agreements. The administrative law judge shall either make an audio or stenographic record of the pertinent portions of the conference or shall place the substance of stipulations, rulings and agreements in the record by written summary. Stipulations to facts and to the authenticity of documents and agreements to narrow issues shall be binding upon the agency and the parties to the stipulation unless good cause is shown for rescinding a stipulation or agreement.

(8) After the hearing begins, the administrative law judge may at any time recess the hearing to discuss any of the matters listed in section (4) of this rule.

(9) Nothing in this rule precludes the agency and parties from engaging in informal discussions of any of the matters listed in section (4) of this rule without the participation of the administrative law judge. Any agreement reached in an informal discussion shall be submitted to the administrative law judge in writing or presented orally on the record at the hearing.

(10) An agency may adopt rules regarding the exchange of exhibits and a list of witnesses before the hearing. In the absence of an agency rule to the contrary, an administrative law judge may establish deadlines for the exchange of exhibits and a list of witnesses before the hearing.

Stat. Auth.: ORS 183.341 & 183.502

Stats. Implemented: ORS 183.341, 183.430, 183.502 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0580

### Motion for Ruling on Legal Issues (Summary Judgment)

(1) Not less than 28 calendar days before the date set for hearing, the agency or a party may file a motion requesting a ruling in favor of the agency or party on any or all legal issues (including claims and defenses)

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in the contested case. The motion, accompanied by any affidavits or other supporting documents, shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(2) Within 14 calendar days after service of the motion, the agency or a party may file a response to the motion. The response may be accompanied by affidavits or other supporting documents and shall be served on the agency and parties in the manner required by OAR 137-003-0520.

(3) The administrative law judge may establish longer or shorter periods than those under section (1) and (2) of this rule for the filing of motions and responses.

(4) The agency by rule or in writing may elect not to make available this process for ruling on legal issues. The administrative law judge shall not consider a motion for ruling on a legal issue if the agency requests that the case proceed to a hearing on that issue.

(5) The party and the agency may stipulate to a record upon which the requested legal ruling shall be made.

(6) The administrative law judge shall grant the motion for a legal ruling if:

(a) The pleadings, affidavits, supporting documents (including any interrogatories and admissions) and the record in the contested case show that there is no genuine issue as to any material fact that is relevant to resolution of the legal issue as to which a decision is sought; and

(b) The agency or party filing the motion is entitled to a favorable ruling as a matter of law.

(7) The administrative law judge shall consider all evidence in a manner most favorable to the non-moving party or non-moving agency.

(8) Each party or the agency has the burden of producing evidence on any issue relevant to the motion as to which that party or the agency would have the burden of persuasion at the contested case hearing.

(9) A party or the agency may satisfy the burden of producing evidence through affidavits. Affidavits shall be made on personal knowledge, establish that the affiant is competent to testify to the matters stated therein and contain facts that would be admissible at the hearing.

(10) When a motion for ruling on a legal issue is made and supported as provided in this rule, a non-moving party or non-moving agency may not rest upon the mere allegations or denials contained in that party's or agency's pleading.

(11) The administrative law judge's ruling may be rendered on a single issue and need not resolve all issues in the contested case.

(12) If the administrative law judge's ruling on the motion resolves all issues in the contested case, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645 incorporating that ruling or a final order in accordance with OAR 137-003-0665 if the administrative law judge has authority to issue a final order without first issuing a proposed order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0585

### Subpoenas

(1) Subpoenas for the attendance of witnesses or the production of documents at the hearing may be issued as follows:

(a) By an agency on its own motion or by an Assistant Attorney General on behalf of the agency;

(b) By the agency or administrative law judge upon the request of a party to a contested case upon a showing of general relevance and reasonable scope of the evidence sought; and

(c) By an attorney representing a party on behalf of that party.

(2) A motion to quash a subpoena must be presented in writing to the administrative law judge, with service on the agency and any other party in the manner required by OAR 137-003-0520.

(a) The agency and any party may respond to the motion to quash within seven calendar days of receiving the motion. Any response must be in writing and served on the agency and any other party in the manner required by OAR 137-003-0520.

(b) The administrative law judge shall rule on the motion to quash within 14 calendar days of receiving the motion.

(3) If a person fails to comply with a properly issued subpoena, the agency, administrative law judge or party may apply to any circuit court judge to compel obedience with the requirements of the subpoena.

(4) The administrative law judge may establish longer or shorter periods than those under section (2) of this rule for the filing of motions and responses.

(5) The agency shall be responsible for paying any mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsection (1)(a) of this rule. The party shall be responsible for paying any

mileage or fees required by ORS 44.415 for witnesses subpoenaed to a hearing under subsections (1)(b) or (c) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 44.415, 183.341, 183.440, 183.445 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0590

### Qualified Interpreters

(1) For purposes of this rule:

(a) An "assistive communication device" means any equipment designed to facilitate communication by an individual with a disability;

(b) An "individual with a disability" means a person who cannot readily understand the proceedings because of deafness or a physical hearing impairment, or cannot communicate in the proceedings because of a physical speaking impairment;

(c) A "non-English speaking" person means a person who, by reason of place of birth or culture, speaks a language other than English and does not speak English with adequate ability to communicate effectively in the proceedings;

(d) A "qualified interpreter" means:

(A) For an individual with a disability, a person readily able to communicate with the individual with a disability, interpret the proceedings and accurately repeat and interpret the statements of the individual with a disability;

(B) For a non-English speaking person, a person readily able to communicate with the non-English speaking person and who can orally transfer the meaning of statements to and from English and the language spoken by the non-English speaking person. A qualified interpreter must be able to interpret in a manner that conserves the meaning, tone, level, style and register of the original statement, without additions or omissions. "Qualified interpreter" does not include a person who is unable to interpret the dialect, slang or specialized vocabulary used by the party or witness.

(2) If an individual with a disability is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter and make available appropriate assistive communication devices whenever it is necessary to interpret the proceedings to, or to interpret the testimony of, the individual with a disability.

(b) No fee shall be charged to the individual with a disability for the appointment of an interpreter or use of an assistive communication device. No fee shall be charged to any person for the appointment of an interpreter or the use of an assistive communication device if appointment or use is made to determine whether the person is disabled for purposes of this rule.

(3) If a non-English speaking person is a party or witness in a contested case hearing:

(a) The administrative law judge shall appoint a qualified interpreter whenever it is necessary to interpret the proceedings to a non-English speaking party, to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge.

(b) No fee shall be charged to any person for the appointment of an interpreter to interpret the testimony of a non-English speaking party or witness, or to assist the administrative law judge in performing the duties of the administrative law judge. No fee shall be charged to a non-English-speaking party who is unable to pay for the appointment of an interpreter to interpret the proceedings to the non-English speaking party. No fee shall be charged to any person for the appointment of an interpreter if an appointment is made to determine whether the person is unable to pay or non-English speaking for the purposes of this rule.

(c) A non-English speaking party shall be considered unable to pay for an interpreter for purposes of this rule if:

(A) The party makes a verified statement and provides other information in writing under oath showing financial inability to pay for a qualified interpreter and provides any other information required by the agency concerning the inability to pay for such an interpreter; and

(B) It appears to the agency that the party is in fact unable to pay for a qualified interpreter.

(d) The agency may delegate to the administrative law judge the authority to determine whether the party is unable to pay for a qualified interpreter.

(4) When an interpreter for an individual with a disability or a non-English speaking person is appointed or an assistive communication device is made available under this rule:

(a) The administrative law judge shall appoint a qualified interpreter who is certified under ORS 45.291 if one is available unless, upon request of a party or witness, the administrative law judge deems it appropriate to appoint a qualified interpreter who is not so certified.

(b) The administrative law judge may not appoint any person as an interpreter if the person has a conflict of interest with any of the parties or

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witnesses, is unable to understand or cannot be understood by the administrative law judge, party or witness, or is unable to work cooperatively with the administrative law judge, the person in need of an interpreter or the representative for that person. If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, a substitute interpreter may be used as provided in ORS 45.275(5).

(c) If a party or witness is dissatisfied with the interpreter selected by the administrative law judge, the party or witness may use any certified interpreter except that good cause must be shown for a substitution if the substitution will delay the proceeding.

(d) Fair compensation for the services of an interpreter or the cost of an assistive communication device shall be paid by the agency except, when a substitute interpreter is used for reasons other than cause, the party requesting the substitute shall bear any additional costs beyond the amount required to pay the original interpreter.

(5) The administrative law judge shall require any interpreter for a person with a disability or a non-English speaking person to state the interpreter's name on the record and whether he or she is certified under ORS 45.291. If the interpreter is not certified under ORS 45.291, the interpreter must state or submit his or her qualifications on the record and must swear or affirm to make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

(6) A person requesting an interpreter for a person with a disability or a non-English speaking person, or assistive communication device for an individual with a disability, must notify the administrative law judge as soon as possible, but no later than 14 calendar days before the proceeding, including the hearing or pre-hearing conference, for which the interpreter or device is requested.

(a) For good cause, the administrative law judge may waive the 14-day advance notice.

(b) The notice to the administrative law judge must include:

(A) The name of the person needing a qualified interpreter or assistive communication device;

(B) The person's status as a party or a witness in the proceeding; and

(C) If the request is in behalf of;

(i) An individual with a disability, the nature and extent of the individual's physical hearing or speaking impairment, and the type of aural interpreter, or assistive communication device needed or preferred; or

(ii) A non-English speaking person, the language spoken by the non-English speaking person.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.418, 183.421 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0595

### Public Attendance; Exclusion of Witnesses; Removal of Disruptive Individuals

(1) Unless otherwise required by law, contested case hearings are open to the public unless the agency by rule or in writing determines that the hearing will be closed to non-participants in the hearing.

(2) The administrative law judge may exclude witnesses from the hearing, except for a party, a party's authorized representative, expert witnesses, the agency representative, one agency officer or employee and any persons authorized by statute to attend.

(3) An administrative law judge may expel any person from the contested case hearing if that person engages in conduct that disrupts the hearing.

(4) Any party, party's representative, agency or agency's representative, having knowledge or reasonable belief that any person participating in the hearing may present a danger or may be a threat to anyone involved in the hearing, should immediately notify the assigned administrative law judge, the agency and the parties or their representatives of the potential danger.

(5) An administrative law judge may take any other measures reasonably required to ensure the safety and security of the participants in the hearing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0600

### Conducting the Contested Case Hearing

(1) The contested case hearing shall be conducted by and under the control of the administrative law judge assigned from the Office of Administrative Hearings.

(2) If the administrative law judge has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that administrative law

judge shall comply with the requirements of ORS Chapter 244 (e.g., ORS 244.120 and 244.130).

(3) At the commencement of the hearing, the administrative law judge shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.

(4) The hearing shall be conducted, subject to the discretion of the administrative law judge, so as to include the following:

(a) The statement and evidence of the proponent in support of its action;

(b) The statement and evidence of opponents, interested agencies, and other parties; except that limited parties may address only subjects within the area to which they have been limited;

(c) Any rebuttal evidence; and

(d) Any closing arguments.

(5) The administrative law judge, the agency through an agency representative or assistant attorney general, interested agencies through an assistant attorney general, and parties or their attorneys or authorized representatives shall have the right to question witnesses. However, limited parties may question only those witnesses whose testimony may relate to the area or areas of participation granted by the agency.

(6) The hearing may be continued with recesses as determined by the administrative law judge.

(7) The administrative law judge may set reasonable time limits for oral presentation and may exclude or limit cumulative, repetitious, irrelevant or immaterial matter.

(8) Exhibits shall be marked and maintained by the administrative law judge as part of the record of the proceedings.

(9) If the administrative law judge receives any written or oral ex parte communication during the contested case proceeding, the administrative law judge shall notify all parties and otherwise comply with the requirements of OAR 137-003-0625.

(10) The administrative law judge may request that any closing arguments be submitted in writing or orally.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(9) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0605

### Telephone Hearings

(1) Unless precluded by law, the administrative law judge may hold a hearing or portion of a hearing by telephone and may permit a party or witness to appear at a hearing by telephone.

(2) If a hearing is to be held by telephone, each party and the agency, if participating in the contested case hearing, shall provide, before the commencement of the hearing, to all other parties, to the agency and to the administrative law judge copies of the exhibits it intends to offer into evidence at the hearing.

(3) If a witness is to testify by telephone, the party or agency that intends to call the witness shall provide, before commencement of the hearing, to the witness, to the other parties, to the agency, if participating in the contested case hearing, and to the administrative law judge a copy of each document about which the witness will be questioned.

(4) Nothing in this rule precludes any party or the agency from seeking to introduce documentary evidence in addition to evidence described in section (2) during the telephone hearing. The administrative law judge shall receive such evidence, subject to the applicable rules of evidence, if inclusion of the evidence in the record is necessary to conduct a full and fair hearing. If any evidence introduced during the hearing has not previously been provided to the agency and to the other parties, the hearing may be continued upon the request of any party or the agency for sufficient time to allow the party or the agency to obtain and review the evidence.

(5) The administrative law judge shall make an audio or stenographic record of any telephone hearing.

(6) As used in this rule, "telephone" means any two-way or multi-party electronic communication device, including video conferencing.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0610

### Evidentiary Rules

(1) Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible.

(2) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded, and privileges afforded by Oregon law shall be recognized by the administrative law judge.

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(3) All offered evidence, not objected to, will be received by the administrative law judge subject to the administrative law judge's power to exclude irrelevant, immaterial, or unduly repetitious matter.

(4) Evidence objected to may be received by the administrative law judge. If the administrative law judge does not rule on its admissibility at the hearing, the administrative law judge shall do so either on the record before a proposed order is issued or in the proposed order. If the administrative law judge has authority to issue a final order without first issuing a proposed order, the administrative law judge may rule on the admissibility of the evidence in the final order.

(5) The administrative law judge shall accept an offer of proof made for excluded evidence. The offer of proof shall contain sufficient detail to allow the reviewing agency or court to determine whether the evidence was properly excluded. The administrative law judge shall have discretion to decide whether the offer of proof is to be oral or written and at what stage in the proceeding it will be made. The administrative law judge may place reasonable limits on the offer of proof, including the time to be devoted to an oral offer or the number of pages in a written offer.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.450 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0615

### Judicial Notice and Official Notice of Facts

(1) The administrative law judge may take notice of judicially cognizable facts on the record before issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued. The agency or party(ies) may present rebuttal evidence.

(2) The administrative law judge may take official notice of general, technical or scientific facts within the specialized knowledge of the administrative law judge.

(a) If the administrative law judge takes official notice of general, technical or scientific facts, the administrative law judge shall provide such notice to the parties and the agency, if the agency is participating in the contested case hearing, before the issuance of the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, before the final order is issued.

(b) The agency or a party may present rebuttal evidence in response to the administrative law judge's official notice of general, technical or scientific facts.

(c) If rebuttal evidence is presented, the administrative law judge shall rule before the issuance of the proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order, in the final order on whether the noticed facts will be considered as evidence in the proceeding.

(3) Before the issuance of the proposed order or a final order issued by an administrative law judge, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the administrative law judge and parties to the hearing.

(b) A party may present rebuttal evidence in response to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts.

(c) If a party presents rebuttal evidence, the administrative law judge shall rule on whether the noticed facts will be considered as evidence in the proceeding.

(4) After the issuance of a proposed order, the agency may take notice of judicially cognizable facts and may take official notice of general, technical or scientific facts within the specialized knowledge of the agency as follows:

(a) The agency shall provide notice of judicially cognizable facts or official notice of general, technical or scientific facts in writing to the parties to the hearing and, if authorized to issue a final order, to the administrative law judge.

(b) A party may object in writing to agency notice of judicially cognizable facts or official notice of general, technical or scientific facts with service on any other parties, the agency and, if authorized to issue a final order, on the administrative law judge in the manner required by OAR 137-003-0520. A party may request that the agency or, if authorized to issue a final order, the administrative law judge provide an opportunity for the party to present written or non-written rebuttal evidence.

(c) The agency may request the administrative law judge to conduct further hearing proceedings under OAR 137-003-0655 as necessary to permit a party to present rebuttal evidence.

(d) If a party presents rebuttal evidence, the agency or, if authorized to issue a final order, the administrative law judge shall rule in the final order on whether the noticed facts were considered as evidence.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.450(4) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0625

### Ex Parte Communications with Administrative Law Judge

(1) For purposes of this rule, an ex parte communication is:

(a) An oral or written communication,

(b) By a party, a party's representative or legal adviser, any other person who has a direct or indirect interest in the outcome of the proceeding, any other person with personal knowledge of the facts relevant to the proceeding, or any officer, employee or agent of the agency,

(c) That relates to a legal or factual issue in the contested case proceeding,

(d) Made directly or indirectly to the administrative law judge,

(e) While the contested case proceeding is pending,

(f) That is made without notice and opportunity for the agency and all parties to participate in the communication.

(2) If an administrative law judge receives an ex parte communication during the pendency of the contested case proceeding, the administrative law judge shall place in the record:

(a) The name of each individual from whom the administrative law judge received an ex parte communication;

(b) A copy of any ex parte written communication received by the administrative law judge;

(c) A memorandum reflecting the substance of any ex parte oral communication made to the administrative law judge;

(d) A copy of any written response made by the administrative law judge to any ex parte oral or written communication; and

(e) A memorandum reflecting the substance of any oral response made by the administrative law judge to any ex parte oral or written communication.

(3) The administrative law judge shall advise the agency and all parties in the proceeding that an ex parte communication has been made a part of the record. The administrative law judge shall allow the agency and parties an opportunity to respond to the ex parte communication. Any responses shall be made part of the record.

(4) The provisions of this rule do not apply to:

(a) Communications made to an administrative law judge by other administrative law judges;

(b) Communications made to an administrative law judge by any person employed by the Office of Administrative Hearings to assist the administrative law judge; or

(c) Communications made to the administrative law judge by an assistant attorney general if the communications are made in response to a request from the administrative law judge and the assistant attorney general is not advising the agency about the matters at issue in the contested case proceeding.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0630

### Pre-hearing Motions

(1) A request for any order or other relief may be made by filing a motion in writing. The motion need not be in any particular form.

(2) Unless otherwise provided by statute or rule, all motions shall be filed in writing at least seven calendar days before the date set for the hearing and a copy provided to the parties and to the agency in the manner required by OAR 137-003-0520 except:

(a) Motions seeking to intervene or to be granted party status under OAR 137-003-0535,

(b) Motions made in a pre-hearing conference,

(c) Motions for a ruling on legal issues under OAR 137-003-0580; and

(d) Motions to continue a scheduled conference or hearing,

(e) Motions to quash a subpoena under OAR 137-003-0585 when the subpoena is served less than 14 days before the date set for the hearing.

(3) The agency or a party may file a response to a motion. Responses to motions made seven calendar days before the date of the hearing shall be in writing with service to the parties and to the agency in the manner required by OAR 137-003-0520 and shall be filed on the earlier of:

(a) Five calendar days after receipt of the motion, or

(b) The date and time of the hearing.

(4) Responses to late-filed motions may be presented orally or in writing at the contested case hearing.

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(5) At the request of a party or the agency, or on the administrative law judge's own motion, the administrative law judge may establish longer or shorter periods than those under sections (2) and (3) of this rule for the filing of motions and responses. The administrative law judge may also consider motions presented orally at the contested case hearing. In exercising discretion under this subsection, the administrative law judge shall consider the duty to ensure a full and fair inquiry into the facts and the likelihood of undue delay or unfair prejudice.

(6) The mere filing or pendency of a motion, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule or order.

(7) The administrative law judge shall rule on all motions on the record before issuance of a proposed order or in the proposed order or, if the administrative law judge has authority to issue a final order without first issuing a proposed order, in the final order.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0635

### Transmittal of Questions to the Agency

(1) Questions regarding the following issues may be transmitted to the agency:

- (a) The agency's interpretation of its rules and applicable statutes; or
- (b) Which rules or statutes apply to a proceeding.

(2) At the request of a party, the agency, or their representatives, or on the administrative law judge's own motion, the administrative law judge may transmit a question to the agency unless the agency by rule or in writing elects not to make available this process for transmittal of questions to the agency.

(3) The administrative law judge shall submit any transmitted question in writing to the agency. The submission shall include a summary of the matter in which the question arises and shall be served on the agency representative and parties in the manner required OAR 137-003-0520(3).

(4) The agency may request additional submissions by a party or the administrative law judge in order to respond to the transmitted question.

(5) Unless prohibited by statute or administrative rules governing the timing of hearings, the administrative law judge may stay the proceeding and shall not issue the proposed order or the final order, if the administrative law judge has authority to issue the final order, until the agency responds to the transmitted question.

(6) The agency shall respond in writing to the transmitted question and the response shall be made a part of the record of the contested case hearing. The agency's response may be to decline to answer the transmitted question. The agency shall provide its response to the administrative law judge and to each party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0640

### Immediate Review by Agency

(1) Before issuance of a proposed order or before issuance of a final order if the administrative law judge has authority to issue a final order, the agency or a party may seek immediate review by the agency of the administrative law judge's decision on any of the following:

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

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

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

(2) The agency by rule or in writing may elect not to make available this process of immediate review by the agency.

(3) The agency or a party may file a response to the request for immediate review. The response shall be in writing and shall be filed with the agency within five calendar days after receipt of the request for review with service on the administrative law judge, the agency representative, if any, and any other party.

(4) The mere filing or pendency of a request for immediate agency review, even if uncontested, does not alter or extend any time limit or deadline established by statute, rule, or order.

(5) The agency shall rule on all requests for immediate agency review in writing and the request and ruling shall be made part of the record of the proceeding.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0645

### Proposed Orders in Contested Cases

(1) Unless the administrative law judge is authorized or required to issue a final order without first issuing a proposed order, the administrative law judge shall prepare a proposed order.

(2) The proposed order shall be based exclusively on:

- (a) The pleadings, including the contested case notice, and motions;
- (b) The applicable law;
- (c) Evidence and arguments;
- (d) Stipulations;
- (e) Ex parte written communications received by the administrative law judge, memoranda prepared by the administrative law judge reflecting the substance of any ex parte oral communications made to the administrative law judge, written responses made by the administrative law judge and any memoranda prepared by the administrative law judge reflecting the substance of any oral responses made by the administrative law judge;

(f) Judicially cognizable facts and matters officially noticed;

(g) Proposed findings of fact and written argument submitted by a party or the agency;

(h) Intermediate orders or rulings by the administrative law judge or agency; and

(i) Any other material made part of the record of the hearing.

(3) The proposed order shall fully dispose of all issues presented to the administrative law judge that are required to resolve the case. The proposed order shall be in writing and shall include:

(a) The case caption;

(b) The name of the administrative law judge(s), the appearances of the parties and identity of witnesses;

(c) A statement of the issues;

(d) References to specific statutes or rules at issue;

(e) Rulings on issues presented to the administrative law judge, such as admissibility of offered evidence, when the rulings are not set forth in the record;

(f) Findings as to each issue of fact and as to each ultimate fact required to support the proposed order, along with a statement of the underlying facts supporting each finding;

(g) Conclusions of law based on the findings of fact and applicable law;

(h) An explanation of the reasoning that leads from the findings of fact to the legal conclusion(s);

(i) The action the administrative law judge recommends the agency take as a result of the facts found and the legal conclusions arising therefrom; and

(j) The name of the administrative law judge who prepared the proposed order and date the order was issued.

(4) The agency by rule may provide that the proposed order will become a final order if no exceptions are filed within the time specified in the agency rule unless the agency notifies the parties and the administrative law judge that the agency will issue the final order. If the agency adopts such a rule, the proposed order shall include a statement to this effect.

(5) If the recommended action in the proposed order is adverse to any party, the proposed order shall also include a statement that the party may file exceptions and present argument to the agency or, if authorized to issue the final order, to the administrative law judge. The proposed order shall include information provided by the agency as to:

(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(6) The administrative law judge shall serve the proposed order on the agency and each party.

(7) The proposed order shall include a certificate of service, documenting the date the proposed order was served on the agency and each party.

(8) The administrative law judge shall transmit the hearing record to the agency when the proposed order is served or, if the administrative law judge has authority to issue a final order, when the final order is served.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.460, 183.464 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0650

### Exceptions to Proposed Order

(1) If the recommended action in the proposed order is adverse to any party or the agency, the party or agency may file exceptions and present argument to the agency or, if authorized to issue a final order, to the administrative law judge.

(2) The agency shall by rule or in writing describe:

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(a) Where and when written exceptions must be filed to be considered by the agency; and

(b) When and in what form argument may be made to the official(s) who will render the final order.

(3) The agency may request the administrative law judge to review any written exceptions received by the agency and request the administrative law judge either to provide a written response to the exceptions to be made a part of the record or to revise the proposed order as the administrative law judge considers appropriate to address any exceptions. The administrative law judge shall not consider new or additional evidence unless, pursuant to OAR 137-003-0655(2), the agency requests the administrative law judge to conduct further hearing. The administrative law judge's response must be in writing, either in the form of a response to the exceptions or a revised proposed order, and sent to all parties and the agency.

(4) Agency staff may comment to the agency or the administrative law judge on the proposed order, and the agency or the administrative law judge may consider such comments, subject to OAR 137-003-0625 and 137-003-0660.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.460, 183.464 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0655

### Further Hearing and Issuance of Final Order

(1) After issuance of the proposed order, if any, the administrative law judge shall not hold any further hearing or revise or amend the proposed order except at the request of the agency, except as provided in this subsection. The administrative law judge may withdraw a proposed order for correction within three working days of issuance of the proposed order. If the administrative law judge withdraws a proposed order for correction, the time for filing exceptions shall begin on the date the administrative law judge issues the corrected proposed order.

(2) If the agency requests the administrative law judge to conduct a further hearing under section (1) of this rule, the agency shall specify the scope of the hearing and the issues to be addressed. After further hearing, the administrative law judge shall issue a proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order if:

(a) The official(s) who are to render the final order have not considered the record; or

(b) The changes to the proposed order are not within the scope of any exceptions or agency comment to which there was an opportunity to respond.

(4) Any amended proposed order issued under section (3) of this rule shall comply with OAR 137-003-0665(3) and (4) and shall include a statement that the party may file exceptions and present argument to the agency. The agency shall serve the amended proposed order on each party to the contested case proceeding.

(5) The agency or, if authorized to issue a final order, administrative law judge shall consider any timely exceptions and argument before issuing a final order. If exceptions are received, the agency or the administrative law judge may not consider new or additional evidence unless the agency requests the administrative law judge to conduct further hearings under section (1) of this rule. The agency or administrative law judge may issue an amended proposed order in light of any exceptions or argument.

(6) The agency or, if authorized, the administrative law judge shall issue a final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order as the final order, or modify the proposed order and issue the modified order as the final order.

(7) If an agency decision maker has an actual or potential conflict of interest as defined in ORS 244.020(1) or (7), that decision maker shall comply with the requirements of ORS Chapter 244, including but not limited to ORS 244.120 and 244.130.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 7-2003, f. 7-11-03, cert. ef. 7-21-03; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0660

### Ex Parte Communications to Agency during Review of Contested Case

(1) For purposes of this rule, an ex parte communication is an oral or written communication to an agency decision maker during its review of the contested case not made in the presence of all parties to the hearing, concerning a fact in issue in the proceeding, but does not include communication from agency staff or counsel about legal issues or about facts in the record.

(2) If an agency decision maker receives an ex parte communication during its review of a contested case, the decision maker shall:

(a) Give all parties notice of the substance of the communication, if oral, or a copy of the communication, if written; and

(b) Provide any party who did not present the ex parte communication an opportunity to rebut the substance of the ex parte communication.

(3) The agency shall include in the record of the contested case proceeding:

(a) The ex parte communication, if in writing;

(b) A statement of the substance of the ex parte communication, if oral;

(c) The agency's notice to the parties of the ex parte communication; and

(d) Rebuttal evidence, if any.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, ORS 183.462 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0665

### Final Orders in Contested Cases

(1) Final orders in contested cases shall be in writing.

(2) Except as provided in section (5) of this rule, all final orders in contested cases shall include the following:

(a) Each of the elements identified in OAR 137-003-0645(3)(a)-(h),

(b) An Order stating the action taken by the agency as a result of the facts found and the legal conclusions arising therefrom; and

(c) A citation of the statutes under which the order may be appealed.

(3) If the agency modifies the proposed order issued by the administrative law judge in any substantial manner, the agency must identify the modifications and provide an explanation to the parties as to why the agency made the modification. For purposes of this provision, an agency modifies a proposed order in a "substantial manner" when the effect of the modifications is to change the outcome or the basis for the order or to change a finding of fact.

(4) The agency may modify a finding of historical fact made by the administrative law judge only if the agency determines that the finding made by the administrative law judge is not supported by a preponderance of the evidence in the record. For purposes of this provision, an administrative law judge makes a finding of historical fact if the administrative law judge determines that an event did or did not occur in the past or that a circumstance or status did or did not exist either before the hearing or at the time of the hearing.

(5) When informal disposition of a contested case is made by stipulation, agreed settlement or consent order as provided in OAR 137-003-0510(4), the final order need not comply with section (2) of this rule. However, the order must state the agency action and:

(a) Incorporate by reference a stipulation or agreed settlement signed by the party or parties agreeing to that action; or

(b) Be signed by the party or parties.

(6) The final order shall be served on each party.

(7) The date of service of the final order on the parties shall be specified in writing and be part of or be attached to the order on file with the agency, unless service of the final order is not required by statute.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(5), 183.470 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0670

### Default

(1) The agency or, if authorized, the administrative law judge may issue a final order by default:

(a) When the agency gave a party an opportunity to request a hearing and the party failed to request a hearing within the time allowed to make the request;

(b) When the party that requested a hearing withdraws the request;

(c) Except as provided in section (2) of this rule, when the agency or administrative law judge notified the party of the time and place of the hearing and the party fails to appear at the hearing; or

(d) When the agency or administrative law judge notified the party of the time and place of the hearing in a matter in which only one party is before the agency and that party subsequently notifies the agency or administrative law judge that the party will not appear at the hearing, unless the agency or administrative law judge agreed to reschedule the hearing.

(2) If the party failed to appear at the hearing after being notified of the time and place of the hearing and, before issuing a final order by default, the agency or administrative law judge finds that the failure of the party to appear was caused by circumstances beyond the party's reasonable control, the agency or administrative law judge may not issue a final order



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by default under section (1)(c) of this rule. In this case, the administrative law judge shall schedule a new hearing.

(3)(a) An agency or administrative law judge may issue an order adverse to a party upon default under section (1) of this rule only upon a prima facie case made on the record. The agency or administrative law judge must find that the record contains evidence that persuades the agency or administrative law judge of the existence of facts necessary to support the order.

(b) The record may consist of transcribed, recorded or reported oral testimony or written evidence or both oral testimony and written evidence.

(c) Except as provided in subsection (d) of this section, if the agency designated the agency file in a matter as the record when a contested case notice for the matter was issued in accordance with OAR 137-003-0505 and no further testimony or evidence is necessary to establish a prima facie case, the agency file shall constitute the record. No hearing shall be conducted. The agency or, if authorized, the administrative law judge shall issue a final order by default under section (1) of this rule in accordance with OAR 137-003-0665.

(d) If the agency determines that testimony or evidence is necessary to establish a prima facie case or if more than one party is before the agency and one party appears at the hearing, the administrative law judge shall conduct a hearing and, unless authorized to issue a final order without first issuing a proposed order, the administrative law judge shall issue a proposed order in accordance with OAR 137-003-0645. The agency or, if authorized, the administrative law judge shall issue a final order by default in accordance with OAR 137-003-0665.

(4) The agency or administrative law judge shall notify a defaulting party of the entry of a final order by default by delivering or mailing a copy of the order. If the contested case notice contained an order that was to become effective unless the party requested a hearing, and designated the agency file as the record, that order becomes a final order by default if no hearing is requested, and no further order need be served upon the party.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.415(6), 183.470 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0675

### Reconsideration and Rehearing — Contested Cases

(1) Unless otherwise provided by statute, a party may file a petition for reconsideration or rehearing of a final order in a contested case with the agency within 60 calendar days after the order is served. A copy of the petition shall also be delivered or mailed to all parties or other persons and agencies required by statute, rule or order to receive notice of the proceeding.

(2) The agency may, by rule, require a party to file a petition for reconsideration or rehearing as a condition of judicial review. The agency may, by rule or in writing, require any petition for reconsideration or rehearing to be filed with the administrative law judge.

(3) The petition shall set forth the specific grounds for reconsideration or rehearing. The petition may be supported by a written argument.

(4) The petition may include a request for stay of a final order if the petition complies with the requirements of OAR 137-003-0690(3).

(5) Within 60 calendar days after the order is served, the agency may, on its own initiative, reconsider the final order or rehear the case. If a petition for judicial review has been filed, the agency must follow the procedures set forth in ORS 183.482(6) before taking further action on the order. The procedural and substantive effect of reconsideration or rehearing under this section shall be identical to the effect of granting a party's petition for reconsideration or rehearing.

(6) The agency may consider a petition for reconsideration or rehearing as a request for either or both. The petition may be granted or denied by summary order and, if no action is taken, shall be deemed denied as provided in ORS 183.482.

(a) If the agency determines that reconsideration alone is appropriate, the agency shall enter a new final order in accordance with OAR 137-003-0665, which may be an order affirming the existing order.

(b) If the agency determines that rehearing is appropriate, the agency shall decide upon the scope of the rehearing. The agency shall request the administrative law judge to conduct further hearing on such issues as the agency specifies and to prepare a proposed order as appropriate. The agency shall issue a new final order in accordance with OAR 137-003-0665. The agency may adopt the proposed order prepared by the administrative law judge as the final order, or modify the proposed order and issue the modified order as the final order.

(7) Reconsideration or rehearing shall not be granted after the filing of a petition for judicial review, except in the manner provided by ORS 183.482(6).

(8) Unless otherwise provided by law, a final order remains in effect during reconsideration or rehearing until stayed or changed.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.482 & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 2-2000, f. & cert. ef. 3-27-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0690

### Stay Request — Contested Case

(1) Unless otherwise provided by law, any person who submits a hearing request after a final order by default has been issued or petitions for reconsideration, rehearing or judicial review may request the agency to stay the enforcement of the agency order that is the subject of the petition.

(2) The agency may, by rule or in writing, require the stay request to be filed with the administrative law judge.

(3) The stay request shall contain:

(a) The name, address and telephone number of the person filing the request and of that person's attorney, if any;

(b) The full title of the agency decision as it appears on the order and the date of the agency decision;

(c) A summary of the agency decision;

(d) The name, address and telephone number of each other party to the agency proceeding. When the party was represented by an attorney in the proceeding, then the name, address and telephone number of the attorney shall be provided and the address and telephone number of the party may be omitted;

(e) A statement advising all persons whose names, addresses and telephone numbers are required to appear in the stay request as provided in subsection (3)(d) of this rule, that they may participate in the stay proceeding before the agency if they file a response in accordance with OAR 137-003-0695 within ten calendar days from delivery or mailing of the stay request to the agency;

(f) A statement of facts and reasons sufficient to show that the stay request should be granted because:

(A) The petitioner will suffer irreparable injury if the order is not stayed;

(B) There is a colorable claim of error in the order; and

(C) Granting the stay will not result in substantial public harm;

(g) A statement identifying any person, including the public, who may suffer injury if the stay is granted. If the purposes of the stay can be achieved with limitations or conditions that minimize or eliminate possible injury to other persons, petitioner shall propose such limitations or conditions. If the possibility of injury to other persons cannot be eliminated or minimized by appropriate limitation or conditions, petitioner shall propose an amount of bond, irrevocable letter of credit or other undertaking to be imposed on the petitioner should the stay be granted, explaining why that amount is reasonable in light of the identified potential injuries;

(h) A description of additional procedures, if any, the petitioner believes should be followed by the agency in determining the appropriateness of the stay request; and

(i) An appendix of affidavits containing evidence (other than evidence contained in the record of the contested case out of which the stay request arose) relied upon in support of the statements required under subsections (3)(f) and (g) of this rule. The record of the contested case out of which the stay request arose is a part of the record of the stay proceedings.

(4) The request must be delivered or mailed to the agency and on the same date a copy delivered or mailed to all parties identified in the request as required by subsection (3)(d) of this rule.

Stat. Auth.: ORS 183.341

Stats. Implemented: ORS 183.341, 183.482(3) & OL 1999, Ch. 849

Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 9-2001, f. & cert. ef. 10-3-01; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## 137-003-0695

### Intervention in Stay Proceeding

(1) Any party identified under OAR 137-003-0690(3)(d) desiring to participate as a party in the stay proceeding may file a response to the request for stay.

(2) The agency may, by rule or in writing, require the response to be filed with the administrative law judge.

(3) The response shall contain:

(a) The full title of the agency decision as it appears on the order;

(b) The name, address, and telephone number of the person filing the response, except that if the person is represented by an attorney, then the name, address, and telephone number of the attorney shall be included and the person's address and telephone number may be deleted;

(c) A statement accepting or denying each of the statements of facts and reasons provided pursuant to OAR 137-003-0690(3)(f) in the petitioner's stay request; and

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(d) A statement accepting, rejecting, or proposing alternatives to the petitioner's statement on the bond, irrevocable letter of credit or undertaking amount or other reasonable conditions that should be imposed on petitioner should the stay request be granted.

(4) The response may contain affidavits containing additional evidence upon which the party relies in support of the statement required under subsections (3)(c) and (d) of this rule.

(5) The response must be delivered or mailed to the agency and to all parties identified in the stay request within 10 calendar days of the date of delivery or mailing to the agency of the stay request.

Stat. Auth.: ORS 183.341  
Stats. Implemented: ORS 183.341, 183.482(3) & OL 1999, Ch. 849  
Hist.: DOJ 10-1999, f. 12-23-99, cert. ef. 1-1-00; DOJ 19-2003, f. 12-12-03, cert. ef. 1-1-04

## Department of Revenue Chapter 150

**Adm. Order No.:** REV 3-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Adopted:** 150-OR Laws 2003, Ch. 818

**Subject:** This rule provides definitions and clarification for the purposes of the state transient lodging tax enacted by HB 2267 (Oregon Laws 2003, Chapter 818), describes types of lodging subject to the tax, and explains requirements for registration and penalties imposed.

**Rules Coordinator:** Xann Culver—(503) 947-2099

### 150-Or Laws 2003, Chapter 818

#### State Lodging Tax

(1) *Application of the tax.*

(a) The tax applies to rents received for the rental of dwelling units and recreational vehicle spaces that are rented or available for rent to the general public on a daily or weekly basis at least half of the time they are available for use during the year.

(b) Units and spaces that are rented by the month or for a longer term under a rental or lease agreement and that are being used either as a principal residence or long term living quarters by the occupant are not subject to the tax.

*Example 1:* Daniel operates a motel. He rents units on a month to month basis and most units are occupied by persons as their principal residences or living quarters during long term business assignments away from home. A unit will occasionally be rented out by the day or week. Because Daniel does not provide units to the general public for rent on a daily or weekly basis for at least half the time they are available during the year, he is not required to collect and remit the state lodging tax.

*Example 2:* For two weeks of each year, John rents out a parcel of land that is used by coworkers to park a RV while vacationing. Because John does not typically provide the RV space to the general public for rental on a daily or weekly basis, he is not required to collect a lodging tax on the rent he receives.

*Example 3:* Mary operates the By The Sea Mobile Home Park. There are 50 spaces that are generally rented permanently to residents. They pay on a monthly basis. A mixture of manufactured homes and recreational vehicles occupies these spaces. If a space happens to be vacant it can be rented on a daily or weekly basis. A vacant space will occasionally be rented out by the week. Mary is not required to collect and pay the state lodging tax because she does not operate a facility that is typically rented to the public on a daily or weekly basis.

*Example 4:* Jim operates the Bar-B-Q Mobile Home Park. There are 37 spaces rented permanently to residents. They pay on a monthly basis. The spaces are occupied by a mixture of manufactured homes and recreational vehicles. In the front of the park, Jim has 10 spaces that are typically rented for periods of a week or less by people traveling in recreational vehicles. Jim would collect the tax on rents charged for the 10 spaces rented on a daily or weekly basis but would not collect the tax on the 37 spaces rented on a monthly basis.

*Example 5:* The Bandon Community Church owns and operates a campground with cabins and recreational vehicle spaces for use by its members and members of associated churches. The campground is rented or available for rent to the general public for two months out of the five months it is open during each year. The church is not required to collect and pay the state lodging tax because it does not operate a facility that is typically rented to the public for more than half the time it is available on a daily or weekly basis.

*Example 6:* The Elks Lodge in Depot Bay owns and operates a recreational vehicle park for use by its members. The recreational vehicle park is rented or available for rent to the general public for three months out of the year. The lodge is not required to collect and pay the state lodging tax because it does not operate a facility that is typically rented to the public for more than half the time it is available on a daily or weekly basis.

(2) For purposes of Oregon Laws 2003, chapter 818:

(a) "Hotel, motel and inn" include any dwelling units that are designed for temporary overnight human occupancy. Examples include but are not limited to facilities known as motor lodges, lodges, condominiums, bed and breakfasts, and cabins. "Hotel, motel and inn" does not include a free-standing house even though the entire house is rented or available for

rent to the general public on a daily or weekly basis at least half of the time it is available for use during the year.

(b) "Dwelling units that are designed for temporary overnight human occupancy" include rented rooms and suites of rooms with living spaces, storage, appliances, and related amenities that are provided for the purpose of short-term occupancy.

(c) "Transient lodging provider" includes a person who operates a facility whether in the capacity of owner, lessee, sublessee, mortgagee in possession, licensee, concessionaire, or any other capacity.

(3) Public and Private Providers Must Collect the Tax. The state lodging tax applies to rents charged for dwelling units and recreational vehicle spaces provided by public and private persons. It includes dwelling units and recreational vehicle spaces offered to the general public by state and local parks departments and also includes dwelling units and spaces offered for rent to the general public on federal lands operated by a concessionaire on a contract basis with a federal agency such as the U. S. Forest Service, Bureau of Land Management and the National Parks Service. However, the tax does not apply to rents charged for dwelling units and spaces rented directly by an agency of the federal government.

(4) Services Included in the Fee for Lodging. If the fee charged for lodging includes other services whether or not those services are used, the tax must be collected on the total fee. Other services include, but are not limited to, meals, access to exercise equipment, pools, spas, or the provision of newspapers. If a separate fee is charged for the other services, and the service is optional, that fee will not be subject to the tax. Examples of optional fees include fees for pay-per-view movies, room service charges, honor bar charges or restaurant meals charged to the room.

*Example 7:* The ABC Bed and Breakfast charges \$100 per night for a room. Guests are provided a gourmet breakfast that is included in the per night fee. Guests may also have lunch or dinner at ABC and may charge the cost of these meals to their room. The state lodging tax applies to the \$100 fee but does not apply to any charges for optional meals purchased.

*Example 8:* Annie runs the Countryside Guest Ranch. The ranch is an all-inclusive resort where the guests pay a single fee per day for staying on the ranch with special offers available for guests wishing to stay for one or two weeks. The fee covers all lodgings, meals, horseback riding and entertainment. Annie would collect the state lodgings tax on the total fee paid by guests. If, however, Annie were to charge a fee for lodgings and a separate fee for food, horseback riding and entertainment, and other optional goods and services, then Annie would only collect the state lodgings tax on the fee for lodgings.

(5) Use of a Managing Agent. If a transient lodging provider uses a managing agent that is not an employee, the managing agent is considered the provider for the purposes of the tax and has the same duties and liabilities as the operator. Compliance with the provisions of the state lodging tax by either the lodging provider or the managing agent is considered compliance by both.

(6) Registration of Providers. A transient lodging provider must register with the department on forms provided by the department.

(7) Penalty Imposed. The person submitting the return required by OR Laws 2003, Chapter 818, Section 4 must sign the return and is subject to the penalty for false swearing under ORS 162.075, which is a Class A misdemeanor.

Stat. Auth.: ORS 305.100 & OL 2003, Ch. 818  
Stats. Implemented: OL 2003, Ch. 818  
Hist.: REV 3-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## Department of Transportation Chapter 731

**Adm. Order No.:** DOT 4-2003

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 731-001-0000

**Subject:** This rule provides for notice to the public of rulemaking by the Department of Transportation. The amendment clarifies that notice will be provided in compliance with this rule for all proposed permanent rulemakings, rather than any rulemaking.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 731-001-0000

#### Notice of Proposed Rules

In accordance with ORS 183.341, to provide a reasonable opportunity for interested persons to be notified of proposed actions, prior to the adoption, amendment or repeal of a permanent rule, the Oregon Department of Transportation shall give notice of the proposed adoption, amendment or repeal:

(1) In the Secretary of State's Bulletin referred to in ORS 183.360 and in accordance with ORS 183.335.

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(2) By mailing a copy of the notice to persons on the Oregon Department of Transportation mailing lists for specific interest areas established pursuant to ORS 183.335(8).

(3) By mailing a copy of the notice to legislators as provided in ORS 183.335(15).

(4) By mailing a copy of the notice to the following:

- (a) Associated Press;
- (b) Northwest Labor Press;
- (c) Associated Oregon Industries;
- (d) Capitol Press Room; and
- (e) Statesman-Journal newspaper.

Stat. Auth.: ORS 183.341 & ORS 184.616

Stats. Implemented: ORS 183.335 & ORS 183.341

Hist.: 1 OTC 67, f. & ef. 1-9-76; DOT 2-1990, f. & cert. ef. 2-26-90; DOT 1-1994, f. & cert. ef. 3-17-94; DOT 1-1996, f. & cert. ef. 8-8-96; DOT 1-1998, f. & cert. ef. 1-28-98; DOT 4-2003, f. & cert. ef. 12-11-03

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

**Adm. Order No.:** DMV 16-2003

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 11-18-03

**Notice Publication Date:** 9-1-03

**Rules Adopted:** 735-060-0065, 735-060-0115

**Rules Amended:** 735-060-0000, 735-060-0030, 735-060-0040, 735-060-0050, 735-060-0060, 735-060-0090, 735-060-0095, 735-060-0100, 735-060-0110, 735-060-0120, 735-060-0130

**Rules Repealed:** 735-060-0070, 735-060-0080

**Rules Ren. & Amended:** 735-060-0050(9)&(13) to 735-060-0055, 735-060-0050(10), (11)&(12) to 735-060-0057, 735-060-0100(8), (9)&(10) to 735-060-0105, 735-060-0015 to 735-062-0200, 735-060-0017 to 735-062-0210, 735-060-0140 to 735-074-0260, 735-060-0150 to 735-074-0270, 735-060-0160 to 735-074-0280, 735-060-0170 to 735-074-0290

**Subject:** OAR Chapter 735, Division 60 establishes the CDL third party testing program, which authorizes persons certified by DMV to test the driving competency of applicants for a commercial driver license (CDL). Division 60 also contains rules that pertain to the issuance of a CDL and specific qualifications, including medical qualifications, necessary to qualify for a CDL. This rulemaking reorganizes the rules within Division 60 to clarify qualifications, eligibility requirements and responsibilities of CDL Third Party Testers and CDL based on the applicant's driving record, Tester and Examiner violations and possible sanctions, addition and modification of definitions, and other general housekeeping changes. New rules establish record requirements and a code of ethics and rules of conduct. Rules relating to training have been repealed.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 735-060-0000

#### Definitions

(1) The following definitions apply to terms in OAR 735-060-0000 through 735-060-0130:

(a) "CDL" means commercial driver license.

(b) "CDL Certificate of Test Completion" is a document that certifies an individual is competent to safely exercise the commercial driving privileges granted by a Class A, Class B or Class C CDL and that is issued by a CDL Third Party Examiner as authorized by ORS 807.080.

(c) "CDL Third Party Examiner" or "CDL Examiner" is an individual issued a Third Party Examiner Certificate by DMV that authorizes the individual to conduct certified drive tests to determine a driver's qualification to obtain a CDL and issue CDL Certificates of Test Completion.

(d) "CDL Third Party Examiner Certificate" or "Examiner Certificate" is a certificate issued by DMV that authorizes an individual to conduct certification drive tests to determine a driver's qualification to obtain a CDL and to issue CDL Certificates of Test Completion.

(e) "CDL Third Party Tester" or "CDL Tester" is an individual or entity issued a CDL Third Party Tester Certificate by DMV for the purpose of certifying the competency of drivers to safely exercise commercial driving privileges. For purposes of OAR 735-060-0000 to 735-060-0130 the term includes, but is not limited to, an individual, corporation, association, firm, company, business, partnership, limited liability company, employer, federal or state agency, municipal corporation as defined by ORS 33.710, includ-

ing a mass transit or transportation district, a publicly owned and operated educational facility and the Oregon Department of Education.

(f) "CDL Third Party Tester Certificate" or "Tester Certificate" is a driver competency testing certificate issued by DMV as authorized by ORS 807.080(2).

(g) "Calendar day" is a period that begins at 12:01 a.m. and ends at 11:59 p.m. on the same day.

(h) "Commercial truck or bus driver training school" means any school that trains the general public in driving commercial motor vehicles and has been licensed by the Oregon Department of Education as a licensed private career school.

(i) "Disqualified" means a person's CDL has been suspended, revoked, cancelled or withdrawn by a State or other jurisdiction, or the person is not qualified to operate a commercial motor vehicle under 49 CFR part 391. "Disqualified" has the same meaning given the term "disqualification" in 49 CFR part 393.5.

(j) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(k) "Employee" means a person who works for another for compensation, but does not include an independent contractor.

(l) "Employer" includes any of the following:

(A) An individually owned business;

(B) A company;

(C) A corporation;

(D) An association;

(E) A cooperative; and

(F) A federal, state, county or municipal agency, including a publicly owned and operated education facility and the Oregon Department of Education.

(m) "Major traffic crime" means a conviction under Oregon statute or city ordinance, or a comparable statute or city ordinance of any other jurisdiction, for any traffic offense that is punishable by a jail sentence and includes the following offenses:

(A) Any degree of murder, manslaughter, criminally negligent homicide or assault resulting from the operation of a motor vehicle;

(B) Driving under the influence of intoxicants;

(C) Reckless driving as defined in ORS 811.140;

(D) Failure to perform the duties of a driver involved in an accident or collision under ORS 811.700 or 811.705;

(E) Criminally driving while suspended or revoked, as defined under ORS 811.182;

(F) Fleeing or attempting to elude a police officer, as defined in ORS 811.540;

(G) Vehicular assault of bicyclist or pedestrian under ORS 811.060;

(H) Reckless endangerment of highway workers, as defined in ORS 811.231;

(I) False accident report under ORS 811.740;

(J) Knowingly violating an out-of-service notice under ORS 825.990(2); or

(K) A violation of ORS 825.990(3).

(n) "Motor carrier" means for-hire carrier or private carrier as those terms are defined in ORS 825.005 and who is subject to the Federal Motor Carrier Safety Regulations.

(o) "Under the influence of intoxicants" means a person's physical or mental faculties are adversely affected by use of over the counter drugs or a lawfully prescribed controlled substance to a noticeable or perceptible degree, unlawful use of a controlled substance or consumption of an intoxicating liquor within six hours of or while conducting or taking a certification drive test.

(2) The terms of "employer" and "employee" are only applicable as used in OAR 735-060-0010 through 735-060-0130. They are not intended to affect any employer or employee rights, responsibilities or obligations.

Stat. Auth.: ORS 184.616, 184.619, 807.072 & 807.080

Stats. Implemented: ORS 807.040, 807.070, 807.072 & 807.080

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; MV 23-1987, f. & ef. 9-28-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0600; MV 6-1990, f. & cert. ef. 4-2-90; MV 9-1991(Temp), f. & cert. ef. 7-26-91; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

### 735-060-0030

#### Qualifications for Third Party Testers

(1) An applicant must meet the following qualifications for a CDL Third Party Tester Certificate:

(a) Sign and abide by all terms and conditions of a written CDL Third Party Tester Agreement with DMV;

(b) Maintain a business office or facility in which driver testing records are securely kept and are available for inspection or audit by DMV, the Oregon Secretary of State's Office or the Federal Highway

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Administration. To qualify as a business office or facility, it must be staffed and open during posted business hours and/or have a business phone with an answering service, answering machine or voice mail service, with the ability to return all business related messages no later than the following business day;

(c) Have a DMV approved testing program to administer standardized behind the wheel drive tests to applicants for a CDL license which complies with all the requirements set forth in OAR 735-060-0120;

(d) Have an owner who is certified as a CDL Third Party Examiner or has applied for certification as a Class CDL Third Party Examiner or employ a certified CDL Third Party Examiner. For purposes of this rule, owner does not include a shareholder of a corporation;

(e) Be in compliance with all federal, state and local laws or regulations, including all business and zoning requirements; and

(f) Pass the inspection described in OAR 735-060-0040.

(2) To qualify as a Third Party Tester, an applicant must not:

(a) Have a Third Party Tester Certificate, a Third Party Examiner Certificate or equivalent authorization, issued by any jurisdiction, that is currently suspended or revoked;

(b) Have had a Third Party Tester Agreement, issued by any jurisdiction, involuntarily terminated. This section does not apply if the agreement was terminated more than five years from the date an application for a CDL Third Party Tester Certificate is submitted to DMV;

(c) Have had a Third Party Tester Certificate, a Third Party Examiner Certificate or equivalent authorization, issued by any jurisdiction, that was suspended, revoked or involuntarily canceled or otherwise involuntarily terminated for conduct that would result in permanent revocation in Oregon;

(d) Have a driver training school certificate or driver training instructor certificate or equivalent authority, issued by any jurisdiction, that is currently suspended or revoked; or

(e) Have a partner, owner or shareholder who owns 20% or more of the business or an officer, director, agent or manager who:

(A) Has a Third Party Tester Certificate, Third Party Examiner Certificate, Driver Training School Certificate, Driver Training Instructor Certificate or equivalent authorization, issued by any jurisdiction, that is currently suspended or revoked;

(B) Has had a Third Party Tester Certificate, Third Party Examiner Certificate, Driver Training School Certificate, Driver Training Instructor Certificate or equivalent authorization, issued by any jurisdiction, that has been suspended, revoked or involuntarily canceled or otherwise involuntarily terminated within the five years immediately preceding the date an application for a CDL Third Party Tester Certificate is submitted to DMV; or

(C) Has been convicted of a crime involving moral turpitude, including but not limited to, homicide, assault, kidnapping, a sexual offense, robbery, child pornography, fraud, forgery, perjury and theft or of a crime punishable as a felony involving the use of a motor vehicle, or a crime punishable as a felony involving possession, manufacture or distribution of a controlled substance, if DMV determines from the facts and intervening circumstance of the conviction that the person is not fit to perform the responsibilities of a CDL Third Party Tester and/or poses a risk to the safety of persons while performing those responsibilities.

(D) Has engaged in conduct that is substantially related to the person's fitness to hold a CDL Third Party Tester Certificate and which demonstrates unfitness and inability to perform the responsibilities of a CDL Third Party Tester.

(3) In addition to the requirements listed in sections (1) and (2) of this rule, the applicant, if a publicly-owned and operated educational facility, must have a campus located in Oregon.

(4) In addition to the requirements listed in sections (1) and (2) of this rule, an applicant, if a motor carrier, must not have an unsatisfactory safety rating from the Federal Motor Carrier Administration or the Oregon Department of Transportation, Motor Carrier Transportation Division.

Stat. Auth.: ORS 184.616, 184.619 & ORS 807.080

Stats. Implemented: ORS 807.040, 807.070 & ORS 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 18-1986, f. & ef. 10-16-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0630; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0040 Inspection

(1) To insure compliance with all relevant statutes, administrative rules and regulation, before issuing a CDL Third Party Tester Certificate, an authorized representation of DMV shall, during regular business hours, inspect the applicant's:

(a) Business office, facility or campus;

(b) CDL drive test route and testing procedures; and

(c) Vehicles used for testing purposes that are owned or leased by the applicant.

(2) DMV or the Federal Motor Carrier Safety Administration may conduct a random inspection of the business premises, records and equipment of a CDL Third Party Tester to review compliance with Oregon statute, administrative rules and federal regulation requirements for CDL Third Party Testers and CDL Examiners. No notice will be given to the CDL Tester prior to the random inspection. The CDL Tester must consent to and fully cooperate with the random inspection.

(3) In addition to any other inspection, DMV shall annually conduct an on-site inspection of each CDL Tester to review compliance with Oregon statutes, administrative rules and federal regulations pertaining to the third party tester and examiner program.

(4) An onsite inspection shall include, but may not be limited to:

(a) CDL Third Party Tester records, including records of all persons for whom a CDL drive test was conducted by the CDL Third Party Tester and Examiner, regardless of whether the person passed or failed the test and class rosters if the tester is also a commercial truck or bus driver training school licensed by the Oregon Department of Education;

(b) The business office, facility or campus;

(c) Testing procedures;

(d) Testing equipment, including vehicle(s) owned or leased by the CDL Tester and used for certification drive testing;

(e) A review of the CDL Third Party Tester's qualifications as listed in OAR 735-060-0030;

(f) The testing procedures used by CDL Examiners of the CDL Third Party Tester;

(g) The CDL drive test route(s);

(h) Review of the CDL Third Party Tester's compliance with all terms of the CDL Third Party Tester Agreement; and

(i) Any other related areas the DMV representative may deem necessary at the time of the inspection.

(5) As part of an inspection, a DMV representative may accompany a CDL Third Party Examiner on a certification drive test or retest a sample of the drivers who were tested by the CDL Examiner to compare pass/fail results.

(6) A DMV representative may pose as a customer of a CDL Third Party Tester without identifying himself or herself as an employee of DMV in order to observe the manner in which testing is conducted.

(7) To pass an inspection the CDL Third Party Tester must be in compliance with the statutes, rules and regulations pertaining to the CDL Third Party Tester and Examiner program and the provisions of the CDL Third Party Tester Agreement.

(8) The DMV inspector shall prepare a written report and specify any deficiencies that must be corrected. The CDL Third Party Tester will be given a copy of the report. Deficiencies identified must be corrected by the CDL Third Party Tester within 30 days of receipt of the report.

Stat. Auth.: ORS 184.616, 814.619 & ORS 807.080

Stats. Implemented: ORS 807.040, 807.070 & ORS 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0635; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0050

### Application for and Issuance of CDL Third Party Tester Certificate

(1) To apply for a CDL Third Party Tester Certificate, an applicant must:

(a) Meet all the requirements set forth in OAR 735-060-0030(1) and (2);

(b) Submit the following to DMV, CDL Third Party Testing, 1905 Lana Avenue NE, Salem, Oregon 97314:

(A) A completed application for a CDL Third Party Tester Certificate, DMV Form 6766;

(B) A signed original CDL Third Party Tester Agreement between the Department of Transportation and the applicant;

(C) A proposed drive test route(s) for each test location which meets the criteria set forth in OAR 735-060-0120;

(D) At least one application for an Examiner's Certificate; and

(E) Proof of comprehensive commercial liability insurance and proof of comprehensive auto liability insurance, if applicable, that meets the requirements specified in the CDL Third Party Tester Agreement. A public agency covered by the Oregon Tort Claims Act and which is self insured must submit a statement of self-insurance.

(2) To apply for a CDL Third Party Tester Certificate, the Oregon Department of Education must:

(a) Meet all the requirements set forth in OAR 735-060-0030;

(b) Submit the following to DMV, CDL Third Party Testing, 1905 Lana Avenue NE, Salem, OR 97314:

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(A) A completed application for a CDL Third Party Tester Certificate, DMV Form 6766;

(B) A signed original CDL Third Party Tester Agreement between the Department of Transportation and the Department of Education; and

(C) Drive test route(s) for each test location meeting the criteria set forth in OAR 735-060-0120.

(3) When issued by DMV a CDL Third Party Tester Certificate is valid for two years, unless suspended, cancelled or revoked. The certificate shall expire two years from the end of the month it is issued or renewed. For example, a certificate issued or renewed on April 2, 2003 will expire on April 30, 2005.

(4) A CDL Third Party Tester Certificate may be renewed. The following apply to renewal of the certificate:

(a) DMV will notify the CDL Third Party Tester of the pending expiration of the CDL Third Party Tester Certificate at least 60 days prior to the expiration date of the certificate;

(b) The CDL Third Party Tester must meet the qualification requirements set forth in OAR 735-060-0030;

(c) The CDL Third Party Tester must submit a CDL Third Party Tester Agreement covering the period the certificate is valid and a written.

(5) A CDL Third Party Certificate may be replaced if the original certificate is lost, mutilated or destroyed. To apply for a replacement certificate, a written request that describes the reason for the replacement must be submitted to DMV CDL Third Party Testing Program, 1905 Lana Avenue NE, Salem, Oregon 97314.

Stat. Auth.: ORS 184.616, 814.619 & ORS 807.080

Stats. Implemented: ORS 807.040, 807.070 & ORS 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0640; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0055

### Responsibilities of a CDL Third Party Tester

(1) A CDL Third Party Tester shall do all of the following:

(a) Notify DMV in writing within 10 calendar days of any change in:

(A) The address of the CDL Third Party Tester's business office, facility or campus;

(B) The location where the testing is conducted or a change in the drive test route(s);

(C) The status of a CDL Third Party Examiner, including an individual who is hired or who has discontinued employment; or

(D) The name and address of the designated or registered agent, an owner, partner or shareholder owning 20% or more of the business or officer, director, agent or manager.

(b) Notify DMV in writing within 10 calendar days if:

(A) The CDL Third Party Tester goes out of business;

(B) The CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0030; or

(C) A CDL Third Party Examiner employed by the CDL Third Party Tester no longer meets the qualification requirements set forth in OAR 735-060-0090 including notification that the CDL Examiner has discontinued employment with the CDL Tester.

(c) Ensure that all CDL Third Party Examiners employed by the CDL Third Party Tester remain in compliance with all statutes, administrative rules and regulations pertaining to the qualifications and responsibilities of CDL Third Party Examiners.

(d) Make any and all business records, vehicles and facilities related to the operation of the CDL Third Party Tester's testing program available for inspection by representatives of DMV and/or the Federal Motor Carrier Safety Administration with or without prior notice.

(e) Correct any deficiencies specified in an inspection report with 30 days of receipt of the report.

(f) Ensure that vehicles provided by the CDL Third Party Tester for testing purposes meet the safety equipment standards of the Oregon Vehicle Code and federal regulations, are maintained in good mechanical condition, and are equipped with the following emergency equipment:

(A) Fire extinguisher; and

(B) Three flares or three approved reflectors.

(g) Comply with all statutes, administrative rules and regulations related to the CDL Third Party Testing program and with all terms of the CDL Third Party Testing Agreement.

(h) Notify DMV within 24 hours of any:

(A) Notice of a civil legal action filed against the CDL Third Party Tester or a CDL Third Party Examiner employed by the tester which is related to the administration of a test;

(B) Criminal investigation, arrest or conviction for an offense described in OAR 735-060-0030(2)(e)(C), a crime involving moral turpitude or any fraudulent activity related to CDL testing; or

(C) A complaint concerning the CDL Third Party Tester or a CDL Examiner employed by the CDL Tester related to CDL testing.

(i) Maintain the eligibility requirements set forth in OAR 735-060-0030 as applicable.

(j) Maintain and submit records as required by OAR 735-060-0057.

(k) Ensure that each CDL Third Party Examiner employed maintain a Third Party Tester Log documenting all CDL certification drive tests conducted by the Third Party Examiner.

(l) Maintain a record, by form control number, showing the disposition of all CDL Certificates of Test Completion issued to the CDL Third Party Tester by DMV.

(2) A CDL Third Party Tester shall not:

(a) Falsify any records or fraudulently issue a CDL Certificate of Test Completion to any person who has not passed a CDL certification drive test;

(b) Permit anyone except a certified CDL third party examiner to conduct a CDL drive test or issue a CDL Certificate of Completion;

(c) Transfer its CDL Third Party Tester Certificate to any other person, employer, or publicly-owned and operated educational facility;

(d) Permit a CDL Third Party Examiner to issue a CDL Certificate of Test Completion to any person who:

(A) Was not tested in accordance with the requirements set forth in OAR 735-060-0120; or

(B) Failed the CDL certification drive test;

(e) Permit an Oregon Department of Education CDL Third Party Examiner to test a person who has not applied for a school bus driver certificate or permit;

(f) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(g) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(h) Knowingly allow a CDL Examiner to conduct a CDL certification drive test while under the influence of intoxicants; or

(i) Permit a CDL Third Party Examiner employed by a commercial driver training school to test a driver who has been trained by the CDL Examiner or trained by anyone employed by the school.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stat. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(9) & (13)

## 735-060-0057

### Record Requirements

(1) The CDL Third Party Tester shall ensure records are maintained at the CDL Tester's primary place of business or by each CDL Examiner at each testing location(s) for no less than two years from the date of the test as follows:

(a) A fully completed copy of the CDL test score sheet for each applicant tested, regardless of whether the individual passed or failed the test. To be fully completed the CDL test score sheet must contain the applicant's full name and driver license number, the drive test location and route identifier, the CDL Examiner's name as well as the test date and test results.

(b) A fully completed copy of the CDL Certificate of Test Completion that was issued to each applicant who passed the test. To be fully completed the CDL Certificate of Test completion must contain: the applicant's full name, date of birth, social security number and driver license number; the CDL Examiner's name, certificate number, signature and date signed; the CDL Tester's name; the type of vehicle used for the test; the date of the test and whether the test vehicle had airbrakes, was a passenger carrying vehicle or the applicant is an employee of the CDL Tester.

(c) Copies of all CDL Certificates of Test Completion that have been voided by the examiner.

(d) Fully completed copies of all CDL Tester Logs for each CDL Examiner. To be fully completed:

(A) Each log must contain the month and year of tests included on the log, the CDL Tester name and city, the CDL Examiner and certificate number and the test route, location and number; and

(B) Each log entry must contain: the start and stop time of the test; the test date; the name and driver license number of the applicant tested; the class of vehicle used for testing and the vehicle's plate number(s), gross vehicle weight rating(s) and brake type; the test results, including the test score; and whether the applicant was a retest due to a previous failure.

(2) The CDL Third Party Tester shall maintain documentation to show the disposition, by form control number, of all CDL Certificates of Test Completion issued to the CDL Tester. This documentation shall be maintained for a minimum of two years after the date the certificate was issued or voided by the CDL Examiner or by DMV.

(3) All records subject to this rule shall be available for inspection by an authorized representative(s) of DMV or the Federal Motor Carrier Safety Administration, Monday through Friday between the hours of 8:30

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a.m. to 4:30 p.m. Although DMV will normally arrange an appointment prior to an inspection, records must be available for inspection without an appointment or prior notice. Records may be retained in paper format or electronically but must be maintained in a manner allowing for timely and efficient retrieval and review. DMV may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

Stat. Auth.: ORS 184.616, 184.619 & 807.080  
Stat. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0050(10), (11) & (12)

## 735-060-0060

### Third Party Tester Sanctions

(1) DMV shall impose sanctions when it determines a CDL Third Party Tester or CDL Third Party Examiner has violated provisions of the Motor Vehicle Code, administrative rules promulgated by DMV or federal regulations related to CDL third party testing.

(2) DMV shall impose a sanction determined by DMV to be appropriate for the particular violation. In determining an appropriate sanction, DMV may use the appropriate matrix set forth in either OAR 735-060-0065 or 735-060-0110 as a guideline and may consider the following criteria:

- (a) The severity of the violation or its impact on the public;
- (b) The number of similar or related violations;
- (c) Whether the violations were willful or intentional; and
- (d) The history of prior sanctions imposed by DMV.

(3) DMV shall determine the steps to take or sanctions to impose when it determines violations have occurred or are occurring. These may include one or more of the following:

(a) A written warning, including correction notices;

(b) Suspension of the CDL Third Party Tester's Certificate and the right to apply for a certificate for up to one year;

(c) Suspension of the CDL Third Party Examiner's Certificate and the right to apply for a certificate or renewal of a certificate for up to one year;

(d) Revocation of CDL Third Party Tester's Certificate and the right to apply for a certificate or renewal of a certificate for up to five years;

(e) Revocation of the CDL Third Party Examiner's certificate and the right to apply for a certificate or renewal of a certificate for up to five years;

(f) DMV will immediately suspend a CDL Third Party Tester or Third Party Examiner Certificate if DMV has reason to believe the Third Party Tester or Third Party Examiner participated in any fraudulent or criminal activity related to the issuance of a CDL Certificate of Test Completion or has violated any provision of the Code of Ethics and Rule of Conduct set forth in OAR 735-060-0115. The suspension shall remain in effect pending the outcome of a contested case hearing;

(g) DMV will immediately suspend a CDL Third Party Tester Certificate if the general business liability and/or auto liability insurance has lapsed or is cancelled, or DMV determines a CDL Third Party Tester's vehicle(s) used for testing is in an unsafe condition; and

(h) DMV will permanently revoke a CDL Third Party Tester or CDL Third Party Examiner Certificate if DMV determines the CDL Third Party Tester or CDL Third Party Examiner participated in fraudulent or criminal activity related to the issuance of a CDL Certificate of Test Completion, including, but not limited to violation of OAR 735-060-0115(1), (3) or (7). No principal, owner, shareholder, or manager of a CDL Third Party Tester whose certificate is permanently revoked shall be eligible for a CDL Third Party Tester or CDL Third Party Examiner Certificate.

(4) A CDL Third Party Tester or CDL Third Party Examiner whose certificate has been suspended or revoked is entitled to a contested case hearings as provided in the Oregon Administrative Procedures Act under ORS 183.413 to 183.500.

(5) When DMV takes action to suspend or revoke a CDL Third Party Tester or CDL Third Party Examiner Certificate, DMV will send notice in writing that the suspension or revocation will begin either in five days (an immediate suspension) or 30 calendar days from the date on the notice. The notice will be served by first class mail sent to the most recent address on record with DMV.

(6) Except as provided for in section (7) of this rule, a request for a hearing must be submitted in writing to, and received by, the Office of Administrative Hearings within 20 days of the date of the notice of violation. If a hearing request is received in a timely manner the suspension or revocation will not go into affect pending the outcome of the hearing, unless the certificate is immediately suspended.

(7) If the certificate is immediately suspended as set forth in subsections (3)(f) and (g) of this rule, the request for hearing shall be submitted in writing to, and received by, the Office of Administrative Hearings within 90 days of the date of notice of suspension. The suspension shall remain in effect pending the outcome of the hearing.

(8) Except as provided in OAR 137-003-0003, when no request for a hearing is timely received, the CDL Third Party Tester or CDL Third Party Examiner has waived the right to a hearing, DMV's file shall constitute the record of the case and a default order shall be issued by DMV.

(9) If a CDL Third Party Tester or CDL Third Party Examiner Certificate has been revoked, the CDL Third Party Tester or CDL Third Party Examiner must reapply for an original certificate after the period of revocation and must meet all the requirements set forth in the Division 60 rules. At the end of the suspension period of a CDL Third Party Tester or CDL Third Party Examiner Certificate, DMV will reinstate the certificate unless the certificate has expired or the CDL Tester or CDL Examiner does not meet the qualification requirements for the certificate. If the certificate has expired, the CDL Tester or CDL Examiner must reapply for an original certificate and must meet all the requirements set forth in the Division 60 rules.

Stat. Auth.: ORS 184.616, 814.619 & 807.080  
Stats. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0650; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0065

### Matrix for Tester Sanctions

DMV adopts the matrix of sanctions in Table 1 for CDL Third Party Tester violations. Table 1, Tester Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Tester was notified orally or in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense.

Stat. Auth.: ORS 184.616, 184.619 & 807.080  
Stat. Implemented: ORS 807.040, 807.070 & 807.100  
Hist.: DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0090

### Eligibility Requirements for Third Party Examiner Certificate

(1) No person shall certify the competency of an applicant for a commercial driver license to safely operate a commercial vehicle by conducting a commercial driver license certification drive test under the authority of ORS 807.080 or 807.072(3), unless he or she has a valid CDL Third Party Examiner Certificate issued by DMV and conducts the driving test in accordance with Oregon statutes and administrative rules.

(2) To be eligible for a CDL Third Party Examiner Certificate or to be allowed to renew or maintain a CDL Third Party Examiner Certificate a person must meet the following requirements:

(a) Be at least 21 years of age;

(b) Be an employee of a CDL Third Party Tester or an employee of an applicant for a CDL Third Party Tester Certificate or certified as a behind the wheel examiner for school bus drivers by the Oregon Department of Education;

(c) Is of good moral character and has not been convicted of a crime involving moral turpitude, including but not limited to, homicide, assault, kidnapping, a sexual offense, robbery, child pornography, fraud, forgery, perjury and theft or of a crime punishable as a felony involving the use of a motor vehicle, or a crime punishable as a felony involving possession, manufacture or distribution of a controlled substance if DMV determines from the facts and intervening circumstances of the conviction that the person is not fit to perform the responsibilities of a CDL Third Party Examiner and/or poses a risk to the safety of persons while performing those responsibilities.

(d) Except as provided in subsection (e) of this section, have and maintain valid Oregon commercial driving privileges in the classification for which the person will be conducting drive tests and with all required endorsements. To be valid, commercial driving privileges must not be suspended, revoked canceled or otherwise withdrawn.

(e) If the person does not have valid Oregon commercial driving privileges, he or she must have valid commercial driving privileges issued by another state in the classification for which the person will be conducting drive tests and with all required endorsements. The person must meet the medical standards established by DMV for the operation of commercial motor vehicles and be issued a medical certificate. An operator who has not held Oregon CDL driving privileges for the three year period, may be required to submit a certified driving record from any jurisdiction that issued CDL driving privileges during that period;

(f) Has successfully completed the CDL Third Party Examiner training course as required in OAR 735-060-0095; and

(g) Must provide documented evidence including a recommendation from a previous employer, satisfactory to DMV, of at least one of the following:

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(A) At least three years of commercial motor vehicle driving experience;

(B) At least two years of experience as an instructor with a licensed commercial truck driving school;

(C) At least two years of experience training commercial motor vehicle drivers for a private business or government agency; or

(D) At least two years of experience providing testing of CDL applicants for a governmental licensing agency;

(3) A person is not eligible for a CDL Third Party Examiner Certificate, or shall not be allowed to renew or maintain a CDL Third Party Examiner Certificate if:

(a) The person is enrolled or participating in a DUII diversion program, or has restricted or suspended driving privileges under a driver improvement program, including an equivalent diversion or driver improvement program in another jurisdiction. This section shall apply if the person was enrolled or participating in a diversion program or his or her driving privileges were restricted or suspended under a driver improvement program anytime within the three years preceding the date an application for a CDL Third Party Examiner Certificate is submitted to DMV;

(b) The person has been convicted of any major traffic crime. This subsection does not apply if the conviction occurred more than five years preceding the date an application for a Third Party Examiner Certificate is submitted to DMV;

(c) The person has been issued a CDL Third Party Tester or CDL Third Party Examiner Certificate by DMV that is currently revoked or suspended;

(d) The person has been issued a CDL Third Party Tester or CDL Third Party Examiner Certificate by another jurisdiction, that is currently revoked or suspended, or that was revoked, involuntarily canceled or suspended within the five years preceding the date an application for a CDL Third Party Examiner Certificate is submitted to DMV; or

(e) The person has engaged in conduct that is substantially related to the person's fitness to hold a CDL Third Party Examiner Certificate and which demonstrates unfitness and inability to perform the responsibilities of a CDL Third Party Examiner.

(4) In addition to the eligibility requirements of sections (2) and (3) of this rule, to be eligible for a CDL Third Party Examiner Certificate to conduct drive tests for school bus drivers for the Oregon Department of Education, a person must:

(a) Be certified by the Oregon Department of Education as a behind-the-wheel examiner; and

(b) Meet the requirements set forth in OAR 581-053-0006.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 18-1986, f. & ef. 10-16-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0670; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0095

### Third Party Examiner Training

(1) An applicant for a third party examiner certificate must successfully complete the third party examiner training course as described in section (2) of this rule.

(2) The CDL third party examiner training course shall consist of instruction in all of the following:

(a) How to conduct the drive tests;

(b) How to score the drive test and minimum passing scores;

(c) How to select and document a drive test route;

(d) The skills to be tested;

(e) Where and how the skills will be tested;

(f) How the performance of the skills will be scored;

(g) Grounds for immediate failure of skills tests;

(h) A review of the responsibilities of the third party examiner, including but not limited to maintaining records and proper completion of forms; and

(i) Information contained in the Oregon CDL Examiner's Manual and the Oregon Commercial Motor Vehicle Operator's Manual available from DMV.

(3) Upon successful completion of the third party examiner training the training course instructor shall submit a copy of the class roster and indicate on the roster those individuals who passed the training course.

(4) The CDL third party examiner training course may only be provided by a person or entity that has an agreement with DMV to provide training.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0100

### Application for CDL Third Party Examiner Certificate

(1) To apply for a CDL Third Party Examiner Certificate an applicant must:

(a) Meet all the eligibility requirements set forth in OAR 735-060-0090; and

(b) Submit a completed Application for a Third Party Examiner Certificate, Form 6767, signed by a Certified CDL Third Party Tester or applicant for a CDL Third Party Tester Certificate, to: DMV, CDL Third Party Testing Program, 1905 Lana Avenue NE, Salem, Oregon 97314.

(2) Unless suspended or revoked, a CDL Third Party Examiner Certificate shall remain valid as long as the CDL Examiner is employed by a certified CDL Third Party Tester or is approved by the Department of Education. The certificate must immediately be returned to DMV by the CDL Third Party Examiner when the CDL Examiner is no longer employed by a CDL Third Party Tester or approved by the Department of Education.

(3) The Third Party Examiner Certificate issued to a CDL Examiner testing under the Oregon Department of Education will be withdrawn upon request of the Director, Pupil Transportation Section of the Oregon Department of Education.

(4) The CDL Third Party Examiner Certificate will be withdrawn by DMV upon request of the CDL Third Party Tester by whom the examiner is employed.

(5) DMV shall issue a replacement CDL Third Party Examiner Certificate if the CDL Third Party Examiner certifies that the original certificate has been lost, mutilated or destroyed. To apply for a replacement CDL Third Party Examiner Certificate, the person must submit a written request indicating the reason for the replacement to: DMV, CDL Third Party Testing Program, 1905 Lana Avenue NE, Salem, OR 97314.

(6) DMV shall issue an additional CDL Third Party Examiner Certificate(s) when a CDL Third Party Examiner is employed by more than one certified CDL Third Party Tester. DMV shall issue a corrected CDL Third Party Examiner Certificate when a CDL Examiner changes employers. To obtain an additional or corrected certificate, the CDL Examiner must:

(a) Meet all the requirements set forth in OAR 735-060-0090; and

(b) Submit a completed Application for a CDL Third Party Examiner Certificate, Form 6767, signed by the employing CDL Third Party Tester, to DMV, CDL Third Party Testing Program, 1905 Lana Avenue NE, Salem, OR 97314.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 18-1986, f. & cert. ef. 10-16-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0680; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0105

### Responsibilities of a CDL Third Party Examiner

(1) A CDL Third Party Examiner shall:

(a) Remain in compliance with the eligibility requirements set for in OAR 735-060-0090;

(b) Properly complete all forms required by DMV;

(c) Conduct all certification drive tests as set forth in OAR 735-060-0120;

(d) Conduct drive tests and issue CDL Certificates of Test Completion only for the class of vehicles authorized on the Third Party Examiner Certificate by DMV;

(e) Issue CDL Certificates of Test Completion only for the class of commercial license for which the person is tested;

(f) Maintain a CDL Third Party Tester Log of all CDL tests conducted. A copy of the log shall be kept at the CDL third party tester's business office or facility and the original shall be submitted by the CDL Examiner to DMV by the 10th day of the following month;

(g) Comply with the following requirements when issuing a CDL Certificate of Test Completion:

(A) Place the CDL Certificate of Test Completion in an envelope and seal the envelope. The outside of the envelope must have the signature of the CDL Tester or CDL Examiner across the seal of the envelope; and

(B) Verbally instruct the tested driver that the envelope containing the certificate must be submitted to DMV within two years of the date it is issued and will not be accepted if the envelope is opened prior to its delivery to DMV.

(h) Successfully complete any additional training when required by DMV;

(i) Comply with all statutes, administrative rules, and federal regulations pertaining to the qualifications and responsibilities of a CDL Third Party Examiner;

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(j) Except as provided in section (2) of this rule, conduct a minimum of 12 certification drive tests during each 12-month period after the initial issuance date of the CDL Third Party Examiner Certificate;

(k) Be present during any DMV or Federal Motor Carrier Administration inspection of CDL Third Party Tester records if requested by DMV;

(l) Only conduct certification drive tests for the CDL Third Party Tester on the CDL Examiner's Third Party Examiner Certificate; and

(m) Notify the CDL Third Party Tester within 24 hours of any notice of a civil legal action, a criminal investigation or arrest, or any complaint concerning administration of a certification drive test or issuance of a certificate of test completion by the CDL Examiner.

(2) A CDL Third Party Examiner employed by the Oregon Department of Education is not required to conduct a minimum number of certification drive tests in a 12-month period.

(3) A CDL Third Party Examiner shall not:

(a) Issue a CDL Certificate of Test Completion to any individual:

(A) If the CDL Third Party Examiner did not administer a certification drive test to the individual;

(B) If the CDL Third Party Examiner did not administer a certification drive test meeting the requirements of OAR 735-060-0120 to the individual;

(C) If the individual did not pass the certification drive test; or

(D) Who is known to not have valid driving privileges. Acceptable evidence of valid driving privileges are a valid driver license and CDL instruction permit.

(b) Falsify any records;

(c) Conduct drive tests without a valid CDL Third Party Examiner Certificate issued by DMV;

(d) Transfer his or her CDL Third Party Examiner Certificate to any other person;

(e) Knowingly assist a person in fraudulently obtaining driving privileges from DMV;

(f) Violate the Code of Ethics and Rules of Conduct set forth in OAR 735-060-0115;

(g) Allow any person to take a certification drive test if the CDL Examiner has reason to believe the person is under the influence of intoxicants; or

(h) Knowingly test a relative or friend of the CDL Tester or a relative or friend of any employee of the CDL Tester.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0100(8), (9) & (10)

## 735-060-0110

### Matrix Third Party Examiner Sanctions

DMV adopts the matrix of sanctions in Table 2 for CDL third party examiner violations. Table 2, Examiner Sanctions, is hereby adopted and made a part of this rule. As used in this rule, an offense will be considered a second or subsequent offense if the CDL Third Party Examiner was notified in writing within the three previous years of the occurrence of the same or a substantially similar offense. If more than three years have passed between sanctions for the same or similar offense, DMV will sanction as a first offense.

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stats. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0690; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0115

### Code of Ethics and Rules of Conduct

A CDL Third Party Tester or CDL Third Party Examiner shall adhere to the highest standards of professional conduct and shall not engage in or knowingly allow any owner, officer, agent, director, manager or employee to engage in any of the following:

(1) Assist or knowingly allow an applicant for CDL driving privileges to fraudulently:

(a) Receive a passing score for a drive test when the applicant either failed the test or did not take the test; or

(b) Obtain driving privileges for which the applicant is ineligible or has not qualified.

(2) Discrimination against any applicant for CDL driving privileges on the basis of race, religion, national origin, disability, age, sex or sexual orientation.

(3) Accepting or requiring anything of value from an applicant when it is known or it is obvious that the offer is for the purpose of influencing the CDL Third Party Tester's or CDL Third Party Examiner's scoring of a test.

(4) Having sexual relations with or requesting sexual relations from an applicant for driving privileges. For purposes of this section, "sexual relations" means:

(a) Sexual intercourse; or

(b) Any touching of the sexual or other intimate parts of a person for the purpose of arousing or gratifying the sexual desire of either party.

(5) Using physical force or a threat of physical force against an applicant, unless such force or threat is necessary to avoid immediate danger to the safety of the applicant, the CDL Third Party Examiner, employees of the CDL Third Party Tester or the general public.

(6) Possessing any unlawful controlled substance or intoxicating beverage or being under the influence of any intoxicating beverages, drugs or controlled substances while conducting a certification drive test.

(7) Falsifying of any document or knowingly making a misrepresentation on the CDL Third Party Examiner or CDL Tester applications or in any document that relates to any testing activity.

Stat. Auth.: ORS 184.616, 184.619 & 807.080

Stats. Implemented: ORS 807.080

Hist.: DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0120

### The Certification Drive Test

(1) DMV adopts the following United States Department of Transportation's Commercial Driver's License Regulations, October 1, 2002 edition, and prescribes that these regulations establish the standards that must be followed in the testing for a commercial driver license:

(a) 49 CFR § 383.75, Third Party Testing; and

(b) 49 CFR § 383.131 through § 383.135.

(2) The certification drive test conducted under the CDL Third Party Tester program shall be by a CDL Third Party Examiner. The CDL Third Party Examiner shall:

(a) Be certified by DMV; and

(b) Not conduct more than eight CDL Class A, B, or C pre-trip inspection tests and on-road drive tests within a single calendar day;

(c) Begin and end all pre-trip inspection and on-road drive tests during daylight hours;

(d) Conduct all pre-trip inspection and on-road drive tests within the State of Oregon;

(e) Conduct both the pre-trip inspection and on-road drive tests in the same type and class of commercial vehicle. Both the pre-trip inspection and on-road drive tests must be completed on the same calendar day unless the person tested has previously failed the on-road drive test;

(f) Not conduct another on-road drive test until after the minimum waiting period set forth in OAR 735-062-0070(5) has passed, if the person fails a pre-trip inspection test or an on-road drive test;

(g) Conduct the same pre-trip inspection tests and on-road drive tests that are administered by DMV examiners and use test scoring sheets approved by DMV;

(h) Not permit any person who is not a certified examiner, an official with DMV, an official with the Federal Motor Carrier Safety Administration or the person being tested to observe or participate in CDL pre-trip inspection tests or the on-road drive tests without the prior approval of DMV.

(3) The CDL Third Party Examiner shall do the following before administering a drive test:

(a) Ensure the person being tested has a valid CDL instruction permit as required by law. A drive test shall not be administered if the CDL Examiner has reason to believe that the driver's driving privileges are suspended, revoked, canceled or have otherwise been withdrawn; and

(b) View a Medical Certificate or a Medical Waiver as described in OAR 735-074-0280 issued to the person being tested that meets the requirements of OAR 735-074-0260.

(4) The certification drive test shall be conducted in accordance with the federal regulations adopted by section (1) of this rule and the methods and procedures set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated herein. The certification drive test shall include, but is not limited to, the following:

(a) A pre-trip inspection test. This test is designed to evaluate the tested driver's ability to identify and operate the equipment on the vehicle in which he or she is being tested and to detect and identify unsafe vehicle equipment items. The specific items that must be inspected during a pre-trip inspection are those listed in the Oregon Department of Transportation CDL Examiner's Manual; and

(b) An on-road drive test. This test is designed to evaluate the tested driver's competency to safely operate a commercial motor vehicle or combination of commercial vehicles under actual driving conditions. The tested driver must demonstrate safe and proper driving methods and procedures and knowledge of the traffic laws. The following apply to an on-road drive test:



# ADMINISTRATIVE RULES

(A) It shall be conducted on a drive test route approved by DMV and meeting the specifications set forth in section (4) of this rule:

(B) The commercial motor vehicle or combination of commercial motor vehicles must be of the class for which the tested driver seeks a license and must have the proper equipment in safe working order so that the vehicle(s) can be operated safely and legally. The CDL Examiner is not required to verify the safe condition of any commercial motor vehicle provided by the tested driver for an on-road test, but shall not conduct the test if it is apparent the vehicle cannot be operated safely and legally; and

(C) The commercial motor vehicle or combination of vehicles need not be loaded, but the test shall be conducted and scored as if the vehicle or combination of vehicles is loaded.

(5) The on-road drive test route shall:

(a) Be designed to enable the CDL Third Party Examiner to evaluate the ability of the driver to perform the maneuvers listed in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein; and

(b) Meet the specifications for an on-road drive test for commercial driver licensing set forth in the Oregon Department of Transportation CDL Examiner's Manual, incorporated by reference herein.

(6) The Oregon Department of Education may establish additional requirements for the pre-trip inspection and on-road drive test for applicants for a school bus driver certificate, but may not modify or omit any of the testing requirements set forth in these rules, including those in the Oregon Department of Transportation CDL Examiner Manual, incorporated by reference herein, without the prior approval of DMV.

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

Stat. Auth.: ORS 184.616, 814.619 & 807.080

Stat. Implemented: ORS 807.040, 807.070 & 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0710; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-060-0130

### The CDL Certificate(s) of Test Completion

(1) DMV shall waive the actual demonstration of an applicant's ability to drive a Class A, B, or C commercial motor vehicle under ORS 807.070(3)(b) if the applicant submits to DMV a CDL Certificate(s) of Test Completion.

(2) A CDL Certificate(s) of Test Completion, Form 6771, shall be accepted only when it is submitted by an applicant who:

(a) Has passed a Commercial A, B, or C drive test meeting the standards set forth in OAR 735-060-0120;

(b) Has valid driving privileges and has passed the necessary CDL knowledge tests and vision screening. A hardship or probationary permit does not constitute valid driving privileges; and

(c) Is applying for a Class A, B, or C commercial driver license.

(3) The CDL Certificate(s) of Test Completion shall be:

(a) On DMV Form 6771 CDL Certificate(s) of Test Completion;

(b) Completed in its entirety by a CDL Third Party Examiner with a valid Examiner Certificate issued by DMV; and

(c) Submitted to DMV within two years of the date of the certification drive test in an unopened envelope sealed by the CDL Third Party Examiner.

(4) DMV will not accept a CDL Certificate(s) of Test Completion, Form 6771, when:

(a) The applicant for a CDL failed a drive test(s) for CDL of the same class or a lower class and did not wait the required waiting period under OAR 735-062-0070 before taking a certification drive test from a CDL Third Party Examiner.

(b) The applicant submits a CDL Certificate(s) of Test Completion in an envelope that has been opened prior to its being submitted to DMV;

(c) The applicant submits a CDL Certificate(s) of Test Completion that includes any alterations;

(d) The applicant submits a CDL Certificate(s) of Test Completion that is more than 2 years after the date of the drive test; or

(e) The applicant was not tested by a CDL Third Party Examiner who is certified by DMV.

Stat. Auth.: ORS 184.616, 814.619 & ORS 807.080

Stat. Implemented: ORS 807.040, 807.070 & ORS 807.100

Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0720; MV 6-1990, f. & cert. ef. 4-2-90; DMV 1-1998, f. & cert. ef. 1-26-98; DMV 16-2003, f. & cert. ef. 11-18-03

## 735-062-0200

### Conversion From Another Jurisdiction's Commercial Driver License

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require an applicant for a commercial driver license in this state who currently holds a CDL issued by another jurisdiction to:

(a) Take and pass the Class C knowledge test and a vision screening; and

(b) Take and pass the pre-trip inspection, drive test and knowledge test required, if the person applies for a higher class license.

(2) DMV may waive the drive tests or knowledge tests, except the Class C knowledge test and the hazardous materials endorsement knowledge test, if the applicant applies for a license equal to the CDL the applicant has been issued by another jurisdiction and the CDL has not been expired for more than one year.

(3) DMV may require any applicant to take a knowledge or drive test prior to issuing a CDL.

(4) When a person has surrendered his or her Oregon CDL to obtain a CDL from another jurisdiction, DMV may replace or renew the Oregon CDL without requiring a drive test or knowledge test if:

(a) The applicant has moved back to Oregon and can provide proof of residence address in Oregon; and

(b) The Oregon CDL is not currently expired, or if expired, has not been expired for more than one year. Rather than issue a replacement CDL, DMV will renew the Oregon CDL if it is due to expire within the next 13 months.

(5) DMV will not renew an Oregon CDL unless the applicant meets the requirements of OAR 735-062-0090 and 735-074-0290.

(6) DMV will submit an inquiry through the Commercial Driver License Information System (CDLIS) and the National Driver Register (NDR)/ Problem Driver Pointer System (PDPS) before issuing, replacing or renewing an Oregon CDL. DMV will not issue, replace or renew an Oregon CDL if the inquiry shows:

(a) The applicant has a current and valid CDL, issued by another jurisdiction unless the CDL is surrendered to DMV or the applicant certifies it has been lost or destroyed;

(b) The applicant's driving privileges are suspended, revoked or canceled in another jurisdiction; or

(c) The applicant is disqualified from operating a commercial motor vehicle in another jurisdiction.

(7) The driving record of the applicant from another jurisdiction will become a part of the Oregon driving record as provided in OAR 735-060-0017.

(8) A person whose driving privileges have been suspended, revoked, or canceled in another jurisdiction or who has been disqualified from operating a commercial motor vehicle in another jurisdiction, must be eligible for valid driving privileges in the other jurisdiction before an Oregon CDL may be issued. When the person is eligible for valid driving privileges in the other jurisdiction, he or she may ask that DMV check CDLIS and NDR/PDPS to verify the eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050 & 807.070

Stat. Implemented: ORS 807.045

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0015

## 735-062-0210

### Transfer of Driver Records from Other Jurisdictions

When the driving record from another jurisdiction becomes part of the person's Oregon driving record under ORS 802.200(10)(e) the following will apply:

(1) Any convictions from the other jurisdiction's driving record shall be transferred to the person's Oregon driving record using the AAMVAnet Code Dictionary (ACD).

(2) Each driving record entry transferred shall have the same force and effect as though entered originally on the driver's record by this state.

Stat. Auth.: ORS 184.616, 184.619, 802.200, 802.540, 807.040, 807.045, ORS 807.050, 807.060, 807.070, 807.150, 807.170 & 809.310

Stat. Implemented: ORS 802.200

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0017

## 735-074-0260

### Medical Standards for Drivers of Commercial Motor Vehicles

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) adopts the United States Department of Transportation regulations contained in 49 CFR §§391.41 through 391.49 (2002) pertaining to physical qualifications and medical examination of drivers of commercial motor vehicles. Except as provided in section (2) of this rule, a person must obtain a medical certificate meeting the requirements of these federal regulations to qualify for a Class A, B, or C commercial driver license.

(2) DMV may issue a Class A, B, or C commercial driver license to a person who does not qualify for a medical certificate under section (1) of this rule if the person is issued a Waiver of Physical Disqualification, by the Motor Carrier Transportation Division of the Oregon Department of

# ADMINISTRATIVE RULES

Transportation under OAR 740-100-0140. The Waiver Of Physical Disqualification shall indicate any conditions and limitations for issuance of a restricted commercial license if applicable.

Stat. Auth.: ORS 184.616, 184.619 & 807.040  
Stats. Implemented: ORS 807.040 & 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140

## 735-074-0270

### Who Must Have an Approved Medical Certificate

(1) A person with a Class A, B, or C commercial license who drives any Class A, B, or C commercial motor vehicle must have an approved medical certificate in their immediate possession.

(2) To be an approved medical certificate:

(a) It must be listed in OAR 735-074-0280; and

(b) The date of examination indicated on the medical certificate must not be more than two years prior to the date of the operation of the vehicle.

(3) A person who does not have a valid medical certificate approved by the Driver and Motor Vehicle Services Division of the Department of Transportation may drive only non-commercial vehicles even if the person has a Class A, B, or C commercial driver license.

Stat. Auth.: ORS 184.616, 184.619 & 807.040  
Stats. Implemented: ORS 807.040 & 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0740; MV 6-1990, f. & cert. ef. 4-2-90; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0150

## 735-074-0280

### Approved Medical Certificates

DMV approves the following as medical certificates for use when driving Class A, B, or C commercial motor vehicles within Oregon:

(1) Waiver of Physical Disqualification (issued by the ODOT Motor Carrier Transportation Division);

(2) Skill Performance Evaluation Certificate (issued by the Federal Motor Carrier Safety Administration);

(3) Oregon School Bus Driver's Certificate or Oregon School Bus Driver's Permit (issued by the Oregon Department of Education); and

(4) Any medical certificate that complies with Title 49, Chapter III, Sections 391.41 through 391.49, of the Federal Motor Carrier Safety Regulations. Compliance with these requirements must be explicitly stated on the medical certificate issued.

Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 807.040  
Stats. Implemented: ORS 807.040 & ORS 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; MV 4-1987, f. & ef. 5-18-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0750; MV 24-1988, f. & cert. ef. 7-1-88; MV 24-1989, f. & cert. ef. 10-3-89; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 16-2003, f. & cert. ef. 11-18-03; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0160

## 735-074-0290

### Medical Certificate Procedures

(1) DMV will issue a Class A, B, or C commercial driver permit or license only to applicants who present an approved medical certificate when applying for an original Class A, B, or C commercial permit or driver license.

(2) To be an approved medical certificate, it must be:

(a) Listed in OAR 735-074-0280; and

(b) Issued within two years of the date of the application for license.

(3) An applicant for renewal of a Class A, B, or C commercial driver license used in interstate operations must certify on the renewal application he or she meets all of the driver qualification requirements as required by Part 38, § 383.71(c)(1) of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation (codified at 49 CFR § 383.71).

(4) A person who renews a Class A, B, or C commercial driver license by mail (when eligible to receive a driver license extension) must certify on the renewal application that he or she meets all of the driver qualification requirements as required by part 383, §383.71(c)(1) of the Federal Motor Carrier Safety Regulations (FMCSR) of the U.S. Department of Transportation (codified at 49 CFR § 383.71).

(5) DMV will return a Class A, B, or C commercial driver license renewal application to a licensee who does not certify he or she meets all the driver qualification requirements as required in subsections (3) and (4) of this rule.

(6) DMV may issue a Class C or Class C restricted driver license to a person who applies for the renewal of a Class A, B, or C commercial driver license if the person cannot certify he or she meets the driver qualification requirements as required in subsections (3) and (4) of this rule. The lower class of license issued shall be the class requested by the applicant.

When this is done, the person must go to a DMV office to receive a new license.

(7) A driver who needs to replace a medical certificate because it is lost, mutilated, or destroyed may obtain a duplicate from the same source from which they obtained the original medical certificate.

(8) DMV is not responsible for any expenses an applicant may incur from the acquisition of an approved medical certificate or duplicate medical certificate.

Stat. Auth.: ORS 184.616, 184.619 & 807.040  
Stats. Implemented: ORS 807.040 & 807.100  
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0760; MV 4-1987, f. & ef. 5-18-87; MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0170

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**Adm. Order No.:** DMV 17-2003

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 11-18-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 735-080-0010, 735-080-0030

**Subject:** These rules relate to the program for issuance of disabled person parking permits. The proposed amendments redefine what constitutes an authorized program for purposes of obtaining a program placard issued under ORS 811.607. Previously the applicant had to provide documentation from a city, county, or state that the program is a recognized program for the transportation of disabled persons of an adult foster care home. The amendments allow the applicant to certify it is an authorized program.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-080-0010

### Definitions Relating to Disabled Person Parking Permits

The following definitions apply to OAR 735-080-0010 through 735-080-0080:

(1) "Authorized family" means a family residing in Oregon with more than one disabled person residing within the same household.

(2) "Authorized program" means a transportation provider that operates at least one vehicle regularly as part of a program for the transportation of disabled persons and includes, but is not limited to a nonprofit organization, an agency, a residential care facility, an assisted living facility, a disabled or medical transportation service, or an adult foster care home.

(3) "Certificate" means a statement signed by a licensed physician, certified physician assistant, certified nurse practitioner or licensed optometrist on an application for a disabled person parking permit that certifies the applicant is either a temporarily disabled person or a disabled person whose condition is expected to continue for a period of at least four years.

(4) "Certified nurse practitioner" means a registered nurse who has been certified by the Oregon State Board of Nursing as qualified to practice in an expanded specialty role within the practice of nursing.

(5) "Certified physician assistant" means a person who is registered as a physician assistant pursuant to ORS 677.505 to 677.525 and is in compliance with all administrative rules and regulations of the Oregon Board of Medical Examiners.

(6) "Disabled parking identification card" means an identification card issued by DMV to a disabled person, in conjunction with a disabled person parking permit, that contains the person's name, address and other identifying information, but does not contain a photograph of the disabled person.

(7) "Disabled person" means a disabled person as defined in ORS 801.235.

(8) "Disabled person parking decal" means a decal issued by DMV for use on a motorcycle, golf cart or similar vehicle that gives special parking privileges as provided in ORS 811.635.

(9) "Disabled person parking permit" means a renewable or temporary permit issued by DMV that gives special parking privileges as provided in ORS 811.635 or 811.637.

(10) "DMV" means the Driver and Motor Vehicle Services Division of the Department of Transportation.

(11) "Expiration date" means:

(a) For a renewable disabled person parking permit, the date the person's driver license, identification card, disabled parking identification card or golf cart driver permit will expire;

(b) For a temporary disabled person parking permit, the date a licensed physician, certified physician assistant or certified nurse practitioner certifies to be the date a temporarily disabled person will no longer

# ADMINISTRATIVE RULES

need a temporary disabled person parking permit, but not to exceed six months;

(c) Eight years from the date a placard is issued to an authorized program;

(d) Eight years from the date a placard is issued to an authorized family.

(12) "Licensed optometrist" means a person licensed by the Oregon Board of Optometry pursuant to ORS 683.020 to measure and diagnose visual acuity of the human eye and treat vision defects by means of prescription and adaptation of lenses to preserve or restore maximum range of vision.

(13) "Physician" means a person who holds a degree of Doctor of medicine, osteopathy, podiatry, chiropractic or naturopathy, and is licensed pursuant to Oregon law.

(14) "Renewable disabled person parking permit" means a permit issued by DMV to a person whose condition is expected to continue for a period of at least four years, or a permit issued to an authorized program or family.

(15) "Temporary disabled person parking permit" means a permit issued to a temporarily disabled person under ORS 811.606 by DMV that gives special parking privileges as provided in ORS 811.635.

(16) "Temporary duplicate permit" means a permit valid for 30 days that is issued to a person who needs a duplicate disabled person parking permit for travel purposes only.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.603, 811.607 & 811.609

Stats. Implemented: ORS 811.602 - 811.640

Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0800; MV 4-1988, f. & cert. ef. 2-2-88; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 6-1996, f. & cert. ef. 8-15-96; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 17-2003, f. & cert. ef. 11-18-03

## 735-080-0030

### Application for Disabled Person Parking Permits

Before DMV may issue a disabled person parking permit, a person must apply to DMV.

(1) An applicant for an individual placard must submit an application that contains the applicant's name, address and a certificate as described in ORS 811.604(1)(a), and the number of the applicant's current driver license, identification card, disability golf cart driver permit.

(2) An applicant for a program placard must submit an application containing the program name and address. The applicant must certify that it is an authorized program for the transportation of disabled persons.

(3) An applicant for a family placard must submit an application containing the names of all disabled family members, the family's residence address and a statement from a licensed physician certifying that the family has more than one disabled person residing in the same household.

(4) An applicant for a temporary disabled person parking permit must submit an application that meets the requirements of ORS 811.606 and contains the applicant's name and address and the certificate required by ORS 811.604, including a date when the applicant will no longer need the permit, if known.

Stat. Auth.: ORS 184.616, 184.619, 811.602, 811.607 & 811.609

Stats. Implemented: ORS 811.602 & 811.604 - 811.609

Hist.: MV 11-1985, f. 9-19-85, ef. 9-20-85; MV 30-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-110-0820; MV 38-1989, f. & cert. ef. 10-3-89; MV 20-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 18-2001(Temp), f. & cert. ef. 9-21-01 thru 3-19-01; DMV 6-2002, f. & cert. ef. 3-14-02; DMV 17-2003, f. & cert. ef. 11-18-03

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**Adm. Order No.:** DMV 18-2003

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

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Adopted:** 735-170-0110, 735-170-0120, 735-170-0140

**Rules Amended:** 735-170-0000, 735-170-0010, 735-170-0020, 735-170-0030, 735-170-0050, 735-170-0060, 735-170-0070, 735-170-0090, 735-170-0100, 735-174-0000, 735-174-0010, 735-174-0020, 735-174-0030, 735-174-0040

**Rules Ren. & Amended:** 735-174-0050 to 735-170-0045, 735-174-0060 to 735-170-0130

**Subject:** Division 170 rules relate to record keeping and reporting requirements for Oregon Motor Vehicle Fuel Dealers. The rule changes establish what constitutes evidence that a dealer did not intend to avoid payment of license taxes for the purposes of establishing required bonding levels; establish a method of notifying licensed motor vehicle fuel dealers that a dealer's license has been suspended or revoked; establish the process for dealers to submit

refund claims for uncollectible accounts; incorporate updated forms and reporting requirements; and replace or delete outdated or unnecessary language. Division 174 rules relate to record keeping and information required to support refund claims for Oregon motor vehicle fuel tax. Amendments relate to new requirements for claiming tax exemption by licensed dealers for exports of motor vehicle fuel from the State of Oregon. Other amendments are for clarification and to replace or delete outdated or unnecessary language.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-170-0000

### Definitions

(1) To "Import" means to bring motor vehicle fuel or aircraft fuel into the State of Oregon by means of your own truck vehicle, aircraft, container, or otherwise, excluding only fuel imported in the fuel tank of your truck, aircraft, or other vehicle and ultimately used only as fuel for the propulsion of said vehicle or aircraft.

(2) "Cause to be Imported" means to have motor vehicle fuel or aircraft fuel brought into the state at your order, request, or solicitation.

(3) "ODOT Fuels Tax Group" means the organizational unit within Financial Services, Central Services Division of the Oregon Department of Transportation that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(4) "Ex-tax" means that tax is not included in the price of the fuel.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.010-319.430

Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0005; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0010

### Records Required

Every licensed dealer shall maintain and keep at least the following:

(1) Stock summary showing monthly totals for the gallons of motor vehicle fuel or aircraft fuel handled within the State of Oregon with an analysis as to inventories, receipts, sales, use, transfers, and loss or gain.

(2) Purchase journal showing the number of gallons of motor vehicle fuel or aircraft fuel purchased or received each month supported by purchase invoices or other documents.

(3) Sales journal showing the number of gallons of motor vehicle fuel or aircraft fuel sold or distributed each month, supported by sales invoices covering each sale or delivery. Sales invoice forms shall be approved by the ODOT Fuels Tax Group and shall include at least the following information:

(a) Date of sale or delivery;

(b) Name of place or storage facility from which sale or delivery is made if the vendor has more than one branch or if the origin point is different from the mailing address;

(c) Name of licensed dealer making the sale or delivery;

(d) All invoices shall separately state and describe to the satisfaction of the ODOT Fuels Tax Group the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the ODOT Fuels Tax Group are maintained;

(e) Name and address of the purchaser and delivery point if different than the address;

(f) The gallons of motor vehicle fuel or aircraft fuel sold;

(g) When motor vehicle fuel or aircraft fuel is sold to a person who claims to be entitled to a refund of the tax, the invoice must show no corrections or erasures; and

(h) Where the storage facility or sale point is located near the state border and where sales therefrom are made to customers residing both within and outside the State of Oregon, the invoice shall clearly show the place and state where the licensed dealer actually made delivery to the customer.

(4) A record showing all withdrawals of motor vehicle fuel or aircraft fuel from storage for use by the licensed dealer. Such record shall be summarized into monthly totals and shall show separately the number of gallons used for non-highway purposes and the number of gallons used in highway vehicles. Records shall also be maintained showing the total number of miles traveled each month and the total number of gallons of fuel used (segregated as to fuel withdrawn from licensee's bulk storage and fuel received from other sources) by each highway vehicle. Such records are to be kept in the accounting office where the periodical tax audit is to be made and must cover all distributing locations which are operated under the dealer license, whether such distributing locations are operated by employees of the licensee or by commission agents. In addition, individual fueling records, including purchase invoices, when fuel for vehicles is obtained from sources other than licensee's bulk storage, shall be kept and made available for audit when requested.

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(5) A physical inventory of motor vehicle fuel and aircraft fuel stocks shall be taken at least at the end of each calendar month and preserved for audit purposes.

(6) All required records shall be summarized into calendar month totals and shall be centralized in the accounting office where the periodical tax audit is to be made.

(7) If at any time the auditor for the state is required to go outside the State of Oregon in order to examine the licensee's records, the licensee shall reimburse the state for travel expenses, including transportation, meals, and lodging costs, incurred by said auditor.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.390 & ORS 319.400

Hist.: MV 22, f. 2-15-63; Administrative Renumbering 3-1988, Renumbered from 735-011-0055; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0020

### Tax Report Forms

(1) Every dealer must prepare a tax report which completely summarizes the number of gallons of motor vehicle fuel or aircraft fuel sold, distributed, or used in the State of Oregon each month. Tax report forms to be used are the:

(a) Signed Motor Vehicle Fuel and Aircraft Fuel License Tax Report, Form 1302;

(b) The Stock Summary schedule Form 1303; and

(c) Supporting detail Schedules 1, 2, 3, 4, 5.1, 5.2, 5.3, 6, 7, and 8 as appropriate to support entries on Form 1303.

(2) The following forms are available for preparing detail schedules. The most current version of such forms shall be used:

(a) Form 1303 is to be used in preparing the Stock Summary schedule;

(b) Form 1304 is a multiple use form to be used in preparing the detail schedule of receipts 1, 2, 3 and 4;

(c) Form 1305 is a multiple use form to be used in preparing the schedule of disbursements 5.1, 5.2, 5.3, 6, 7, and 8;

(d) Form 1306 is to be used only to support miscellaneous deductions not elsewhere reported.

(3) Only the signed report, Form 1302, the Stock Summary, Form 1303, and such other of the detail schedules as are necessary to completely explain the various entries to these forms are required to be submitted on or before the 25th of each month. Machine tabulated data will also be accepted where a great amount of detail is involved.

(4) A separate set of forms shall be prepared by or for each division or other accounting territory of the licensee with a summarized or consolidated set of forms prepared by the reporting office of the licensee covering all distribution within Oregon.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.190, ORS 319.390 & ORS 319.400

Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0105; MV 7-1988, f. & cert. ef. 2-29-88; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0030

### Tax Report Preparation

(1) The Motor Vehicle Fuel and Aircraft Fuel License Tax Report, Form 1302, shall be completed, signed and accompanied by the Stock Summary, Form 1303 and such supporting detail schedules as are necessary to explain entries on line 8 of Form 1302 and lines 2 to 6 and 8 to 13 of Stock Summary Form 1303.

(2) Stock Summary Schedule, Form 1303, shall summarize the total number of gallons of motor vehicle fuel or aircraft fuel handled within Oregon.

(3) Schedule 1, Form 1304, shall state the number of gallons of motor vehicle fuel and aircraft fuel acquired in Oregon on an Oregon tax paid to supplier basis.

(4) Schedule 2, Form 1304, shall state the number of gallons of motor vehicle fuel and aircraft fuel acquired in Oregon with the Oregon tax not paid to supplier.

(5) Schedule 3, Form 1304, shall state the number of gallons of motor vehicle fuel and aircraft fuel sold or distributed from storage facilities, distributing stations, refineries, etc., located outside of Oregon and imported or for importation into the state. Enter on this schedule all sales to Oregon customers which are made directly from storage facilities or distributing plants located in other states, also all sales made from delivery equipment or carriers operating out of supply points located outside of Oregon.

(6) Schedule 4, Form 1304, shall state the number of gallons of motor vehicle fuel and aircraft fuel imported into Oregon tax free storage.

(7) Schedule 5, Form 1305, shall state the number of gallons of motor vehicle fuel and aircraft fuel subject to Oregon tax. Gallons reported on Schedule 5 shall also include all motor vehicle fuel or aircraft fuel delivered to retail service stations or bulk storage tanks which are connected by

means of pipe lines with retail service pumps that are used to fuel motor vehicles or aircraft, even though such service stations or bulk tanks may be owned and operated by the licensed dealer. Gallons reported on Schedule 5 must be allocated to one of the following sub-schedules as appropriate:

(a) Schedule 5.1 — Deliveries to your own Service Stations, Card/Keylocks in Oregon.

(b) Schedule 5.2 — Tax-Included Sales or Distributions to Oregon Licensed Dealers.

(c) Schedule 5.3 — All Other Taxable Sales, Use or Distribution.

(8) Schedule 6, Form 1305, shall state the total number of gallons of motor vehicle fuel or aircraft fuel sold, exchanged or distributed ex-tax to Oregon licensed dealers:

(a) Use this schedule for reporting all sales or deliveries of motor vehicle fuel or aircraft fuel to Oregon licensed dealers upon which the state tax is not charged. Also include on Schedule 6 shipments sold, exchanged or distributed ex-tax in Oregon to Oregon licensed dealers where the shipment is destined for points outside Oregon.

(b) A separate total for each licensed dealer shall be shown and shall be supported by detail set out on supporting Schedule 6, Form 1305, which is required to be submitted in duplicate.

(9) Schedule 7, Form 1305, shall summarize the number of gallons of motor vehicle fuel or aircraft fuel sold or distributed from storage facilities or locations located within the State of Oregon and exported to other states, territories, or countries in which the licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country. This schedule shall also be used to show separately product transfers from storage facilities or distributing stations located within the State of Oregon and exported to other states, territories, or countries in which the licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country:

(a) Use this schedule to claim tax exemption for fuel exported and delivered to customers or storage facilities owned or controlled by the licensed dealer located outside of Oregon where the licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country;

(b) Fuel sold, distributed, or transferred to other states, territories, or countries in which the licensed dealer does not hold a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country is subject to Oregon tax and must be reported on Schedule 5.3;

(c) A separate total for each state, territory, or country shall be shown and shall be supported by detail set out in supporting Schedule 7, Form 1305, which is required to be submitted in duplicate;

(d) Each entry to Schedule 7 except those representing exports in equipment owned and operated or completely controlled by the dealer is to be supported by a properly executed certificate of exportation; and

(e) For complete instructions relative to claiming such exemptions and to executing export certificates, see OAR 735-170-0050 through 735-170-0070.

(10) Schedule 8, Form 1305, shall state the number of gallons of motor vehicle fuel and aircraft fuel sold or distributed ex-tax within Oregon to the Armed Forces of the United States for use in ships, aircraft or for exportation:

(a) Use this schedule for claiming exemption of tax when motor vehicle fuel or aircraft fuel is sold by the dealer to the Armed Forces of the United States for use in ships, aircraft or for exportation.

(b) Tax exemption may be claimed on this schedule for aircraft fuel sold in Oregon by other than a license dealer to the Armed Forces of the United States for use in aircraft provided exemption certificate Form 1338 is obtained at time of sale.

(c) Each entry to Schedule 8 is to be supported by a properly executed exemption certificate (Form 1338).

(11) Form 1306, Miscellaneous Deduction Schedule, shall be used for claiming miscellaneous tax exemptions for non-highway use, and other miscellaneous deductions. However, entries that reverse, cancel, or correct transactions should be made on the respective schedule to which they relate and submitted with the appropriate amended Forms 1302AA and 1303AA, Forms 1302MA and 1303MA, or Forms 1302JA and 1303JA.

(12) Form 1302AA and Form 1303AA, completed in the format and manner prescribed by the ODOT Fuels Tax Group, shall be used to show increases or decreases to aviation gasoline gallons reported and tax paid for a previously reported tax period.

(13) Form 1302MA and Form 1303MA, completed in the format and manner prescribed by the ODOT Fuels Tax Group, shall be used to show increases and decreases to gasoline and ethanol gasoline gallons reported and tax paid for a previous reported tax period.

(14) Form 1302JA and Form 1303JA, completed in the format and manner prescribed by the ODOT Fuels Tax Group, shall be used to show

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increases or decreases to jet fuel gallons reported and tax paid for a previously reported tax period.

Stat. Auth.: O RS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.190, 319.240, 319.390 & ORS 319.400  
Hist.: MV 22, f. 2-15-63; MV 24, f. 8-22-63, ef. 9-22-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0110; MV 49-1989, f. 11-16-89, cert. ef. 1-1-90; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0045

### Motor Vehicle Fuel Tax Waiver of Late Payment Penalties

(1) ORS 319.180(4) allows the ODOT Fuels Tax Group to waive penalties for late payment of motor vehicle fuel tax.

(2) Any 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, 184.619 & 319.180  
Stat. Imp.: ORS 319.180  
Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0745; Renumbered from 735-174-0050 by DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0050

### Transactions Which May Be Classed as Export Sales

Transactions which may be classed as export sales reportable on Schedule 7 consist of:

(1) Motor vehicle fuel and aircraft fuel actually and in fact exported and delivered to customers at points outside the State of Oregon by means of equipment owned and operated or completely controlled by the Oregon licensed dealer, where the Oregon licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country. No exportation certificate is required for these sales.

(2) Motor vehicle fuel and aircraft fuel delivered by the Oregon licensed dealer to a rail, motor, or other "carrier" not owned, managed, or controlled by the consignee, or an officer or officers of the consignee, in case the consignee is a corporation, for transportation to a destination outside of the State of Oregon; provided, that the terms of the shipping contract definitely establish that the said Oregon licensed dealer actually and in fact retains title to and control over said fuel until actual delivery to its destination outside of the State of Oregon, where the Oregon licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country. ODOT may require these sales to be supported by a Certificate of Exportation, Form B, 1318, as specified in OAR 735-170-0060.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.240  
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0205; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0060

### Certificate of Exportation Requirements

ODOT may require a dealer to submit a Certificate of Exportation Form B, 1318, in support of claims on account of exportation of motor vehicle fuel from the State of Oregon as provided in OAR 735-170-0050(2). When required to do so, a dealer shall:

(1) Complete a Certificate of Exportation Form B, 1318;

(2) File the certificate in the principal office of the dealer within three months after the close of the calendar month during which the shipments were made, unless a request for extension of time has been made and approved;

(3) Retain the duplicate copy of the Form B certificate in the principal office of the dealer; and

(4) File the original copy of the Form B certificate with the ODOT Fuels Tax Group of the State of Oregon on or before the tenth day of the fourth month following the calendar month during which the shipment is made.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.240  
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0210; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0070

### Special Requirements Relating to Reporting and Recording Export Sales

(1) Motor vehicle and aircraft fuel sold by Oregon licensed dealers to other Oregon licensed dealers, the destinations of which shipments are points outside the State of Oregon, should be reported on Schedule 6 of the tax report and need not be supported by certificates of exportation. Oregon licensed dealers purchasing such fuels shall report the exportation from Oregon of the same on Schedule 7 of the monthly tax report whenever the delivery is to any person or location other than to themselves and to their own storage facilities if the Oregon licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country. If the Oregon licensed dealer does not hold a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country, the stock transfers must be reported on Schedule 5.3.

(2) Stock transfers of motor vehicle and aircraft fuels consigned and delivered to the Oregon licensed dealer's own storage facilities located in other states, territories or countries need not be supported by a certificate of exportation but must be listed on Schedule 7 of the monthly tax report if the Oregon licensed dealer holds a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country. If the Oregon licensed dealer consigning or delivering to the dealer's own storage facilities does not hold a valid motor vehicle fuel dealers license or its equivalent issued by the destination state, territory or country, the stock transfers must be reported on Schedule 5.3.

(3) Sales or other deliveries of motor vehicle and aircraft fuel made from stock located within the State of Oregon must be reported as Oregon distribution and supported by exportation certificates if:

(a) The sales or deliveries are consigned or shipped to points outside the State of Oregon; and

(b) The invoicing or billing is transferred to locations or offices located in other states.

(4) All export sales for which tax exemption is claimed shall be reported on Schedule 7 of the monthly tax report.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.240 & ORS 319.270  
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0215; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0090

### Exemption Certificates

(1) Every sale or delivery to the Armed Forces of the United States upon which tax exemption is claimed must be supported by Exemption Certificate Form 1338 supplied by the ODOT Fuels Tax Group.

(2) In order to obtain exemption from the tax, Form 1338 must be completed and signed at the time of sale and delivery. Whenever the vendor is other than an Oregon licensed dealer, the Form 1338 may be turned over to a dealer for credit and for inclusion with the dealer's monthly tax report. All Form 1338 certificates shall be placed on file in the dealer's office where the tax audit is to be made.

(3) All claims for tax exemption are to be entered on Schedule 8, Form 1305.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.250  
Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0255; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0100

### Fuel Lost or Destroyed — Tax Exemption Requirements

The following requirements are for claims by Oregon licensed dealers for exemption from the Oregon tax on motor vehicle fuel or aircraft fuel lost or destroyed through transportation and other mishaps prior to the time title to the product passes from the licensed dealer:

(1) Motor vehicle fuel or aircraft fuel lost by a carrier or other person in this state shall be included in the taxable distribution section of the monthly tax report, Form 1302. When a carrier or person responsible for lost motor vehicle or aircraft fuel furnishes acceptable documentary proof of actual loss, credit for the Oregon tax may be taken on Form 1302. Acceptable documentary proof of the loss, as described in section (2) of this rule, must be submitted to the ODOT Fuels Tax Group for approval. After approval by the ODOT Fuels Tax Group, the documents shall be filed with the accounting records in the dealer's office where the tax audit is to be made. Credits for approved losses shall be reported on Form 1306 of the monthly tax report. If the carrier or other person being invoiced is licensed as a dealer, the loss shall be reported on Schedule 6.

(2) Acceptable documentary proof of loss will include the following:

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(a) A signed statement by the driver of the vehicle, or some person having actual knowledge of the loss, stating:

- (A) The circumstances surrounding the accident or mishap;
- (B) The total quantity of fuel shipped;
- (C) The quantity of fuel actually lost or destroyed;
- (D) The quantity of fuel salvaged;
- (E) The disposition of the salvaged fuel; and
- (F) The procedure used in the determination of the exact quantity of fuel lost or destroyed.

(b) A certified copy of the carrier's settlement of claim against the insurance company, if the loss is occasioned by a for-hire or other insured carrier. The details required by subsection (2)(a) of this rule shall be supplied; or

(c) A signed statement by a State Police officer or other person witnessing the accident or mishap, which:

- (A) Sets out the details of the accident; and
- (B) States the quantity of fuel actually lost as nearly as can be determined by the officer or other person. The details required by subsection (2)(a) of this rule shall be supplied.

(3) Losses which occur through accident or mishap to the dealer's own equipment shall be supported by a signed statement made by the driver of the vehicle or person directly in charge of the equipment at the time of the accident. The statement shall include the details required by subsection (2)(a) of this rule. This statement shall be filed in the dealer's office where the tax audit is to be made.

(4) A tax exemption cannot be allowed when motor vehicle fuel is lost under the following conditions:

(a) Fuel lost from storage tanks which are directly connected by means of a pipe line to retail service station pumps, or fuel over which the licensed dealer no longer retains complete control; or

(b) Fuel claimed to have been lost from spillage, leaky valves, loose connections, unloading mishaps, leaky or defective storage tanks, etc., where the nature of the loss is such that it cannot be positively established that an actual loss did occur and the exact quantity cannot be determined.

(5) In all cases where employers, agents, carriers, or other persons fail to account satisfactorily or completely for motor vehicle fuel and are charged by the dealer with the value of the product, such transactions shall be included in the computation of the license tax.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.010

Hist.: MV 22, f. 2-15-63; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0300; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0110

### Evidence Demonstrating that a Dealer did not Intend to Avoid Paying Taxes for Purposes of Determining the Bond Amount

(1) For purposes of Oregon Law 2003, Chapter 52, Section 4, the following constitutes evidence that a dealer did not intend to avoid payment of license taxes if the conduct described in Oregon Laws 2003, Chapter 52, Section 4 was due to:

(a) Error on the part of the dealer's financial institution where the dealer can show that such error was not attributable to the dealer;

(b) An Act of God or natural disaster, i.e., earthquake, flood, fire, severe weather conditions;

(c) An act of war or terrorism;

(d) Medial emergencies resulting in incapacitation of key personnel responsible for reporting and remitting taxes;

(e) Mail theft, errors or other actions committed by the mail carrier or another party after the tax report or tax payment leaves the dealer's control or possession; or

(f) Other evidence or explanations presented by the dealer demonstrating to the satisfaction of the ODOT Fuels Tax Group that the dealer's conduct as described in Oregon Laws 2003, Chapter 52, Section 4, was not intentional or purposely designed to avoid payment of license tax.

(2) If the conduct described in Oregon Laws 2003, Chapter 52, Section 4 was due to carelessness, negligence, inattention or disregard of duties on the part of the dealer or their staff, the ODOT Fuels Tax Group will not grant a waiver of the bond increase.

(3) The dealer shall present a written request for waiver of the bond increase and all related evidence to support the request, to the ODOT Fuels Tax Group within 30 days of the date of notice of bond increase. The ODOT Fuels Tax Group will respond to the waiver request within 30 days of receipt.

Stat. Auth.: ORS 184.616, 184.619 & OL 2003, Ch. 307(2)

Stats. Implemented: OL 2003, Ch. 307(2)

Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0120

### Notice of Suspension/Revocation – Method of Delivery

(1) Each licensed dealer shall provide the ODOT Fuels Tax Group, by mail, with an address and contact information for the purpose of notification of license suspension under ORS 319.100(4) and Oregon Laws 2003, Chapter 113, Section 2(2)(b) (effective 1-1-04).

(2) The address and contact information as described in section (1) of this rule may be in the form of a postal address or an e-mail address, and a telephone contact.

(3) Not later than the first business day following suspension or revocation of an Oregon Motor Vehicle Fuel dealer license, the ODOT Fuels Tax Group will serve official notice to license dealers as follows:

(a) The Group will telephone fuel suppliers listed on the most recent tax report of the suspended or revoked dealer.

(b) The Group will notify all licensed dealers of the suspension or revocation at the postal address or e-mail address provided by each dealer.

(4) Each licensed dealer will notify the ODOT Fuels Tax Group of any change of address or contact information for the purpose of serving notices of suspension or revocation. The information most recently received by the Group from each licensed dealer will be the information that fulfills the Department's notice requirements of Oregon Laws 2003, Chapter 113, Section 2(2)(b) (effective 1-1-04).

Stat. Auth.: ORS 184.616, 184.619 & OL 2003, Ch. 307(2)

Stats. Implemented: OL 2003, Ch. 307(2)

Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0130

### Motor Vehicle Fuel Tax Credit of Interest on Tax Overpayments

(1) The ODOT Fuels Tax Group may allow interest credit for overpayments of motor vehicle fuel tax up to the amount of interest paid for underpayments of tax during any given audit period.

(2) For purposes of ORS 319.180(5)(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 319.180(5)(b).

Stat. Auth.: ORS 184.616, 184.619 & 319.180

Stat. Imp.: ORS 319.180

Hist.: MV 37-1987, f. 12-7-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0755; Renumbered from 735-174-0060 by DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-170-0140

### Motor Vehicle Tax Refunds to License Oregon Motor Vehicle Fuel Dealers for Uncollectible Accounts

(1) Application for refunds to licensed dealers for taxes paid attributable to uncollectible accounts pursuant to Oregon Laws 2003, Chapter 307, Section 2 (effective 1-1-04) shall be made on Amended Oregon Motor Vehicle Tax Report Forms 1302MA, 1302AA, or 1302JA as appropriate to the type of fuel for which tax is to be refunded. Gallons attributable to the uncollectible accounts shall be entered on line 8 of the form.

(2) The dealer must submit the following in order to support the claim:

(a) Form 1306, listing the detail fuel loads for which the refund is claimed;

(b) A copy of the original Form 1302 and supporting Schedule 5.1, 5.2 or 5.3 on Form 1305 that includes the fuel loads for which the refund is claimed;

(c) Invoices supporting the fuel sales being claimed as uncollectible;

(d) A statement showing the name and address of the purchaser of the fuel;

(e) A statement, signed by the licensed dealer, describing what actions have been taken to collect on the account and why the account is now uncollectible;

(f) A statement, signed by the licensed dealer, that the dealer has not previously received a refund from ODOT for motor vehicle fuel taxes not paid by the same purchaser;

(g) Certification that the debt meets Internal Revenue Service standards for deductibility; and

(h) Any additional supporting evidence, such as bankruptcy notices or other public notices, that support the account being uncollectible.

(3) Upon review and approval of the application for refund, the ODOT Fuels Tax Group shall issue the refund within 90 days after the date of approval.

Stat. Auth.: ORS 184.616, 184.619 & OL 2003, Ch. 307(2)

Stats. Implemented: OL 2003, Ch. 307(2)

Hist.: DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

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## 735-174-0000

### General Provisions for Fuels Tax Refunds

(1) "ODOT Fuels Tax Group" means the organizational unit within Financial Services, Central Services Division of the Oregon Department of Transportation that is primarily charged with the administration of ORS 319.010 through 319.880 on behalf of the State of Oregon.

(2) Motor Vehicle Fuel — Gasoline. The Oregon law provides that any person who has purchased motor vehicle fuel and who has paid any tax, either directly or indirectly, levied under the provisions of ORS 319.010 through 319.430, shall be entitled to a refund when such motor vehicle fuel is exported from the state (under certain conditions) or is used by the claimant for certain purposes. To obtain the refund, the claim must be filed within the prescribed time limits in ORS 319.290 on forms supplied by the ODOT Fuels Tax Group. The claim must be accompanied by the original invoices or reasonable facsimiles approved by the ODOT Fuels Tax Group, showing purchase of the fuel.

(3) Special fuels — Diesel Oil, Propane, etc. Use Claim Form 1200. The Oregon Use Fuel Tax Law, ORS 319.510 through 319.880 authorizes refund of any tax paid in the same manner and subject to substantially the same conditions as is provided for gasoline. Vehicles subject to, and for which operators report and pay mileage taxes to the Oregon Department of Transportation in accordance with the weight group rates prescribed in ORS 767.815 through 767.825, are exempt from the use fuel tax and, because no tax is paid, a refund of tax is not applicable.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.280, 319.320 & 319.831  
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0701; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-174-0010

### Tax Refunds on the Use of Gasoline and Other Motor Vehicle Fuels

(1) General Use and Export Claims, Form 1200, shall be used for all claims for export or refundable use defined in ORS 319.280 and 319.320. Claims based on the export of fuel out of Oregon will be allowed only if the person claiming the refund holds a valid motor vehicle fuel dealer's license, or equivalent, issued by the state, territory or country to which the fuel is exported and where it is unloaded. The ODOT Fuels Tax Group may require claimants to submit proof of such a license.

(2) Aircraft Fuel Use. Form 1203 shall be used for all claims for fuel used in aircraft. Most sellers of aircraft fuel are licensed to acquire and to sell such fuel including only the rates of tax applicable to aircraft fuel provided in ORS 319.020(2). These rates of tax are not refundable except as provided in ORS 319.330.

(3) Licensed Dealer Claims. Instead of filing refund claims, a licensed dealer in motor vehicle fuel may enter the gallons of motor vehicle fuel on Form 1306, Miscellaneous Deduction Schedule, included with the monthly tax report Form 1302. In doing so, all requirements pertaining to refund claims must be complied with.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880  
Stats. Implemented: ORS 319.280 & ORS 319.330  
Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 33, f. 9-12-67, ef. 9-13-67; MV 48, f. 10-5-72, ef. 10-15-72; MV 53, f. 2-20-74, ef. 3-11-74; MV 4-1980, f. & ef. 3-4-80; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0706; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-174-0020

### Records and Invoice Requirements

(1) The law requires a claimant to keep records sufficient to substantiate the accuracy of a claim. Failure of the claimant to maintain required records or to allow examination of them constitutes a waiver of all rights to the refund.

(2) The following rules shall govern records maintained to support refund claims:

(a) Highway and Non-Highway Use of Fuel from Common Storage. Fuel purchased and delivered into bulk storage for use in vehicles on public roads and for non-highway use, must be fully accounted for by detail withdrawal records to accurately show the manner in which used. This record must be available for inspection upon request by the ODOT Fuels Tax Group. Any fuel on hand (by actual measurement) should be deducted from a claim and should be reported as an opening inventory on the next claim. Credit for the inventory will be allowed on the next claim if it is filed within 15 months from the filing date of the claim which established the inventory. All invoices for the total fuel purchased must be submitted with each claim. (For an exception see subsection (2)(g) of this rule.) Gasoline Consumption Report, Form 1223, is available upon request for recording fuel withdrawn from bulk storage;

(b) Highway and Non-Highway Use of Fuel from Separate Storage. If separate storage tanks are maintained for non-highway use and for public road use the invoices should be so marked, at the time of delivery, to iden-

tify the storage into which the fuel was delivered and no further detail record will be required. Inventories must be reported and all invoices submitted. Fuel may not be used from the "non-highway" tank for licensed vehicles. To do so invalidates this method of determining refundable gallonage;

(c) Use of Fuel from Restricted Use Storage. Special storage facilities in the woods, or in farm fields, or for other uses for certain periods, should be identified and explained. If such storage is used entirely for non-highway purposes (not including licensed vehicles) no record will be required, other than purchase invoices showing delivery into such storage. Inventory at end of claim period should be reported;

(d) Fuel Purchased for Other than Bulk Storage. Fuel purchased in small containers for non-highway use only (boats, tractors, etc.) should be so identified on the purchase invoice and no further record will be required;

(e) Resellers. Service Stations, marinas, etc., must prepare a separate and complete invoice for each withdrawal of fuel for their own use upon which a refund is to be claimed, or a detailed withdrawal record must accompany the claim supported by sufficient purchase invoices to cover gallons claimed. Refund cannot be paid to vendors on sales to others;

(f) Proof of Highway Use. When no highway use deduction is made from invoices attached to the claim, claimant should be prepared to show additional invoices or other proof of purchase of public road fuel upon request of the ODOT Fuels Tax Group;

(g) Persons claiming tax refund on fuel exported to another state in the fuel supply tank of a motor vehicle are not required to attach fuel purchase invoices to the claim:

(A) All such claims must be accompanied by evidence of payment of tax to another state and information for each vehicle showing the source of all fuel used, the total number of miles traveled, and the miles traveled in each state;

(B) When all vehicles operated are similar in size, fleet totals may be used instead of individual vehicle information.

(h) A person or agency, other than a farmer, who operates a motor vehicle on and off the public highway may claim a refund of the Oregon tax on the fuel used to operate the vehicle as is designated in ORS 319.320(1). The refund can be approved only if the claimant has maintained the following records:

(A) The total miles operated on and off the public highways;

(B) The total gallons of fuel used in the vehicle; and

(C) The source of the fuel used in the vehicle.

(i) On claims covering the operation of motor vehicles entirely over roads or property subject to refund, no record will be required other than that necessary to show source and number of gallons of fuel used;

(j) A farmer, as defined by ORS 319.320(4), may claim a refund of the tax on the fuel which is used in a licensed motor vehicle, for farm purposes, when operating over roads or property in private ownership, if required records are maintained. All such claims must be supported by the following information:

(A) The total number of highway miles operated by each licensed motor vehicle, including private passenger cars;

(B) Total gallons of fuel used in each vehicle. To include both refund and non-refund use;

(C) Purchase invoices supporting all fuel handled through bulk storage, as well as all fuel purchased at service stations, or received from other sources. Highway use for each vehicle may be determined by actual measurement, or may be computed by dividing the average miles per gallon highway operation consumption rate into the number of highway miles operated.

(3) Requirements covering invoices submitted in support of fuel tax refund claims:

(a) Each invoice, or reasonable facsimile approved by the ODOT Fuels Tax Group, submitted with a claim must be the original issued at the time of purchase, (cumulative invoices, statements, or receipts are not acceptable);

(b) Each invoice must show the following:

(A) Complete date of sale, month, day, and year;

(B) Name and complete address of seller (city and state);

(C) Purchaser's name (Cash, boat number, etc., will not qualify);

(D) Kind of fuel and number of gallons purchased (Gasoline, pressure appliance fuel, etc.); and

(E) Price per gallon purchased and dollar amount extended, clearly indicating that Oregon tax was included in the price.

(c) The seller shall void any invoice on which an error has been made. If correction of an invoice is necessary, it should be marked "void", and a new invoice must be issued showing the number and date of the voided or replaced invoice. Both invoices must be submitted with the claim, except when the seller is a licensed dealer in motor vehicle fuel. In that case the

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voided invoice should be placed on file in the dealer's office where the periodical tax audit is to be made;

(d) The original invoice shall be returned to the supplier when fuel is returned for credit. When only a portion of the fuel covered by an invoice is returned and claim for refund of tax is to be made on the unreturned portion, the invoice shall be returned to the seller and a new invoice obtained for the unreturned gallons. The new invoice shall show reference to the number and date of the surrendered invoice.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.280

Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 25, f. 8-3-65; MV 13-1986, f. & ef. 9-2-86; MV 7-1988, f. & cert. ef. 2-29-88; Administrative Renumbering 3-1988, Renumbered from 735-011-0716; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-174-0030

### Rules and Special Requirements for Fuel Tax Refunds

(1) Signatures Required on Refund Claims:

(a) Individuals must sign their own claims;  
(b) A partnership claim may be signed by any one of the partners;  
(c) Claims of business firms or corporations must be signed by an authorized agent;

(d) Accountants and other persons assisting in preparation of claims must also sign in the space provided.

(2) Normally the "Buyer and User" is the person entitled to the refund and is the person or firm named on the invoice. Claims should be made out in the same name as that shown on the invoices. If it is desired to have a claim paid in a name differing from that shown on the purchase invoice, attach a letter of authorization Form 1209 signed by the person to whom the invoice was issued.

(3) Power take-off fuel use in motor vehicles as described in ORS 319.280:

(a) The refund formula in ORS 319.280(2)(b) does not apply to garbage trucks with power take-off which operates only a dump box, hoist, or other type of lift;

(b) Claims must be accompanied by valid purchase invoices to cover the total gallons of motor vehicle fuel (gasoline) purchased. Service station purchase invoices should identify each vehicle by showing the vehicle license plate number;

(c) When gasoline is drawn from the claimant's bulk storage, a detailed record must be kept of all withdrawals, together with beginning and ending inventories, so that a complete accounting may be made of all fuel handled;

(d) A summary, showing beginning inventory, receipts, withdrawals, loss or gain, and ending inventory, is to be shown on the claim form in the space provided;

(e) Claimant must also maintain records to show the total gallons of gasoline used in each vehicle and the total miles operated by each vehicle;

(f) Claimants who operate petroleum delivery trucks must maintain records to show the total gallons of petroleum products pumped by each vehicle using power take-off equipment, together with supporting delivery meter readings;

(g) Each such refund claim is to be made on Fuels Tax Refund Claim, Form 1200, and must be accompanied by Work Sheet, Form 1200-A. This will be in addition to schedules or work sheets required for other refundable use or equipment.

(4) Auxiliary Engines. Fuel used in an auxiliary engine mounted on a licensed motor vehicle (ready mix concrete, refrigeration or air conditioning units, etc.), is considered refundable use if fuel for the auxiliary engine is supplied from a fuel tank, other than the fuel tank which supplies the engine propelling the vehicle. Estimates of refundable use do not qualify for refund. When separate fuel tanks are used, a record of the gallons of fuel delivered into each tank must be kept and purchase invoices covering both tanks must accompany the claim.

(5) Use or disposition of fuel which is not subject to refund:

(a) Fuel sold, lost, destroyed, stolen, or given away;  
(b) Fuel used with respect to which no tax has been paid to the State of Oregon;

(c) Fuel used to operate motor vehicles upon public highways with certain exceptions;

(d) Fuel used to operate licensed motor vehicles upon both refundable and nonrefundable roads or property where complete mileage and fuel records required by law and administrative rule are not maintained;

(e) Fuel used in snowmobiles or other unlicensed motor vehicles, unless operated on private land.

Stat. Auth.: ORS 184.616, 184.619 & 319.010-319.880

Stats. Implemented: ORS 319.280

Hist.: MV 24, f. 8-22-63, ef. 9-2-63; MV 26, f. 12-8-65; MV 42, f. 8-15-69; MV 45, f. 8-12-70, ef. 9-11-70; MV 53, f. 2-20-74, ef. 3-11-74; MV 13-1986, f. & ef. 9-2-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0725; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

## 735-174-0040

### Tax Refunds on Use of Gasoline and Other Motor Vehicle Fuels in Motor Boats

(1) The refund of tax on fuel used in motor boats is limited to boats used for commercial purposes.

(2) The ODOT Fuels Tax Group shall consider the use of fuel in motor boats for commercial purposes to include the following:

- (a) Commercial fishing.
- (b) Charter boat operations.
- (c) Log pond operations.
- (d) Mail boat operations.
- (e) Tourist boat operations.

(f) Any other type of operation which the ODOT Fuels Tax Group may determine to be commercial use.

Stat. Auth.: ORS 184.616, 184.619 & 319.280

Stats. Implemented: ORS 319.280

Hist.: MV 20-1985, f. 12-30-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-011-0735; DMV 18-2003, f. 12-12-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 19-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-062-0005

**Subject:** Under current law, DMV only collects Social Security Numbers from applicants for commercial driving privileges. This rule has been rewritten in its entirety to implement Section 1, Chapter 610, 2003 Oregon Laws (HB 2783) which requires that an applicant's Social Security Number be recorded on the original application or renewal form for a driver license or permit. The law exempts an individual who has not been issued a Social Security Number if the person submits a written statement to DMV. This rule is also amended to establish the requirements for the written statement.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-062-0005

### Social Security Number on Application for License or Permit

(1) The Driver and Motor Vehicle Services Division of the Oregon Department of Transportation (DMV) will not issue or renew a driver license or permit unless an applicant provides his or her Social Security Number on the application or renewal form. The applicant is not required to provide his or her Social Security Number on the application for renewal, if the applicant's Social Security Number has previously been provided to DMV and is in the applicant's driver record.

(2) If a person has not been issued a Social Security Number by the United States Social Security Administration, DMV will accept a written statement from the individual to fulfill the requirements of section (1) of this rule. The applicant may submit a Statement of No Social Security Number (DMV Form 735-7255) but 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 U.S. Social Security Administration; and
- (c) Describe the penalties for knowingly supplying false information under this section.

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

Stats. Implemented: ORS 802.200, 807.050 & Ch. 610 OL 2003

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1995, f. & cert. ef. 11-15-95; DMV 19-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 20-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-050-0060, 735-050-0062, 735-050-0064, 735-050-0070, 735-050-0080, 735-050-0120

**Subject:** Chapter 364, Oregon Laws 2003 (SB 252) changes the wording in statute from "insurance agent" to "insurance producer." These rule amendments include the change from "agent" to "producer." OAR 735-050-0062 and 735-050-0064 are also amended to clarify what DMV will accept or consider in determining if a person 'reasonably and in good faith' believed he or she was covered by insurance. Other changes are made for clarity.

**Rules Coordinator:** Brenda Trump—(503) 945-5278



# ADMINISTRATIVE RULES

## 735-050-0060

### Good Faith Belief of Compliance with Financial Responsibility Requirements — Purpose and Definitions

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will terminate future responsibility requirements and rescind a financial responsibility suspension of a person's driving privileges as allowed by ORS 806.245, 809.380 and 809.450 when the person:

- (a) Is currently in compliance; and
- (b) Reasonably and in good faith believed he or she was in compliance at the time of the accident or DMV's letter of verification.

(2) For purposes of OAR 735-050-0060 through 735-050-0064 "good faith" means a state of mind of honesty in purpose and freedom from intent to defraud. Failure of a person to inquire further when the person could reasonably be expected to do so constitutes absence of good faith.

(3) For purposes of OAR 735-050-0060 through 735-050-0064, "reasonably believed" or "reasonable belief" means a belief based on the combinations of facts that existed and the circumstances that a person knew, or with ordinary diligence should have known, which would give cause for a rational person to believe.

(4) It is presumed that a person has knowledge of the contents of his or her motor vehicle liability insurance policy.

(5) DMV will rescind a suspension under this rule if DMV is presented with evidence that the person reasonably and in good faith believed that the person was in compliance with financial responsibility requirements. Evidence for the above may be presented to the Accident Reports Unit or at a hearing. In either case, examples of such evidence include, but is not limited to, the following:

- (a) Copies of cancelled checks, money orders or receipts for cash that show payment was received for an automobile liability insurance policy;
- (b) Written verification on agency or company letterhead or sworn testimony from the insurance producer;
- (c) Copies of insurance policies, binders, declarations or applications; and
- (d) Notarized written statements or sworn testimony from spouses, co-owners of current or former policies or others involved in the payment of policy premiums.

(6) A person is entitled to a hearing on rescinding of the suspension of the person's driving privilege under this rule. A negative determination by the Accident Reports Unit does not limit the right to a hearing.

Stat. Auth.: ORS 184.616, 184.619, 806.245, 809.380 & 809.450  
Stats. Implemented: ORS 806.245, 809.380 & ORS 809.450  
Hist.: MV 17-1985, f. 12-19-85, ef. 1-1-86; MV 22-1987; Administrative Renumbering 3-1988, Renumbered from 735-033-0055, f. 9-21-87, ef. 9-27-87; MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-050-0062

### What Constitutes "Reasonably and in Good Faith"

(1) Examples of circumstances that constitute reasonable and good faith belief include, but are not limited to, the following:

- (a) An insurance company accepted application and payment for liability insurance covering the period of time in question;
- (b) An insurance producer told a person that he or she was insured or would be insured by a particular policy, and the person was not told otherwise until after the accident or the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) random sample;
- (c) A separated spouse or other additional holder of an insurance policy cancels the policy without the person's knowledge and consent as shown by:

- (A) Proof of legal separation; or
- (B) A written statement from the party canceling the policy; and
- (d) A person is not yet 21 years old, is attending school or is in the military service and believes he or she is covered by a parent's policy.

(2) DMV will use the examples in section (1) of this rule as guidelines in making decisions. However, each request for the rescinding of a suspension under this rule will be reviewed on a case-by-case basis.

Stat. Auth.: ORS 184.616, 184.619, 806.245, 809.380 & 809.450  
Stats. Implemented: ORS 806.245, 809.380 & 809.450  
Hist.: MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-050-0064

### What Does Not Constitute "Reasonably and in Good Faith"

(1) Examples of beliefs that do not constitute a reasonable and good faith belief include, but are not limited to, the following:

- (a) Belief that a vendor's single interest (VSI) or other policy issued by a dealer or financing institution provides motor vehicle liability coverage. That policy or its declarations must clearly state that it does not provide motor vehicle liability insurance, does not meet financial responsibility requirements or contain some other similar statement;

(b) Belief by a person who is not yet 21 years of age, not attending school or not in military service, and not residing with a parent that he or she is covered by a parent's policy;

(c) Belief by a person that a policy meets the requirements of the financial responsibility law when the person has not read the policy declarations and limitations;

(d) Belief that a policy is still in force because of non-receipt of a notice of cancellation, unless the person presents substantial evidence showing that the insurance company did not meet the notification requirements for cancellation found in ORS Chapter 742;

(e) Belief that a spouse normally pays all bills and must have paid an insurance premium; and

(f) Belief based only upon an insurance producer's representation after an accident has occurred when, at the time of the accident, the person did not reasonably believe that they were covered.

(2) The Driver and Motor Vehicle Services Division of the Department of Transportation will use the examples in section (1) of this rule as guidelines in making decisions. However, each request for the rescinding of a suspension under this rule will be reviewed on a case-by-case basis.

Stat. Auth.: ORS 184.616, 184.619, 806.245, 809.380 & 809.450  
Stats. Implemented: ORS 806.245, 809.380 & 809.450  
Hist.: MV 7-1989, f. & cert. ef. 2-1-89; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-050-0070

### Suspensions for Uninsured Accidents

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will suspend the driving privileges of any person if the person is involved in any motor vehicle accident at any time when DMV determines the person has been driving uninsured.

(2) DMV will determine that a person was the driver of a vehicle involved in an accident if DMV receives a report to that effect from the police, an insurance carrier or producer, or any person involved in the accident.

(3) If the accident must be reported to DMV, DMV will determine that a person was involved in an accident while driving uninsured if:

- (a) The person does not respond to DMV's request for an accident report;
- (b) The person does not respond to DMV's request for both the name of the insurance carrier and the policy number which covered the person's operation of the vehicle at the time of the accident; or
- (c) The insurance carrier the person stated he or she was insured with denies coverage for the accident.

(4) DMV will grant a pre-suspension hearing under ORS 809.440(1), upon timely request, to any person whose driving privileges are suspended as described in section (1) of this rule. The suspension will not take effect pending the outcome of the hearing and DMV will impose the suspension if the hearings officer affirms the suspension following the hearing.

(5) Once a suspension described in section (1) of this rule takes effect, DMV will reinstate, at no fee, the suspension if the person supplies the name of an insurance carrier and policy number which covered the person's operation of the vehicle at the time of the accident.

(6) DMV will again suspend the driving privileges if the suspension was withdrawn under section (5) and the insurance carrier subsequently denies coverage for the accident. The person will be eligible for full reinstatement of driving privileges one year from the new suspension date.

**EXCEPTION:** DMV shall subtract time served under the original uninsured accident suspension from the one-year suspension period.  
Stat. Auth.: ORS 184.616, ORS 184.619 & ORS 809.417  
Stats. Implemented: ORS 809.417  
Hist.: MV 22-1985, f. 12-31-85, ef. 1-1-86; Administrative Renumbering 3-1988, Renumbered from 735-033-0065; MV 15-1991, f. 9-18-91, cert. ef. 10-1-91; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-050-0080

### Financial Responsibility Verification Program

(1) DMV will randomly select motor vehicles for financial responsibility verification. The total number randomly selected each year will not exceed ten percent of the motor vehicles registered in Oregon that are subject to verification.

(2) DMV may, in addition, designate persons for verification of financial responsibility requirements if DMV has reasonable grounds to believe that the person is in violation of financial responsibility requirements. The DMV's determination of reasonable grounds will be based on the following:

- (a) Written statements from police, insurance companies, insurance producers, and the public;
- (b) Any admission to DMV by the owner of an Oregon-registered vehicle that the vehicle is not insured;

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(c) Receipt by DMV of any record from another jurisdiction that the owner of any Oregon-registered vehicle was convicted of driving uninsured, regardless of the vehicle driven at the time of offense.

(d) Receipt by DMV of any record from another jurisdiction indicating that an Oregon-registered vehicle was driven without insurance, regardless of who was driving the vehicle;

(e) Statements made during an administrative hearing by a driver or owner of a vehicle that the Oregon-registered vehicle was driven while uninsured; or

(f) No record of submission from an insurance company, pursuant to ORS 742.580, 806.195 and OAR 735-050-0130 through 735-050-0160, that a motor vehicle liability insurance policy has been issued.

(3) DMV will use a written statement as identified in section (2)(a) of this rule as a basis for a financial responsibility verification request only if the person making the statement does all of the following:

(a) Signs and dates the request;

(b) Identifies the vehicle which the person believes is being operated in violation of financial responsibility requirements; and

(c) Explains why the person believes the vehicle is being operated in violation of financial responsibility requirements and includes facts that would cause a reasonable person to believe the vehicle is being operated in violation of financial responsibility requirements.

(4) DMV will suspend the driving privileges or right to apply for driving privileges of any person who fails to make a future responsibility filing after failing verification or who falsely certifies compliance with financial responsibility requirements.

(5) A person who fails to make a future responsibility filing after failing verification or who falsely certifies compliance with financial responsibility requirements is entitled to a pre-suspension hearing in accordance with ORS 809.440(1) and 809.415. If no pre-suspension hearing is held, a person may be entitled to a post-imposition hearing in accordance with OAR 735-050-0090.

Stat. Auth.: ORS 184.616, 814.619 & ORS 806.150

Stats. Implemented: ORS 806.150 & ORS 809.450

Hist.: MV 2-1986, f. & ef. 1-30-86; Administrative Renumbering 3-1988, Renumbered from 735-033-0075; MV 12-1990, f. & cert. ef. 7-16-90; MV 6-1991, f. & cert. ef. 7-16-91; DMV 9-2003, f. & cert. ef. 7-17-03; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-050-0120

### Proof of Compliance With Financial Responsibility Requirements in Lieu of an Unexpired Insurance Card

The following list establishes what constitutes "other current proof of compliance with financial or future responsibility requirements" under ORS 806.011, and "proof of compliance with financial responsibility requirements" under ORS 806.012:

(1) An unexpired motor vehicle liability insurance policy for the particular vehicle which meets the standards set forth in ORS 806.080;

(2) An unexpired motor vehicle liability insurance binder issued by the insurance company or its authorized producer for the particular vehicle which meets the standards set forth in ORS 806.080;

(3) A letter signed by an authorized insurance producer or company official, on insurance producer or insurance company letterhead that verifies current insurance coverage;

(4) A certificate of self insurance issued by DMV under ORS 806.130 naming the owner of the particular vehicle; or

(5) A displayed Oregon dealer plate unless the dealership does not sell motorized vehicles and has completed a "Certificate of Exemption from Vehicle Liability Insurance for Vehicle Dealer," DMV Form 735-7024.

Stat. Auth.: ORS 184.616, 184.619, 806.011 & 806.012

Stats. Implemented: ORS 806.011 & ORS 806.012

Hist.: DMV 3-1994, f. & cert. ef. 7-21-94; DMV 22-2002, f. 11-18-02, cert. ef. 1-1-03; DMV 14-2003, f. 10-24-03, cert. ef. 1-1-04; DMV 20-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 21-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-018-0020, 735-018-0070, 735-018-0080, 735-018-0110

**Subject:** Generally, OAR Chapter 735, Division 18 rules describe the procedures, requirements and processes pertaining to the conduct of electronic commerce between DMV and its customers. OAR 735-018-0080 specifies the requirements for using a credit card or debit card when making a fee payment to DMV within an electronic transaction. DMV proposes to amend the rule to remove references to erroneous data requirements currently specified in subsections (2)(b), (e) and (f) of the rule. More specifically, cardholder phone number,

e-mail address and shipping address. DMV's electronic credit card/debit card application was not designed to capture these data. Further, these data are not required by the Oregon Department of Administrative Services, the agency responsible for setting e-commerce payment policy for state agencies. Other non-substantive changes are proposed to Division 18 rules to clarify rule language.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-018-0020

### General Provisions

An electronic transaction is a transaction conducted between DMV and a person or organization, including but not limited to the submission of documents or information to DMV that meets all of the following requirements:

(1) Is limited to the transactions described under OAR 735, division 18 rules;

(2) Is voluntary, and is made at the sole discretion of the person or organization submitting the information;

(3) Is conducted through DMV's website or an official State of Oregon website that hosts or administers a DMV application or service;

(4) Is subject to the provisions of Oregon's Record Privacy Law (ORS 802.175-802.191) and Oregon's Public Records Law (ORS 192.410-192.505);

(5) Has the same level of legal protection and effect that is given to a hardcopy transaction and may not be denied legal effect, validity or enforceability solely because it is conducted in electronic form;

(6) Is conducted in accordance with:

(a) The provisions of OAR 735, division 18 rules;

(b) All applicable laws and administrative rules; and

(c) Any instructions contained on DMV's website.

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

Stat. Auth.: ORS 184.616, 184.619, 802.012 & ORS 803.460

Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420 & ORS 807.560

Hist.: DMV 4-2003, f. & cert. ef. 5-14-03; DMV 21-2003, f. & cert. ef. 12-15-03

## 735-018-0070

### Payment of Fees; Use of Credit Cards; Debit Cards

(1) If an electronic transaction requires the payment of fees to DMV, payment of those fees within the electronic transaction shall be limited to only those credit card(s) or debit card(s) that are approved by DMV and designated on DMV's website.

(2) To pay required fees to DMV within an electronic transaction, a person or organization must submit the following information to DMV:

(a) Credit cardholder or debit cardholder name and billing address, including city, state and ZIP code;

(b) Credit card or debit card number; and

(c) Expiration date of the credit card or debit card.

Stat. Auth.: ORS 184.616, 184.619, 802.012 & ORS 803.460

Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420 & ORS 807.560

Hist.: DMV 4-2003, f. & cert. ef. 5-14-03; DMV 21-2003, f. & cert. ef. 12-15-03

## 735-018-0080

### Errors; Omissions; Acknowledgement; Receipt of Transaction

(1) An electronic transaction conducted at DMV's website will result in the generation of an acknowledgement, receipt or message including but not limited to one or more of the following:

(a) An error message informing the user of the nature of the problem and that the error is required to be corrected before the form can be accepted by DMV and the electronic transaction completed, if:

(A) An error is made on an electronic form; or

(B) A required data element is left off an electronic form.

(b) An error message informing the user of the nature of the problem and that the electronic transaction cannot be completed, if:

(A) DMV's website is experiencing technical difficulties; or

(B) There is an error in transmission of information.

(c) If the electronic transaction is successfully completed, a receipt or acknowledgement that the electronic transaction has been accepted.

(2) If DMV's website is experiencing technical difficulties or there is an error in the transmission of information; an error message will be sent informing the user of the nature of the problem and that the electronic transaction cannot be completed at that time.

Stat. Auth.: ORS 184.616, 184.619, 802.012 & ORS 803.460

Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450, 803.460, 807.420 & ORS 807.560

Hist.: DMV 4-2003, f. & cert. ef. 5-14-03; DMV 21-2003, f. & cert. ef. 12-15-03

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## 735-018-0110

### Renewal of Vehicle Registration by Electronic Means

(1) A person or organization may renew, by means of an electronic transaction at DMV's website, a vehicle registration pursuant to ORS 803.360, 803.370, 803.450, 803.455, 803.460, 803.465 and 803.473, by submitting:

(a) A completed Online Registration Renewal Transaction; and

(b) The fee required to be paid for renewal of vehicle registration under ORS 803.455 under the method prescribed in OAR 735-018-0070.

(2) In addition to the certifications described in OAR 735-018-0040, a renewal of vehicle registration submitted by means of an electronic transaction shall constitute a certification of all of the following:

(a) The motor vehicle for which the person is applying for registration:

(A) Is, at the time of registration renewal, covered by the insurance policy indicated on the registration renewal application;

(B) Is not subject to weight-mile tax; and

(C) If the vehicle is a tow/recovery, farm, mobile home toter, or a charitable/non-profit vehicle that has been previously issued special registration, at the time of renewal:

(i) The vehicle continues to qualify for special registration; and

(ii) The vehicle's use continues to conform to Oregon law as previously certified.

(b) The applicant for vehicle registration renewal:

(A) Is a resident of or domiciled in Oregon, or is otherwise eligible, or required to register the vehicle in question pursuant to ORS 803.200 and 803.360;

(B) Understands that it is a crime under ORS 803.375 to knowingly make a false statement on an application for vehicle registration; and

(C) If required, has an in-house drug and alcohol testing program that meets the federal requirements; or is member of a consortium that provides testing that meets the federal requirements, or is exempt from the preceding requirements described in this paragraph.

(c) Proof of compliance with financial responsibility requirements pursuant to ORS 803.460.

Stat. Auth.: ORS 184.616, 184.619, 802.012 & ORS 803.460

Stats. Implemented: ORS 802.012, 802.560, 803.200, 803.220, 803.360, 803.370, 803.450,

803.460, 807.420 & ORS 807.560

Hist.: DMV 4-2003, f. & cert. ef. 5-14-03; DMV 21-2003, f. & cert. ef. 12-15-03

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**Adm. Order No.:** DMV 22-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-070-0130

**Subject:** DMV is given authority in ORS 809.410(15), as amended by Chapter 115, Oregon Laws 2003 (HB 2262), to suspend a person's driving privileges if the person causes or contributes to an accident resulting in death to any other person if the department has reason to believe that the person's incompetence, recklessness, criminal negligence or unlawful operation of the vehicle caused or contributed to the accident. OAR 735-070-0130 provides the definitions DMV uses in determining incompetence, recklessness, criminal negligence and unlawful operation of a vehicle. OAR 735-070-0130 is amended to remove some outdated references and to put the definitions in alphabetical order. ORS 809.410(15)(c) gives DMV authority to determine the length of suspension. OAR 735-070-0130 is amended to establish the period of one year for suspension. Chapter 402, Oregon Laws 2003 (SB 245) repeals ORS 809.410 effective January 1, 2004. SB 245 breaks the contents of ORS 809.410 into several new sections of statute, which have not yet been codified. Therefore, the reference to what was contained in ORS 809.410(15) is now cited in this rule as "Section 6, Chapter 245, Oregon Laws 2003."

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-070-0130

### Fatal Accident Suspension

(1) DMV will use the following definitions when determining whether to issue a suspension order under ORS 809.417(3):

(a) "Criminal negligence" is as defined in ORS 161.085(10) which states "that a person fails to be aware of a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that the failure to be aware of it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

(b) "Incompetence" means driving in a manner that indicates lack of ability or fitness to safely operate a motor vehicle.

(c) "Recklessness" is as defined in ORS 161.085(9), which states "that a person is aware of and consciously disregards a substantial and unjustifiable risk that the result will occur or that the circumstance exists. The risk must be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

(d) "Unlawful operation" means driving in a manner that would constitute commission of a traffic offense as defined by ORS 801.555 and includes any traffic offense under any federal law or any law of another state, including subdivisions thereof, that substantially conforms to a traffic offense as defined by Oregon statute.

(2) A suspension under ORS 809.417(3) will be for a period of one year.

Stat. Auth.: ORS 184.616 & ORS 184.619 & ORS 809.417

Stats. Implemented: ORS 809.417

Hist.: MV 13-1989, f. & cert. ef. 3-20-89; DMV 6-1997, f. & cert. ef. 7-15-97;

Administrative Correction 8-12-97; DMV 22-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 23-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-062-0075, 735-062-0095

**Subject:** Chapter 601 and Chapter 618, Oregon Laws 2003 increased DMV fees and Chapter 14, Oregon Laws 2003 changed the spelling of indorsement to endorsement. The amendments to these rules make the provisions related to payment of fees, the period during which test scores are valid and forfeiture of testing fees applicable to all licenses, permits and endorsements. Amendments also relate to acceptance of another state's test results; the renewal period for identification cards; and other changes to correct spelling and for clarification.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-062-0075

### Driver Tests, Additional Provisions

(1) In addition to the requirements of any other law or rule, the following apply to driver license, permit or endorsement tests provided by the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV):

(a) Any required fee for a test must be paid prior to taking the test. DMV will not refund a test fee if the applicant fails the test.

(b) Test scores are valid for two years from the date the test is passed. After two years the applicant must retake and pass the applicable tests to be issued the license, permit or endorsement.

(2) The following apply to commercial driver licenses (CDL) only:

(a) Applicants for a Class A commercial driver license must pass a "combination vehicle" knowledge test for combination vehicles.

(b) A restriction prohibiting the operation of vehicles with air brakes will be included on any CDL unless the applicant:

(A) Passes the air-brake knowledge test; and

(B) Passes the skills test in a vehicle equipped with air brakes, when a skills test is required.

(c) For purposes of application for and issuance of a commercial driver license (CDL), DMV may accept CDL knowledge and skills test results from another state if the state sends the test scores directly to DMV.

(3) If a CDL skills test is not provided due to vehicle equipment failure (the vehicle does not have the necessary safety equipment or is not in proper working order), the required test fee will remain on the DMV customer record for when the test is provided. If there are three postponements due to equipment failure it will be considered a test failure and the test fee will be forfeited. An additional test fee will be required for subsequent tests.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050, 807.070, 807.120 & 807.170

Stats. Implemented: ORS 807.031, 807.045, 807.070 & 807.120

Hist.: MV 58-1989, f. 12-29-89, cert. ef. 1-1-90; MV 6-1990, f. & cert. ef. 4-2-90; MV 16-

1991, f. 9-18-91, cert. ef. 9-29-91; MV 4-1992, f. & cert. ef. 4-16-92; DMV 23-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-062-0095

### Transition to Eight Year Renewal Cycle

As authorized by Oregon Laws 1999, Chapter 91, Section 9, the following rules are adopted as necessary for an orderly transition to an eight-year period for issuance and renewal of driver licenses, endorsements, identification cards, disability golf cart driver permits, and disabled person parking permits.

# ADMINISTRATIVE RULES

(1) The transition period begins on October 1, 2000 and ends on October 1, 2008. In order to complete the full transition to the eight-year period by October 1, 2008, DMV will stop issuing renewal reminder notices that authorize a person to renew by mail after September 30, 2004. Licensees required to renew a driver license after September 30, 2004 must appear in person at a DMV office.

(2) Beginning October 1, 2000 DMV will issue an Oregon license or identification (ID) card for an eight-year period when:

- (a) Issuing a first license or ID card;
- (b) Issuing a license upon restoration of revoked driving privileges;
- (c) Issuing a license upon restoration of cancelled driving privileges;
- (d) Issuing a license or ID card when the previous license or ID card has been expired for more than one year; or

(e) Renewing the license of a person who is required to renew in person at a DMV field office.

(3) DMV will renew a license for a four-year period when renewing the license of a person who is eligible to renew by mail whether the person renews by mail or in person at a DMV field office.

(4) Beginning October 1, 2003, DMV will renew an ID card for an eight-year period.

(5) A license, endorsement or permit issued or renewed for a four-year period will be charged one-half of the fee established by ORS 807.370.

Stat. Auth.: ORS 184.616, 184.619, & section 9, ch. 91, OL 1999  
Stat. Imp. ORS 807.130, 807.400 & 807.410  
Hist.: DMV 12-2000, f. & cert. ef. 9-21-00; DMV 12-2003(Temp), f. 9-22-03, cert. ef. 10-1-03 thru 3-28-04; DMV 23-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 24-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-010-0070, 735-062-0110

**Subject:** Oregon Laws 2003, Chapter 129, (HB 2215) amends ORS 803.220, 807.420 and 807.560 to give DMV authority to determine by rule the methods and requirements for submitting a change of name or address to the Department. OAR 735-010-0070 is amended to specify the methods for submitting a change of address. Section (4) of OAR 735-062-0110 is deleted because the methods for submitting a change of address will be contained in OAR 735-010-0070. Section (3) is also amended so that the description of "current residence" is consistent with OAR 735-062-0030.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-010-0070

### Submission of Change of Address and Update of DMV Records

(1) DMV maintains a customer database that contains information on all DMV customers. A single notice of address change will be sufficient for a customer to comply with ORS 807.560 (address changes related to driver licensing), ORS 803.220 (address changes related to titling and registering vehicles) and ORS 807.420 (address changes related to identification cards), as long as DMV is provided with sufficient information to identify the customer.

(2) DMV will accept a notice of a change of address:

(a) In writing by mail, facsimile or at a drop box in a DMV field office, in the form of a Change of Address Notice for DMV Records (DMV Form 735-6438) or any other written form;

(b) Electronically as set forth in OAR 735-018-0100; or

(c) In person at a DMV field office.

(3) DMV may accept an address change by telephone.

Stat. Auth.: ORS 184.616, 184.619, 803.220, 807.420 & 807.560  
Stats. Implemented: ORS 803.220, 807.420 & 807.560  
Hist.: DMV 1-1995, f. & cert. ef. 1-23-95; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-062-0110

### Duplicate Driver Permits, Driver Licenses, and Identification Cards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a duplicate or replacement driver permit or driver license to a person who meets the requirements set forth in ORS 807.160.

(2) An applicant for a duplicate driver license, driver permit, or identification card must present to DMV proofs of age and/or identity as outlined in OAR 735-062-0020.

(3) An applicant at a DMV field office for a duplicate driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually

lives, and DMV will include that address on the license, permit, or identification card issued.

Stat. Auth.: ORS 184.616 & ORS 184.619  
Stats. Implemented: ORS 807.160, 807.220, 807.230, 807.280 & 807.400  
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 25-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 735-064-0020, 735-064-0060

**Subject:** These rules establish who can apply for a hardship or probationary permit. Section 1, Chapter 204, Oregon Laws 2003 (HB 2263) amended ORS 807.250 so that a person whose driving privileges are suspended due to a notification from a court stating that the person has failed to comply with the court or has failed to appear in the court, will no longer be eligible for a hardship permit. Section 2, Chapter 160, Oregon Laws 2003 (SB 187) amends ORS 807.240 so that DMV may not issue a hardship or probationary permit that allows a person to operate a commercial motor vehicle. The rule amendments make the rules consistent with these law changes.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-064-0020

### Who Can Apply for a Hardship or Probationary Permit

(1) Any Oregon resident whose driving privileges are suspended may apply for a hardship permit unless the person's driving privileges are revoked for any reason or suspended under:

(a) ORS 25.780 for failure to pay child support because ORS 807.250(3) does not allow the issuance of a hardship permit;

(b) ORS 809.260 for court denial of juvenile driving privileges because a person suspended for this reason is eligible for an emergency driver permit per ORS 807.220(4);

(c) ORS 809.280(10) for a controlled substance conviction because ORS 807.250(2) does not allow the issuance of a hardship permit;

(d) ORS 809.419(1) for failure to appear for or pass required tests because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(e) ORS 809.419(2) for failure to obtain a required medical clearance because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(f) ORS 809.419(3) for a mental or physical condition because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(g) ORS 809.421(1) for habitual incompetence, recklessness or criminal negligence or committing a serious violation of the motor vehicle laws because ORS 809.421(1)(b) states this suspension is subject to any conditions the department determines necessary. The department has determined that a person suspended under this subsection shall not be issued a hardship permit;

(h) ORS 809.419(5) upon notification by the superintendent of a hospital because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(i) ORS 809.419(6) when a person charged with a traffic offense has been found guilty except for insanity because ORS 813.520 provides that no hardship permit may be issued if a person has a mental or physical condition that makes the person unsafe to drive a motor vehicle;

(j) ORS 813.400 and 813.403, and the person fails to install or use an IID in a vehicle(s) the person intends to operate, because under ORS 813.602(1)(a) an IID must be installed before the person is eligible for a hardship permit;

(k) ORS 809.280(5) or 809.290(1) for failure to appear in court, because ORS 807.250(4) does not allow the issuance of a hardship permit; or

(l) ORS 809.280(2) for failure to pay a fine or obey a court order, because ORS 807.250(4) does not allow the issuance of a hardship permit.

(2) DMV will not issue a hardship permit that authorizes a person to operate a commercial motor vehicle because ORS 807.240(2) does not allow the issuance of a hardship permit to drive a commercial motor vehicle.

# ADMINISTRATIVE RULES

(3) Any Oregon resident whose driving privileges are revoked as an habitual traffic offender may apply for a probationary permit unless the person's driving privileges are also revoked for any reason other than being an habitual traffic offender or are also suspended for any of the reasons listed in section (1) of this rule. DMV will not issue a probationary permit that authorizes a person to operate a commercial motor vehicle because ORS 807.270(4) does not allow the issuance of a probationary permit to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 807.240, 807.252 & ORS 807.270  
Stats. Implemented: ORS 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.419, 809.421, 813.500 & 813.602  
Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0085; MV 12-1989, f. & cert. ef. 3-20-89; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 4-1999(Temp.), f. & cert. ef. 10-13-99 thru 4-9-00; DMV 1-2000, f. & cert. ef. 3-10-00; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04

## 735-064-0060

### Standards for Issuance of Hardship or Probationary Permits

(1) All hardship or probationary permits shall be restricted to minimally meet the applicant's needs. Upon request, the permit holder shall be required to submit verification to DMV and/or law enforcement.

(2) DMV may issue hardship and probationary permits only for the following purposes:

- (a) Occupational and employment purposes;
- (b) Occupational training or education that is required by the applicant's employer;
- (c) Transportation to and from an alcohol or drug treatment or rehabilitation program; and
- (d) To look for work.

(3) Hardship permits may also be issued for the following reasons:

- (a) To obtain medical treatment on a regular basis for the person or a member of the person's immediate family; and
- (b) Family necessities only if the person's driving privileges are suspended for violation of ORS 165.805, 471.430 or 806.010, to provide necessary service to the person or a member of the person's immediate family.

(4) A hardship or probationary permit will not be issued for more than 12 hours of driving on any one day, except for transportation to and from an alcohol or drug treatment or rehabilitation program.

(5) A hardship or probationary permit issued to look for work will be restricted to 12 hours per day, seven days per week. It will not be issued for a period of more than 120 days at a time.

(6) DMV may deny a hardship or probationary permit to an applicant who has public or private transportation available which is sufficient to serve the applicant's transportation needs as established in sections (2) and (3) of this rule.

(7) DMV will determine whether public or private transportation is sufficient to serve the applicant's need based upon the following criteria:

- (a) Convenience in terms of hours and distance;
- (b) Requirements of occupation;
- (c) Physical limitations of applicant; and
- (d) Personal safety of applicant.

(8) If the applicant is suspended for two or more reasons, the applicant must satisfy the requirements for each type of suspension.

(9) If the applicant is revoked as a habitual traffic offender and the applicant's driving privileges are also suspended, the applicant must satisfy all hardship permit requirements for each suspension in addition to the probationary permit requirements.

(10) Notwithstanding section (2) of this rule, DMV will not issue a hardship or probationary permit that authorizes a person to drive a commercial motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 807.240, 807.252 & 807.270  
Stats. Implemented: ORS 25.780, 807.062, 807.240, 807.250, 807.270, 809.265, 809.380, 809.390, 809.409-423, 813.500 & 813.602  
Hist.: MV 7-1984, f. 6-29-84, ef. 7-1-84; MV 17-1986, f. & ef. 10-1-86; MV 12-1987(Temp), f. 9-16-87, ef. 9-27-87; MV 31-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0105; MV 17-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 25-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** DMV 26-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 6-11-04

**Notice Publication Date:**

**Rules Adopted:** 735-150-0250, 735-150-0260

**Subject:** These rules are needed to implement Section 3, Chapter 459, Oregon Laws 2003 (HB 2455), which amended ORS 822.015 and added new provisions. The law change requires a lien claimant, who sells or offers for sale a vehicle being sold to foreclose posses-

sory lien, or sells or offers for sale a vehicle acquired through possessory liens to keep records sufficient to establish that all vehicles being sold or offered for sale were acquired by the lien claimant as the result of a possessory lien. The new provision authorizes DMV to adopt rules to establish record keeping and notation requirements and impose civil penalties. OAR 735-150-0250 is adopted to specify the requirements, form and retention period of records required to be maintained by a lien claimant pursuant to HB 2455. The rule also specifies how a lien claimant will notify DMV of the sale of a vehicle subject to the new statutory requirements. The adoption of OAR 735-150-0260 adds a civil penalty schedule DMV may use when determining appropriate civil penalty amounts for violations of OAR 735-150-0250. The rules were drafted in consultation with representatives of Oregon vehicle dealers and Oregon tow companies.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-150-0250

### Lien Claimant Records; Notification of Sale

(1) Purpose. This rule establishes the requirements, form and retention period for lien claimant records pursuant to 2003 Or. Laws, Chapter 459, Section 3 (HB 2455). The rule also specifies how a lien claimant will notify DMV of the sale of a subject vehicle.

(2) Definitions. For purposes of 2003 Or. Laws, Chapter 459, Section 3 (HB 2455), OAR 735-150-0260 and this rule:

(a) "Owner" means any individual(s) or business shown in the records of DMV as having an ownership interest in a subject vehicle.

(b) "Subject vehicle" means a vehicle sold by a lien claimant to foreclose a possessory lien, or acquired by a lien claimant through a possessory lien foreclosure that is sold or offered for sale by the lien claimant.

(c) "Violation" means failure by a lien claimant to keep records in accordance with this rule.

(3) Records. A lien claimant who sells or offers for sale a subject vehicle must maintain records sufficient to establish that subject vehicles were acquired by the lien claimant as the result of a possessory lien. The following records must be maintained:

(a) A signed and dated copy of an original tow notification, repair order, an impound form from law enforcement or other similar form or document showing how the lien claimant acquired possession of the subject vehicle, or a written record that identifies the person or entity that authorized the lien claimant to take possession of the subject vehicle (e.g. specific law enforcement agency, business, etc.) and the time and date of contact.

(b) A signed and dated copy of an original claim or notice of possessory lien, a notice of foreclosure sale form applicable to the possessory lien or similar form or document showing the owner of the vehicle was notified of the possessory lien;

(c) A signed and dated copy of the DMV certificate of possessory lien foreclosure form applicable to the possessory lien as specified in OAR 735-020-0012 for each subject vehicle; and

(d) A bill of sale, if applicable.

(4) Retention. Records required under this rule must be retained for a period of five (5) years by the lien claimant:

(a) For an individual, at a location that complies with section (5) of this rule;

(b) For a business, including the holder of a current valid towing business certificate issued under ORS 822.205, for a period of five years; two years on the premises of the main business location or at a supplemental location of the lien claimant if the vehicle is sold to foreclose a possessory lien, and an additional three-year period at any location within the State of Oregon that is convenient for the lien claimant; or

(c) Any other location that is approved in writing by DMV.

(5) Maintenance; Form. Lien claimant records must be maintained in a manner allowing for timely and efficient retrieval of any record requested by DMV for inspection. Records maintained under this rule must be the original records or an exact copy of the original records and may be maintained in hard copy, on film, or by electronic means. DMV may require that any record printed or completed in a language other than English be accompanied by a copy translated into English.

(6) Notice to DMV. A lien claimant must notify DMV within 10 days of the sale or transfer of interest of a subject vehicle by submitting to DMV:

(a) A completed and signed Notice of Sale or Transfer of Vehicle (DMV Form 6890), if the subject vehicle is covered by an Oregon title; or

(b) A completed and signed Notice of Lien Foreclosure; Sale or Transfer of Vehicle (DMV Form 6890A), if the subject vehicle is not covered by an Oregon title.

Stat. Auth.: ORS 184.616, 184.619, 803.097, 822.035, 822.042 & Sec. 3, Ch. 459, OL 2003

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 87.152, 87.162, 87.166, 87.172, 87.176-206, 90.425, 90.675, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.097, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160, 819.230, 822.035, 822.042, 822.045 & Sec. 3, Ch. 459, OL 2003  
Hist.: DMV 26-2003(Temp), f. & cert. ef. 12-15-03 thru 6-11-04

## 735-150-0260

### Civil Penalty Consideration, Lien Claimant Records

(1) In addition to any other penalty or sanction provided by law, a lien claimant who violates any provision of 2003 Or. Laws, Chapter 459, Section 3 (HB 2455) or OAR 735-020-0013 relating to lien claimant records may incur a civil penalty in an amount not to exceed \$1,000 for each violation. DMV will assess a penalty amount determined by DMV to be appropriate for the particular violation. In determining an appropriate penalty amount DMV may use the schedule set forth in section (2) of this rule as a guideline and may consider the following criteria:

- The severity of the violation or its impact on the public;
- The number of similar or related violations;
- Whether the violations were willful or intentional;
- The prior history of penalties imposed by DMV against the lien claimant;

(e) The number of violations compared to the volume of transactions by the lien claimant; or

(f) Other circumstances determined by DMV to be applicable to the particular violation.

(2) Pursuant to 2003 Or. Laws, Chapter 459, Sections 3 (HB 2455), DMV may impose a civil penalty for failure to comply with any provision of OAR 735-020-0013, concerning lien claimant records:

- For first offense: warning;
- For second offense: \$250;
- For third offense: \$500;
- For fourth and subsequent offense: \$1,000.

(3) Prior to the issuance of a final order, DMV may reassess the civil penalty amount and may agree to payment of an amount less than that assessed in the Notice of Imposition of Civil Penalty, after review of:

- The criteria listed in section (1) of this rule; and
- Any explanatory information provided to DMV.

Stat. Auth.: ORS 184.616, 184.619, 803.097, 822.035, 822.042 & Sec. 3, Ch. 459, OL 2003  
Stats. Implemented: ORS 87.152, 87.162, 87.166, 87.172, 87.176-206, 90.425, 90.675, 98.805, 98.810, 98.812, 98.818, 98.830, 98.835, 803.097, 809.720, 811.555, 811.570, 819.110, 819.120, 819.160, 819.230, 822.035, 822.042, 822.045 & Sec. 3, Ch. 459, OL 2003  
Hist.: DMV 26-2003(Temp), f. & cert. ef. 12-15-03 thru 6-11-04

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**Adm. Order No.:** DMV 27-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Adopted:** 735-018-0120, 735-020-0080

**Subject:** The temporary rules are necessary to implement amendments to ORS 803.112 and ORS 803.117 made by Chapter 121, Oregon Laws 2003 (HB 2542). Specifically, Chapter 121, Oregon Laws 2003 (HB 2542) amends ORS 803.112 repealing vehicle transferor notice requirements formerly codified at ORS 803.112(1). This amendment authorizes DMV to specify by rule what information is to be submitted to DMV from a transferor (seller) who transfers an interest in a vehicle covered by an Oregon title. The amendments also delete language in ORS 803.117 that define "notice to DMV" for purposes of relieving the seller from ongoing liability for the vehicle when title is not transferred. DMV is adopting OAR 735-020-0080 to specify the form and content of notice required to be submitted to DMV by a transferor (seller) of an interest in a vehicle pursuant to ORS 803.112 and 803.117. In addition to written notice, the rule authorizes notice by electronic means and gives DMV discretion to accept seller notice information by telephone or facsimile machine. The adoption of OAR 735-018-0120 authorizes electronic submission of a notice under ORS 803.112 and 803.117 through DMV's website.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-018-0120

### Notification of Transfer or Sale of Vehicle by Electronic Means

Notice required under ORS 803.112 and 803.117 that a person has transferred interest in a vehicle covered by an Oregon title may be submitted to DMV by means of an electronic transaction through DMV's website.

Stat. Auth.: ORS 814.616, 184.619, 802.012, 803.112 & Ch. 121, OL 2003  
Stat. Implemented: ORS 802.012, 803.112, 803.117 & Ch. 121, OL 2003  
Hist.: DMV 27-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-020-0080

### Notice of Transfer of Interest in a Vehicle

(1) This rule specifies in what form notice must be submitted to DMV under ORS 803.112 and ORS 803.117 that a person has transferred an interest in a vehicle covered by an Oregon title.

(2) Notice submitted under ORS 803.112 and ORS 803.117 must contain the following information:

- The vehicle identification number (VIN);
- The vehicle registration plate number;
- The full name of the person who transferred an interest in the vehicle (seller/transferor); and
- The full name of the transferee (new owner/buyer).

(3) Notice meeting the requirements of section (2) of this rule must be submitted to DMV:

(a) In writing, and includes a Notice of Sale or Transfer of a Vehicle form (DMV Form 6890), a completed seller notice on the back of the vehicle's registration card or any other written document that contains the required information. Written notice may be delivered to any DMV office or mailed to DMV Headquarters; or

(b) Electronically, using DMV's online Notice of Sale or Transfer form as set forth in OAR 735-018-0120.

(4) At DMV's discretion, notice meeting the requirements of section (2) of this rule may be faxed or submitted by telephone.

(5) For purposes of ORS 803.112, notice meeting the requirements of sections (2) and (3) of this rule must be submitted within 10 days of the date of a transfer of interest in the vehicle.

Stat. Auth.: ORS 184.616, 184.619, 803.112, 803.113 & Ch. 121, OL 2003  
Stat. Implemented: ORS 803.112, 803.113, 803.117 & Ch. 121, OL 2003  
Hist.: DMV 27-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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**Adm. Order No.:** DMV 28-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Adopted:** 735-154-0005

**Rules Amended:** 735-034-0010, 735-150-0040, 735-150-0070

**Subject:** The need to amend these rules is necessitated by the recent passage of Chapter 600, Oregon Laws 2003 (HB 2388), which in part amended ORS 803.600. The law change requires licensed vehicle dealers and towing companies to remove the registration stickers from the registration plates of vehicles they sell that have Oregon registration plates. Exceptions from the requirement occur if a dealer or tow company submits title and registration documents to DMV on behalf of the vehicle buyer, or if a dealer or tow company sells a vehicle to a licensed dealer.

The law change authorizes dealers and towing companies to issue a new 10-day trip permit that allows vehicle buyers to operate their vehicles until DMV issues new registration stickers. DMV is temporarily amending its trip permit rules to conform them to the new law. As amended, OAR 735-034-0010 adds language that specifies the procedures and requirements for issuance of the new 10-day trip permit. OAR 735-150-0040 is amended to add the 10-day trip permit to the list of trip permits that may be issued by vehicle dealers. OAR 735-150-0070 is amended to specify when a 10-day trip permit may be issued by a dealer. OAR 735-154-0005 is adopted to specify the authority of towing businesses to issue 10-day trip permits.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-034-0010

### Procedures for Issuance of Trip Permits

(1) This rule describes the procedures and requirements for vehicle trip permits issued under the authority of ORS 803.600. Vehicle trip permits may be issued by:

(a) A trip permit agent pursuant to ORS 803.600 and OAR 735-034-0005;

(b) A Vehicle dealer pursuant to ORS 802.031 and OAR 735-150-0040, including a vehicle dealer who issues 10-day trip permits as described under section 3, chapter 600, Oregon Laws 2003; or

(c) A towing business that issues 10-day trip permits as described under section 3, chapter 600, Oregon Laws 2003.

(2) A person described under section (1) of this rule must comply with the following requirements:

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(a) Unless otherwise authorized in writing by DMV, trip permits must be purchased from DMV in advance.

(b) Each trip permit issued must be legibly completed with the following information:

(A) The name and address of the vehicle's registered owner or the person applying for the trip permit. The name and address is recorded on the issuer's copy and DMV's copy of the permit;

(B) The driver license number of the vehicle's registered owner or the person applying for the trip permit, if available. Nothing may be written on the purchaser's (window) copy of the permit to identify the person to whom the permit was issued;

(C) A complete vehicle description, including the year, make, body style and vehicle identification number (VIN);

(D) The written signature of the person who issues the permit. This must include at least the person's full first and last name;

(E) The identification number of the dealer or towing business, if one has been assigned by DMV;

(F) The effective date and expiration date of the permit;

(G) For a registration weight trip permit, the registration weight of the vehicle.

(c) For a light vehicle trip permit, the person who issues the permit must require the applicant to sign a certification stating:

(A) The insurance company name and policy number; and

(B) The motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(d) A vehicle dealer or towing business that issues a 10-day trip permit:

(A) Must insure the Oregon registration stickers have been removed in accordance with section 3, chapter 600, Oregon Laws 2003;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(e) For a recreational vehicle trip permit, the person who issues the permit must require the applicant to:

(A) Provide proof of ownership as described in OAR 735-034-0050;

(B) Sign a certification stating that the applicant has not been issued recreational vehicle trip permits that when included with the permit being applied for, would grant more than 10 days vehicle operation for the preceding 12 months;

(C) Provide the insurance company name and policy number if the trip permit is for a motor home; and

(D) Sign the certificate on the permit, stating that the recreational vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid if the trip permit is for a motor home.

(f) A person authorized to issue a trip permit under section (1) of this rule:

(A) Must send DMV's copy of the permit to DMV within five days of the date a permit is issued; and

(B) May not loan, transfer or assign a trip permit to any other person.

(3) Any alteration of the permit information will automatically void the permit:

(a) When a trip permit is voided, the trip permit agent, vehicle dealer, or towing business must return the purchaser's copy and DMV's copy to DMV within five (5) days of the date it was voided, along with an explanation of why the permit was voided. If either copy of the voided permit is unavailable for submission to DMV, the explanation must state the reason; and

(b) If DMV is satisfied that a prepaid permit was not used for the operation of a vehicle, DMV will refund the prepaid permit fee to the trip permit agent, vehicle dealer or towing business that purchased the permits from DMV.

(4) Upon receipt of a written request from a trip permit agent, vehicle dealer or towing business subject to this rule, DMV will refund the fee amount for each unissued prepaid permit.

(5) Upon DMV's written request, a trip permit agent, vehicle dealer or towing business subject to this rule must immediately cease issuing permits and immediately return all unused trip permits to DMV. DMV will issue a refund to the trip permit agent, vehicle dealer or towing business for any unused prepaid permits returned to DMV.

(6) DMV may revoke the authority of a trip permit agent, vehicle dealer or towing business to issue trip permits for failure to comply with the provisions of this rule, or at any time DMV determines it is no longer in the

interest and convenience of the motoring public or a change in state or federal law or regulation prohibit the designation.

(7) The failure of a trip permit agent, vehicle dealer or towing business to comply with the provisions of this rule may result in the revocation of the authority to issue trip permits.

Stat. Auth.: ORS 184.616, 184.619, 803.600-803.650, 806.080 & Ch. 600, OL 2003

Stats. Implemented: ORS 803.600 & Ch. 600, OL 2003

Hist.: MV 19-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-110-0060; MV 2-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 9-1998, f. & cert. ef. 8-20-98; DMV 14-2001, f. & cert. ef. 8-13-01; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-150-0040

### Designation of Dealers as Agents

(1) Persons issued a dealer certificate under ORS 822.020 are designated as agents of DMV as provided in ORS 802.031.

(2) All snowmobile dealers and Class I and Class III all-terrain vehicle dealers are designated as agents of DMV as provided in ORS 802.031.

(3) DMV may impose sanctions against a dealer's status as an agent of DMV as provided in OAR 735-150-0120.

(4) Dealers designated as agents of DMV may:

(a) Accept applications and fees for titles and registrations of vehicles they sell, as provided in OAR 735-150-0050;

(b) Perform vehicle identification number inspections on vehicles they sell, as provided in OAR 735-022-0070 when the vehicle has been registered or titled in another jurisdiction subject to the limitations of OAR 735-022-0070;

(c) Issue temporary registration permits for unregistered vehicles they sell, as provided in ORS 803.625 and OAR 735-150-0060;

(d) Issue trip permits for unregistered vehicles they sell, as provided for in OAR 735-150-0070 and 735-150-0080;

(e) Issue 10-day trip permits for registered vehicles they sell, as provided in ORS 803.600, OAR 735-150-0070, 735-150-0080 and 735-034-0010. When issuing a 10-day trip permit as described in this subsection, a vehicle dealer:

(A) Must insure the Oregon registration stickers have been removed in accordance with section 3, chapter 600, Oregon Laws 2003;

(B) May not issue more than two permits for the same motor vehicle; and

(C) Must require the person applying for the permit to provide the insurance company name and policy number on the permit, and sign the certificate on the permit stating that the motor vehicle is covered by an insurance policy that meets the requirements of ORS 806.080 and will continue to be covered as long as the permit is valid.

(f) Issue mobile home trip permits for mobile homes they sell or transport, as provided in OAR 735-140-0140 and 735-150-0090; and

(g) Accept applications and fees for transfers of registration plates as provided in OAR 735-150-0060(2).

(5) A dealer who, on behalf of a purchaser, accepts application, collects fees and obtains registration plates, stickers and temporary registration, as applicable, must ensure prompt delivery of the items obtained to the purchaser. Such dealer must, within five working days of receipt from DMV:

(a) Deliver the items to the purchaser;

(b) Mail the items to the purchaser; or

(c) Advise the purchaser the items are at the dealership and, if the purchaser agrees, arrange for the purchaser to pick up the items at the dealership.

(6) The dealer must document in the dealer's records the actions taken by the dealer to notify the purchaser or to deliver the registration plates, stickers and temporary registration.

(7) No dealer may, as a result of a dispute between the purchaser and dealer or for any other reason, withhold registration plates or stickers or temporary registration from the purchaser.

(8) Designated agents must only charge document, title transfer and registration fees in the amount authorized by Oregon Revised Statutes and Oregon Administrative Rule when collecting such fees on behalf of DMV.

(9) A dealer may not accept applications and fees for the transfer of plates under subsection (4)(f) of this rule if the dealer determines that the plates that the purchaser wants to transfer are not from a current issue of plates, are not customized plates described under ORS 805.240 or are so old, damaged, mutilated or otherwise rendered illegible as to be not useful for purposes of identification.

Stat. Auth.: ORS 184.616, 184.619, 802.031, 803.530, 803.600, 803.625, 821.060, 821.080 & Ch. 600, OL 2003

Stats. Implemented: ORS 802.031, 821.060, 821.080, 822.005, 822.080 & Ch. 600, OL 2003  
Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 2-1985, f. & ef. 1-30-85; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0007; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 5-

# ADMINISTRATIVE RULES

1998(Temp), f. & cert. ef. 4-30-98 thru 10-26-98; DMV 13-1998, f. & cert. ef. 10-15-98; DMV 7-2000, f. & cert. ef. 8-10-00; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

Stat. Auth.: ORS 184.616, 814.619, 822.205, 822.215 & Ch. 600, OL 2003  
Stats. Implemented: ORS 822.215 & Ch. 600, OL 2003  
Hist.: DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-150-0070

### When Trip Permits May Be Issued by Dealers

(1) Pursuant to ORS 803.600, OAR 735-034-0010 through 735-034-0040 and this rule, a designated dealer may issue light vehicle and recreational vehicle trip permits for the vehicles they sell providing:

(a) The vehicle purchaser or lessee is not subject to Oregon registration requirements and must operate the vehicle over Oregon highways to leave the state. This subsection does not apply to 10-day trip permits;

(b) The vehicle is to be driven directly to a Department of Environmental Quality (DEQ) inspection station in order to receive a certificate of compliance with pollution control equipment before applying for registration;

(c) The vehicle is to be driven directly to a DMV office or a law enforcement agency for a vehicle identification number inspection (VIN); or

(d) The dealer is not submitting the application for transfer of title and registration on behalf of the purchaser or lessee and the purchaser or lessee must operate the vehicle until they can get to a DMV office.

(2) In addition to the trip permits described in section (1) of this rule, a vehicle dealer may issue 10-day trip permits for vehicles they sell providing:

(a) Before issuance the dealer insures the Oregon registration stickers have been removed in accordance with section 3, chapter 600, Oregon Laws 2003;

(b) The dealer complies with all applicable provisions of ORS 803.600 and OAR 735-034-0010 through 735-034-0040; and

(c) The 10-day permits are issued specifically for the purpose of registering the vehicle. For purposes of section 3, chapter 600, Oregon Laws 2003 and this section "registering the vehicle" means authorization to operate a vehicle in compliance with this section to obtain:

(A) Title, registration or new registration stickers; or

(B) A (VIN) inspection or (DEQ) inspection before DMV can issue title, registration or new registration stickers as described under this subsection.

(3) Trip permits must be purchased in bulk in advance from DMV's Salem headquarters office.

(4) A designated dealer may charge and retain a fee for a trip permit issued by the dealer but may not charge more than the fee provided in ORS 803.645 for the permit.

(5) Each trip permit is valid for a period of consecutive days; 21 days for a light vehicle trip permit and 10 days for a recreational vehicle trip permit and a 10-day permit. Each permit is effective from the date it is issued to midnight on the date of expiration.

(6) The issuance of trip permits under this rule is limited as follows:

(a) No more than one light vehicle or recreational trip permit may be issued under subsection (1)(a), (c) or (d) of this rule in any 12-month period for any one vehicle unless all registered owners are replaced with new owners;

(b) No more than two light vehicle trip permits may be issued under subsection (1)(b) of this rule in any 12-month period for any one vehicle unless all registered owners are replaced with new owners; and

(c) No more than two 10-day trip permits may be issued under section (1) of this rule for the same motor vehicle.

Stat. Auth.: ORS 184.616, 184.619, 803.600, 822.035 & Ch. 600, OL 2003

Stats. Implemented: ORS 803.600 & Ch. 600, OL 2003

Hist.: MV 2-1983, f. 3-10-83, ef. 5-1-83; MV 4-1983, f. 10-5-83, ef. 10-15-83; MV 1-1984, f. & ef. 1-10-84; MV 20-1986, f. & ef. 12-1-86; Administrative Renumbering 3-1988, Renumbered from 735-071-0012; MV 4-1989, f. & cert. ef. 1-3-89; MV 13-1991, f. 9-18-91, cert. ef. 9-29-91; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 28-2001(Temp), f. 12-14-01 cert. ef. 1-1-02 thru 6-29-02; DMV 8-2002, f. & cert. ef. 4-12-02; DMV 28-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-154-0005

### Authority of Towing Business to Issue 10-day Trip Permits

(1) A towing business may issue 10-day trip permits as provided in section 3, chapter 600, Oregon Laws 2003, if the towing business:

(a) Submits a completed and signed Agreement to Issue Oregon Trip Permits (DMV Form 7115) to DMV; and

(b) Agrees to abide by the Oregon statutes and administrative rules relating to the issuance and sale of 10-day trip permits, including but not limited to section 3, chapter 600, Oregon Laws 2003 and OAR 735-034-0010.

(2) DMV may revoke the authority of a towing business to issue 10-day trip permits if the towing business fails to comply with the requirements of section 3, chapter 600, Oregon Laws 2003 and OAR 735-034-0010.

**Adm. Order No.:** DMV 29-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Amended:** 735-040-0050, 735-040-0055, 735-040-0061, 735-040-0080, 735-040-0095, 735-040-0097, 735-040-0100

**Subject:** These rules are needed to implement Sections 3 and 4, Chapter 409, Oregon Laws 2003 (SB 508) that amended ORS 805.205 and 805.206. The amendments change provisions that pertain to the procedures and requirements for issuance of special registration plates for certain groups. Special group registration plates are issued to benefit qualified veterans organizations, institutions of higher education and non-profit organizations. More specifically, the statutory amendments require a \$10,000 application fee when a group applies for a special registration plate. The application fee will be refunded if the group sells at least 1,000 sets of plates within the first 12 months of issuance. Further, the amendments require DMV to stop production of a group's plates if the group fails to sell or renew at least 500 sets of plates within a 12 consecutive month period. The previous plate sales threshold was 50 sets of plates within a 12-month period. These law changes require DMV to amend its special group registration plate rules to conform with the law changes.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-040-0050

### Eligibility for Veteran Group Plates

(1) To request issuance of veteran group plates a veterans group must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is a nonprofit group that represents veterans of the Armed Forces of the United States, or is established for the purpose of supporting or recognizing such veterans;

(b) The group has an established membership, that includes officers and bylaws; and

(c) The group is physically located in Oregon or has a chapter that is physically located in Oregon.

(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0080.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0055

### Qualifications; Higher Education Group Plates

(1) To request issuance of Higher Education group plates an institution of higher education must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is physically located in Oregon or has a chapter that is physically located in Oregon; and

(b) The group is an institution of higher education or is representing an institution of higher education to obtain group plates for that institution.

(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0095.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0061

### Qualifications; Non-Profit Group Plates

(1) To request issuance of non-profit group plates a non-profit organization must qualify by submitting written documentation sufficient to satisfy DMV that:

(a) The group is physically located in Oregon or has a chapter that is physically located in Oregon; and

(b) The group is registered with the IRS as a 501(c)(3) non-profit corporation or foundation. Such proof must be a copy of the ruling or determination letter issued by the IRS granting tax-exempt status under 501(c)(3), and must include a federal identification number or IRS identification number for the 501(c)(3) non-profit corporation.



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(2) The applicant must submit an application and fees to DMV that complies with OAR 735-040-0097.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003  
Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003  
Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0080

### Application and Approval and Renewal Process for Veterans' Group

(1) A veterans group that is qualified to apply for group plates under OAR 735-040-0040 and 735-040-0050 must submit the following to DMV:

(a) A completed and signed Application for Approval of Veteran Group Plates (DMV Form 7069);

(b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;

(c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the veterans group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0050, including a copy of the group's bylaws, organization papers or other documents that show it is a veterans' organization;

(e) The names and addresses of the group's current directors or officers, and the name, address and phone number of the group's authorized representative. The authorized representative is the person authorized to apply for veterans group plates on behalf of the group and is the contact person for DMV on any matter related to the group plates;

(f) The word(s), or initials the group is requesting for use on the plate to identify the group. DMV must approve and authorize any request before it may be used on a veteran group plate;

(g) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), or initials on a registration plate;

(h) Specific information as to where moneys collected by DMV from the sale of group plates should be deposited. If no account has been specified by the time moneys collected from the sale of the group's plates are distributed by DMV, the moneys will be deposited to the Environmental Quality Information Account as provided by law; and

(i) Whether or not the group requests restrictions on the issuance of the group plates as covered in OAR 735-040-0090 and any other information DMV may require concerning the restriction.

(2) In addition to the requirements described in section (1) of this rule, the group must provide an estimate of the number of plates it will sell during the next 12-month period.

(3) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the group is eligible for group plates. DMV will refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

(a) The group is not eligible;

(b) The word(s) or initials used, or proposed to be used, to name or describe the group contain an expression of political opinion or religious belief, contrary to ORS 805.205; or

(c) The authorized representative fails to provide information or documentation as requested by DMV.

(4) DMV will contact the authorized representative:

(a) At the time the application is approved or denied;

(b) When additional information or documentation is required or consultation is necessary; or

(c) If DMV proposes to withdraw its approval to issue plates for the group.

(5) Once plates are approved, the authorized representative must file an annual statement with DMV showing the group continues to be eligible for group plates. The statement must:

(a) Be on a form provided by DMV or that is acceptable to DMV;

(b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0050;

(c) Include the names and addresses of the current group directors, or officers, and the name, address and phone number of the group's authorized representative;

(d) Show that the group continues to be a nonprofit group;

(e) Provide an estimate of the number of plates the group expects to sell during the next 12 months.

(6) The group must immediately notify DMV anytime:

(a) There is a change in the name, address or phone number of the authorized representative; or

(b) The group is dissolved, is no longer a nonprofit organization or is otherwise no longer qualified for veteran group plates under OAR 735-040-0050.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003  
Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003  
Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0095

### Application, Approval, Renewal and Issuance Process for Higher Education Group Plates

(1) An institution of higher education or a group representing an institution of higher education that is qualified to apply for group plates as provided in OAR 735-040-0040 and 735-040-0055 must submit the following to DMV:

(a) A completed and signed Application for Approval of Group Plates for Institutions of Higher Education and Non-Profit Groups (DMV Form 735-7076);

(b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;

(c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the higher education group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0055 that the group is an institution of higher education or is a group authorized by an institution of higher education to obtain plates for that institution as described in OAR 735-040-0055;

(e) The word(s), initials, image or logo the institution is requesting for use on the plate to identify the institution of higher education. DMV must approve and authorize any request before it may be used on a higher education group plate;

(f) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), initials, image or logo on a registration plate;

(g) If the group is an institution of higher education, the name, address and phone number of the institution's authorized representative. The authorized representative is the person authorized to apply for higher education group plates on behalf of the institution and is the contact person for DMV on any matter related to the group plates;

(h) If the group is representing an institution of higher education, the names and addresses of the current directors, or officers and the name, address and phone number of the group's authorized representative, as described in subsection (g) of this section; and

(i) Specific information as to where moneys collected by DMV from the sale of group plates should be deposited. The money must be deposited in an account in the general fund of the institution. An institution or group representing an institution is not eligible for higher education group plates unless this information is provided at the time of application.

(2) If the group is not an institution, the application must be accompanied by written authorization from the institution that specifically authorizes the group to obtain higher education group plates on behalf of the institution. Authorization must come from a representative of the institution who has been given authority to sign the authorization on behalf of the institution.

(3) An institution must immediately notify DMV if a group previously authorized by the institution is no longer authorized to obtain plates on behalf of the institution.

(4) In addition to the requirements described in sections (1) through (3) of this rule, the institution or group must provide an estimate of the number of plates it expects to sell during the next 12-month period.

(5) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the institution or group is eligible for higher education group plates. DMV will refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

(a) The institution or group representing the institution is not eligible for higher education group plates; or

(b) The word(s), initials, image or logo used or proposed to be used to name or describe the institution contain an expression of political opinion or religious belief, contrary to ORS 805.205.

(6) DMV will contact the authorized representative:

(a) At the time the application is approved or denied;

(b) When additional information or documentation is required or consultation is needed; or

(c) If DMV proposes to withdraw its approval to issue plates.

(7) Once plates are approved the authorized representative must file an annual statement with DMV showing the institution continues to be eligible for group plates. The statement must:

(a) Be on a form provided by DMV or that is acceptable to DMV;

# ADMINISTRATIVE RULES

(b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0055;

(c) Include written authorization from the institution stating that the group continues to have authorization to act on behalf of the institution in relation to the group plate program;

(d) Provide the name, address and phone number of the institution's authorized representative or if it is a group representing the institution, the names and addresses of the current directors or officers and the name, address and phone number of the group's authorized representative; and

(e) Provide an estimate of the number of plates the institution expects to sell during the next 12 months.

(8) The institution or representing group must immediately notify DMV:

(a) Anytime there is a change in the name or address of the authorized representative; or

(b) If the institution withdraws authorization from the representing group to act on behalf of the institution in relation to the group plate program.

(9) Upon receiving information from an institution that it is withdrawing authorization from a representing group to produce group plates, DMV will stop production of the group's plates and contact the group's authorized representative of the withdrawal of authorization.

Stat. Auth.: ORS 184.616, 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0097

### Application, Approval, Renewal and Issuance Process for Non-Profit Groups

(1) A non-profit group that is qualified to apply for group plates under OAR 735-040-0040 and 735-040-0061 must submit the following to DMV:

(a) A completed and signed Application for Approval of Group Plates for Institutions of Higher Education and Non-Profit Groups (DMV Form 735-7076);

(b) A \$10,000 application fee at the time of application. This fee is in addition to any other fee required by law or rule;

(c) Fees to cover DMV's anticipated administrative expenses related to the design and production of the non-profit group plates requested. At the time of application, DMV will estimate the costs, including but not limited to computer programming costs, plate design costs, color costs and vendor set-up fees, which must be paid prior to approval of the application;

(d) The written documentation required under OAR 735-040-0061, and a copy of the group's bylaws and articles of incorporation;

(e) The names and addresses of the group's current directors or officers and the name, address and phone number of the group's authorized representative. The authorized representative is the person authorized to apply for non-profit group plates on behalf of the group and is the contact person for DMV on any matter related to the group plates;

(f) The word(s), or initials the group is requesting for use on the plate to identify the group. DMV must approve and authorize any request before it will be used on a non-profit group plate;

(g) A certification or other evidence as may be required by DMV that the group has the authority to use the requested word(s), or initials on a registration plate; and

(h) Specific information as to where moneys collected from the sale of group plates should be deposited. If no account is specified by the time moneys collected from the sale of the group's plates are distributed by DMV, the moneys will be deposited to the Environmental Quality Information Account as provided by law.

(2) In addition to the requirements described in section (1) of this rule, the group must provide an estimate of the number of plates it will sell during the next 12-month period.

(3) DMV may at any time request from the authorized representative further information or documentation necessary to determine if the non-profit group is eligible for group plates. DMV may refuse to approve the issuance of group plates, or may withdraw approval previously granted if DMV determines:

(a) The group is not eligible;

(b) The word(s), or initials used or proposed to be used to name or describe the group contain an expression of political opinion or religious belief, contrary to ORS 805.205; or

(c) The authorized representative fails to provide information or documentation as requested by DMV.

(4) DMV will contact the authorized representative:

(a) At the time the application is approved or denied;

(b) When additional information or documentation is required or consultation is necessary; or

(c) If DMV proposes to withdraw its approval to issue plates for the group.

(5) Once plates are approved the authorized representative must file an annual statement with DMV showing the group continues to be eligible for non-profit group plates. The statement must:

(a) Be on a form provided by DMV or that is acceptable to DMV;

(b) Include a statement that the group continues to meet the requirements described in OAR 735-040-0061;

(c) Include the names and addresses of the current group directors, or officers and the group's authorized representative;

(d) Certify the group continues to be registered with the IRS as a 501(c)(3) non-profit corporation or foundation; and

(e) Provide an estimate of the number of plates the group expects to sell during the next 12-month period.

(6) The group must immediately notify DMV anytime:

(a) There is a change in the name or address of the group's authorized representative; or

(b) The group is dissolved, is no longer a tax-exempt 501(c)(3) organization or is otherwise no longer qualified for non-profit group plates under OAR 735-040-0061.

Stat. Auth.: ORS 184.616; 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Hist.: DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-040-0100

### Refund of Fees; Withdrawal and Reinstatement of Group Plates

(1) DMV will refund a group's \$10,000 application fee if the group sells at least 1,000 sets of plates within the first 12-month period following issuance of the plates. The refund will be issued in the name of the group and mailed to the group's authorized representative designated on the group plate application form.

(2) DMV will stop production of a group's plate if the group:

(a) Fails to provide an annual statement as required under OAR 735-040-0080, 735-040-0095 and 735-040-0097;

(b) The group ceases to exist;

(c) The group's approval is otherwise withdrawn;

(d) DMV determines the word(s), initials, image or logo used to name or describe the group are inconsistent with statute or rule; or

(e) DMV fails to sell or renew at least 500 sets of plates within any 12 consecutive month period. For purposes of this rule and OAR 735-040-0050 through 735-040-0097:

(A) "Sets" mean any plate(s) issued other than those issued as a replacement plate(s), whether one or two plates are issued; and

(B) The first day of the month in which the group plates are first offered for sale will be used to determine the start of the first 12-month period.

(3) DMV will notify the group's authorized representative if DMV will no longer produce plates for the group.

(4) Except as provided in section (5) of this rule, when DMV stops production of a group's plate DMV will destroy all remaining plate inventory.

(5) If DMV stops production of a group's plate, DMV will not approve or order plates for that group except as provided in this section:

(a) If DMV ceases to order plates because the word(s), initials, image or logo used to identify the group is determined to be inconsistent with statute or rule, DMV may restart production if:

(A) The group is otherwise eligible and qualified to have group plates; and

(B) After consulting with the authorized representative, a different word(s), initial(s), image or logo is approved by DMV to identify the group or institution.

(b) If DMV ceases to order plates for any reason not covered in this section DMV will destroy all remaining plate inventory.

(6) If production of a group's plate is discontinued for reasons other than those described in section (5) of this rule, the group must reapply and pay all required fees as described in OAR 735-040-0050 through 735-040-0097.

Stat. Auth.: ORS 184.616; 184.619, 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Stats. Implemented: ORS 805.205, 805.206 & Sec. 3 and 4, Ch. 409, OL 2003

Hist.: DMV 2-1994, f. & cert. ef. 3-17-94; DMV 3-1995, f. 3-9-95, cert. ef. 3-20-95; DMV 29-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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**Notice Publication Date:**

**Rules Adopted:** 735-024-0045

# ADMINISTRATIVE RULES

## Rules Amended: 735-024-0020

**Subject:** These temporary rules are necessary to implement amendments to ORS 803.015 made by Chapter 330, Oregon Laws 2003 (SB 558). Prior to the amendment of ORS 803.015, all title brands except "reconstructed," "replica" and "totaled" were determined by DMV by rule. The provisions for these brands were determined by statute. A title brand is printed on a certificate of title to indicate the condition or history of a vehicle. Amended ORS 803.015 authorizes DMV to determine by rule all title brands that may be printed on a certificate of title including "reconstructed," "replica" and "totaled." Accordingly, DMV adopts OAR 735-024-0045 to specify when DMV will issue or remove a "reconstructed," "replica" or "totaled" brand from a certificate of title. This rule only applies to an application for title submitted to DMV with an Oregon title or salvage title. The rule does not apply to vehicles from other jurisdictions as described under OAR 735-024-0020. OAR 735-024-0020 is amended to include a reference to OAR 735-024-0045.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-024-0020

### Brand or Notation From Other Jurisdictions

(1) When the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) receives an application for certificate of title for a vehicle from another jurisdiction, DMV will place a "previous damage" notation on any certificate of title and registration card DMV issues for that vehicle when:

(a) The title from the other jurisdiction carries a brand or notation that indicates the vehicle was damaged, salvaged, totaled, reconstructed or words of similar import; or

(b) DMV receives a salvage title, salvage certificate or similar document or information that indicates the vehicle has been damaged.

(2) The notation described in section (1) of this rule need not necessarily use the same wording or notation as was used on the title, salvage title, salvage certificate or similar document from the other jurisdiction but must:

(a) Indicate that the vehicle was previously damaged; and

(b) Indicate the name of the state where the last title or similar document was issued, or if the vehicle was last titled in a country other than the United States of America, shall indicate that the vehicle is from out of the country.

(3) DMV may place a notation as described in sections (1) and (2) of this rule on the certificate of title and registration card when any of the documents referenced in section (1) of this rule are received separate from the application for title.

(4) Except as otherwise provided in sections (5) and (6) of this rule, the notation referenced in sections (1) and (2) of this rule shall be placed on any subsequent Oregon certificate of title and registration card issued for the vehicle.

(5) DMV shall omit, remove or change a notation when:

(a) DMV is provided with information from the originating jurisdiction that indicates that its title incorrectly reflects a brand or notation;

(b) DMV is satisfied the notation was placed on the Oregon title in error; or

(c) A subsequent accident or occurrence causes the vehicle to be identified with a different notation such as "totaled."

(6) When the certificate of title from another jurisdiction carries a "reconstructed" or "replica" brand or that is a salvage title, a salvage certificate or similar document, DMV may require documentation to determine if the vehicle otherwise qualifies as a reconstructed vehicle or vehicle replica. If DMV determines the vehicle meets Oregon requirements for an assembled, reconstructed or replica vehicle, DMV will place a brand on the Oregon title in accordance with the requirements of OAR 735-024-0045(2)(a) or (b).

(7) This rule does not apply to:

(a) An application for title submitted to DMV with an Oregon title or salvage title as described under OAR 735-024-0045; or

(b) A vehicle issued a junk title or similar ownership document by another jurisdiction as described under OAR 735-020-0070.

Stat. Auth.: ORS 184.616, 184.619, 802.012, 803.015, 819.016, 821.060 & Ch. 330, OL 2003  
Stats. Implemented: ORS 803.015, 803.113, 803.117, 821.060 & Ch. 330, OL 2003  
Hist.: MV 32-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0580; MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 23-2001, f. 11-9-01, cert. ef. 1-1-02; DMV 30-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-024-0045

### Issuance of Oregon Title with a Reconstructed, Replica or Totaled Brand

(1) This rule specifies when DMV will issue an Oregon certificate of title with a "reconstructed," "replica," or "totaled" brand. The title brand issued under this rule will be printed on the Oregon certificate of title and registration card issued for the vehicle.

(2) An Oregon certificate of title described in section (1) of this rule will be issued with:

(a) A "reconstructed" brand if the vehicle is reconstructed, as defined in ORS 801.045. The certificate will also indicate the original year, model and make of the vehicle. This subsection does not apply to an antique vehicle;

(b) A "replica" brand if the vehicle is a replica, as defined in ORS 801.425;

(c) A "totaled" brand if the vehicle has been reported to DMV as a totaled vehicle under the provisions of ORS 819.012 or 819.014. This does not apply if the reason for the report was theft, the vehicle has been recovered, and the vehicle does not meet the definition of a totaled vehicle as described under this subsection. Additionally, a title that carries a "replica" or "reconstructed" brand will have a "totaled" brand added if the vehicle is reported as totaled as described in this subsection. For example, "totaled-replica" or "totaled-reconstructed" whichever is applicable. Similarly, a totaled vehicle that is reconstructed will be issued a title with a "totaled-reconstructed" brand.

(3) Except as provided in section (4) of this rule, a brand described in sections (1) and (2) of this rule will be printed on any future Oregon certificate of title and registration card issued for the vehicle.

(4) DMV will omit, remove or change a brand when:

(a) DMV is provided with information that indicates that a title incorrectly reflects a brand;

(b) DMV is provided with information indicating that the vehicle should not be identified as damaged;

(c) DMV is satisfied the brand was placed on the Oregon title in error; or

(d) A subsequent accident or occurrence causes the vehicle to be identified with a different brand such as "totaled."

(5) Except as provided in OAR 735-024-0020(6), this rule does not apply to a vehicle with a certificate of title issued by another jurisdiction that is being titled and registered in Oregon.

Stat. Auth.: ORS 184.616, 184.619, 803.015 & Ch. 330, OL 2003

Stats. Implemented: ORS 803.015 & Ch. 330, OL 2003

Hist. DMV 30-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Adopted:** 735-020-0070

**Rules Amended:** 735-024-0010

**Subject:** The adoption of OAR 735-020-0070 is necessitated by legislation passed by the 2003 Legislative Assembly. Specifically, Section 1, Chapter 24, Oregon Laws 2003 (HB 2216) amended ORS 803.045. The amendment prohibits DMV from issuing a vehicle title, if the current title, certificate or ownership document is a junk title, junk certificate or similar ownership document issued by another jurisdiction, or has a junk or similar brand or notation. The purpose of OAR 735-020-0070 is to specify what constitutes a "junk title," "junk certificate" or "similar ownership document" and "junk or similar brand or notation" for purposes of amended ORS 803.045. Amendments are made to OAR 735-024-0010 to remove terms used by other jurisdictions that, prior to the enactment of HB 2216, formed the basis for DMV to determine if an Oregon title would be issued with a title notation indicating the vehicle was previously damaged in another jurisdiction.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-020-0070

### Junk Titles

(1) Pursuant to ORS 803.045, DMV will not issue an Oregon title or salvage title for a vehicle that has been issued a junk title, junk certificate, or similar ownership document, or junk or similar brand or notation that includes a word, term, brand or notation including, but not limited to the following:

(a) Destroyed;

# ADMINISTRATIVE RULES

- (b) Dismantled;
- (c) Hulk;
- (d) Junk;
- (e) Non-rebuildable;
- (f) Non-repairable;
- (g) Parts only;
- (h) Scrap; or
- (i) Wreck or Wrecker only.

(2) A designation as described in section (1) of this rule is based strictly on a determination made by another jurisdiction, as reflected on the current title or other ownership document issued by that jurisdiction.

Stat. Auth.: ORS 184.616, 184.619 & 803.045

Stat. Implemented: ORS 803.045 & Sec. 1, Ch. 24, OL 2003

Hist.: DMV 31-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04

## 735-024-0010

### Previously Damaged Notation Based on Information from Other States — Definitions

As used in this rule and OAR 735-024-0020, the following definitions apply:

(1) "Damaged, Wrecked or Salvaged" means an incident, or occurrence or condition relating to a vehicle that impaired or altered the vehicle from its original state, and:

(a) When these terms appear on a certificate of title or other documents from another jurisdiction, they shall form a basis for determining whether to issue an Oregon title with a notation indicating the vehicle was previously damaged in another jurisdiction;

(b) These terms when used by other jurisdictions do not necessarily carry the same meaning as they do when used in other areas of Oregon law or Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) rules, but shall be construed to be words of similar import.

(2) "Words of Similar Import" means any word, term or phrase that means the same or has the same effect as the terms defined in section (1) of this rule:

(a) Words of similar import may include, but are not limited to: reconstructed; rebuilt; assembled; restored salvage; or other terms used by other jurisdictions to denote a vehicle that has been damaged, wrecked or salvaged;

(b) Words that would not be considered as "words of similar import" include but are not limited to: gray market; non USA; prior police; prior taxi; and bonded.

(3) "Previously Damaged" means that DMV has received some indication from another jurisdiction, that the vehicle was damaged, wrecked or salvaged, or words of similar import. The use of this term does not reflect the extent of damage nor to what extent or how well the vehicle may have been repaired. The term "previously damaged" as described in this rule does not apply to vehicles issued a junk title or similar ownership document by another jurisdiction under OAR 735-020-0070.

(4) "Salvage Title," and "salvage certificate" mean documents issued for a vehicle that indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to Oregon salvage titles, unless the Oregon salvage title reflects a notation that indicates the vehicle was damaged in another jurisdiction, prior to being titled in Oregon.

(5) "Similar Document" means any report, information, or paperwork that fulfills the same function as the documents listed in section (4) of this rule. Similar documents shall include but are not limited to:

(a) A report or information from a law enforcement agency, the Motor Vehicles Division, or equivalent agency in another jurisdiction, or any other government agency, that indicates a vehicle is damaged, wrecked or salvaged, or words of similar import;

(b) A report or information from a government agency of another jurisdiction that the title from the other jurisdiction should have carried a brand or notation of damage to the vehicle;

(c) A report or information from a government agency of another jurisdiction that a salvage title, salvage certificate, or similar document should have been issued for the vehicle;

(d) A salvage bill of sale, junking certificate, or other document used by other jurisdictions to indicate that a vehicle has been damaged, wrecked, or salvaged or words of similar import.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.015, 819.016, 821.060 and Sec. 1, Ch. 293, OL 2001

Stats. Implemented: ORS 803.015 & 803.420

Hist.: MV 32-1987, f. & ef. 10-5-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0570; MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 23-2001, f. 11-9-01, cert. ef. 1-1-02; DMV 31-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

**Adm. Order No.:** DMV 32-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Amended:** 735-032-0010

**Subject:** The need to amend this rule is necessitated by legislation passed by the 2003 Legislative Assembly. Specifically, Section 48, Chapter 618, Oregon Laws 2003 (HB 2041) amends ORS 803.570. HB 2041 repeals the requirement formerly in ORS 803.570(3) that DMV establish plate fees based on plate manufacturing costs. As amended, ORS 803.570 requires DMV to determine by rule the fee amount charged for each registration plate or plates issued, but sets a limit on the amount DMV may charge at \$3.00 per single plate and \$5.00 per pair of plates. As temporarily amended, OAR 735-032-0010 establishes the registration plate fee for \$3.00 for a single plate and \$5.00 for a pair of plates. This changes the plate fee from \$2.00 for a single plate and \$3.00 for a pair of plates.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-032-0010

### Plate Manufacturing Fee

(1) As provided in ORS 803.570 the Driver and Motor Vehicle Services Division of the Department of Transportation shall establish by rule the fee for each registration plate issued and for each set of two plates issued. The fee may not exceed \$3 for one plate and \$5 for a set of two plates. This fee shall be charged each time a plate(s) is issued, except as otherwise provided by law.

(2) The fee shall be:

(a) \$3.00 if a single plate is issued; or

(b) \$5.00 if two plates are issued.

Stat. Auth.: ORS 184.616, 184.619, 803.570 & Ch. 618, OL 2003

Stats. Implemented: ORS 803.570 & Sec. 48, Ch. 618, OL 2003

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0310; MV 21-1988, f. 6-29-88, cert. ef. 7-1-88; DMV 4-1997, f. 1-24-97, cert. ef. 4-1-97; DMV 5-2003(Temp), f. 5-14-03, cert. ef. 7-1-03 thru 12-27-03; DMV 32-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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**Adm. Order No.:** DMV 33-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Amended:** 735-064-0220

**Subject:** ORS 809.605 requires DMV to adopt rules specifying which traffic offenses count for the purpose of determining that a person is a habitual offender under ORS 809.600(2). By administrative rule, those offenses are used to determine who qualifies for DMV's Driver Improvement programs, and whether a person has violated the terms of a hardship or probationary permit or has committed a serious traffic violation while operating a commercial motor vehicle. OAR 735-064-0220 specifies those traffic offense convictions DMV will use for the above described purposes. The 2003 Legislature enacted several bills that create new traffic offenses or amend current traffic offense statutes. The proposed amendments to OAR 735-064-0220 revise the list of traffic offenses to implement these legislative changes.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-064-0220

### Traffic Offenses Used in Habitual Offender, Driver Improvement, CMV Serious Violations and Hardship/Probationary Driver Permit Programs

(1) A conviction for an offense listed in this rule counts toward:

(a) The Habitual Offender Program pursuant to ORS 809.600(2);

(b) The Provisional and Adult Driver Improvement Programs outlined in Oregon Administrative Rule 735, division 72;

(c) Motor vehicle traffic control violations connected to a fatal accident as defined in ORS 801.477(9) that can lead to a suspension of commercial motor vehicle driving privileges;

(d) Revocation of a probationary driver permit pursuant to ORS 807.270(7); and

(e) Revocation of a hardship permit pursuant to OAR 735-064-0100 and 735-064-0110.

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(2) This section lists the offenses and the statutory citations for Oregon offenses used in the programs identified in section (1) of this rule: [Table not included. See ED. NOTE.]

(3) The following offenses are a result of laws passed by the 2003 Legislature and become effective January 1, 2004. [Table not included. See ED. NOTE.]

(4) Offenses from other states are posted to driver records using an AAMVAnet Code Dictionary (ACD) code. This section identifies the code that appears on the driver record, a description of the offense and the ORS reference covering an equivalent offense(s) for Oregon: [Table not included. See ED. NOTE.]

[ED. NOTE: Tables referenced in this rule are available from the agency.]  
Stat. Auth.: ORS 184.616, 184.619, 809.480 & 809.605  
Stats. Implemented: ORS 807.240, 807.270, 809.480, 809.600(2) & 809.605  
Hist.: MV 17-1986, f. & ef. 10-1-86; MV 33-1987, f. & ef. 11-2-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0180; MV 32-1989, f. & cert. ef. 10-3-89; MV 7-1990, f. & cert. ef. 5-16-90; MV 18-1991, f. 9-18-91, cert. ef. 9-29-91; MV 26-1991, f. & cert. ef. 11-18-91; DMV 8-1995, f. & cert. ef. 6-19-95; DMV 5-1997, f. & cert. ef. 2-20-97; DMV 8-1998, f. & cert. ef. 6-19-98; DMV 27-2001(Temp), f. 12-14-01, cert. ef. 1-1-02 thru 6-29-02; DMV 11-2002, f. 6-24-02, cert. ef. 6-30-02; DMV 33-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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**Adm. Order No.:** DMV 34-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

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**Notice Publication Date:**

**Rules Amended:** 735-062-0020, 735-062-0030

**Subject:** These rules outline acceptable proof of an applicant's identity, age and residence address when applying to DMV for an original, renewal or duplicate driver permit, driver license or identification card. Because of the tremendous problem identity theft and use of fraudulently obtained documents present nationwide, including a threat to the nation's security, and because a driver license or identification card are the primary forms of identification, these rule amendments are intended to provide DMV with the documentation necessary to verify the identity, age and residence address of a person issued a driver permit, driver license, or identification card.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 735-062-0020

### Proof of Age and Identity Requirements

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require all applicants for an original, renewal or duplicate driver permit, driver license or identification card to present to DMV documentary proof of the applicant's age and identity prior to the issuance of such driver permit, driver license or identification card. This documentation must consist of:

(a) Two of the primary proofs of age and identity listed in section (6) of this rule; or

(b) One of the primary proofs of age and identity listed in section (6) of this rule that contains a date of birth and at least two of the secondary proofs of age and identity listed in section (7) of this rule.

(2) Documents must be original or certified copies.

(3) Foreign birth certificates, passports and driver licenses will not be accepted as primary proof of age and identity unless they are either in English or contain an English translation within the same document. No separate translation document(s) will be accepted.

(4) Documents must be of different types and no two documents can be issued by the same government agency, department or consulate. For example, a U.S. birth certificate issued by a state agency and a social security card issued by the Social Security Administration are acceptable. A passport and a consulate card issued by the same consulate will not be accepted.

(5) If the document contains an expiration date, DMV will accept the document up to one year after the expiration date.

(6) Primary proofs of age and identity include:

(a) A U.S., Canadian and U.S. Territorial government issued birth certificate. For purposes of this subsection, DMV will not accept a hospital issued birth certificate, hospital card, birth registration or baptismal certificate;

(b) A U.S. Consular Report of Birth Abroad (FS-240);

(c) A Certification of Birth (DS-1350 or FS-545);

(d) U.S. Military documents including:

(A) Military or Armed Forces ID card (DD-2);

(B) Military Common Access Card (CAC);

(C) U.S. Uniform Services ID and Privileges card (DD1173 and DD1173-1); and

(D) Request for Verification of Birth (DD372);

(e) Passport;

(f) U.S. immigration or naturalization documents including;

(A) U.S. citizen ID card (I-179 and I-197);

(B) Temporary Resident ID card (I-688);

(C) Employment Authorization Document (I-688A, I-688B and I-766);

(D) Certificate of Citizenship (N560 and N561);

(E) Resident Alien card or Permanent Resident card (I-551); or

(F) Certificate of Naturalization (N550, N570 and N578);

(g) A valid Oregon, out-of-state, U.S. Territorial government or Canadian driver license, instruction permit or identification card, unless hole-punched or marked as "Not Valid As ID";

(h) A digital photograph on file with DMV;

(i) Non-immigrant visa issued by the U.S. Department of State;

(j) U.S. Department of State driver license or Non-driver ID card;

(k) A Consulate ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a person's age and identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card;

(l) An Oregon Concealed Weapons permit/Concealed Handgun License;

(m) Social Security card; or

(n) A Confederated Tribes of Oregon Tribal ID card if:

(A) DMV determines the procedures used in issuing the card are reasonably equivalent to DMV standards for verification of a person's age or identity; and

(B) The card contains sufficient security features to alleviate alteration or counterfeiting of the card.

(7) Secondary proofs of age and identity include:

(a) An Oregon student body identification card, issued for the current school year;

(b) U.S. military discharge papers;

(c) A Permit to Reenter the U.S. (I-327);

(d) Border Crossing cards (DSP-150, I-185, I-186 and I-586);

(e) A Refugee Travel Document (I-571);

(f) W-2 tax forms for the current tax year;

(g) Court documents issued by a court in the United States need to show the applicant is a party to the judicial proceeding and which contain court signatures and seals. Acceptable documents are:

(A) Gender and/or name change;

(B) Adoption, guardianship, custody or child support; and

(C) Marriage license or divorce decree; or

(h) A birth certificate, driver license, military ID card, passport or voter card issued by a foreign government. A DMV employee may accept a foreign document that does not include English if the employee is able to understand the information in the document that relates to the person's identity and is satisfied the document was validly issued.

(8) DMV will not accept a document as proof of identity or age if DMV has reason to believe the document is not valid. DMV may request an applicant for a driver permit, driver license, or identification card to present additional documentary proof of age or identity if the documents presented do not establish the applicant's age or identity to the satisfaction of DMV.

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

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

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0016;

MV 6-1990, f. & cert. ef. 4-2-90; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 7-2001, f. &

cert. ef. 3-7-01; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

## 735-062-0030

### Proof of Residence Address

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) requires all applicants for an original driver permit, driver license, or identification card to present to DMV at least one document showing the applicant's name and current residence address. Current residence address is the address where the applicant actually lives, and DMV will include this address on the permit, license, or identification card. Acceptable documents include any of the items listed in section (3) of this rule.

(2) DMV requires all applicants who apply for a renewal or duplicate driver permit, driver license, or identification card at a DMV field office to present to DMV at least one document showing the applicant's current residence address if the applicant is changing his or her address. Acceptable documents include any of the items listed in section (3) of this rule.

(3) Proof of residence address includes any of the following documents that show the applicant's current residence address:

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(a) Any one of the proofs of identity listed in OAR 735-062-0020(6) or (7) that includes the person's current residence address.

(b) Mortgage documents.

(c) A statement from the parent, step-parent, or guardian of an applicant under 18 years of age attesting to the applicant's residence address. The parent, step-parent or guardian must reside at the same address as the applicant and sign a statement attesting to the applicant's residence address. In addition, the parent, step-parent, or guardian must present one acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(d) A statement of the applicant's spouse. The spouse must reside at the same residence as the applicant and sign a statement attesting to the applicant's residence address. In addition, the spouse must present one other acceptable proof of address document as set forth in this rule that shows the current residence address of the applicant.

(e) Rental or lease agreement dated within one year of the application for the license, permit or identification card.

(f) Utility hook-up order.

(g) Payment booklet.

(h) Canceled mail that is dated within 60 days of the application for the license, permit or identification card. The applicant must present both the envelope and the envelope's matching contents. DMV will accept canceled mail from the following sources:

(A) Credit card companies;

(B) U.S. Treasury;

(C) Social Security Administration;

(D) Oregon State government agencies;

(E) Utility companies;

(F) Financial institutions;

(G) Insurance companies;

(H) Originators of out-of-state clearance letter; and

(I) A state or federal revenue department.

(i) Oregon vehicle title or registration documents.

(j) Oregon voter registration card.

(k) Selective Service Card.

(l) Medical or health card.

(m) Educational institution transcript forms for the current school year.

(n) Professional license issued by an agency in the United States.

(4) If the applicant does not have a residence address, DMV may accept a descriptive address with a mailing address, if the applicant provides proof that no residence address has been assigned to the property. Such proof may include, but is not limited to, a statement from the U.S. Postal Service or from the Assessor's office in the county in which the property is located.

(5) An applicant who is homeless may use a descriptive address of the location where he/she actually resides, e.g., "under the west end of Burnside Bridge." The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

(6) An applicant who travels continuously may use a descriptive address of "continuous traveler". The applicant must prove that he or she is a resident or domiciled in Oregon pursuant to OAR 735-016-0040. In addition to the descriptive address, the applicant also must provide a mailing address.

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

Stats. Implemented: ORS 807.110, 807.160 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; March 1988, Renumbered from 735-031-0017; DMV 2-1995, f. & cert. ef. 2-10-95; DMV 12-1997, f. & cert. ef. 11-17-97; DMV 34-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-28-04

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## Department of Transportation, Highway Division Chapter 734

**Adm. Order No.:** HWD 3-2003

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

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 734-060-0025

**Subject:** This rule relates to the permitting process for outdoor directional signs. Chapter 126, Oregon Laws 2003 (HB 3151) deleted the requirement for a sign owner to affix a decal to each sign every year. The proposed amendment to this rule deletes the language relating to issuance of a "current permit decal" in section (11). Section (10) is amended to correct terminology.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 734-060-0025

### Permits

(1) Unless an annual permit has been issued therefor, a directional sign shall not be erected, maintained or replaced by any person.

(2) A person may apply for a permit to the director on forms furnished by the director. The permit application shall include a precise description of the sign and such other information as the director considers necessary or desirable to determine compliance with ORS 377.700 to 377.840. Upon approval of the Permit Review Committee the director shall issue a permit for a sign that complies with ORS 377.700 to 377.840. A valid permit may be transferred to another person upon written notice to the director.

(3) A permit shall not be issued for a directional sign located adjacent to an interstate highway or freeway unless the director determines that access to the sign from the interstate highway or freeway can be obtained without violating the access control line of the interstate highway or freeway.

(4) A permit shall be renewed annually on the first day of January. Application for renewal of a permit shall be filed prior to expiration of the term of the permit. If application for renewal of a permit is filed after the expiration of the term and the permit is granted, an additional fee equal to the fee specified by section (5) of this rule shall be paid.

(5) An applicant shall pay the appropriate annual fee as established in OAR 734-059-0100(1) or (2).

(6) A permit may be issued for one year. The applicable fee shall accompany the permit application. A fee shall not be prorated for a fraction of a year or be refunded if the sign is removed.

(7) A permit shall be obtained and the prescribed fee paid if the sign area is increased beyond the size for which a fee was paid or if a sign is relocated or reconstructed.

(8) The director shall cancel a permit and require removal of the sign as provided by ORS 377.775 if he finds a sign has been erected, maintained or serviced from the highway right of way at any portion of the right of way where the Department has acquired rights of access to the highway or rights of access have not accrued to the abutting property. In addition, the Department may recover from the owner of the sign or person erecting, maintaining or servicing the sign, the amount of damage to landscaping, sodding, fencing, ditching or other highway appurtenances resulting from such acts.

(9) The director may revoke a permit, unless a corrected application is filed or the sign is brought into compliance within 30 days after written notice thereof if mailed to the permittee, if he finds:

(a) The applicant has knowingly supplied materially false or misleading information in his application for a permit or renewal; or

(b) The sign covered by the permit is in violation of ORS 377.700 to 377.840.

(10) The director shall cancel a permit immediately upon a failure of a permittee to erect or maintain the sign as described by the permit application and to attach a permit plate thereto within 120 days after the date of issuance of the permit therefor.

(11) The director shall assign to every permit when issued for a directional sign a permit plate with identification number thereon. The permittee shall attach the applicable permit plate to the sign so as to be visible from the adjacent state highway. The absence of a permit plate is prima facie evidence that the sign does not comply with ORS 377.700 to 377.840.

Stat. Auth.: ORS 184.616, 184.619, 377.725, 377.727 & 377.729

Stats. Implemented: ORS 377.727

Hist.: 1 OTC 28a(Temp), f. & ef. 5-6-74; 1 OTC 32, f. 8-2-74, ef. 8-25-74; 2HD 17-1981, f. & ef. 11-24-81; TO 6-2001(Temp), f. & cert. ef. 11-9-01 thru 5-7-02; TO 5-2002, f. & cert. ef. 4-15-02; HWD 3-2003, f. 12-12-03, cert. ef. 1-1-04

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## Department of Transportation, Motor Carrier Transportation Division Chapter 740

**Adm. Order No.:** MCTD 6-2003

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 740-100-0010, 740-100-0060, 740-100-0070, 740-100-0080, 740-100-0090, 740-110-0010

**Subject:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international stan-

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dards. In addition, Oregon intrastate driver's hours of service rules are modified to reflect changes in federal regulations. It has been standard practice to adopt these rules to become effective April 1, however, because revisions to federal driver hours-of-service regulations become enforceable January 4, 2004, it is necessary to adopt those regulations prior to January 4, 2004.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 740-100-0010

### Adoption of Federal Safety Regulations

(1) Except as provided in section (3) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards), and all amendments thereto in effect January 1, 2004, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of Part 387 shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes;

(b) With reference to Part 390.21, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver;

(c) The rules in Part 391 (except Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less;

(d) Notwithstanding Title 49, CFR, Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations) the Department may, upon receipt of a favorable recommendation from the State Health Division or a licensed health care professional under contract to ODOT, issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Department and who is in compliance with motor carrier safety regulations applicable to drivers;

(e) With reference to Title 49, CFR, Part 395.5, motor carriers conducting intrastate transportation of passengers may not:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period after being on-duty for 16 hours following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days;

(f) With reference to Title 49, CFR, Part 395.3, motor carriers conducting intrastate transportation of property may not:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days, except any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days, except any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours;

(g) Notwithstanding the provisions of Title 49, CFR, Part 395.1(e) relating to 100-airmile radius drivers, such drivers need not maintain a daily driver's record-of-duty status, as described in Title 49, CFR, Part 395.8, if:

(A) The driver operates within a 100-airmile radius of the normal work reporting location;

(B) The driver returns to the work reporting location and is released from work within 16 consecutive hours;

(C) The driver has at least eight consecutive hours off duty between each 16 hours on duty;

(D) The driver does not exceed 12 hours maximum driving time following eight consecutive hours off duty; and

(E) The motor carrier maintains and retains for a period of six months accurate and true driver time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding seven days in accordance with Title 49, CFR, Part 395.8(j)(2), for such drivers used for the first time or intermittently;

(h) The provisions of subsections (f) and (g) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with Title 49, CFR, Part 395;

(i) All public utilities as defined in ORS 757.005, telecommunications utilities as defined in ORS 759.005, and electric, gas, water, and telecommunications utilities that are a people's utility district organized under ORS Chapter 261, a municipal utility operating under ORS Chapter 225, or a cooperative organized under ORS Chapter 62, are relieved from the drivers' hours-of-service requirements and restrictions prescribed in Title 49, CFR, Part 395, when such utility is engaged in the provision or restoration of essential utility services and such restoration is unplanned, unscheduled and the direct result of circumstances beyond the control of the utility; and

(j) The provisions of Title 49, CFR, Parts 396.17 through 396.23 (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of Title 49, CFR, Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and are subject to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.

(5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252

Stats. Implemented: ORS 825.210, 825.250 & 825.252

Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

## 740-100-0060

### Operation of Motor Vehicles, Out-of-Service Conditions Prohibited

(1) No motor carrier shall permit or require any person to operate nor shall any person operate a motor vehicle over the public highways of the State of Oregon unless the vehicle is free from each defect listed in OAR 740-100-0070. (North American Uniform Vehicle Out-of-Service Criteria.)

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(2) In addition to the requirements of section (1) of this rule, a vehicle transporting hazardous materials also shall be free from each defect listed in OAR 740-100-0080. (North American Uniform Hazardous Material Out-of-Service Criteria.)

(3) Except as provided in section (4) of this rule, in addition to the requirements of sections (1) and (2) of this rule, no motor carrier shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0090. (North American Uniform Driver Out-of-Service Criteria.)

(4) No motor carrier engaged in intrastate transportation shall permit or require the operation of a motor vehicle nor shall any driver operate a motor vehicle in violation of OAR 740-100-0010(2)(e) through (h).

(5) Each defect which exists in each applicable standard shall be deemed a separate and distinct violation of this rule.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.210 & 825.252

Hist.: PUC 1-1987(Temp), f. & ef. 1-5-87 (Order No. 87-006); PUC 3-1987, f. & ef. 3-24-87 (Order No. 87-359); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1990, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0028; MCT 2-1997, f. & cert. ef. 5-9-97; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

## 740-100-0070

### North American Uniform Vehicle Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect January 1, 2004, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to likely cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. & 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. & 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. & 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. & 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. & 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

## 740-100-0080

### North American Uniform Hazardous Material Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect January 1, 2004, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & ORS 825.232

Stats. Implemented: ORS 825.250 & ORS 825.258

Hist.: PUC 3-1986, f. & ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. & 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. & 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. & 3-10-98, cert. ef. 4-1-98;

MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. & 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. & 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

## 740-100-0090

### North American Uniform Driver Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect January 1, 2004, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier only has to complete the "Motor Carrier Certification of Action Taken" in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.252 & 825.260

Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. & 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. & 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. & 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. & 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. & 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

## 740-110-0010

### Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable, and amendments thereto, in effect on January 1, 2004.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division.

Stat. Auth.: ORS 823.011, ORS 823.061 & ORS 825.258

Stats. Implemented: ORS 825.258

Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. & 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. & 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. & 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. & 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. & 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04

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**Adm. Order No.:** MCTD 7-2003

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 9-1-03

**Rules Repealed:** 740-115-0010, 740-115-0020, 740-115-0030, 740-115-0040, 740-115-0050, 740-115-0060, 740-115-0070, 740-120-0010, 740-120-0020, 740-120-0030, 740-120-0040, 740-125-0010, 740-125-0020, 740-125-0030, 740-125-0040, 740-130-0010, 740-130-0020, 740-130-0030, 740-130-0040, 740-130-0050, 740-130-0060, 740-130-0070, 740-130-0080, 740-130-0090, 740-135-0010, 740-135-0020, 740-135-0030, 740-135-0040, 740-140-0010, 740-140-0020, 740-140-0030, 740-140-0040, 740-140-0050, 740-140-



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**Subject:** Current Motor Carrier Transportation Division (MCTD) load securement rules that apply to intrastate motor carrier transportation were originally adopted to provide commodity specific securement requirements, because the Federal Motor Carrier Safety Regulations adopted by MCTD only provided general standards. New Federal Motor Carrier Safety Regulations codified at Title 49, CFR Part 393.100-136 are based on years of research and now provide commodity specific standards. Oregon annually adopts by rule Federal Motor Carrier Safety Regulations to govern intrastate motor carrier operations. The new federal load securement regulations are more comprehensive than the old rules and adequately address the concerns MCTD had when it promulgated separate intrastate rules. Therefore, MCTD proposes to repeal its load securement rules.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

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**Adm. Order No.:** MCTD 8-2003

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 740-200-0010, 740-200-0020, 740-200-0040

**Subject:** Provisions of the International Fuel Tax Agreement (IFTA) and associated material are applicable to Oregon-based motor carriers who participate in IFTA as a way to report and pay fuel tax to other jurisdictions. The revision to OAR 740-200-0040 adopts the most recent version of IFTA and associated material as the procedures and guidelines for Oregon-based IFTA participants ensures Oregon remains current with national and international IFTA standards. The International Registration Plan (IRP) and 26 CFR Part 41 (Heavy Vehicle Use Tax — HVUT) relate to commercial motor vehicle registration and heavy vehicle taxation respectively. Amendments to OAR 740-200-0010 and 740-200-0020 adopt IRP and HVUT and amendments thereto in effect as of January 1, 2004 and ensure Oregon remains current with national and international commercial motor vehicle registration standards.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

**740-200-0010**

**Prorate Registration**

(1) The provisions contained in the "**International Registration Plan**" (IRP), the **IRP Audit Procedures Manual** and the **IRP Policies and Procedures Manual** and all amendments thereto in effect January 1, 2004, are hereby adopted and prescribed by the Oregon Department of Transportation and apply to the apportioned registration of vehicles.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IRP:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Audit assessments are subject to penalty, late payment charges and interest described in ORS 825.490;

(c) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(d) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

(3) The mileage reporting period for application and renewal purposes shall be the previous July through June twelve-month period.

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

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 826.005 & 826.007

Hist.: PUC 8-1990, f. & cert. ef. 5-25-90 (Order No. 90-834); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0005; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04

**740-200-0020**

**Adoption of Federal Rules Governing Payment of Heavy Vehicle Use Tax (HVUT)**

The Department hereby adopts the rules of the United States Internal Revenue Service contained in **26 CFR Part 41** (HVUT) and all amendments thereto in effect January 1, 2004. These rules apply to carriers conducting operations subject to ORS Chapter 826. As provided in **CFR Title 26 Part 41.6001-2(b)(3)**, the Department will suspend the registration of a vehicle for which proof of HVUT payment has not been received within four months of the effective date of registration.

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

Stat. Auth.: ORS 823.011 & ORS 826.007

Stats. Implemented: ORS 803.370(5) & ORS 826.033

Hist.: PUC 19-1990, f. & cert. ef. 12-31-90 (Order No. 90-1919); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-081-0015; MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04

**740-200-0040**

**Adoption of International Fuel Tax Agreement**

(1) The provisions contained in the **International Fuel Tax Agreement (IFTA) Articles of Agreement**, the **IFTA Audit Manual** and the **IFTA Procedures Manual**, and all amendments thereto in effect January 1, 2004, are hereby adopted and prescribed by the Oregon Department of Transportation (ODOT) and apply to Oregon-based motor carriers who participate in IFTA.

(2) In addition to the requirements described in section (1) of this rule, the following requirements apply to Oregon-based motor carriers who participate in IFTA:

(a) Records required to be maintained for distance data must denote intermediate trip stops;

(b) Records of monthly over the road and bulk fuel reconciliations must be maintained;

(c) The Department shall assess a penalty of \$50 or 10 percent of the amount of delinquent taxes due, whichever is greater, for failing to file a return, filing a late return, or underpaying taxes due on a return;

(d) Upon proposing an additional assessment as the result of an audit, the Department shall assess a penalty of 10 percent of the amount of delinquent taxes due;

(e) Any person against whom a proposed assessment is made by the Department may petition the Department for reassessment within 30 days after service upon the person of the assessment notice. If a petition for reassessment is not filed within the 30-day period, the assessment becomes final. If a petition for reassessment is timely filed, the Department will reconsider the assessment. The decision of the Department upon a petition for reassessment will become final 30 days after notice of the decision is served upon the petitioner. A petitioner may submit a request for hearing in the petition for reassessment; and

(f) If a request for hearing is timely received, a hearing will be scheduled and conducted in accordance with the provisions of ORS Chapter 183. The petitioner will be provided a minimum of 10 days notice of the time and place of the hearing. The Department may assess a penalty of \$150 for failure to appear at a scheduled hearing.

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

Stat. Auth.: ORS 823.011 & 825.555

Stat. Implemented: ORS 825.490 & 825.555

Hist.: MCTB 6-2002, fr. & cert. ef. 11-18-02; MCTD 8-2003, f. & cert. ef. 11-18-03, cert. ef. 1-1-04

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**Adm. Order No.:** MCTD 9-2003(Temp)

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

**Certified to be Effective:** 1-1-04 thru 6-28-04

**Notice Publication Date:**

**Rules Adopted:** 740-060-0055, 740-300-0035

**Rules Amended:** 740-060-0030, 740-060-0050

**Subject:** These rules implement Chapter 754, Oregon Laws 2003 (SB 471) which becomes effective January 1, 2004. Chapter 754, Oregon Laws 2003 requires a person in the business of providing a pack or load service to register with ODOT. Pack or load service, defined in Chapter 754, Oregon Laws 2003, is a specialized labor

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service that essentially offers the public an alternative to using a moving company when relocating. Chapter 754, Oregon Laws 2003 directs the Department to adopt rules that establish fees, set minimum levels of general liability insurance and provide registration and renewal standards for persons who provide a pack or load service. The rules also establish a fee to be collected from existing household goods carriers and establish civil monetary penalties for persons who provide an unregistered pack or load service or an unauthorized household goods moving service. Also, OAR 740-060-0030 is amended to decrease, from nine months to three months, the time a consumer of a household goods carrier has to file a loss or damage claim.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 740-060-0030

### General Information for Moving Household Goods in Oregon

The text of the information bulletin, "General Information for Moving Household Goods in Oregon," shall include the following:

(1) The Oregon Department of Transportation requires the mover to give you this bulletin to provide information about purchasing the services of a motor carrier moving company. It tells you about your rights and responsibilities when having household goods moved within Oregon.

(2) Moving company rates and services are regulated by ODOT when the origin and destination of a move are within Oregon.

(3) If, after discussing your move with the mover, you still need information or assistance, you may obtain help by contacting ODOT, 550 Capitol Street NE, Salem, Oregon 97301-2530, (503) 378-5987, or online at: [www.odot.state.or.us/trucking/special/moving.htm](http://www.odot.state.or.us/trucking/special/moving.htm).

#### (4) ESTIMATES:

(a) Estimates are free of charge. You may obtain more than one estimate in order to compare movers and service. Be sure to tell each estimator the same information in order to compare service and quality of estimates;

(b) Estimates must be in writing. An estimate of charges may only be given after a visual inspection of the goods by the mover. Oral or telephone estimates are not permitted;

(c) You should NOT select a mover based solely on the lowest estimate provided because estimates are not binding and may differ from the final cost;

(d) Be cautious if you receive a very low estimate as compared to other estimates. All services may not have been included or it may not be accurate.

(e) **BINDING ESTIMATES OR GUARANTEES OF ACTUAL CHARGES ARE ILLEGAL ON INTRASTATE TRANSPORTATION OF HOUSEHOLD GOODS IN OREGON;**

(f) **FINAL CHARGES FOR MOVES MUST BE BASED UPON RATES PUBLISHED IN THE MOVER'S TARIFF AND APPROVED BY THE PUC OR ODOT, REGARDLESS OF ANY ESTIMATE GIVEN BY THE MOVER PRIOR TO THE MOVE.**

(5) **CHANGES/ADDITIONAL SERVICE REQUIRES AN ADDENDUM ESTIMATE:** When a written estimate of cost for services has been given to you, but additional services (not included on the first estimate) are needed, an addendum estimate must be prepared. This means that if you ask for additional materials or service, or an unforeseen circumstance arises, a second estimate must be given to you. An addendum estimate must clearly show you any extra estimated costs, and be signed by you as authorized.

#### (6) ESTIMATES FOR DELIVERY INTO STORAGE:

(a) If your shipment will be put into storage, be sure to look at the origin and destination address(es) on the estimate. This will tell you if the estimate is for one-way transportation only (into the warehouse), or for the complete trip to the final destination;

(b) If needed, ask for a second estimate of charges for removing your goods from storage and delivering them to the final site;

(c) Be sure the estimate includes the warehouse handling and storage charges. Generally, new storage charges are added monthly.

#### (7) UNDERESTIMATES:

(a) ODOT rules do not allow movers to provide underestimates for service. It is an underestimate if the final charge is higher than 10 percent of the original estimate, and addendum estimate (if any);

(b) ODOT requests that you contact them if this happens so that the situation may be investigated. ODOT may file a formal complaint against a mover for underestimating;

(c) If an underestimate does occur, you must still pay the total tariff charges because estimates are not binding;

(d) If payment is due upon delivery, the amount that must be paid is the estimated (and addendum estimate amount, if any) amount plus 10 per-

cent. The excess amount is the amount above that. You may request deferred payment of the excess amount for 15 days. The 15-day extension does not include Saturdays, Sundays, or holidays.

#### (8) HOURLY RATED LOCAL MOVES:

(a) Local moves are generally within an area of 30 airmiles and are charged for on an hourly basis. Hourly rates depend upon the number of persons and vehicles employed on the job and whether overtime is involved;

(b) No inventory listing is required to be made by the mover on local hourly moves. You may wish to prepare your own inventory and count the items and boxes as they are loaded and unloaded. Discuss this with the mover in advance because a successful loss or damage claim settlement may depend on it.

#### (9) INTERCITY MOVES; RATED ON WEIGHT AND MILEAGE:

(a) An intercity move is generally between cities more than 30 airmiles apart. The rate is published in cents per 100 pounds. The charges increase in relation to the weight of the shipment and the distance moved. Accessorial services are charged separately;

(b) An inventory of items must be prepared by the mover for an intercity shipment prior to loading. The inventory document will be coded to list any pre-existing damage of your goods. This is so that the condition of your goods may be established at origin in case of a later claim;

(c) After completing the inventory, the driver and you should sign each page of the inventory. You have a right to note any disagreement with entries regarding damage or unusual wear noted by the mover. Your ability to recover from the mover for any loss or damage may depend on the notations made;

(d) The driver must give you a copy of each page of the inventory. You should attach your copy of the inventory to your copy of the bill of lading. It is your receipt for the goods.

#### (10) PACKING YOURSELF:

(a) Caution: Generally, a moving company will NOT accept liability for items you pack yourself (unless the mover is negligent in handling the items). Any items you pack must be able to withstand the normal rigors (shaking) of transportation. Discuss this with the mover. Consider asking the mover to pack any fragile items for you;

(b) Do not pack jewelry, money, or valuable papers with your belongings. Never pack matches, flammables, or other dangerous articles.

#### (11) VALUATION OPTIONS:

(a) Notice: A household goods mover's liability for loss or damage caused by the mover is limited in Oregon to 60 cents per pound per article based upon the actual weight of each article;

(b) Additional valuation protection may be purchased from the mover or an insurance company of your own choosing;

(c) You may want to check with your own insurance company first. Ask whether your insurance coverage applies when your goods are transported by a for-hire carrier;

(d) **YOU ARE FREE TO PURCHASE INSURANCE FOR YOUR GOODS FROM SOMEONE OTHER THAN THE MOVER;**

(e) Valuation protection options are available from the mover depending on your declared value of the goods. Movers shall include in their information bulletin the valuation protection option(s) they offer, which may include:

(A) Option 1. Released Value Protection/Almost No Coverage. This type of valuation pays up to 60 cents per pound per article for any lost or damaged article. For example, it would pay a maximum of \$30.00 for a 50-pound table (\$.60 x 50 lbs.). You are not required to pay an extra charge for this option;

(B) Option 2. Depreciated Value Protection. The weight of your goods is multiplied by \$1.25 per pound to figure the value of your goods, or you may declare a lump sum value of your goods. The greater of the two value figures will be used to calculate the amount you must pay for this protection. Ask your mover for the current price of this option. Any items lost or damaged are subject to depreciation under this option;

(C) Option 3. Replacement Cost Protection. The weight of your goods is multiplied by \$3.50 per pound to figure the value of your goods, or you may declare a value of \$10,000 or more. The greater of the two value figures will be used to calculate the amount you must pay for this protection. Ask your mover for the current price of this option. Depreciation does not apply under this option; and

(D) Valuation protection options, other than those found in paragraphs (A), (B) and (C) of this subsection may be offered by the mover, when approved by the Department.

#### (12) ADDITIONAL VALUATION INFORMATION:

(a) Hourly rated shipments are not usually weighed, so a lump sum value must be declared if you wish to purchase depreciated value or replacement cost protection;

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(b) If NO option is chosen and signed by you on the bill of lading, the mover will assign depreciated value protection (Option 2 in paragraph (11)(e)(B) of this rule). You will be required to pay the valuation charge for this protection;

(c) Be sure the bill of lading has the option you have chosen before you sign it;

(d) Caution: If the actual value of your goods is higher than the amount you declare on the bill of lading, you may NOT be fully covered. If you are unsure of the value of your goods, you should check your homeowner's policy or call your insurance agent.

## (13) POINTS TO REMEMBER:

(a) Bill of Lading Contract: The bill of lading is a contract between you and the mover. The mover is required by law to prepare a bill of lading for every shipment it transports;

(b) Get a copy of the bill of lading from the driver who loads the shipment before your goods leave the point of origin. It must show the mover's name, address, and telephone number, the address and telephone number furnished by you to which the mover can send messages regarding your shipment, the location to which your goods are moving, the date of loading, the preferred delivery date and the declared value of your goods;

(c) It is your responsibility to read the bill of lading before you sign it. If you do not agree with something on the bill of lading, do not sign it until you are satisfied that the bill of lading shows what service you want;

(d) The bill of lading requires the mover to provide the service you have requested, and requires you to pay the mover the charges for those services. The bill of lading is an important document. Do not lose or misplace your copy. Have it available until your shipment is delivered. Keep it until all charges are paid and all claims, if any, are settled;

(e) Weights: The transportation charge for an intercity move is based on the actual weight of the shipment and distance moved, plus the charge for any accessorial services provided. If you question the weight reported by a mover, you may request that the shipment be reweighed prior to delivery when scales are available. You may be assessed an extra charge for reweighing.

## (14) AT DELIVERY, CHECK FOR LOSS OR DAMAGE:

(a) At the time of delivery, check for missing items and for damage. If an inventory was prepared, it is your responsibility to check the items delivered against the items listed on the inventory;

(b) If any item is missing, or new damage is discovered, discuss it with the driver. Make a record of the missing or damaged goods on the driver's copy and your copy of the bill of lading or inventory;

(c) After the shipment is unloaded, the driver will request that you sign the bill of lading and/or inventory sheets to show that you received the items listed. Do not sign these documents until your notations have been made if any items are missing or damaged;

(d) A claim settlement may depend on whether these notations were made by you at the time of delivery. Keep any evidence, such as crushed cartons, until the claim is settled.

## (15) LOSS OR DAMAGE CLAIMS:

(a) Should your move result in the loss or damage to any of your property, you have the right to file a claim with the mover to recover for such loss or damage. Claims must be filed with the moving company in writing within three months from the date of delivery. You should, however, file a claim as soon as possible. Claim forms may be obtained from the mover;

(b) After receipt of your claim, the mover must:

(A) Acknowledge receipt of your claim by notifying you in writing within 30 days;

(B) Pay, decline, or offer a firm compromise settlement in writing within 120 days of receipt of your claim;

(C) Notify you in writing of the reasons for any delay in settling your claim beyond 120 days;

(D) Continue to notify you in writing of the reason for the delay each 60 days thereafter until the claim is settled.

(c) ODOT does NOT have the authority to settle claims but does enforce these time limits. The mover must send a copy of any delayed claim letter to ODOT. Contact ODOT if the mover does not adhere to these time limits;

(d) The time limit to file suit against the mover is within two years and one day from the date of any claim disallowance received in writing.

## (16) READY TO ASSEMBLE FURNITURE:

(a) Moving companies have limited liability on "Ready to Assemble Furniture" with components that are not bordered by solid wood, veneer plywood or metal and structural fasteners that join into one of these materials. "Ready to Assemble Furniture" does not stand up to the normal strains of moving and needs to be fully disassembled prior to your move to avoid loose joints, chipping, and breakage. The cost of repair can exceed the value of this furniture.

(b) If you have purchased furniture second hand, look for fasteners secured into cam locks or into any material other than solid wood, veneer plywood or metal. Review your "Ready to Assemble Furniture" and make sure it is worth moving and decide as soon as possible how you will have it disassembled at origin and reassembled at destination.

(c) Your least expensive option is to disassemble furniture completely and remove and carefully place all hardware, fasteners, pins, cams, handles, wafers and dowels into a clearly labeled box. Your mover will then move these items at the valuation you chose.

(d) Your mover can also arrange for "Ready to Assemble Furniture" to be disassembled and reassembled for you at additional cost. If, however, these items are moved assembled they will be moved at your risk with specific caps on carrier liability.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.202

Hist.: PUC 17-1987, f. & ef. 12-31-87 (Order No. 87-1309); PUC 5-1994, f. & cert. ef. 2-16-94 (Order No. 94-298); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-069-0007; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 4-1997, f. & cert. ef. 7-15-97; MCTB 3-2002, f. & cert. ef. 7-24-02; MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04

## 740-060-0050

### Packing and Loading of Residential Personal Property

(1) Any person that provides, or offers to provide, a pack or load service as defined in ORS 825.005(9) must first obtain registration from the Department as described in section (2) of this rule. Furthermore, such person:

(a) May not directly or indirectly provide or otherwise be involved in the procurement of a motor vehicle for the movement of residential personal property, including the pickup or return of a leased vehicle, nor act as agent for any person who does; or

(b) May not operate a motor vehicle used in the movement of residential personal property, nor arrange for or procure another person to operate the motor vehicle, except for driving the motor vehicle used in the transportation of residential personal property from the origin to the destination of the shipment.

(2) An applicant for an initial pack or load service registration must:

(a) Complete and submit an application form provided by the Department;

(b) Remit the initial application fee described in ORS 825.180(f);

(c) Remit an annual fee of \$100; and

(d) Provide a Certificate of Insurance verifying general liability and property damage insurance with single limit coverage of at least \$50,000 and aggregate limit coverage of at least \$150,000.

(3) A pack or load service provider must renew registration, not later than December 31st of the year preceding the year of proposed operation. Renewal consists of completing and submitting a renewal form provided by the Department and remittance of the \$100 annual fee.

(4) The Department will issue to all persons who meet the requirements of this rule an annual registration document verifying proof of registration as a pack or load service provider.

Stat. Auth.: ORS 823.011 & Ch. 754, OL 2003

Stats. Implemented: Ch. 754, OL 2003

Hist.: PUC 12-1993, f. & cert. ef. 6-23-93 (Order No. 93-810); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-069-0015; MCT 3-1996, f. & cert. ef. 3-14-96; MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04

## 740-060-0055

### Additional Fees

Each authorized intrastate household goods carrier must annually pay a fee of \$100 or .1 percent of its gross revenue derived from Oregon intrastate household goods moving activity in the preceding year, whichever is greater. The fee shall be due by April 1 and must be reported on a form provided by the Department. A fee of \$100 will be charged any new intrastate household goods carrier at the time authority is granted. Fees received late will be charged a penalty of 2 percent per month until paid.

Stat. Auth.: ORS 823.011 & Ch. 754, OL 2003

Stats. Implemented: Ch. 754, OL 2003

Hist.: MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04

## 740-300-0035

### Providing Unauthorized Pack or Load Service or Household Goods Transportation

Except as otherwise ordered by the Department in a particular case, any person who violates Chapter 754 Oregon Laws 2003 by providing a pack or load service without valid registration, or any rule or order related thereto, or who violates ORS 825.100 by providing an unauthorized household goods moving service, or any rule or order related thereto, is subject to civil monetary penalties in the amount of \$500 per violation, in addition to any other penalties authorized by law.

Stat. Auth.: ORS 823.011 & Ch. 754, OL 2003

Stats. Implemented: ORS 825.100, 825.950 & Ch. 754, OL 2003

Hist.: MCTD 9-2003(Temp), f. 12-12-03, cert. ef. 1-1-04 thru 6-28-04

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## Division of State Lands Chapter 141

**Adm. Order No.:** DSL 2-2003(Temp)

**Filed with Sec. of State:** 11-26-2003

**Certified to be Effective:** 11-26-03 thru 5-23-04

**Notice Publication Date:**

**Rules Adopted:** 141-085-0450

**Rules Amended:** 141-085-0010, 141-085-0027, 141-085-0028, 141-085-0029, 141-085-0075, 141-085-0096, 141-085-0115, 141-085-0121, 141-085-0126, 141-085-0131, 141-085-0141, 141-085-0146, 141-085-0151, 141-085-0156, 141-085-0161, 141-085-0176, 141-085-0263, 141-085-0410, 141-085-0421, 141-085-0430, 141-089-0180, 141-090-0020, 141-090-0030

**Subject:** This temporary rule makes the following major changes in OAR 141-085: deletes terms no longer in use (e.g. direct and indirect compensatory wetland mitigation); adds new terms (e.g. compensatory wetland mitigation (CWM); offsite CWM; on-site CWM; amends terms (e.g. practicable, credits, service area); changes certain application processing deadlines and procedures (e.g. completeness review period reduced from 40 to 30 days; requires payment of fees at time of application; reduces public review process from 45 to 30 days; limits DEQ's comment period for projects not requiring federal Clean Water Act certification); changes certain deadlines (60 to 21 days for parties other than the applicant) for appeals and allows appeals for rejection of an application; deletes requirements that certain CWM be within the same subbasin or within one mile of the project site and substitutes the requirement for on-site then off-site CWM if on-site is impracticable; sets the value of payment to provide payments at the average cost of credits from all active wetland mitigation banks; requires the use of a wetland mitigation bank if available before making payment to provide mitigation payment; allows DSL to use funds from the Wetland Mitigation Bank Revolving Fund to purchase wetland mitigation bank credits in order to satisfy certain CWM requirements; allows for credits to be sold from any wetland mitigation bank to remedy a violation of law or rules; adds requirement for DSL to encourage the development of wetland mitigation banks; adds requirement that parties commenting on a mitigation bank prospectus do so within 30 days; adds new requirement that DSL maintain certain records on each active mitigation bank and report annually.

This temporary rule makes the following major changes in OAR 141-089 Transportation General Authorization: Deletes no longer used, "indirect CWM" and replaced with "off site."

This temporary rule makes the following major changes to OAR 141-090: adds new provision that requires DSL to give priority to wetland delineation reports submitted with or in advance of an application; adds provision that requires DSL to use the U.S. Corps of Army Engineers' national wetland delineation manual.

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3805, ext. 239

### 141-085-0010

#### Definitions

The following definitions will be used in addition to those in ORS 196.600, 196.800, 196.815, 196.830, 196.860 and 196.905

(1) "Activities Customarily Associated with Agriculture" (ORS 196.810(1)(b)) applies only to fill or removal of less than 50 cubic yards in essential indigenous anadromous salmonid habitat (see OAR 141-102-0020(6)). "Activities customarily associated with agriculture" include maintenance of an existing irrigation structure at an existing point of diversion (as defined in OAR 690-015-0005) to maintain previously constructed agricultural drainage or irrigation channels, or to maintain or replace any associated and necessary pumps, tide gates, levees, groins and/or other drainage or irrigation-related devices. Exempt activities also include maintaining existing culverts under farm or ranch roads by removing debris. "Activities customarily associated with agricultural" does not include activities such as filling a slough to expand a farm field, constructing a new farm or ranch road, or constructing a new point of diversion.

(2) "Activity" means the same as "project."

(3) "Adverse Effect" means the same as "reasonably expected adverse impacts".

(4) "Applicant" means a landowner or person authorized by a landowner seeking a permit or authorization to conduct a removal-fill activity under ORS 196.800 to 196.990 and who has authority to fully execute the terms and conditions of the authorization.

(5) "Agency" means the Oregon Division of State Lands and the Director or designee.

(6) "Aquatic Life and Habitats" means the aquatic environment including fish, wildlife and plant-species dependent upon environments created and supported by the waters of this state. Aquatic life includes communities and species populations that are adapted to aquatic habitats for at least a portion of their life.

(7) "Artificially Created" means constructed by artificial means.

(8) "Artificial Means" means the purposeful movement or placement of material by humans and/or their machines.

(9) "Authorization" means an individual permit, letter of authorization issued under a General Authorization, or emergency authorization as required by these rules and ORS 196.810 and 196.850.

(10) "Authorization Holder" or "permittee" means the person holding a valid authorization from the Agency.

(11) "Bank" means: (a) for perennial streams, that portion of a waterway that is exposed at low water and lies below the ordinary high water line or bankfull stage; and (b) for intermittent streams, the bank extends to the ordinary high waterline; the line between the bed and bank may be indistinguishable during dry months.

(12) "Bankfull Stage" means the two-year recurrence interval flood elevation.

(13) "Baseline Conditions" means the ecological conditions, wetland functional attributes, and the vegetative, soils, and hydrological characteristics present at a site before any change by the applicant is made.

(14) "Basin" means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department as shown on maps published by that agency.

(15) "Beds" means: (a) for the purpose of OAR 141-089-0245 to 141-089-0275, the land within the wet perimeter and any adjacent nonvegetated dry gravel bar; (b) for all other purposes, "beds" means that portion of a waterway that is always covered by water; or, on intermittent streams, the area that carries water when water is present.

(16) "Beds or Banks" means the physical container of the waters of this state, bounded on freshwater bodies by the line of ordinary high water or bankfull stage, and on bays and estuaries by the limits of the highest measured tide.

(17) "Bio-Engineering" means construction methods which use live woody material or a combination of live vegetation material (usually woody) and rock to stabilize a stream bank.

(18) "Borrowed Material" means excavated earth or rock that is removed from one location (e.g. streambed) and used at another location.

(19) "Buffer" means an upland area immediately adjacent to or surrounding a wetland or other water that protects the functioning of that wetland or water.

(20) "Bulkhead" means a vertical or nearly vertical bank protection structure placed parallel to the shoreline consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

(21) "Cease and Desist Order" means a legally binding order compelling a party to cease removal or fill activities in waters of the state.

(22) "Certified Credit" as used in compensatory wetland mitigation banking, results when the wetland mitigation bank has met or exceeded the performance standards established in its Mitigation Bank Instrument. Once credits are certified, they are available for sale or exchange.

(23) "Channel" means a natural (perennial or intermittent stream) or human made (e.g., drainage ditch) waterway of perceptible extent that periodically or continuously contains moving water and has a definite bed and banks that serve to confine the water.

(24) "Channel Relocation" means a type of removal in which a new channel is dug and the flow of the stream is diverted from the old channel into the new channel.

(25) "Coastal Zone" means the area lying between the Washington border on the north to the California border on the south, bounded on the west by the extent of the state's jurisdiction as recognized by federal law, and the east by the crest of the coastal mountain range, excepting:

(a) The Umpqua River basin, where the coastal zone extends to Scottsburg;

(b) The Rogue River basin, where the coastal zone extends to Agness; and

(c) The Columbia river basin, where the coastal zone extends to the downstream end of Puget Island.

(26) "Coastal Zone Certification Statement" means a signed statement by the applicant or an authorized agent indicating that the proposed project

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will be undertaken in a manner consistent with the applicable enforceable policies of the Oregon Coastal Management Program.

(27) "Cofferdam" means a temporary enclosure used to keep water from a work area.

(28) "Commercial Aggregate Removal" means excavating sand, gravel or rock for the purposes of exchanging or reselling as a marketable commodity.

(29) "Commercial Operator" means any person undertaking a project having financial profit as a goal.

(30) "Compensatory Mitigation" means replacement of water resources that are damaged or destroyed by an authorized activity.

(31) "Compensatory Mitigation Goal" means a broad statement(s) that describes the intent or purpose of the compensatory mitigation proposal. An example of a mitigation goal is "to establish a 10-acre diverse wetland habitat with four Cowardin wetland classes."

(32) "Compensatory Mitigation Objective" means the specific direct actions necessary to achieve the compensatory mitigation goals. Mitigation objectives are performance based and measurable; they describe water regimes, vegetation structure, soil morphology, and/or habitat features that will be restored, enhanced, or created as a part of the compensatory mitigation plan. An example of an objective is "the vegetated areas will have 3 (three) acres each of emergent, scrub-shrub and forested wetland."

(33) "Compensatory Wetland Mitigation" means activities conducted by an authorization holder, permittee or third party to create, restore or enhance wetland functional attributes to compensate for the adverse effects of project development or to resolve violations of ORS 196.800 to 196.905 or these rules.

(34) "Compensatory Wetland Mitigation (CWM) Plan" means a document that describes in detail proposed compensatory wetland mitigation.

(35) "Compensatory Wetland Mitigation (CWM) Project" means a project to replace authorized wetland losses according to a compensatory mitigation plan.

(36) "Comprehensive Plan" means a generalized, coordinated land use map and policy statement of the governing body of a local government that interrelates all functional and natural systems and activities relating to the use of lands, including but not limited to sewer and water systems, transportation systems, educational facilities, recreational facilities, and natural resources and air and water quality management programs and as further defined under ORS 197.015(5).

(37) "Completed Application" means a signed application form that contains all necessary information as described in OAR 141-085-0025 and as determined to be complete under OAR 141-085-0027.

(38) "Concentrator" means a device used to physically or mechanically separate and enrich the valuable mineral content of aggregate. Pans, sluice boxes and mini-rocker boxes are examples of concentrators.

(39) "Consent Agreement" means an informal agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(40) "Consent Order" means a formal, legally binding agreement between the Agency and the violator that is signed by both parties, where the violator voluntarily agrees to resolve a removal-fill violation.

(41) "Converted Wetland" means, for the purposes of OAR 141-085-0020(4),

(a) Wetlands that on or before June 30, 1989, have been diked, drained, dredged, filled, leveled or otherwise manipulated to impair or reduce the flow, circulation or reach of water for the purpose of enabling production of an agricultural commodity and are managed for that purpose; and

(b) Includes land that the Natural Resources Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland or farmed wetland, so long as agricultural management of the land has not been abandoned for five or more years.

(42) "Cowardin Classification" means the comprehensive classification system of wetlands and deepwater habitats that was developed by the U.S. Fish and Wildlife Service (Cowardin et al. 1979).

(43) "Creation" means to convert an area that has never been a wetland to a jurisdictional wetland.

(44) "Creation of an Estuarine Area" means to convert an upland area into a shallow subtidal or an intertidal or tidal marsh area by land surface alteration. The area to be converted must be an upland area lying above the line of nonaquatic vegetation when alteration work begins.

(45) "Culvert" means a conduit designed and functioning to convey stream flows under an obstacle, such as, a corrugated metal pipe used to pass stream flow under a road.

(46) "Dam" means a structure or barrier constructed across a waterway to control the flow of the water.

(47) "Day of Violation" means the first day and each day thereafter on which there is a failure to comply with any provision of the removal-fill

law, these rules (OAR 141-085), any rule adopted pursuant to these rules (OAR 141-085), any order adopted in accordance with these rules (OAR 141-085) or any authorization issued in accordance with these rules (OAR 141-085).

(48) "Deep Ripping, Tiling and Molding" refer to certain specific mechanical methods used to promote subsurface drainage of agricultural wetlands.

(49) "Degraded Wetland" refers to a wetland with diminished functional attributes resulting from hydrologic manipulation (such as diking, draining and filling) or other human caused actions or events that demonstrably interfere with the normal functioning of wetland processes.

(50) "Dewatering" is the removal of water from a defined area (e.g., from within a cofferdam) using gravity or mechanical means (e.g. pumping).

(51) "Dike" means any embankment, usually earthen, constructed to control or confine water.

(52) "Directly Connected" as used in connection with exempt forest management practices means conducted as part of a commercial activity relating to the establishment, management or harvest of forest tree species. These activities include reforestation; road construction and maintenance; harvesting of forest tree species; application of chemicals; disposal of slash; site preparation; pre-commercial thinning; pruning; development of rock pits for forest road use; collecting cones and seeds; tree protection such as bud capping; and harvesting of minor forest products. These activities also include riparian and aquatic habitat restoration done as part of a forest management practice. Directly connected does not include fill and removal activities conducted as part of a land use change, even though commercial harvesting of forest tree species may be part of the land use change process.

(53) "Drainage Ditch" means channels excavated from the surface of the ground designed to remove surface or shallow ground waters.

(54) "Dolphin" is a cluster of piles or piling which is bound together.

(55) "Drained" means a condition in which ground or surface water has been reduced or eliminated by artificial means.

(56) "Dredge Material Disposal Sites" or "DMD" means geographic locations identified as pre-approved by local government for the stockpiling or disposal of materials dredged from a waterway.

(57) "Dredging" means removal of bed material using other than hand held tools.

(58) "Emergency" means natural or human-caused circumstances that pose an immediate threat to public health, safety or substantial property including crop or farmland.

(59) "Emergency Authorization" is an expedited authorization that the Agency may issue for the removal of material from the beds or banks or filling of any waters of the state in an emergency, for the purpose of making repairs or for the purpose of preventing irreparable harm, injury or damage to persons or property (ORS 196.810(4)).

(60) "Emergency Wetlands Resources Act of 1986" means the federal legislation adopted as Public Law 99-645.

(61) "Enhancement" refers to a human activity that increases the function of an existing degraded wetland.

(62) "Enhancement of an Estuarine Area" means a long-term improvement of existing estuarine functional characteristics and processes that is not the result of a creation or restoration action.

(63) "Environmentally Preferable" means having a higher likelihood of replacing wetland functional attributes or of improving water resources of the state.

(64) "Erosion-Flood Repair" means the placement of riprap or any other work necessary to preserve existing structures, facilities and land from flood and high stream flows.

(65) "Estuarine Resource Replacement" means the creation, the restoration or enhancement of an estuarine area to maintain the functional characteristics and processes of the estuary, such as its natural biological productivity, habitats and diversity of native species, unique features, and water quality.

(66) "Estuary" means a body of water semi-enclosed by land and connected with the open ocean within which salt water is usually diluted by fresh water derived from the land. "Estuary" includes all estuarine waters, tidelands, tidal marshes and submerged lands extending upstream to the head of tidewater. However, for the purposes of these rules, the Columbia River Estuary extends to the western edge of Puget Island.

(67) "Expiration Date" means the date the authorization to conduct the removal-fill activity specified in the authorization has ended. The authorization holder's obligation to comply with the Agency's rules and authorization conditions continues indefinitely. For example, compensatory wetland mitigation requirements, including monitoring, extend until such requirements are fully satisfied according to the general and specific conditions attached to the authorization.

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(68) "Extreme Low Tide" means the lowest estimated tide that can occur. The elevation of Extreme Low Tide under these rules is established at -3.5 feet Mean Lower Low Water.

(69) "Farm or Stock Pond" means a confined water body located on a working farm or ranch, created by human activity and used predominately for agricultural purposes.

(70) "Farm Road" means a road on a working farm and that is used predominantly for agricultural purposes.

(71) "Farm Use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the production of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm Use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm Use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm Use" also includes the propagation, cultivation, maintenance and harvesting of aquatic species and bird and animal species to the extent allowed by the rules adopted by the Oregon Fish and Wildlife Commission. "Farm Use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm Use" does not include the use of land subject to the provisions of ORS Chapter 321, except land used exclusively for growing cultured Christmas trees.

(72) "Farmed Wetland" means land that the Natural Resources Conservation Service of the United States Department of Agriculture certifies as farmed wetland.

(73) "Federal Endangered Species Act" or "ESA" means 16 U.S.C. 1531 et seq., administered by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS).

(74) "Fen" means a type of wetland that accumulates peat, receives some drainage from surrounding mineral soil and supports a wide range of vegetation types including sedge and moss-dominated communities and coniferous forests.

(75) "Fill" means the total of deposits of material, including pilings, by artificial means equal to or greater than 50 cubic yards at one location in any waters of this state. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102-0000 to 0045) and in designated Scenic Waterways (OAR 141-100-0000 to 0090) "fill" means any deposit by artificial means.

(76) "Financial Assurance(s)" means the money or other form of financial instrument (for example, surety bonds, trust funds, escrow accounts, proof of stable revenue sources for public agencies) required of the sponsor to ensure that the functions of the subject bank are achieved and maintained over the long-term pursuant to the terms and conditions of the Mitigation Bank Instrument.

(77) "Financial Security Instrument" means a Surety Bond, Certificate of Deposit, irrevocable letter of credit or other instrument to guarantee performance.

(78) "Fish Habitat Enhancement" means a project with the sole purpose of improving habitat conditions for fish.

(79) "Fish Passage/Fish Screening Structures" mean devices specifically designed to manage/direct the movement of fish.

(80) "Fishway" means any structure, facility or device that is designed to enable fish to effectively pass around or through an obstruction.

(81) "Floodplain" is that portion of a river valley, adjacent to the channel, which is built of sediments, deposited during the present regimen of the stream and is covered with water when the waterway overflows its banks at flood stage.

(82) "Food and Game Fish" means those species listed under either ORS 506.011 or 496.009.

(83) "Food-Producing Areas for Food and Game Fish" (as used in ORS 196.800 and these rules) include all stream reaches that flow during a portion of every year, up to one tributary above (i.e., upstream) any food and game fish bearing stream.

(84) "Forest Management Practices" means commercial activity conducted on forestlands connected with growing and harvesting forest tree species, including but not limited to:

- (a) Reforestation;
- (b) Road construction and maintenance;
- (c) Harvesting of forest tree species;
- (d) Application of chemicals; and
- (e) Disposal of slash.

(85) "Forestland" means the same as used in the Forest Practices Act and rules (ORS 527.610 to 527.992 and OAR 629-024-0101(26)) as land

which is used for the commercial growing and harvesting of forest tree species, regardless of how the land is zoned or taxed or how any state or local statutes, ordinances, rules or regulations are applied.

(86) "Free and Open Connection" as used in OAR 141-085-0015(2) means a connection by any means, including, but not limited to, culverts, to or between natural waterways and other bodies of water that allows the interchange of surface flow at bankfull stage or ordinary high water, or at or below mean higher high tide between tidal waterways.

(87) "Functional Attributes" are those ecological characteristics or processes associated with a wetland and the societal benefits derived from those characteristics. These ecological characteristics are widely known as "functions," whereas the associated societal benefits are widely known as "values."

For example, wetland functions include, but are not limited to the following: providing habitat areas for fish and wildlife; nutrient breakdown, retention and/or assimilation; stormwater retention and controlled release. Values associated with those functions, respectively, might include: protecting listed species; water quality improvement; and flood attenuation and floodwater storage.

(88) "General Authorization" means a rule adopted by the Agency authorizing, without an individual removal-fill permit, a category of activities involving removal or fill, or both, on a statewide or other geographic basis. (OAR 141-085-0070).

(89) "Geographic Region" for the purposes of the payment to provide option of a compensatory wetland mitigation plan, means one of the eighteen (18) Oregon drainage basins identified by the Oregon Water Resources Department (WRD) as shown on maps published by WRD.

(90) "Governmental Body" includes the federal government when operating in any capacity other than navigational servitude, the State of Oregon and every political subdivision therein.

(91) "Gravel" is loose rounded rock, particle size between 2 and 64 mm in diameter.

(92) "Groins" is a general category of structures that are designed to directly influence stream hydraulics, and may include barbs and vanes. The primary function of a groin is to provide roughness, dissipate energy, and reduce velocities near the bank. They may be oriented downstream, perpendicular, or upstream to the flow.

(93) "Habitat Enhancement" means to improve habitat areas through habitat manipulation and management.

(94) "Harvesting" means, for the purposes of OAR 141-085-0020(4), physically removing farm or ranch crops.

(95) "Hatchery" means any water impoundment or facility used for the captive spawning, hatching, or rearing of fish and shellfish.

(96) "Hearing Officer Panel" means the group established within the Employment Department, pursuant to the provisions of Sections 2 to 21, Chapter 849, Oregon Laws, 1999 (later codified within ORS 183.310 to 183.550), to provide hearing officers to conduct contested case proceedings.

(97) "Herbaceous Plants" are non-woody vegetation including forbs, grasses, rushes and sedges.

(98) "Highbanker" means a stationary concentrator capable of being operated outside the wetted perimeter of the water body from which water is removed, and which is used to separate gold and other minerals from aggregate with the use of water supplied by hand or pumping, and consisting of a sluice box, hopper, and water supply. Aggregate is supplied to the highbanker by means other than suction dredging. This definition excludes mini-rocker boxes.

(99) "Highbanking" means the use of a highbanker for the recovery of minerals.

(100) "Highest Measured Tide" means the highest tide projected from actual observations of a tide staff within an estuary or tidal bay.

(101) "Hydraulicizing" means the use of water spray or water under pressure to dislodge minerals and other material from placer deposits.

(102) "Hydric Soil" is a soil that is formed under conditions of saturation, flooding or ponding long enough during the growing season to develop anaerobic conditions in the upper part.

(103) "Hydrophytic Vegetation" means macrophytic plant life growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content.

(104) "Hydrogeomorphic Method" or "HGM" is a method of wetland classification and functional assessment based on a wetland's location in the landscape and the sources and duration of water flow. The HGM approach identifies the wetland classes present in each region, defines the functions that each class of wetlands performs, and establishes reference sites to define the range of functioning of each wetland class.

(105) "Impact" or "Effect" means the actual, expected or predictable results of an activity upon waters of the state including water resources, navigation, fishing and public recreation uses.

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(106) "Impounded Waters," means waters behind dams, weirs or other structures as measured to the maximum pool or top of the spillway, whichever is lower.

(107) "Individual Removal-Fill Permit" is a permit issued to a person for a specific removal and/or fill activity that is not subject to a General Authorization or Emergency Authorization as defined in these rules.

(108) "Intergovernmental Agreement" means a memorandum of agreement (MOA), memorandum of understanding (MOU), intergovernmental agreement (IGA), or other forms of agreement between government entities.

(109) "Intermittent Stream" means any stream that flows during a portion of every year and which provides spawning, rearing or food-producing areas for food and game fish.

(110) "Intertidal or Tidal Marsh Area of an Estuary" means those lands lying between extreme low tide and the line of nonaquatic vegetation (Figure 1, Estuarine Mitigation The Oregon Process, Division of State Lands, April 1984, p 8).

(111) "Invasive Plants" mean non-native plants that aggressively compete with native species. For example, invasive plants include English ivy, reed canary grass and Himalayan blackberry.

(112) "Irrigation Ditches" are channels excavated on the surface of the ground designed to convey water for the purpose of irrigating crops or pasture.

(113) "Jetty or Jetties" means a pier or other structure projecting into a body of water to influence the current or tide or protect a harbor or shoreline.

(114) "Land and Water Conservation Fund Act" means the federal legislation adopted as Public Law 88-578, as amended.

(16 U.S.C. Section 460-L et seq.)

(115) "Large Woody Material" means trees or tree parts larger than ten inches in diameter at the smallest end and longer than six feet, including rootwads.

(116) "Legally Protected Interest" means a claim, right, share, or other entitlement that is protected under state or federal law. A legally protected interest includes, but is not limited to, an interest in property.

(117) "Letter of Authorization" is issued to a person confirming that the activity described in an application meets the requirements of a specific General Authorization adopted in accordance with these rules.

(118) "Levee" means a human-made feature that restricts movement of water into or through an area.

(119) "Line of Nonaquatic Vegetation" means the upper limit of wetland vegetation, or, the point at which characteristic upland species become established in the vegetation, or, if not discernible, the line of Highest Measured Tide which is a projection from the highest tide actually observed on a tide staff within the estuary.

(120) "Linear Project" means a corridor type project, such as a transportation or utility transmission project.

(121) "Listed Species" means any species listed as endangered or threatened under the federal Endangered Species Act (ESA) and/or any species listed as endangered, threatened or sensitive under the Oregon Endangered Species Act (OESA).

(122) "Maintenance" means the periodic repair or upkeep of a structure in order to maintain its original function. Maintenance does not include any modification that changes the character or scope, or increases the adverse impact over the original fill or removal design, except as specifically stated in OAR 141-085-0020. Maintenance does not include reconstruction.

(123) "Maintenance Dredging" means dredging to maintain the serviceability of an existing dredged channel to the previously authorized depths and areas for a previously defined project.

(124) "Material" means rock, gravel, sand, silt and other inorganic substances removed from waters of the state and any materials, organic or inorganic, used to fill waters of the state.

(125) "Maximum Pool Elevation" means the highest operating level of a reservoir.

(126) "Mining Access Road" means a road constructed for the sole purpose of serving a commercial gravel, placer or lode operation.

(127) "Mitigation" means the reduction of adverse effects of a proposed project by considering, in the following order:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action;

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

(c) Rectifying the impact by repairing, rehabilitating or restoring the affected environment;

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate corrective measures; and

(e) Compensating for the impact by replacing or providing comparable substitute wetlands or other waters.

(128) "Mitigation Bank" or "Bank" means wetland(s) and any associated buffer(s) restored, enhanced, created, or protected, whose credits may be sold or exchanged to compensate for unavoidable future wetland losses due to removal, fill, or alteration activities. ORS 196.600(2) further defines this term.

(129) "Mitigation Bank Credit" or "Credit" means the measure of the increase in wetland functional attributes achieved at a mitigation bank site. Wetland credits are the unit of exchange for compensatory wetland mitigation. ORS 196.600(2) further defines this term.

(130) "Mitigation Bank Instrument" or "Instrument" means the legally binding and enforceable agreement between the Director and a mitigation bank sponsor that formally establishes the wetland mitigation bank and stipulates the terms and conditions of its construction, operation, and long-term management. The Instrument is usually in the form of a memorandum of agreement signed by members of the Mitigation Bank Review Team (MBRT), but an order from the Agency makes the Instrument legally binding and enforceable if a removal-fill permit is not required to construct the bank.

(131) "Mitigation Bank Prospectus" or "Prospectus" is a preliminary document prepared by a mitigation bank sponsor describing a proposed bank in detail sufficient to enable initial review by the Agency. The Agency uses the Prospectus to initially determine whether the proposed bank would be technically feasible, whether the bank is likely to be needed, and whether the bank can meet the policies stated in these rules.

(132) "Mitigation Bank Review Team" or "MBRT" is an advisory committee to the Agency and the Corps on wetland mitigation bank projects.

(133) "Mitigation Bank Sponsor" or "Sponsor" is a person who is proposing, or has established and/or is maintaining a mitigation bank. The sponsor is the entity that assumes all legal responsibilities for carrying out the terms of the Instrument unless specified otherwise explicitly in the Instrument.

(134) "Movement by Artificial Means," means to excavate, alter or otherwise displace material such as, but not limited to: mechanically moving gravel within a streambed, suction dredging for recreational or placer mining, blasting, plowing, and land clearing activities such as grading, scraping and displacing of inorganic material associated with stump removal (except as otherwise allowed by OAR 141-085-0020 for normal farming and ranching activities and other exempted actions).

(135) "Native Vegetation" means plant species that occurred or are documented to have occurred within the State of Oregon prior to Euro-American settlement.

(136) "Natural Biological Productivity" means the sum of all biomass production in an estuary including biological production at all trophic levels under, on, and above the land surface.

(137) "Natural Resources In and Under the Waters of this State" means aquatic life and habitats and includes resources such as shellfish beds, spawning and rearing areas for anadromous fish, gravel and minerals, and other sites and avenues for public recreation, navigation and public commerce within the waters of this state.

(138) "Natural Waterways," as used in ORS 196.800(14), means waterways created naturally by geological and hydrological processes, waterways that would be natural but for human-caused disturbances (e.g., channelized or culverted streams, impounded waters, partially drained wetlands or ponds created in wetlands) and that otherwise meet the definition of waters of the state, and certain artificially created waterways as described in "Other Bodies of Water" (OAR 141-085-0015(2)(e)).

(139) "Navigational Servitude" means activities of the Federal Government that directly result in the construction or maintenance of Congressionally authorized navigation channels.

(140) "Normal Farming and Ranching Activities" for the purpose of the exemption on converted wetlands (OAR 141-085-0020) are activities that directly adapt or use the land for the growing of crops or the raising of livestock and are unique to agriculture.

(141) "Non-Motorized Methods" are those removal-fill activities within Essential Indigenous Anadromous Salmonid Habitat that are completed by hand and are not powered by internal combustion, hydraulics, pneumatics, or electricity. Hand-held tools such as wheelbarrows, shovels, rakes, hammers, pry bars and cable winches are examples of common non-motorized methods.

(142) "Non-Navigable" means a waterway that is not navigable for title purposes or where title navigability has not been determined by the State Land Board in accordance with ORS 274. Contact the Agency for the latest listing of navigable waterways.

(143) "Non-Water Dependent Uses" means uses which do not require location on or near a waterway to fulfill their basic purpose.

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(144) "Non-Wetland" means an area that does not meet the wetland definition and criteria.

(145) "Ocean Shore" means the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. "Ocean shore" does not include an estuary as defined in ORS 196.800. The "Ocean shore" is regulated by the Oregon Department of Parks and Recreation.

(146) "Off-site compensatory wetland mitigation" or "off-site CWM" means activities conducted away from the project site to restore, create or enhance wetland function attributes in order to compensate for the adverse impacts to wetlands from project development.

(147) "On-site compensatory wetland mitigation" or "on-site CWM" means activities conducted at the project site to restore, create or enhance wetland functional attributes in order to compensate for the adverse impacts to wetlands from project development.

(148) "Ordinary High Water Line" (OHWL) means the line on the bank or shore to which the high water ordinarily rises annually in season (ORS 274.005). The OHWL excludes exceptionally high water levels caused by large flood events (e.g. 100 year events). OHWL is indicated in the field by the following physical characteristics:

(a) Clear, natural line impressed on the shore;

(b) Change in vegetation (riparian (e.g. willows) to upland (e.g. oak, fir) dominated);

(c) Textural change of depositional sediment or changes in the character of the soil (e.g. from sand, sand and cobble, cobble and gravel to upland soils);

(d) Elevation below which no fine debris (needles, leaves, cones, seeds) occurs;

(e) Presence of litter and debris, water-stained leaves, water lines on tree trunks; and/or

(f) Other appropriate means that consider the characteristics of the surrounding areas.

(149) "Oregon Endangered Species Act" or "OESA" means ORS 496.171 to 496.192, administered by ODFW, and ORS 564.010 to 564.994 administered by the Oregon Department of Agriculture (ODA).

(150) "Oregon Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with ORS 390.805 to 390.925.

(151) "Oregon Wetlands Priority Plan" or "Plan" means a plan developed pursuant to these rules and approved by the State Land Board that establishes a procedure for setting priorities and creates a list of wetlands and interests therein for possible acquisition in accordance with the federal Emergency Wetlands Resources Act of 1986 (Public Law 99-645).

(152) "Other Waters" means waters of the state other than wetlands.

(153) "Passive Revegetation" means a strategy allowing the re-establishment of non-invasive vegetation without planting or seeding.

(154) "Payment to Provide Mitigation" means compensatory wetland mitigation performed using cash paid to the Agency or by agreement of the Agency to an approved third party.

(155) "Perennial Stream" means a stream with flow that lasts throughout the year.

(156) "Person" is an individual, a political subdivision or government agency, or any corporation, association, firm, partnership, joint stock company, limited liability company, limited liability partnership, or quasi-public corporation registered to do business in the State of Oregon.

(157) "Piles/Piling" is a wood, steel or concrete beam placed, driven or jetted into the beds or banks of a water of the state.

(158) "Placer" includes a glacial or alluvial deposit of gravel or sand containing eroded particles of minerals, eroded hard rock vein material (residual placer) and clay.

(159) "Plan View" means a drawing of the project site drawn as if the viewer were seeing the area from overhead.

(160) "Plant Community" is an assemblage of plants that repeat across the landscape in a similar environment. Plant communities are named according to the dominant plant in each of the layers that are present, either shrub, tree or forb.

(161) "Plowing" means, for the purposes of OAR 141-085-0020(4), all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing, and similar physical means for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. Plowing does not include the redistribution of soil, rock, sand, or other surface materials in a manner that changes any areas of the water of the state to dryland. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetlands areas is not plowing. Plowing, as described above, will never involve filling.

(162) "Pool" means a portion of the stream with reduced current velocity, often with water deeper than the surrounding areas.

(163) "Practicable" means capable of being accomplished after taking into consideration cost, existing technology, and logistics with respect to the overall project purpose.

(164) "Prior Converted Cropland" means land that the Natural Resource Conservation Service of the United States Department of Agriculture, or its successor agency, certifies as prior converted cropland.

(165) "Private Operator" means any person undertaking a project for exclusively a nonincome-producing and nonprofit purpose;

(166) "Project" means any removal and/or fill in waters of this state.

(167) "Project Area" means the physical space in which the removal-fill activity takes place including any direct mitigation site. "Project Area" includes the entire area of ground disturbance, including all staging areas and access ways, both temporary and permanent.

(168) "Project Purpose" means the primary purpose of the proposed project, and not any ancillary activities that may be associated with it or any secondary purpose (e.g., if a retail shopping mall or planned unit residential development includes a habitat restoration component, then habitat restoration is a secondary and ancillary activity to the primary purpose of the project).

(169) "Proposed Enforcement Order" means a notice of civil penalty, proposed restoration order or any other proposed order issued by the Agency to enforce the requirements of the Removal-Fill Law. The proposed order contains provisions allowing the alleged violator to request a contest case hearing. If the alleged violator does not elect this option, then a final order is issued.

(170) "Prospecting" means searching or exploring for samples of gold, silver or other precious minerals, using nonmotorized methods from among small quantities of aggregate.

(171) "Protection" means to prevent human activities from destroying or degrading functions of waters of state.

(172) "Public Body" means federal, state, and local governmental bodies, unless specifically exempted by law, engaged in projects for the purpose of providing free public services (ORS 196.815(3)(d)(B));

(173) "Public Use" means a publicly owned project or a privately owned project that is available for use by the public.

(174) "Push-up Dam" is a berm of streambed material that is excavated or bulldozed (i.e. pushed-up) from within the streambed itself and positioned in the stream in such a way as to hold or divert water in an active flowing stream (i.e. a 'removal'). The push-up dam may extend part way or all the way across the stream. Push-up dams are most frequently used to divert water for irrigation purposes associated with agricultural production including livestock watering. Push-up dams are re-constructed each water use season; high water usually flattens or breaches them or equipment is used to breach or flatten them at the close of the water use season.

(175) "Rare Plant Communities" means plant community types ranked by the Oregon Natural Heritage program as either S1 or S2. Rare plant communities are threatened by either natural or human-made causes.

(176) "Reasonably Expected Adverse Impacts" means the direct or indirect damaging or injurious impacts or effects of an activity that is likely to occur to waters of the state including water resources and navigation, fishing and public recreation uses.

(177) "Recreational and Small Scale Placer Mining" includes, but is not limited to, the use of non-motorized equipment and motorized surface dredges having an intake nozzle with an inside diameter not exceeding four (4) inches, and a muffler meeting or exceeding factory-installed noise reduction standards. This phrase does not include "prospecting" as defined by OAR 141-085-0010 above, which does not require a permit or letter authorization from the Agency.

(178) "Reconstruction" means to rebuild; to construct again.

(179) "Reference Site" means a site or sites that have similar characteristics as those proposed for direct compensatory wetland mitigation. A reference site represents the desired future successful condition of a particular direct compensatory wetland mitigation plan.

(180) "Removal" means the taking of more than 50 cubic yards of material (or its equivalent weight in tons) in any waters of this state in any calendar year; or the movement by artificial means of an equivalent amount of material on or within the bed of such waters, including channel relocation. However, in designated Essential Indigenous Anadromous Salmonid Habitat (ESH) areas (OAR 141-102) and in designated Scenic Waterways (OAR 141-100) the 50-cubic-yard minimum threshold does not apply.

(181) "Removal-Fill Law" means the Oregon Revised Statutes (ORS) 196.800 to 196.990 and 196.600 to 196.692 relating to the filling and/or the removal of material in the waters of this state including wetlands.

(182) "Restoration" means to reestablish wetland hydrology to a former wetland sufficient to support wetland characteristics.

(183) "Restoration of an Estuarine Area" means to revitalize or re-establish functional characteristics and processes of the estuary diminished or lost by past alterations, activities, or catastrophic events. A restored area



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must be a shallow subtidal or an intertidal or tidal marsh area after alteration work is performed, and may not have been a functioning part of the estuarine system when alteration work begins.

**NOTE:** Mitigation credit may be given for enhancement of areas that are already a functioning part of the estuarine system.

(184) "Restoration Order" means a legally binding order requiring a violator to restore waters of the state and may require remittance of a civil penalty to the Common School Fund.

(185) "Revetment" is a blanket of hard material placed to form a structure designed to protect a bank from erosion. It is normally composed of rock riprap, but can be constructed of poured concrete or preformed concrete blocks.

(186) "Riparian" means a zone of transition from an aquatic ecosystem to a terrestrial ecosystem, as defined in ORS 541.351(10).

(187) "Riprap" means facing a streambank with rock or similar substance to control erosion in accordance with these regulations.

(188) "Road Prism" means the excavation and embankment areas of roadbed.

(189) "Scenic Waterway" means a river or segment of river or lake that has been designated as such in accordance with Oregon Scenic Waterway Law ORS 390.805 to 390.925.

(190) "Sediment" is material that originated from the weathering of rocks and decomposition of organic material that is transported by, suspended in, and eventually deposited by water, air or is accumulated in beds by other natural phenomena (e.g. sand, silt).

(191) "Seeding" means, for the purpose of OAR 141-085-0020(4), the sowing of seed and placement of seedlings to produce farm or ranch crops.

(192) "Serviceable" means capable of being used for its intended purpose. For example, a serviceable road is one upon which vehicles can be safely driven.

(193) "Service Area" means the boundaries set forth in a mitigation bank instrument that include one or more watersheds identified on the United States Geological Survey, Hydrologic Unit Map, 1794, State of Oregon, for which a mitigation bank provides credits to compensate for adverse effects from project development. Service areas for mitigation banks are not mutually exclusive.

(194) "Shellfish" are saltwater and freshwater invertebrates with a shell, including but not limited to clams, crabs, mussels, oysters, piddocks, scallops and shrimp.

(195) "Showing Before the Agency" means to prove, make apparent, or make clear by presenting evidence to the Director of the Division of State Lands or designee.

(196) "Siltation/Deposition" means the settlement or accumulation of material out of the water column and into the streambed of the waterway. It occurs when the energy of flowing water is unable to support the load of the suspended sediment.

(197) "Sluice Box" means a trough equipped with riffles across its bottom, used to recover gold and other minerals with the use of water.

(198) "Sluicing" means the use of a sluice box for the recovery of gold and other minerals.

(199) "Statewide Comprehensive Outdoor Recreation Plan" means the plan created by the State Parks and Recreation Department pursuant to the federal Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C.460-L et seq.) ORS 196.635.

(200) "Streambank Stabilization" means those projects which prevent or limit erosion, slippage, and mass wasting; including, but not limited to bank re-sloping, planting of woody vegetation, bank protection (physical armoring of banks using rock or woody material, or placement of jetties or groins), or erosion control.

(201) "Structure" means an object, device (e.g., piling, culvert), excavation or alteration (e.g., irrigation ditch or push-up dam) that is constructed, installed or erected, and is designed to accomplish a specific purpose. Structures require a location in waters of the state (e.g., push-up dams), or are attached to and/or interconnected with waters of the state (e.g., irrigation or drainage ditch).

(202) "Subbasin" is a drainage area described by the United States Geologic Survey fifth field hydrologic unit.

(203) "Substrate" means the mineral and/or organic material that forms the bed of a waterway.

(204) "Success Criteria" means the measurable threshold that establishes when compensatory mitigation objectives have been met (e.g. The cover of native emergent species will be at least 80% as measured by belt transects).

(205) "Suction Dredge" means a machine equipped with an internal combustion engine or electric motor powering a water pump that is used to move submerged bed materials by means of hydraulic suction. These bed materials are processed through an attached sluice box for the recovery of gold and other minerals.

(206) "Suction Dredging" means the use of a suction dredge for the recovery of gold and other minerals.

(207) "Surety Bond" means an indemnity agreement in a sum certain executed by the permittee as principal that is supported by the performance guarantee of a corporation licensed to do business as a surety in the state of Oregon.

(208) "Temporary Impacts" means those impacts that do not result in the permanent loss of function and/or area and are rectified within twelve (12) months of project completion.

(209) "Tidal Bay" means estuaries, ocean coves, inlets and similar semi-enclosed bodies containing water influenced by the tide.

(210) "Tidegate" means a structure placed in an estuarine channel designed to regulate water levels.

(211) "Tile Drain System" means a subsurface conveyance system used to drain soils for agricultural production or other purposes.

(212) "Toe of the Bank" means the distinct break in slope between the stream bank or shoreline and the stream bottom or marine beach or bed, excluding areas of sloughing. For steep banks that extend into the water, the toe may be submerged below the ordinary high water line. For artificial structures, such as jetties or bulkheads, the toe refers to the base of the structure, where it meets the streambed or marine beach or bed.

(213) "Uplands" are any land form that does not qualify as waters of the state.

(214) "Unique Features" means those physical, biological, chemical, and esthetic characteristics and attributes of an estuary that are uncommon, extraordinary, rare, threatened, or endangered.

(215) "U.S. Army Corps of Engineers" or "Corps" means the United States Army Corps of Engineers.

(216) "Vernal Pools" are types of wet meadow habitat areas with specific, diagnostic plant assemblages that are intermittently flooded with shallow water for extended periods during the cool season, but dry for most of the summer.

(217) "Violation" means removing material from or placing fill in any waters of this state without a permit (authorization) or in a manner contrary to the conditions set out in a permit issued under the Removal-Fill law or these rules.

(218) "Water Quality" means the measure of physical, chemical, and biological characteristics of water as compared to Oregon's water quality standards and criteria set out in rules of the Oregon Department of Environmental Quality and applicable state law.

(219) "Water Resources" includes not only water itself but also aquatic life and habitats and all other natural resources in and under the waters of this state.

(220) "Waters of this State" means natural waterways including all tidal and nontidal bays, intermittent and perennial streams (i.e., streams), lakes, wetlands and other bodies of water in this state, navigable and non-navigable, including that portion of the Pacific Ocean, which is in the boundaries of this state. "Waters of this state" does not include the ocean shore, as defined in ORS 390.605.

(221) "Watershed" means the entire land area drained by a stream or system of connected streams such that all stream flow originating in the area is discharged through a single outlet.

(222) "Weir" means a levee, dam or embankment or other barrier placed across or bordering a waterway to:

(a) Measure or regulate the flow of water;

(b) Divert fish into a trap; or

(c) Raise the level of the waterway or divert stream flow into a water distribution system.

(223) "Wet Perimeter", as used in OAR 141-089-0245 thru 0275, means the area of the stream that is under water, or is exposed as a non-vegetated dry gravel bar island surrounded on all sides by actively moving water at the time the activity occurs.

(224) "Wetland Hydrology" means the permanent or periodic inundation or prolonged saturation sufficient to create anaerobic conditions in the soil and support hydrophytic vegetation.

(225) "Wetland Maintenance" means the process of supporting or preserving the condition or functions of a wetland as a management component of a compensatory wetland mitigation plan.

(226) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(227) "Woody Plants" means trees and shrubs.

Stat. Auth.: ORS 196.600- 196.692; ORS 196.800- 196.990

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 1-1978(Temp), f. & ef. 1-27-78; LB 3-1978, f. & ef. 5-19-78; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0100; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 4-1998, f. & cert. ef. 5-1-98; DSL

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2-1999, f. & cert. ef. 3-9-99; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0027

### Determination of Complete Application for Individual Removal-Fill Permit

(1) Upon receipt of an individual removal-fill permit application, the Agency shall review the application materials to determine whether all the forms, plans, maps and other information required in OAR 141-085-0025 are present.

(2) The Agency shall determine no later than thirty (30) calendar days from the date the Agency receives the application whether the application is complete (including the payment of fees in accordance with OAR 141-085-0064). If the Agency fails to make such a determination within the thirty (30) calendar day time period and fails to so notify the applicant, the application shall be deemed a complete application.

(3) The Agency will determine if the project, as described in the application, is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020. If the Agency determines that the application is for a project that is not subject to these rules, it shall notify the applicant in writing and state the reasons for the determination.

(4) The Agency will determine if the project, as described in the application, may be eligible for approval under a general authorization as described in OAR 141-089. The Agency will notify the applicant of this determination and offer the opportunity for the application to be processed under the applicable general authorization.

(5) The Agency will accept a wetland delineation or wetland determination report along with the application in accordance with OAR 141-085-0025(5). A jurisdictional determination in accordance with OAR 141-090 will be completed prior to or at the time of the permit decision.

(6) Once the Agency deems the application complete, the Agency shall commence, without unnecessary delay, to process the application in accordance with OAR 141-085-0028(6).

(7) If the Agency determines that the application does not meet the requirements of OAR 141-085-0025 and is therefore deficient and incomplete, the Agency shall, within a reasonable time, but no later than thirty (30) days after the initial receipt of the application, notify the applicant in writing and list the missing information. The applicant must resubmit the entire amended package for reconsideration, unless instructed by the Agency to do otherwise. Examples of information that may be cause for rejection of the application include, but are not limited to, the following:

(a) Major errors, omissions or inconsistencies in the application;

(b) Major errors, omissions or inconsistencies in the wetland delineation or determination report, if one is required.

(c) Lack of a wetland delineation or wetland determination where wetlands are affected by the project.

(d) Unclear, illegible maps and drawings;

(e) Lack of a compensatory wetland mitigation plan;

(f) Lack of an analysis of the adverse effects of the project on the water resources or the navigation, fishing and public recreation uses; or

(g) Lack of payment of fees.

(8) Minor errors, omissions or inconsistencies, as determined by the Agency, will not be cause for rejection.

(9) Submission of a new application package commences a new 30-day review period.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0028

### Individual Removal-Fill Permit Review Process including the Public Review and Notice Process

(1) General Description. The Agency shall make a permit decision within ninety (90) calendar days after determining that the application is complete and the fee has been received. Within the ninety (90) day time period, the Agency will do one of the following:

(a) Approve the application and issue an individual removal-fill permit with conditions; or

(b) Approve the application with modifications and issue an individual removal-fill permit with special conditions; or

(c) Request of the applicant an extension of the permit decision deadline to a time certain. No extension shall be made without the applicant's written approval; or

(d) If the project is inconsistent with these rules (e.g. OAR 141-085-0029), deny the application; or

(e) Determine the project is an exempt activity or is otherwise not within the jurisdiction of these rules as described in OAR 141-085-0015 or 141-085-0020; or

(f) Determine that the project is eligible for approval under a general authorization as described in OAR 141-089 and process the application in accordance with the applicable general authorization, if requested to do so by the applicant.

(2) If the Agency determines that the project is not subject to these rules, it shall notify the applicant, in writing, and state the reasons for the determination.

(3) In the event that the applicant and the Agency agree to postpone and extend the removal-fill permit issuance decision, the applicant and the Agency shall agree on a new permit decision deadline. The new schedule must be in writing and agreed upon before the expiration of the ninety (90) day period described in OAR 141-085-0028(1). If no agreement is reached, the Agency shall take any action described in OAR 141-085-0028(1)(a), (b) or (d) deemed appropriate.

(4) Modifications to permit applications may be accepted by the Agency at any time prior to the permit decision. If the modification is determined by the Agency to be substantially different in nature or effect from the original application (e.g. large increase in area of development, or large increase of volume of fill/removal), the Agency shall treat the modified application as a new application and process it in accordance with these rules. The Agency shall make a decision on the treatment of the modified application based on the information provided by the applicant, within the ninety (90) day time requirement established in OAR 141-085-0028(1). It is a normal and acceptable practice to modify an application in order to address concerns and comments offered during the public review process or at the applicant's own initiative. The Agency will give consideration to this fact as it determines whether or not to treat the modified application as a new application.

(5) An applicant may withdraw an application at any time prior to the permit decision. The notice of withdrawal must be in writing to the Agency.

(6) Public Review Notice Process. Once the application has been deemed complete in accordance with OAR 141-085-0027 and the fee has been received, the Agency shall provide notification of the availability of the application for review to:

(a) Adjacent property owners;

(b) Watershed Councils and public interest groups who have indicated a desire to receive such notices;

(c) Affected local government land use planning and zoning departments;

(d) Local and State agencies, including but not limited to: irrigation, diking and drainage districts, Soil and Water Conservation Districts, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Department of Land Conservation and Development, Oregon Department of Agriculture, Oregon Water Resources Department, Oregon Department of Economic Development, Oregon State Parks and Recreation Department, Oregon State Historic Preservation Office, Oregon Natural Heritage Program and the Oregon Department of Geology and Mineral Industries;

(e) Federal agencies, including but not limited to: U.S. Army Corps of Engineers (Portland District), Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine Fisheries Service, NOAA-Fisheries, any affected unit of the U.S. Forest Service or Bureau of Land Management; and

(f) Affected Tribal governments.

(7) The notification of the availability of the application for review may be provided by U.S. mail or electronically (e.g. facsimile, e-mail, posting on the Internet).

(8) The Agency shall furnish to any member of the public (persons not listed in OAR 141-085-0028(8)) upon written request and at the expense of the member of the public a printed copy of any application. The application will also be available for review at the Agency office nearest the project location.

(9) The Agency will review and consider substantive comments of local, state, and federal agencies, adjacent property owners, public interest groups, Tribal governments and individuals as well as conduct any necessary investigations to develop a factual basis for a permit decision. The Agency may schedule a permit review coordination meeting with interested agencies/groups and the applicant to: clarify the review standards and process requirements; provide the applicant an opportunity to explain the project; and to identify issues. At the Agency's discretion, the Agency may hold a public hearing when necessary to gather information necessary to make a decision.

(10) All recommendations and comments regarding the application shall be submitted in writing to the Agency within the period established by the Agency, but not more than thirty (30) calendar days from the date of the

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notice. However, the Department of Environmental Quality shall comment within seventy-five (75) calendar days from the date of notice to comment if the application requires certification under the Federal Water Pollution Control Act (P.L. 92-500) as amended (i.e. 401 certification), unless the Agency, based on a written request from the Director of the Department of Environmental Quality, grants an extension of time or as otherwise agreed to in an intergovernmental agreement between Department of Environmental Quality and the Agency. In no case shall the extension granted be in excess of one year. If an agency or unit of government fails to comment on the application within the comment period, the Agency shall assume the agency or other unit of government has no objection to the project.

## (11) Applicant Response to Comments

(a) Comments resulting from the public review process shall be forwarded to the applicant within seven (7) calendar days of the conclusion of the comment period.

(b) The applicant may, at his or her discretion, respond to public and agency comments. The response may be in the form of:

(A) Additional information to support the application; and/or

(B) Revisions to the project that address the comments and become part of the application.

(c) If no response is received from the applicant the Agency will presume that the applicant intends to provide no additional supporting information or revisions to the application.

(d) The applicant may make a request, either orally or in writing, for additional time to respond to comments, and the Agency shall agree to any extension of the time allowed to make a permit decision as described in OAR 141-085-0028(1).

(12) Supplemental Information. The Agency may, as a result of the public review process and/or the Agency's investigations, request that the applicant voluntarily submit supplemental information prior to the Agency making the permit decision. The Agency shall state the reason for requesting the additional information and why it is relevant to the permit decision.

(13) All documents in the applicant's permit file kept by the Agency, unless otherwise restricted by law, shall be available for review by the applicant upon request and at reasonable times and location.

Stat. Auth.: ORS 196.815; ORS 196.825; ORS 196.845

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0029

### Review Standards and Permit Conditions for Individual Removal-Fill Authorizations

(1) In order to meet the requirements of OAR 141-085-0006(1), ORS 196.805 and 196.825 the Agency shall evaluate the information provided in the application; conduct its own investigation; and review and consider the comments submitted during the public review process in order to apply the following standards to determine whether or not to issue an individual removal-fill authorization.

(2) Effective Date of Review Standards. The Agency may consider only standards and criteria in effect on the date the Agency receives the complete application or renewal request (OAR 141-085-0036).

(3) Considerations for Approval. To issue an individual removal-fill permit the Agency must determine that the proposed removal-fill activity will not be inconsistent with the protection, conservation and best use of the water resources of this state and would not unreasonably interfere with the paramount public policy of this state to preserve the use of its waters for navigation, fishing and public recreation, by:

(a) Considering the public need for the project including the social, economic or other public benefits likely to result from the project. If the applicant is a public body, the Agency may rely on the public body's findings as to local public need and benefit;

(b) Considering the economic cost to the public if the project is not accomplished;

(c) Considering whether the project would interfere with public health and safety;

(d) Considering whether the project is compatible with the local comprehensive land use plan. The Agency will not issue an individual removal-fill permit for an activity at a location that is not consistent or compatible with the local comprehensive land use plan and/or zoning ordinance. The Agency may issue an individual removal-fill permit requiring the applicant to obtain local land use approval prior to beginning the authorized activity;

(e) Determining the degree to which, if at all, the project, will unreasonably interfere with navigation, fishing and public recreation uses of the waters of the state;

(f) Considering the degree to which, if at all, the project will increase erosion or flooding upstream and downstream of the project or redirect water from the project site onto adjacent nearby lands.

(g) Considering the practicable alternatives for the project in accordance with (4) as presented in the application; and

(h) Considering practicable mitigation (including compensatory mitigation) for all reasonably expected adverse impacts of project development, as required by subsection (5).

(4) Alternatives Analysis. The Agency will issue an individual removal-fill permit only upon the Agency's determination that a fill or removal project represents the practicable alternative that would have the least adverse effects on the water resources and navigation, fishing and public recreation uses. Unless otherwise specified by the Agency, and except in essential salmon habitat, no alternative analysis will be required for projects involving less than 250 (two hundred fifty) cubic yards of fill or removal and/or converting to upland less than 0.2 (two-tenths) acre of wetland. In determining whether or not an alternative might be the practicable alternative with the least adverse effects, the Agency will consider the type, size and relative cost of the project, the condition of the water resources, and navigation, fishing and public recreation uses as depicted in the application. The financial capabilities of the applicant are not the primary consideration. The basic project purpose, logistics, use of available technology and what constitutes a reasonable project expense are the most relevant factors in determining the most practicable alternative. The applicant bears the burden of providing the Agency with all information necessary to make this determination. No authorizations may be issued for a substantial fill in an estuary for a non-water dependent use unless the following apply:

(a) The fill is for a public use;

(b) The fill satisfies a public need that outweighs the harm, if any, to navigation, fishery and recreation; and

(c) The project meets all other review standards of these rules.

(5) Mitigation. The Agency will only issue an individual removal-fill permit for the practicable alternative with the least adverse effects to the water resources upon the Agency's determination that the project includes appropriate and practicable steps to reduce (mitigate) reasonably expected adverse impacts of the project to the water resources and navigation, fishing and public recreation uses. Mitigation shall be considered in the following sequence:

(a) Avoidance. The Agency shall first consider whether the project can be accomplished by avoiding removing material or placing fill material in or on waters of the state altogether (e.g., by moving the location of a proposed structure, either on-site or off-site, to avoid filling wetlands);

(b) Minimization. If the Agency determines that the project cannot be accomplished without adverse impacts to water resources and/or navigation, fishing and public recreation uses, the Agency shall then consider whether limiting the degree or magnitude of the activity and its implementation can minimize adverse impacts (e.g., bio-engineered and non-structural streambank stabilization techniques, such as bank sloping and revegetation, shall be installed instead of solutions relying primarily on concrete and riprap, whenever technically feasible, suitable and environmentally preferable);

(c) Rectification. If the Agency determines that impacts cannot be further minimized, the Agency shall then consider whether repairing, rehabilitating or restoring (e.g., restoring site conditions along a pipeline corridor after installation is complete) the project area can rectify the impact;

(d) Reduction or elimination. When project impacts have been minimized and rectified to the maximum extent practicable, the Agency will consider whether the impacts can be further reduced or eliminated over time by monitoring and taking appropriate corrective measures (e.g., assure that site restoration methods have effectively revegetated the site); and

(e) Compensation. The Agency shall then consider how the applicant's proposal would compensate for reasonably expected adverse impacts by replacing or providing comparable substitute wetland or water resources and/or navigation, fishing and public recreation uses. Compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of practicable alternatives.

(6) Direct and Indirect Effects. The Agency shall impose conditions that mitigate the direct effects of project development and conditions that mitigate the indirect effects that reach beyond the immediate project area (e.g., a condition requiring that equipment must be washed down away from any wetland) when necessary to mitigate the reasonably expected adverse impacts of project development.

(7) Permit Conditions. If the project meets the requirements of this section, the Agency shall impose applicable general conditions in order to reduce or eliminate the reasonably expected adverse impacts of project development. The Agency may also require additional, site-specific and/or project-specific conditions, or may modify these general conditions, as listed below, as appropriate:

(a) Conditions to assure compliance with state water quality and toxic effluent standards may be required in order mitigate for the reasonably

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expected adverse impacts of project development. Such conditions will be based on standards and/or comments of the Department of Environmental Quality.

(b) The project shall be carried out in compliance with ORS 509.580 to 509.645 and related rules of the Oregon Department of Fish and Wildlife, concerning upstream and downstream passage at all artificial obstructions in which migratory native fish are currently or have historically been present.

(c) All in-water work, (i.e. project work conducted within the beds and banks of a water of the state) including temporary fills or structures, shall be conducted to avoid or minimize impacts to fish and wildlife resources. Such work will be authorized to occur within the Oregon Department of Fish and Wildlife recommended periods for in-water work as specified in Oregon Guidelines for Timing of In-Water Work to Protect Fish and Wildlife. Exceptions to recommended in-water work periods may be authorized by the Agency based on the applicant's request and documentation of consultation with the Oregon Department of Fish and Wildlife that the reasonably expected adverse impacts to fish and wildlife resources will be avoided or minimized.

(d) When previously unknown occurrences of listed species are discovered during construction, the permit holder shall immediately cease work and contact the Agency.

(e) The project shall not disturb or destroy known archeological sites unless authorized under a permit issued by the State Historic Preservation Office. When previously unknown occurrences of archeological sites are discovered during construction, the permit holder shall immediately cease work at the discovery site and contact the Agency and the State Historic Preservation Office.

(f) Equipment shall be fitted with fish screens if water is pumped from a fish-bearing stream during project work. Contact ODFW Screening and Passage staff for screen specifications. The Agency, based on ODFW advice, may require gravity flow bypasses to provide fish passage if active migration is occurring. Sediment control shall be provided during dewatering, and culverts shall be installed only at dewatered sites. If endangered fish are likely to be present, fish salvage operation shall be conducted by qualified personnel prior to construction. The Agency may require an ODFW District biologist or designee to be present during salvage operations.

(g) The project shall not use as fill material any substances defined as solid waste in ORS 459.005(24) unless the Department of Environmental Quality has authorized prior approval to do so. This includes tires, concrete rubble, and asphalt.

(h) The project shall not use as fill material any chassis, body or shell of a motor vehicle as defined by ORS 801.590.

(i) Vegetated buffers may be required at compensatory mitigation sites in order to protect the mitigation from loss.

(j) The restoration or replacement of destroyed or damaged riparian or wetland vegetation may be required at compensatory mitigation and/or project sites in order to mitigate for the reasonably expected adverse impacts of project development. Priority will be given to the replacement of damaged or destroyed vegetation with native plants that will form a wetland or riparian community dominated by native plants within the project area. Conditions may include planting survival success standards (e.g. eighty percent (80%) of each plant species planted, after five (5) years). Protection (e.g. fencing) for replanted areas and control of invasive plants may also be required. Grass seed mixes or exotics certified weed seed free that will hold soil and not persist will be allowed.

(k) The project shall minimize: erosion upstream and downstream of the site; redirecting or relocating water flow beyond pre-project conditions; impoundment of water upstream of the project (unless approved by affected property owners); or additional water flow from the project site beyond pre-project conditions (unless part of the project purpose).

## (8) Long Term Protection of Mitigation Sites.

(a) The individual removal-fill permit along with site access control (e.g. fencing, signing) is usually sufficient legal means to achieve maintenance and long-term protection of mitigation sites. However, in some instances compensatory mitigation sites and indirect compensatory wetland mitigation sites will need to be permanently protected from destruction with appropriate real estate instruments or agreements (e.g. conservation easements, deed restrictions, long-term management agreements with land trusts or public ownership). Situations where such protection will be required include but are not limited to:

(A) When the permit holder is likely to sell the mitigation site within five (5) years of project completion;

(B) When the permit holder is an absentee owner of the mitigation site;

(C) When the permit holder is not likely to actively participate in managing and maintaining the mitigation site; or

(D) When the permit holder is not the owner of the mitigation site.

(b) The applicant shall offer a preferred method and justification.

(c) The Agency will make the final determination for the need and type of long-term protection based upon the risk of loss of the compensatory mitigation site taking into account 8(a)(A)(B)(C) and (D) above.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0075

### Appeals/Contested Case Hearings Regarding Issuance or Denial of an Individual Removal-Fill Permit

(1) Alternative Dispute Resolution Process. An applicant or any other person aggrieved or adversely affected by an individual removal-fill permit decision by the Agency may request the Agency enter into an alternative dispute resolution process. The Agency and all involved parties shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The appellant may retain the right of formal appeal as described in these rules.

(2) Appeal by Applicant. Any applicant whose application for an individual removal-fill permit has been deemed incomplete, denied, or who objects to any of the conditions imposed by the Agency under OAR 141-085-0029(6), may, within twenty-one (21) calendar days of the denial of the permit or the imposition of any condition, request a hearing from the Agency.

(3) Appeals by Others. Any person who is aggrieved or adversely affected by the grant of an individual removal-fill permit by the Agency may file a written request for a hearing with the Agency within twenty-one (21) calendar days after the date the authorization was granted.

(4) Standing in Contested Case Hearings. For a person, other than the applicant/permit holder to have standing to request a contested case as described in OAR 141-085-0075(2), the person must be either "adversely affected" or "aggrieved" as described as follows:

(a) To be "adversely affected" by the individual removal-fill permit the person must have a legally protected interest as defined in OAR 141-085-0010 that would be harmed, degraded or destroyed by the authorized removal-fill activity. This may include, but is not limited to, adjacent property owners.

(b) To be "aggrieved" by the individual removal-fill permit the person must have participated in the Agency's review of the removal-fill activity application by submitting written or oral comments stating a position on the merits of the proposed removal-fill activity to the Agency.

## (5) Setting a Contested Case Hearing.

(a) If the written request for hearing is timely (in accordance with OAR 141-085-0075(2) or (3)), and made by a person who has a legally protected interest which is adversely affected by the grant of the permit, the matter shall be referred to the Hearing Officer Panel for hearing within thirty (30) calendar days after receipt of the request.

(b) The hearing shall be conducted as a contested case.

(c) The permit holder and any persons that have filed a written request and have a legally protected interest that may be adversely affected shall be parties to the proceeding.

(d) Persons that do not have legally protected interests that are adversely affected, but are aggrieved, may nevertheless petition to be included in the contested case hearing as a party under OAR 137-003-0535.

(6) Referral to the Hearing Officer Panel (Panel).

(a) The referral of a request for hearing to the Hearing Officer Panel by the Agency shall include the individual removal-fill permit, or denial, and the request for hearing. The Hearing Officer Panel shall conduct a contested case hearing only on the issues raised in the request for hearing and the referral from the Agency.

(b) Jurisdictional determinations of the existence, or boundaries, of the waters of the state on a parcel of property, as defined in OAR 141-090-0020, issued more than sixty (60) calendar days before a request for hearing are final.

(c) Jurisdictional determinations are judicially cognizable facts of which the Agency may take official notice under ORS 183.450(3) in removal/fill contested cases. Challenges to jurisdictional determinations are only permitted under the process set out in OAR 141-090-0050.

(7) Discovery in Contested Cases. In contested cases conducted on matters relating to these rules, the Agency delegates to the hearing officer the authority to rule on any issues relating to discovery (i.e. production of

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information), except that depositions will not be awarded unless it is likely that a witness will not be available at a hearing.

(8) The Proposed Order. The hearing officer who conducts the hearing shall issue a proposed order containing findings of fact and conclusions of law within twenty (20) calendar days of the hearing, and as required by ORS 183.460, provide an opportunity to file written exceptions with the Agency.

(9) The Final Order. Within forty-five (45) calendar days after the hearing the Agency shall consider the record, any exceptions, and enter an order containing findings of fact and conclusions of law. The final order shall rescind, affirm or modify the permit or proposed order.

(10) Pre-Hearing Suspension of Permits. A permit to fill granted by the Agency may be suspended by the Agency during the pendency of the contested case proceeding. Petitions for suspension shall be made to the Agency and will be either granted or denied by the Agency. The permit shall not be suspended unless the person aggrieved or adversely affected by grant of permit makes a showing before the Agency by clear and convincing evidence that commencement or continuation of the fill would cause irreparable damage and would be inconsistent with ORS 196.000 to 196.905.

(11) Issuance or Denial of a Permit. Interested persons who request notification in writing of the Agency's decision on a permit will be notified at the time of issuance or denial. The Agency's failure to notify an interested person will not extend the statutory sixty (60) calendar days timeframe for hearing requests. Contested case hearings concerning the issuance or denial of a permit will normally be held at the Agency offices in Salem, Oregon, unless extraordinary circumstances require the hearing to be held in the vicinity of the project.

Stat. Auth.: ORS 196.835

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 15, f. 2-1-74, ef. 2-25-74; LB 6-1984, f. & ef. 12-17-84; Renumbered from 141-085-0505; LB 3-1986, f. & ef. 3-31-86; LB 8-1991, f. & cert. ef. 9-13-91; LB 3-1992, f. & cert. ef. 6-15-92; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0096

### Monitoring; Annual Report; Public Information and Education

(1) Program Monitoring. Pursuant to ORS 196.910, the Agency will monitor removal and fill activities authorized under these rules to determine:

- (a) Compliance with permit conditions;
- (b) The effectiveness of permit conditions in achieving the policies of these rules; and
- (c) The adverse impacts of authorized activities on salmonid spawning and rearing habitat and wetland functional attributes.

(2) Annual Reporting. Pursuant to ORS 196.885, commencing with fiscal year 2002-2003 and continuing each fiscal year thereafter, the Agency shall submit an annual report to the State Land Board on the activities conducted under these rules. The report shall be delivered to the State Land Board and posted on the Agency's website no later than 120 days after the end of the fiscal year. The report shall also be provided to the appropriate legislative committee(s). The annual report shall include the following:

(a) The number of removal-fill authorizations applied for, denied and authorized. For all authorizations granted or outstanding during the prior year, a separate summary shall be included for fills and removals, organized by river or other water body that shows:

(A) The total number of authorizations, the number of new authorizations and the number of renewal authorizations.

(B) The volume and/or wetland acreage of removals and fills authorized during the past year, and to the extent possible, the volume and/or wetland acreage of fills and removals completed during the past year.

(C) The areal extent of wetlands lost, by habitat type, and the areal extent of wetlands gained, by habitat type, through compensatory wetland mitigation.

(b) A summary of compensatory mitigation measures, including a description of each compensatory mitigation project approved during the past year including the location and size of each compensatory mitigation project, whether creation, enhancement or restoration, and a report on the status of all compensatory mitigation projects pending or completed during the past year.

(c) A summary of enforcement activities, including:

(A) The number of complaints reported.

(B) The number of compliance investigations conducted.

(C) The results of compliance actions, including:

(i) The number of cases resolved by either voluntary compliance, administrative hearings or judicial enforcement proceedings;

(ii) The penalties assessed; and

(iii) The penalties recovered.

(d) A description of staffing, including the number of full-time equivalent positions devoted to the permit program and, for each position, the qualifications and job description.

(e) The report on the Oregon Wetlands Mitigation Bank Revolving Fund Account as required under ORS 196.640 and 196.655.

(f) The number of and average time for responding to notices received by local governments and the number of responses that took more than thirty (30) calendar days.

(g) The number of wetland conservation plans approved by the Agency and a description of each, including the issues raised during the approval process.

(3) Public Information. The Agency shall develop and maintain a public information program to educate permit applicants and the general public about:

(a) Wetland functions and values;

(b) The status and trends of Oregon's wetlands;

(c) The Statewide Wetlands Inventory; and

(d) Wetland identification, regulations and permit requirements.

(4) Technical Assistance and Cooperation. Upon request, within the limits of staffing ability and available resources, the Agency shall provide technical assistance to other state agencies, local governments and the public in identifying wetlands.

Stat. Auth.: ORS 196.885; ORS 196.910; ORS 196.688

Stats. Implemented: ORS 196.800- 196.990; ORS 196.600- 196.692

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0115

### Compensatory Mitigation

(1) The Agency may require compensatory mitigation as a condition of an authorization to compensate for reasonably expected adverse impacts to water resources of the state and navigation, fishing and public recreation uses on waters of the state other than freshwater wetlands or estuarine areas.

(2) Such compensatory mitigation may include, but is not limited to:

(a) Off-site or on-site enhancement (e.g., planting or seeding riparian vegetation or exposing enclosed culverted systems) of water resources of the state;

(b) Off-site or on-site improvements to enhance navigation, fishing or public recreation uses of waters of the state; or

(c) Compensation to a third party, as approved by the Agency, for the purpose of watershed health or to improve the navigation, fishing or public recreation uses of waters of the state. A permit holder, with the approval of the Agency, may contract with a third party to construct, monitor or maintain the compensatory mitigation site.

(3) The Agency may approve of compensatory mitigation for impacts to waters of the state other than freshwater wetlands or estuarine areas, when the applicant demonstrates in writing that the compensatory mitigation plan will replace or provide comparable substitute for water resources of the state and/or navigation, fishing and public recreation uses lost by project development.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: LB 7-1994, f. 12-15-94, cert. ef. 1-1-95; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0121

### Freshwater Compensatory Wetland Mitigation (CWM) Applicability, General Requirements; Functional Assessments

(1) The following rule sections, OAR-141-085-0121 to 141-085-0151, apply to removal-fill activities that occur within freshwater wetlands and do not apply to removal-fill activities:

(a) Within estuarine wetlands covered by ORS 196.830 and OAR-141-085-0240 thru 141-085-0266, except as specifically noted in the estuarine mitigation rules or where estuarine wetland restoration or enhancement is proposed to compensate for impacts to freshwater wetlands; or

(b) Within areas covered by an approved Wetland Conservation Plan (WCP) authorized under ORS 196.668 to 196.692.

(2) For projects where reasonably expected adverse impacts to the water resources including wetland functions cannot otherwise be avoided, or minimized, a CWM plan will be required to compensate for the reasonably expected adverse impacts of the project by replacing the functional attributes of the wetland impacted by project development. Compensatory wetland mitigation shall be limited to replacement of the functional attributes of the lost wetland.

(3) For projects described in (2) requiring CWM and involving project development on 0.2 (two-tenths) of an acre or less of wetlands, there is a rebuttable presumption that on-site CWM is impracticable. The applicant

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may propose to fulfill CWM requirements through off-site CWM without first considering on-site CWM.

(4) For projects described in (2) requiring CWM involving project development impacts greater than 0.2 (two-tenths) of an acre, the applicant shall first consider on-site CWM to provide the replacement of the functional attributes of the lost wetland. If on-site CWM is impracticable as documented by the applicant, off-site CWM shall be utilized. In considering off-site CWM, the applicant may create, restore or enhance a wetland or if the project development occurs within the service area of an established wetland mitigation bank, the applicant shall purchase credits, if available, from the bank to fulfill CWM requirements so long as the functional attributes of the lost wetland are replaced. If no mitigation bank is available, CWM may be fulfilled through payment to provide as described in OAR 141-085-0131.

(5) The Agency will review the CWM plan for sufficiency and compliance with these rules. The Agency may make recommendations for improvements to CWM plans, at any time prior to the permit decision, based on the demonstrated success of existing CWM projects. The Agency will approve the final CWM plan as a part of the individual removal-fill permit. In approving the final CWM plan, the Agency may, after consulting with the applicant, require conditions necessary to ensure success of the CWM plan and to ensure the requirements in these rules are met.

(6) To the extent possible, the Agency shall develop and make available to the public a listing of known compensatory wetland mitigation sites (e.g., wetland mitigation banks).

(7) The applicant shall complete and include in the application an assessment of wetland functional attributes; the assessment shall assess:

(a) Existing functional attributes at the proposed project impact site;

(b) Functional attributes reasonably expected to be adversely impacted, including those functional attributes decreased or lost due to the proposed project;

(c) Existing functional attributes at the proposed CWM site, if the site is currently wetland; and

(d) The net gain or loss of specific functional attributes at the direct CWM site as a result of the proposed CWM project.

(8) Wetland functional attributes to be assessed include, but are not limited to:

(a) Water quality and quantity functions;

(b) Fish and wildlife habitat functions;

(c) Native plant communities and species diversity functions; and

(d) Recreational and educational values.

(9) The Oregon Freshwater Wetland Assessment Method shall not be used to satisfy the requirements of OAR 141-085-0121(7).

(10) HGM is the preferred, but not required, functional assessment method. When HGM is used, the Willamette Valley HGM guidebook should be used for appropriate HGM classes in the Willamette Valley; until additional guidebooks are developed by the Agency, the "Judgmental Method" in the Willamette Valley Guidebook may be used to assess wetland functions in other regions. The judgmental method provides a consistent framework to consider the basic functional attributes of wetlands as described in OAR 141-085-0121(8)(a) thru (c). It also offers a list of observable field indicators of the conditions and processes that contribute to these functional attributes and guidance on making qualitative rating of these functional attributes without reference to the data set or numeric scoring models.

(11) If best professional judgment is used to evaluate any or all wetland functional attributes, a discussion of the basis of the conclusions is required. For example, if the water quality function is determined to be "low," a detailed rationale based upon direct measurement or observation of indicators of water quality function must be discussed.

(12) Additional assessments or data may be required by the Agency if the functional assessment results, public/agency review comments, or the Agency's review indicate that there may be reasonably expected adverse impacts to rare or listed plant or animal species, adjoining property owners, or if the project's effects are not readily apparent.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0126

### Requirements for All CWM

(1) CWM projects shall replace:

(a) Wetland habitat type(s) impacted by the project, as classified per Cowardin system (e.g., palustrine forested); and

(b) HGM class/subclass(es) impacted by the project (e.g., riverine impounding), using the Oregon HGM Statewide Classification (Oregon Division of State Lands 2001); and

(c) The functional attributes of the lost wetland (impact wetland).

(2) The Agency may approve exceptions to the requirements of OAR 141-085-0126(1) if the applicant demonstrates, in writing, that the alternative CWM:

(a) Is environmentally preferable;

(b) Replaces wetland functions that address problems (such as flooding) that are identified in a watershed management plan or water quality management plan approved by a watershed council or public agency;

(c) Replaces wetland types (Cowardin/HGM) and functions historically lost in the region; or

(d) Replaces rare or uncommon plant communities appropriate to the region, as identified in the most recent ONHP plant community classification.

(3) A permit holder, with the approval of the Agency, may at any time contract with a third party to construct, monitor or maintain the CWM site. The permit holder cannot delegate responsibility for compliance with the CWM requirements unless the authorization has been transferred in accordance with OAR 141-085-0034.

(4) For linear projects (e.g., roads or utility lines with wetland impacts in several watersheds), the applicant may compensate for all wetland impacts at a single CWM site.

(5) CWM projects:

(a) Shall be completed prior to or concurrent with the authorized removal-fill project. The Agency may approve non-concurrent CWM if the applicant clearly demonstrates, in writing, the reason for the delay or that there is benefit to the water resources in doing so. The ratio of CWM required for delayed projects may be increased according to the provisions of OAR-141-085-0136.

(b) Shall include native vegetation plantings aimed at re-establishment of a dominance of native plants.

(c) Shall not rely on features or facilities that require frequent and regular long-term maintenance and management. For example, permanent water control structures may be acceptable, whereas pumping from a groundwater well to provide hydrology is not.

(6) CWM sites may fulfill multiple purposes including stormwater retention or detention provided:

(a) The requirements of OAR 141-085-0126(1) and (2) are met;

(b) No alteration is required to maintain the stormwater functions that would degrade the functional attributes; and

(c) The runoff water entering the CWM site has been pretreated to the level necessary to assure that state water quality standards and criteria are met in the mitigation area.

(7) CWM using wetland enhancement must conform to the following additional requirements. The CWM project shall:

(a) Be conducted only on degraded wetlands as defined in OAR 141-085-0010;

(b) Result in a demonstrable net gain in wetland functions at the CWM site as compared to those functions lost or diminished at the wetland conversion site and those functional attributes previously existing at the CWM site;

(c) Not replace existing wetland functional attributes with different wetland functional attributes unless the applicant justifies, in writing, that it is environmentally preferable to do so;

(d) Not convert one HGM or Cowardin class of wetland to another unless the applicant can demonstrate that it is environmentally preferable to do so;

(e) Identify the causes of wetland degradation at the CWM site and the means by which the CWM plan will reverse, minimize or control those causes of degradation in order to ensure self-sustaining success; and

(f) Not consist solely of removal of non-native, invasive vegetation and replanting or seeding of native plant species.

(8) A conservation easement, deed restriction or similar legally binding instrument shall be part of a CWM plan, as specified in OAR 141-085-0029(8).

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0131

### Requirements for CWM Involving Wetland Mitigation Banks, Payment-to-Provide or Conservation

(1) The requirements in this section are in addition to the general requirements in OAR 141-084-0121.

(2) Mitigation Bank Credits. Purchase of mitigation bank credits from an appropriate and approved mitigation bank is preferable to payment to provide mitigation. The Agency will approve the bank option only after on-site mitigation has been examined and found to be impracticable.

(3) Payment to provide mitigation:

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(a) The removal-fill permit for an authorized activity shall not be issued until payment has been made in the amount identified in the CWM plan as approved by the Agency. Once an approved removal-fill permit activity has begun as proposed, the payment to provide mitigation payment shall be considered as non-refundable.

(b) The amount to pay to the Agency to provide CWM shall be the average cost of credits available from all active mitigation banks in the state as compiled annually by the Agency.

(4) Conservation in lieu:

(a) Conservation of wetlands may be used for meeting the CWM requirement when the wetland proposed for conservation:

(A) Supports a significant population of rare plant or animal species; and/or

(B) Is a rare wetland type (S1 or S2 according to the Oregon Natural Heritage Program); or

(C) Is a vernal pool, fen or bog.

(b) Conservation in lieu should be encouraged as the preferred CWM option when the impact site is a wetland type that is exceptionally difficult to replace, such as vernal pools, fens and bogs.

(c) There is no established ratio for indirect CWM using conservation in lieu. The acreage needed under conservation in lieu will be determined on a case-by-case basis through negotiation between the applicant and the Agency.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0141

### Requirements for All CWM Plans/Application Requirements

(1) On-site or off-site CWM involving the creation, restoration and/or enhancement of wetlands by the applicant. A CWM plan shall, at a minimum, include:

(a) CWM site information including:

(A) Area (size) of the CWM wetland proposed for impact relative to the total area of the wetland.

(B) CWM site ownership information (name, address, phone). If this is different from the applicant, copies of legal agreements granting permission to conduct the CWM and willingness of the property owner to provide long-term protection are required;

(C) Location (Township, Range, Quarter Quarter Section and tax lot(s)) and a USGS or similar map showing the CWM site location relative to the impact site.

(b) Existing physical and biological baseline information of CWM site including:

(A) A wetland determination/delineation report (OAR 141-090).

(B) A functional assessment of any existing wetlands at the CWM site, proposed for enhancement or other alteration, including a description of the factors leading to the degraded condition of the site (OAR 141-085-0121).

(C) A description of the major plant communities and their relative distribution, including the abundance of exotic species.

(D) A general description of water source, duration, frequency of inundation or saturation, depth of surface or subsurface water and approximate location of all water features (wetlands, streams, lakes) within 500 feet of the CWM site.

(E) HGM and Cowardin classification of any wetlands present within the CWM site.

(c) CWM plan description including:

(A) CWM plan goals, objectives and success criteria.

(B) The CWM concept in general terms including a description of how the plan, when implemented, will restore, reverse, minimize or control the causes of wetland degradation and ensure that the wetland functions of the impacted wetland are replaced.

(C) A description of the rationale for the CWM site selection.

(D) Proposed water source, duration, frequency of inundation or saturation of the CWM project.

(E) Any known CWM site constraints or limitations.

(F) Proposed HGM and Cowardin classification.

(G) Proposed net losses and gains of wetland functions.

(H) A description of how the applicant will maintain and protect the direct CWM site beyond the monitoring period.

(I) CWM construction plans including:

(i) Scaled site plan showing CWM project boundaries, existing wetlands, restoration, creation and enhancement areas.

(ii) Scaled grading plan with existing and proposed contours and cross section locations.

(iii) Description of construction methods (access, equipment).

(iv) Schematic of any proposed hydrological structures.

(v) Scaled cross sections showing elevations, distance.

(vi) Planting plan (with species, size, number, spacing and installation methods).

(vii) Monitoring plan (schedule, timetable, methods).

(viii) Contingency plan for CWM failures.

(ix) Implementation schedule and construction sequence.

(J) A reference site, combination of reference sites, or reference data of the same HGM class or subclass (e.g. from the Willamette Valley HGM Guidebook) and representing a less functionally-altered condition than the CWM site. Compare and relate the sites and/or data to the CWM goal.

(K) Provisions for a financial security instrument (OAR-141-085-0176), if the impact is greater than .2 (two-tenths) of an acre. The financial security instrument is not required for the application but will be required prior to permit issuance.

(L) Plans for restoration projects shall include data substantiating that the site was formerly, but is not currently, a wetland (e.g. a wetland delineation report).

(2) Other CWM. A CWM plan using conservation in lieu must include:

(a) Written documentation that the requirements in OAR141-085-0131(4) are met.

(b) A conservation plan that shall include:

(A) Maps showing the wetland conservation area including all delineated wetlands to be conserved;

(B) The surrounding land uses and an analysis of the probable effects of those land uses and activities on the conserved wetlands;

(C) Measures that may be necessary to minimize the effects of surrounding land uses and activities on the conserved wetlands;

(D) Identification of the party(ies) responsible for long term protection of the conserved wetlands;

(E) A draft legally binding long term protection instrument (e.g. conservation easement);

(F) A draft long-term management plan that addresses the specific requirements of the wetlands to be conserved.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0146

### Removal-Fill Authorization Conditions for CWM Plans

(1) For permits involving CWM:

(a) The approved CWM plan shall become part of the removal fill authorization and, by reference, all portions of the CWM plan shall become conditions of the authorization.

(b) Additional compensatory mitigation conditions may be included in the authorization.

(c) All compensatory mitigation conditions shall be enforceable until the CWM is deemed successful by the Agency in accordance with OAR 141-085-0151, regardless of the authorization expiration date.

(2) Conditions for authorizations shall also state:

(a) If applicable, the amount of the payment to provide mitigation made by the applicant and how it was calculated; and

(b) If applicable, the mitigation bank utilized; and

(c) The loss of wetland by area, Cowardin and HGM class(es), and function(s) of wetland(s) expected to be lost or impaired; and

(d) The applicant's remaining responsibility after payment to provide mitigation payment was made, if any.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0151

### Monitoring Requirements for CWM Plans Involving On-site or Off-site Creation, Restoration or Enhancement of Wetlands

(1) The purpose of the CWM monitoring requirement is to provide information for the Agency to:

(a) Determine if the CWM project complies with the conditions of the authorization;

(b) Evaluate whether the CWM project meets the goals, objectives and success criteria of the CWM plan; and

(c) Provide information for removal/fill program monitoring.

(2) The permit holder shall monitor the CWM site and provide to the Agency:

(a) A post construction report demonstrating "as-built" conditions including grading and discussing any variation from the approved plan. Unless waived by the Agency, the post construction report shall be submitted within ninety (90) calendar days of completing grading;

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(b) An annual written monitoring report that includes all data necessary to document compliance with CWM conditions and success in meeting the CWM goals. These data may include photographs, topographic surveys, plant survival data, hydrologic data and other information as required to demonstrate compliance. The report shall include the following sections:

- (A) Introduction
- (B) Goals, objectives and success criteria
- (C) Methods
- (D) Results,
- (E) Summary and recommendations
- (F) Figures
- (G) Appendices with data and photographs

(3) Monitoring shall be conducted for 5 years unless otherwise specified by the Agency.

(4) The Agency may require modifications to the CWM plan as well as require additional monitoring any time the CWM project is failing to meet the CWM goals.

(5) At the end of the five (5) year monitoring period, the Agency shall determine if the mitigation project meets the CWM success criteria. If it fails to meet the success criteria, the Agency may require modifications to the CWM site as well as additional site monitoring.

(6) When the CWM project complies with the compensatory mitigation success criteria, as described in the approved removal-fill authorization, the Agency shall notify the permit holder in writing of compliance with the authorization's conditions and that additional monitoring is not required. If the Agency fails to notify the permitholder within ninety (90) calendar days of the Agency's receipt of the final monitoring report, the permit shall be deemed in compliance and no further monitoring required.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0156

### Payments; Expenditure of Funds for Compensatory Wetland Mitigation Payment to Provide; Agency Accounting of Payment to Provide Funds and Expenditures

(1) The Agency shall utilize the Oregon Wetlands Mitigation Bank Revolving Fund Account authorized pursuant to ORS 196.640 et seq. to hold and disperse money collected from the program.

(a) The Agency shall expend funds collected under the payment to provide option of compensatory wetland mitigation only to:

(A) Restore, enhance, or create wetlands (including acquisition of land or easements as necessary to conduct restoration, enhancement or creation projects) as compensatory mitigation to compensate or replace wetland functional attributes lost or diminished as result of an approved removal-fill authorization activity;

(B) Purchase credits from an approved wetland mitigation bank for the purpose of fulfilling the CWM requirements of an approved removal-fill authorization activity.

(C) Monitor the compensatory wetland mitigation project; or

(D) Conduct site management for the compensatory mitigation project as necessary to assure that the mitigation is successful.

(2) The Agency shall expend funds collected under the payment to provide option of compensatory wetland mitigation only within the geographic region, as defined by OAR-141-085-0010 of these rules, in which the wetland functional attributes occur, unless the Agency determines, in writing that expending the funds is not feasible or appropriate within a respective region.

(3) The Agency shall expend funds collected from specific approved removal-fill activities within two (2) years from the authorization issuance date unless the Agency determines, in writing, that meeting the two year time limit is not feasible.

(4) Third party recipients of funds collected under the payment to provide option of a compensatory wetland mitigation plan shall sign a written agreement provided by the Agency that requires the recipient(s) to utilize the funds for specific wetland compensatory mitigation project that has been reviewed and approved by the Agency. Such review and approval will also be contingent on the submission of a specific monitoring program that is acceptable to the Agency.

(5) All payment to provide monies collected and expended, as well as the success of the compensatory wetland mitigation projects, authorized by the Agency in accordance with these rules, shall be recorded by the Agency and shall include:

(a) A description of the compensatory wetland mitigation projects funded and including an evaluation of the success of these projects in meeting project goals.

(b) A description of the wetland functional attributes lost or diminished from approved removal-fill activities summarized individually and cumulatively by basin;

(c) A summary of the amount of payments collected and expended on individual compensatory wetland mitigation projects as well as cumulatively by basin.

(d) A description of the wetland functions expected to accrue as a result of compensatory wetland mitigation projects funded in accordance with these rules and summarized by basin and statewide.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0161

### Agency Responsibilities Under Payment to Provide Option (Indirect CWM)

(1) The Agency, by eliminating the applicant's responsibility for compensatory wetland mitigation by approving a removal-fill authorization including a payment to provide option, assumes the following responsibilities to:

(a) Defend the sufficiency of the compensatory wetland mitigation plan to compensate or replace the wetland functional attributes lost or diminished; and

(b) Monitor, manage, and otherwise assure the success of the compensatory wetland mitigation project performed by the Agency or designated third party(ies) under these rules.

(2) The Agency, as part of an intergovernmental agreement, may transfer or extend the Agency's responsibility for the compensatory wetland mitigation plan to another person or governmental agency.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0176

### Security Bonding and Instruments

(1) Financial Security Instruments are required for CWM projects for impacts greater than two-tenths of an acre. Financial security instruments are not required when CWM is satisfied by purchase of credits from wetland mitigation bank or payment to provide mitigation is utilized. To ensure compliance with CWM requirements, the Agency may allow for any of the following types of financial security instruments:

(a) Surety bond;

(b) Certificate of Deposit;

(c) Irrevocable letter of Credit; or

(d) such other financial instrument as the Agency deems appropriate to secure the financial commitment of the applicant to fulfill the success of the CWM.

(2) No financial security instrument is required for projects conducted by government agencies.

(3) Financial Security Form: The applicant shall file the financial security instrument (s) on a form prescribed and furnished by the Agency. The financial security instrument(s) shall be made payable to the Oregon Division of State Lands.

(4) Commencement of the liability period. The period of liability shall begin at the time of authorization issuance. The liability period shall be established by the Agency and be clearly stated in the removal-fill authorization.

(5) Determining the financial security instrument amount. The Agency shall set the amount of the financial security instrument based on the estimated cost of implementing, maintaining and monitoring the CWM if the Agency were to carry out the CWM plan as authorized by the removal-fill authorization. The applicant may submit cost estimates for the construction, maintenance and monitoring of the proposed CWM for consideration by the Agency.

(6) General terms and conditions of financial security instruments.

(a) The shall be in an amount determined by the Agency as provided in OAR 141-085-0176(5) of these rules and be made payable to the "Oregon Division of State Lands".

(b) The financial security instrument shall be conditioned upon faithful performance of all of the requirements of these rules as well as the conditions of the removal-fill authorization.

(c) Liability period. The permitholder's liability under the financial security instrument shall be for the duration of responsibility for the CWM as set out in the approved removal-fill authorization and these rules. Except as approved by the Agency, a financial security instrument shall be posted to guarantee specific phases of the required CWM provided the sum of the bonds authorized for the phases equals or exceeds the total amount required to complete the CWM. The scope of work to be guaranteed and the liability



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ty assumed under each phase of the instrument shall be specified in detail in the authorization and financial security instrument form.

(7) Surety bonds: Surety bonds shall be executed by the permitholder and a corporate surety licensed to do business in Oregon. Such surety bonds shall be not be cancelable during their term.

(8) Certificates of Deposit; certificates of deposit shall be assigned to the Agency, in writing, and upon the books of the bank issuing such certificates.

(9) Letters of credit shall be subject to the following conditions:

(a) The letter may only be issued by a bank organized or authorized to do business in the state of Oregon.

(b) The letter must be irrevocable prior to release by the Agency.

(c) The letter must be payable to the "Division of State Lands" in part or in full upon demand by and receipt from the Agency of a notice of forfeiture issued in accordance with OAR 141-085-0176 of this rule.

(10) Financial Security Instrument Replacement. The Agency may allow a permitholder to replace an existing financial security instrument with another if the total liability is transferred to the replacement. The Agency shall not release an existing financial security instrument until the permit holder has submitted and the Agency has approved the replacement. Replacement of a financial security instrument shall not constitute a release under OAR 141-085-0176 of these rules.

(11) Financial Security Instrument Release. The Agency shall authorize release of the financial security instrument when the CWM meets the requirements of the CWM plan and conditions of the removal-fill authorization. The permitholder shall file a request with the Agency for the release of all or part of a financial security instrument. The request shall include:

(a) The precise location of the CWM area.

(b) The permitholder's name.

(c) The removal-fill authorization number and the date it was approved.

(d) The amount of the financial security instrument filed and the portion sought to be released.

(e) The type and appropriate dates of CWM work performed.

(f) A description of the results achieved relative to the permitholder's approved CWM plan.

(12) Forfeiture of financial security instruments. The Agency shall declare forfeiture of all or part of a financial security instrument for any removal-fill authorization project area or an increment of a project area if CWM activities are not conducted in accordance with the approved CWM plan or the permitholder defaults on the conditions under which the financial security instrument was posted. The Agency shall identify, in writing, the reasons for the declaration.

(13) Determination of Forfeiture Amount and Utilization of Funds. The permitholder shall forfeit the amount of the financial security instrument for which liability is outstanding and either utilize funds collected from bond forfeiture to complete the CWM on which bond coverage applies or deposit the proceeds thereof in the Oregon Wetlands Mitigation Revolving Fund Account for use in the payment of costs associated with wetland mitigation activities.

Stat. Auth.: ORS 196.825

Stats. Implemented: ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 1-2003, f. & cert. ef. 7-10-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0263

### Estuarine Mitigation Banks

(1) Credits from an estuarine mitigation bank may be used only as a condition imposed on an authorization or to resolve a violation of ORS 196.800 to 196.905 or these rules approved within the same estuarine ecological system.

(2) The mitigation needs of an intertidal removal-fill activity can be met using mitigation "credits" stored in a "mitigation bank." Mitigation credits result from a mitigative action accomplished under agreement with the Agency. Such credits can be used to offset the mitigation needs of projects that occur at some time after the mitigation bank is created.

(3) A "Mitigation Credit," the currency of a mitigation bank, is the product of the adjusted or enhancement Relative Value of a habitat type and the number of acres affected by the mitigation action(s). For example, a mitigation action might involve a large diked former brackish marsh that could be restored to the estuarine system by breaching dikes. The site might yield acreage of high brackish marsh (Relative Value 4.0), low brackish marsh (Relative Value 5.0), and unvegetated brackish sand flats (Relative Value 3.0) that could be used for mitigation. Based on five acres of each habitat type, the bank would have some 60 mitigation credits available to offset mitigation liabilities of future projects.

(4) The following rules are established for the creation and use of mitigation banks and are to be used in conjunction with OAR 141-085-0421.

(a) A mitigation bank may be created in any estuary to provide mitigation for one or more development projects in that estuary. More than one bank may be created in any estuary. Any legal entity may create a bank;

(b) Mitigation banks shall be created by written agreement with the Agency and may be administered by the Agency. Such agreements shall provide the basis for creation and operation of the bank and shall specifically provide for the following:

(A) The exact location of affected real property;

(B) Proof of ownership or control, i.e., deed, title report;

(C) The nature and extent of the mitigative action. This analysis will require information about site salinity, elevation, wave and current actions, substrate, and other physical and biological characteristics;

(D) How and when the mitigative action will be performed;

(E) A statement of informed opinion as to what habitat types will result from the action and a statement as to Relative Value of each anticipated type;

(F) How the resulting habitat changes will be monitored and evaluated;

(G) How the mitigation site will be protected, i.e., dedication, conservation easement, deed;

(H) How funding for necessary construction or alteration work will be guaranteed, i.e., bonding;

(5) The Agency may authorize creation of mitigation banks making use of restoration of estuarine lands caused by a naturally occurring or human activity that occurred after July 21, 1979, even though mitigation through restoration was not the intent of the action;

(a) Such mitigation banks shall be created under the procedures set out in OAR 141-085-0263(2) of this rule.

(6) Applicants for removal and fill permits requiring mitigation are not obligated, or automatically entitled, to use an existing mitigation bank to meet the mitigation needs of any project. Permit applicants must negotiate directly with the owner of a bank to secure the right to use the bank. Agreements between the owner of a bank and a permit applicant are subject to the Agency's approval as to the number of mitigation credits charged against the bank.

Stat. Auth.: ORS 196.600- 196.665; ORS 196.825

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0410

### Policies

(1) The Agency shall encourage the development of and the expeditious approval of mitigation banks and other types of compensatory wetland mitigation.

(2) Mitigation banks can only be used to provide compensatory wetland mitigation for anticipated losses in wetland functional attributes when on-site CWM is impracticable.

(3) The availability or use of mitigation banks shall not:

(a) Create a presumption that the Agency will be more willing to allow wetland losses under the Removal-Fill Law (ORS 196.800 through 196.990); or

(b) Eliminate the requirement to fully demonstrate that the applicant for a Removal-Fill Permit has considered alternatives that avoid and/or minimize losses to jurisdictional wetlands; and

(c) Eliminate the requirement to comply with these rules.

(4) Both freshwater and estuarine mitigation banks shall only be debited for a condition imposed in an authorization or to resolve a violation of these rules.

(5) Mitigation banks shall be designed to compensate for expected or historic wetland losses to:

(a) Ensure maintenance of regional wetland function in their service area;

(b) More closely match the demand for wetland credits with wetland losses; and

(c) Meet other ecological or watershed needs as determined by the Agency.

(6) The long-term goal of mitigation banks is to provide compensatory wetland mitigation in advance of wetland losses.

(7) Mitigation banks shall be subject to all rules governing freshwater and estuarine resource replacement in OAR 141-085-0102 thru 141-085-0266.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0421

### Requirements to Establish a Mitigation Bank

(1) All persons proposing to establish a mitigation bank shall:

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(a) Meet with the Agency to discuss their proposed bank and the content of their Mitigation Bank Prospectus.

(b) Prepare and submit a Mitigation Bank Prospectus to the Agency.

(2) The Mitigation Bank Instrument shall contain the following elements, as applicable:

(a) The location of the proposed bank and identification of service area (indicated through the use of maps or aerial photographs clearly showing recognizable geographic place names, features, and/or watershed boundaries).

(b) Demonstration of need for the bank as shown by past removal-fill activities, projected demographics for the proposed service area, statements of expected activities from the local planning agency, and like documentation.

(c) List of adjacent property owners within five hundred (500) feet of any boundary of the proposed bank.

(d) Proof of ownership of, or explicit legal and recordable permission granted by the landowner to perpetually dedicate the land upon which the bank and any associated buffer is proposed.

(e) Site plan for the mitigation area indicating the location of hydrogeomorphic and Cowardin wetland classes to be produced at the site, areas where grading will be required, location of buffers, vegetation planting plan, etc.

(f) Description of former or current uses of the proposed bank site which may have resulted in contamination by toxic materials.

(g) Description of the ecological goals and objectives of the bank.

(h) Description of the degree to which the bank potentially will provide wetland functions such as flood storage and shoreline protection, wildlife and fisheries habitat, wildlife corridors, and/or filtration of nutrients and pollution reduction.

(i) Description of the effects of adjacent existing, potential, and proposed land uses on the proposed bank.

(j) Description of the wetland losses by hydrogeomorphic and Cowardin wetland classes for which the bank will be designed to offer credits.

(k) Description of the specific and measurable performance standards against which the development of the credits in the bank will be judged.

(l) Description of reference site(s), if proposed, and their relationship to OAR 141-085-0421(2)(j) of these rules.

(m) A site assessment of the proposed bank area providing information on the:

(A) Hydrogeomorphic and Cowardin wetland classes;

(B) Ecological baseline characterizing the level of each function (if the site is currently a wetland), as well as vegetation, soils, hydrology, and wildlife habitat and usage; and

(C) Results of a wetland determination or delineation.

(n) Description of the method(s) used to determine the availability of credits at the proposed bank, as well as those that will be used to account for and report credit and debit transactions.

(o) Total estimated project cost itemized by major cost elements (for example, land acquisition, bank design and construction, consulting and legal fees, maintenance and monitoring over the long-term, and contingency fund).

(p) Proof that the sponsor has the financial resources to undertake, operate, and maintain the proposed bank over the long-term, as well as the ability to correct project deficiencies or performance failures.

(q) Description of the sampling protocols (including sampling frequency and seasonal schedule) used to monitor bank elements, and the name(s) and qualifications of the person(s) who will conduct such monitoring.

(r) Detailed contingency plan describing how project deficiencies or performance failures will be corrected, including assignment of responsibilities for failures such as earthquakes, floods, vandalism, damage by pests and wildlife, invasion by undesirable vegetation, etc.

(s) Proof in the form of written approval from the local government and in zone designations for the mitigation bank site and surrounding lands, applicable overlay zones, permitted and conditional uses in base and overlay zones, applicable local policies, and identification of necessary local permits and other approvals that the wetland bank is consistent with the requirements of all applicable comprehensive plans and land use regulations, watershed management plans, and/or other applicable land use plans.

(t) All items required in Compensatory Mitigation Plans provided in OAR 141-085-0141.

(u) Drafts of proposed long-term protection measures (such as conservation easements, deed restrictions, donation to non-profit environmental groups, etc.), and management plans, and mechanisms for funding. Prior to approval of the Instrument, these documents shall be signed and recorded with the appropriate government agency.

(v) Statement indicating when each of the conditions of the Instrument will terminate, unless they are perpetual in nature.

(3) The Agency will review the Prospectus for sufficiency, and shall notify the sponsor in writing of the sufficiency of the document within thirty (30) calendar days of receipt. Each submittal containing substantial revisions shall restart the time clock.

(4) Any Prospectus received by the Agency that does not provide sufficient information for review, or that appears to present a proposal in which the Agency will not participate, will be returned to the sponsor with a written explanation.

(5) The Agency reserves the right to decline to participate in the development of a Mitigation Bank Instrument and may, instead, suggest other options to the sponsor including the standard Removal-Fill Permit process, or participation in other wetland stewardship options if the sponsor cannot demonstrate:

(a) Need for the mitigation credits; or that

(b) The bank is technically feasible and ecologically desirable.

(6) Upon determining that the Prospectus is sufficient, the Agency shall give public notice of the Prospectus. This notice shall be called "Intent To Create A Mitigation Bank" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to city and county planning departments, and state agencies having jurisdiction over the mitigation bank site(s), federal natural resources and regulatory agencies, adjacent landowners, conservation organizations and other interested persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Prospectus provided by the bank sponsor.

(d) Indicate that comments must be received for thirty (30) calendar days from the date of the public notice.

(7) The Agency shall consider but is not bound by comments received during the public notice period in (6). If comments are not received from a state agency or from an affected local government or special district within the 30 day comment period, the Agency shall assume the entity does not desire to provide comments.

(8) A Mitigation Bank Review Team (MBRT) shall be formed within thirty (30) calendar days of the date of the public notice. An MBRT shall not have more than ten (10) members, and shall be chaired jointly by a representative of the Agency and, if applicable, the Corps. When the Corps does not participate in a mitigation bank proposal, the Agency may, but is not obligated to, invite other federal involvement.

(a) The members of a MBRT shall be selected jointly by the Agency and the Corps. Each of the following agencies will be asked to nominate a representative to participate in each MBRT:

(A) Oregon Department of Environmental Quality;

(B) Oregon Department of Fish and Wildlife;

(C) Oregon Department of Land Conservation and Development;

(D) U.S. Fish and Wildlife Service;

(E) U.S. Environmental Protection Agency;

(F) Soil and Water Conservation District; and

(G) Local Government Planner, or equivalent.

(b) Other members of the MBRT shall be selected based on the nature and location of the project, particular interest in the project by persons or groups, and/or any specific expertise which may be required by the Agency and the Corps in development of the Instrument.

(9) The MBRT shall:

(a) Review and comment upon the Prospectus, and provide input to the Agency concerning deficiencies noted, and additional information required.

(b) Consider the comments received in response to the notice of "Intent To Create A Mitigation Bank."

(c) Assist with the drafting of the Instrument.

(d) Determine an appropriate level of financial assurance to ensure project development, construction, long-term maintenance and monitoring, and the ability of the sponsor to correct project deficiencies or performance failures.

(e) Review the performance of the bank annually, or more frequently as set by the MBRT, to determine whether it is in compliance with the ecological goals and objectives established in the Instrument, and continues to hold adequate financial resources and assurances to ensure continued long-term operation pursuant to those goals and objectives. This review may include site visits and audits of bank documents at irregular time periods.

(f) The consensus of the MBRT shall be fully considered by the Agency throughout the life of the bank.

(10) A sponsor may begin construction of a bank prior to developing an Instrument by:

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(a) Providing detailed documentation of the baseline conditions existing at the proposed site(s) of the bank; and

(b) Receiving written consent from the Agency prior to undertaking any construction. However, such consent from the Agency does not exempt the sponsor from having to apply for, and obtain a Removal-Fill Permit, if required. Written consent from the Agency recognizes the sponsor's intent to create a bank only, but does not guarantee subsequent approval of the Mitigation Banking Instrument by the Agency, which assumes no liability for the sponsor's actions.

(11) The Instrument shall:

(a) Contain all information listed in OAR 141-085-0421(2) of these rules, as well as any other data required by the Agency.

(b) Be approved and signed by the Agency and the sponsor, at the discretion of the Agency.

(c) Be subject to revision over time as mutually agreed to by the signers of the Instrument.

(12) Upon approval of the Instrument, the Agency shall give public notice of the approval of the Mitigation Bank Instrument. This notice shall be called "Notice Of Mitigation Bank Instrument Approval" and shall:

(a) Be published not less than once each week for three (3) successive weeks in a statewide newspaper and in a newspaper of general circulation in the area where the mitigation bank will be located.

(b) Be sent to affected city and county planning departments, affected state agencies, adjacent landowners, and persons requesting such notices.

(c) Briefly describe the proposed mitigation bank and reference the Mitigation Bank Instrument.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0430

### Use and Sale of Mitigation Credits

(1) Mitigation credits may only be purchased from a sponsor to offset permitted wetland losses or to resolve violations under the Removal-Fill Law. Credit sales and purchases for future anticipated adverse affects not part of Removal-Fill Permit applications are prohibited.

(2) The Agency may purchase credits from an approved bank with funds received from payment to provide mitigation payments where such purchases will provide off-site CWM.

(3) The maximum number of credits that may be sold in advance of certification of the bank credits by the Agency shall be clearly specified in the Instrument. In no case shall more than thirty (30) percent of the total credits expected to be produced initially by the bank be sold prior to their certification.

(4) The Agency shall not allow the sale or exchange of credits by a mitigation bank that is not in compliance with the terms of the Instrument, the Removal-Fill Law, and all rules governing freshwater and estuarine resource replacement in OAR 141-085-0121 through 141-085-0266. The Agency may consult with the MBRT for the bank in order to determine noncompliance and appropriate remedies, including enforcement action.

Stat. Auth.: ORS 196.825; ORS 196.600- 196.665

Stats. Implemented: ORS 196.600- 196.692; ORS 196.800- 196.990

Hist.: LB 2-1997, f. & cert. ef. 2-14-97; DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03 ; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-085-0450

### Records; Reporting

(1) The Agency shall maintain a record of credit withdrawals for each active wetland mitigation bank.

(2) The Agency shall report annually to the Land Board on funds expended from the Oregon Wetlands Mitigation Bank Revolving Fund for each wetland mitigation bank.

Stat. Auth.: ORS 196.600-196.692, ORS 196.800-196.990

Stats. Implemented: 2003 OL 738

Hist.: DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-089-0180

### Mandatory Requirements

The Agency shall review each application to ensure that a project complies with the following mandatory standards:

(1) If the project is within a State Scenic Waterway, a scenic waterway removal-fill permit must have been obtained from the Agency in accordance with OAR 141-100; and

(2) A compensatory mitigation plan or compensatory wetland mitigation plan is required pursuant to OAR 141-085 to mitigate for any reasonably expected adverse impacts to water resources of the state or navigation, fishing and public recreation uses. Applicants for projects involving wet-

land impacts to areas less than 0.2 acres may use off-site compensatory wetland mitigation.

Stat. Auth.: ORS 196.850

Stats. Implemented: ORS 196.800-196.990

Hist.: DSL 6-2002, f. 11-25-02 cert. ef. 1-15-03; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-090-0020

### Definitions

For the purpose of these rules:

(1) "Agent" means a business partner, attorney or any individual who is legally authorized to represent the landowner's interests.

(2) "Applicant" means a person who has applied to the Division for a jurisdictional determination and/or a removal or fill permit.

(3) "Atypical Situation" means a site or situation where the usual methods of making a jurisdictional determination cannot be employed due to human-caused activities or alterations of the "normal circumstances," or natural events, such as a flood, that have recently altered a site.

(4) "Basis of Jurisdictional Determination" means a summary statement of the criteria and indicators that support the Division's jurisdictional determination.

(5) "Change in Circumstances" means a change in site conditions that fundamentally alters the hydrology and/or substrate to the extent that the "normal circumstances" of waters of the state are changed. The change in circumstances may be due to alterations on a site or alterations offsite that affect the site sufficiently to enlarge, reduce, or change the status or geographic extent of a jurisdictional water. A change in circumstances includes, but is not limited to, a dike breach or drainage system failure that restores former hydrologic conditions to a site, placement of fill material, or a water source diversion.

(6) "Consultant" means a private individual or firm whose business is to provide professional services to the public.

(7) "Delineation" means a determination of wetland presence that includes marking the wetland boundaries on the ground and/or on a detailed map prepared by professional land survey or similar accurate methods.

(8) "Determination" means a decision that a site may, does, is unlikely to, or does not contain waters of the state, including wetlands. A determination need not include the precise location or boundaries of any wetlands or waterways determined to be present.

(9) "Director" means the Director of the Division of State Lands or his or her designate.

(10) "Division" means the Oregon Division of State Lands, including the Director.

(11) "Final Order" means a final agency action expressed in writing. "Final order" does not include any tentative or preliminary agency statement, including a "preliminary jurisdictional determination," and does not preclude further agency consideration of the subject matter of the final order.

(12) "Global Positioning System" (GPS) means a navigation system which consists of a network of satellites and earth receiver stations which allows a person to determine, via a hand-held receiver, their respective position in latitude, longitude, and altitude.

(13) "Indicator" means soil characteristics, vegetation, hydrology evidence or other field data that indicate, by their presence or absence, the existence of certain environmental conditions. Indicators are used with other information, mapped or anecdotal, to determine the state's jurisdiction over waters of the state.

(14) "Jurisdictional Determination" (JD) means a written decision by the Division that waters of the state subject to regulation and permit requirements of the Removal-Fill Law are present or not present on a land parcel. The JD may include a determination of the geographic boundaries of the water area subject to state jurisdiction. For example, a JD may include the location of a wetland boundary or the location of the "bankfull stage" of a waterway. A JD may, but does not necessarily, include a determination that a particular activity in a water of this state is subject to permit requirements. The decision record includes the basis of the jurisdictional determination and is a final order subject to reconsideration according to the provisions in 141-090-0050.

(15) "Landowner" means the legal owner of the parcel(s) for which a JD is requested or made.

(16) "Local Wetlands Inventory" (LWI) means a wetland inventory map and supporting data that is conducted according to the requirements in OAR 141-086-0180 to 0240 and has been approved by the Division.

(17) "Manual" means the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual.

(18) "National Wetlands Inventory" (NWI) means the wetlands inventory prepared by the U.S. Fish and Wildlife Service.

(19) "New Information" means data, reports, photographs, observations or similar information that is provided to or obtained by the Division

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after the Division has issued a jurisdictional determination or issued a permit.

(20) "Non-wetland" means an area that does not meet the wetland definition and criteria.

(21) "Normal Circumstances" means the hydrology, soil and vegetative conditions that are naturally present, regardless of whether or not the soil or hydrology has been recently altered or the natural vegetation has been removed or altered. "Normal circumstances" includes a consideration of the permanence of any change to the site; for example, if several feet of fill material are placed on a wetland the new "normal circumstances" may be non-wetland. In such a situation, the Division may determine if the placement of fill material required a fill permit.

(22) "Offsite Determination" means a determination by the Division or any other person that is conducted without a site visit using maps, aerial photographs, observations from adjacent areas, and/or interviews with persons familiar with the site. An offsite determination is considered to be a Preliminary Jurisdictional Determination unless otherwise stated in writing by the Division.

(23) "Onsite Determination" means a determination by the Division or any other person that includes a site visit to collect relevant data. An onsite determination may be either a Preliminary Jurisdictional Determination or a JD.

(24) "Other Waters" means waters of the state other than wetlands.

(25) "Permit Application" means the written application for a permit to place fill in or remove material from waters of the state as required by ORS 196.800 to 196.990.

(26) "Person" means an individual, corporation, firm, partnership, estate, association, body of government or other legal entity.

(27) "Preliminary Jurisdictional Determination" (PJD) means an advisory determination issued orally or in writing stating that wetlands or other waters of the state are present or not present on a parcel of land. Because a PJD is advisory in nature it has no specified duration or expiration and is not subject to appeal. PJDs include all wetland determinations by any person other than the Division, and also include wetlands mapped on the NWI or on a LWI.

(28) "Primary Contact" means the person or firm designated by the landowner, agent or applicant to serve as the Division's contact for the purpose of the review and approval of a wetland determination or delineation report.

(29) "Removal-Fill Law" means ORS 196.800 through 196.990 and rules adopted thereunder relating to the filling and/or the removal of material in waters of the state.

(30) "Report" means a wetland determination or delineation report.

(31) "Sample Plot" means an area on a parcel of land within which environmental data (e.g., soils, hydrology and vegetation) are collected that is representative of that area.

(32) "Waters of the state" means natural waterways including all tidal and nontidal bays, intermittent streams, constantly flowing streams, lakes, wetlands and other bodies of water in this state, navigable and nonnavigable, including that portion of the Pacific Ocean which is in the boundaries of this state (ORS 196.800(14) and OAR 141-085-0010 and 0015).

(33) "Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions (ORS 196.800(16)).

(34) "Wetland Boundary" means a line marked on the ground and/or on a map that identifies the boundary line between wetlands and non-wetlands.

(35) "Wetland Delineation Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes and maps their location and geographic extent.

(36) "Wetland Determination Report" means a written document that contains the methods, data, conclusions and maps used to determine if wetlands and/or other waters of the state are present on a land parcel and, if so, describes their approximate location and size.

(37) "Wetland Map" means a map included in a Wetland Determination or Delineation Report or provided by the Division that shows the parcel(s) and/or areas investigated and the location, size and boundaries of any wetlands and other waters.

Stat. Auth.: ORS 196.600-196.692, 196.800-196.990

Stats. Implemented: 2003 OL 738

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

## 141-090-0030

### Technical Requirements

(1) The Division shall give priority to the review of wetland delineation reports submitted in advance of an application for fill or removal of material from waters of this state.

(2) Wetland determinations and delineations shall be conducted in accordance with the 1987 U.S. Army Corps of Engineers Wetlands Delineation Manual ("the manual") along with any supporting technical or guidance documents issued by the Division and applicable guidance issued by the U.S. Army Corps of Engineers for the area in which the wetlands are located.

(3) In addition to the requirements in this section, wetland determination and/or delineation reports submitted to the Division for review and approval shall meet the standards and requirements in 141-090-0035.

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

Stat. Auth.: ORS 196.845 & ORS 196.692

Stats. Implemented: ORS 196.800-990, 196.600-665, 196.668-692 & 197.279

Hist: DSL 3-2001, f. 4-18-01, cert. ef. 7-1-01; DSL 2-2003(Temp) f. & cert. ef. 11-26-03 thru 5-23-04

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**Rules Amended:** 141-030-0010, 141-030-0015, 141-030-0025, 141-030-0034, 141-030-0035, 141-030-0036, 141-030-0037, 141-035-0005, 141-035-0013, 141-035-0015, 141-035-0020, 141-035-0025, 141-035-0030, 141-035-0035, 141-035-0040, 141-035-0045, 141-035-0047, 141-035-0048, 141-035-0050, 141-035-0055, 141-035-0060, 141-035-0065, 141-035-0070, 141-040-0005, 141-040-0010, 141-040-0020, 141-040-0030, 141-040-0035, 141-040-0040, 141-040-0200, 141-040-0211, 141-040-0212, 141-040-0214, 141-040-0220, 141-045-0005, 141-045-0010, 141-045-0015, 141-045-0021, 141-045-0031, 141-045-0041, 141-045-0061, 141-045-0100, 141-045-0105, 141-045-0115, 141-045-0120, 141-045-0121, 141-045-0122, 141-045-0123, 141-045-0124, 141-045-0125, 141-045-0126, 141-045-0130, 141-045-0150, 141-045-0155, 141-045-0160, 141-045-0170, 141-045-0180, 141-045-0185

**Rules Repealed:** 141-030-0038, 141-035-0010

**Rules Renumbered:** 141-030-0040 to 141-030-0055

**Rules Ren. & Amended:** 141-030-0039 to 141-030-0050

**Subject:** Following a lengthy rule updating process, the Division adopted major revisions to Chapter 141-010, 141-035, 141-040 and 141-045. Since the adoption of the new rules in January 2002, the 2003 Legislative Assembly has enacted several bills that now require a number of clarifications and changes to be made to the rules. Changes incorporate modifications to existing language and/or new provisions, including:

(1) Changes to dormancy periods for reporting unclaimed property;

(2) Definitions;

(3) Clarifications to appeal processes for disputes related to unclaimed property;

(4) Changes to permissible methods for disposing of unclaimed property;

(5) Changes to the estates administration process for escheated estates; and

(6) Changes the name of the Division of State Lands to Department of State Lands.

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3805, ext. 239

## 141-030-0010

### Purpose

The purpose of these rules is to prescribe uniform procedures for making claims to recover escheat property held by the Division of State Lands as provided for by ORS 112.055, 114.555, 116.193, 116.203, 708A.430, 722.262, 723.466, any form of non-probate administration of an escheat estate, and property received by the Division pursuant to ORS 179.540-179.550 prior to October 4, 1997.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

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Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0015

### Definitions

As used in this division and division 35 of these rules:

- (1) "Administration" means any proceeding relating to the estate of a decedent, whether the decedent died testate, intestate or partially intestate.
- (2) "Affiant" means the person or persons signing an affidavit for a small estate filed under ORS 114.515.
- (3) "Agent" means a person who is filing a petition to recover escheat property on behalf of a claimant.
- (4) "Assets" includes real, personal and intangible property.
- (5) "Claim" includes liabilities of a decedent, whether arising in contract, in tort or otherwise.
- (6) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to escheat property held by the Department.
- (7) "Claiming Successor" means:
  - (a) If the decedent died intestate, the heir or heirs of the decedent, or if there is no heir, the Director of the Department of State Lands;
  - (b) If the decedent died testate, the devisee or devisees of the decedent; and
  - (c) Any creditor of the estate entitled to payment or reimbursement from the estate under ORS 114.545(1)(c) who has not been paid or reimbursed the full amount owed such creditor within 60 days after the date of the decedent's death.
- (8) "Court" or "probate court" means the court in which jurisdiction of probate matters, causes and proceeding is vested as provided in ORS 111.075.
- (9) "Decedent" means a person who has died.
- (10) "Department" means the Department of State Lands.
- (11) "Devisee" includes "legatee" and "beneficiary".
- (12) "Director" means the Director of the Department of State Lands or the designee of the director.
- (13) "Distributee" means a person entitled to any property of a decedent under the will of the decedent or under intestate succession.
- (14) "Escheat property" means:
  - (a) Property paid or delivered to the Department because the devisee or heir could not be found, or refused to accept the property;
  - (b) Funds paid or delivered to the State of Oregon prior to October 4, 1997 according to ORS 179.540 from a state institution where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.
- (15) "Estate" means the real and personal property of a decedent as from time to time changed in form by sale, reinvestment or otherwise, and augmented by any accretions or additions thereto and substitutions therefore or diminished by any decreases and distributions therefrom.
- (16) "Estate Administrator" means an employee of the Department appointed by the Director to protect the assets of a decedent, and administer the estate on behalf of the Department.
- (17) "Finder" means any person who independently searches for and finds the owners of escheat property for a fee paid by the owner.
- (18) "Funeral" includes burial, cremation or other disposition of the remains of a decedent, including the plot or tomb and other necessary incidents to the disposition of the remains.
- (19) "Heir" means any person, including the surviving spouse, who is entitled under intestate succession to the property of a decedent who died wholly or partially intestate.
- (20) "Interested person" includes heirs, devisees, children, spouses, creditors and any others having a property right or claim against the estate of a decedent that may be affected by the proceeding. It also includes fiduciaries representing interested persons.
- (21) "Intestate" means one who dies without leaving a valid will, or the circumstance of dying without leaving a valid will, effectively disposing of all the estate.
- (22) "Intestate succession" means succession to property of a decedent who dies intestate or partially intestate.
- (23) "Issue" includes adopted children and their issue and, when used to refer to persons who take by intestate succession, includes all lineal descendants, except those who are the lineal descendants of living lineal descendants.
- (24) "Known heir" means an heir who has been identified and found.
- (25) "Personal property" includes all property other than real property.
- (26) "Personal Representative" includes executor, administrator, administrator with will annexed and administrator de bonis non, but does not include special administrator.
- (27) "Property" means both real and personal property.

(28) "Probate" means the court procedure that encompasses all matters and proceedings pertaining to administration of estates as described in ORS 111.085, including but not limited to appointment and qualification of personal representatives, determination of heirships, construction of wills, and the administration, settlement and distribution of estates of decedents. As to the estate of a decedent, "settlement" includes, the full process of administration, distribution and closing.

(29) "Real property" means all legal and equitable interests in land, in fee and for life.

(30) "Testate" means the circumstances of dying with a legal, valid will that effectively disposes of all the estate.

(31) "Will" means the legal, valid, written document that disposes of the estate. "Will" includes a codicil or a testamentary instrument that merely appoints an executor or that merely revokes or revives another will.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 31, f. & cert. ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0025

### Petitions to Recover Estate Property

(1) Pursuant to ORS 116.253, a claimant or agent may initiate a claim to recover escheat estate property by filing a petition with the Department within the later of 10 years after the death of a decedent from whose estate the Department received the property, or eight years after the entry of a decree or order escheating the property to the state.

(2) A petition shall be considered filed upon its receipt by the Department.

(3) The petition shall provide all information required under subsections (4) and (5) of this rule. The petition shall be verified and state the following:

(a) The name, age, and place of residence of the claimant by whom or on whose behalf the petition is filed.

(b) That the claimant is lawfully entitled to the property or proceeds, and a brief description of the property or proceeds.

(c) That at the time the property escheated to the state, the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement.

(d) That the claimant claims the property or proceeds as:

(A) (For escheat of an estate) An heir or as the personal representative of the estate of an heir.

(B) (For escheat of a distributive share of an estate) The person who was entitled to receive the distributive share or that person's personal representative.

(e) That 10 years have not elapsed since the death of the decedent from whose estate the Department received the property, or that eight years have not elapsed since the entry of the decree or order escheating the property to the state.

(f) If the petition is filed on behalf of the claimant, the identity and authority of the claimant's agent.

(4) The petition to recover estates and distributive shares shall be supported by the following documents:

(a) Current photo identification of the claimant, or other satisfactory proof of identity.

(b) An acknowledged indemnification agreement signed by the claimant(s) and acceptable to the Department.

(c) If the petition is being filed by an agent for a claimant, a Power of Attorney or written, acknowledged authorization given by each claimant to the agent to act on behalf of the claimant. The original Power of Attorney or authorization shall be filed with the petition. A finder who is acting as an agent for a claimant shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall forward a copy of the finder's current license issued by the Oregon Board of Investigators with the initial Power of Attorney. Subsequent claims filed by a finder shall include the current license number on the Power of Attorney.

(d) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, a genealogical chart showing the relationship of all heirs of the decedent. If the line has lapsed, a statement shall be included that no issue exists and proof that the line lapsed by death. If persons in a line have not been identified or found, the statement shall include information on the efforts made to identify and find the persons in that line and all known information on that line.

(e) If the property was paid or delivered to the Department because a decedent died intestate with no known heirs, certified copies of birth, death, and/or marriage certificates, that show the family relationships of the heirs to the decedent.

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(5) In addition to the documents required by subsection (4) of this rule, a petition may also include the following records to verify and establish the relationship of the heirs to the decedent:

- (a) Bureau of Census Records;
- (b) Published obituaries and funeral Notices;
- (c) Wills of deceased family members, which show the relationship of heirs to each other;
- (d) Church records showing birth, death, baptism, or marriages;
- (e) Applications for Social Security cards, naturalization records, employee pension plans or any records containing the signature of the applicant/claimant and listing any designated beneficiaries, other family members or parents;
- (f) Court records and duly authenticated records of proceedings conducted before domestic and foreign courts to show the heirs of the decedent and the entitlement of the claimant to the escheat funds.

(6) Copies of documents submitted to support a petition shall be certified by the custodian of the original document or shall include an appropriate reference to the source at which they may be verified.

(7) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

(8) In order to assist the Department in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(9) For the purposes of this rule, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 31, f. & ef. 10-3-75; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0034 Recovery of Costs

The Department shall recover its actual costs of reviewing a petition, including those of the Attorney General. The actual costs and any tax on the property shall be deducted from the proceeds before payment is made to the claimant. As used in this section, "actual costs" shall include but need not be limited to the actual staff time incurred in reviewing the petition and any overhead costs to the Department in handling the petition, calculated in the manner described in 141-035-0068(2).

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0035 Contested Case Procedures

(1) If the Department is unable to determine legal entitlement from information provided in the petition, and any supporting documentation received or provided by supplemental filings, the Department shall give written notice of denial.

(2) The notice of denial shall include the specific reason(s) for denial and shall provide an opportunity for a contested case hearing.

(3) Within 60 days after the date the Department provides written notice of denial, the claimant may request a hearing on the matter.

(a) A request for hearing shall be in writing and shall identify issues of law or fact raised by the denial and shall include a summary of the evidence of ownership on which the claim was originally submitted.

(b) Within 30 days after the Department receives a written request, the Department shall contact the claimant to schedule a hearing date by mutual agreement. The Department shall confirm the hearing date by providing written notice to the claimant.

(c) The Director or a hearings officer appointed by the Director shall conduct the hearing.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 31, f. & ef. 10-3-75; LB 37, f. & ef. 9-1-76; LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0036 Petitions to Recover Institutional Escheat Property

(1) A claimant or an agent shall initiate a claim to recover institutional escheat property received prior to October 4, 1997 pursuant to ORS 179.540 by submitting a claim to the Department within 10 years after the date the Department receives the property.

(2) A claim shall be considered filed upon its receipt by the Department. The claim shall be supported by the following documents:

(a) A verified claim form furnished by or acceptable to the Department, signed by the owner, or the owner's heir, personal representative or claiming successor;

(b) Current photo identification of the claimant, or other satisfactory proof of identity;

(c) In order to substantiate information when sufficient supporting documentation is not available to prove entitlement, the Department may require an affidavit by the claimant.

(3) In order to assist the Department in determining the rightful owner of an account, a claimant may voluntarily include the claimant's Social Security number on the petition.

(4) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the application.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0037 Review by the Division

(1) The Department shall review the petition and the sufficiency of the supporting documents. If a preponderance of the evidence indicates that the claimant is legally entitled to the property, the Department shall satisfy charges due, if any, to the Department of Human Resources, and prepare the necessary administrative deeds and assignment of contracts for property that is part of the estate. The Department may require the Department of Justice to review the petition or claim and supporting documents for accounts with a value of \$1,000 or more.

(2) Upon completion of the requirements of subsection (1) of this section, the Department shall request a warrant from the State Treasurer and make payment to the claimant, agent, or attorney for the claimant.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0045 Standards for Determining Escheat Share of the Estate

(1) In determining the escheat share of the estate of a decedent whose estate is wholly or partially subject to probate in this state:

(a) The Department shall not give preference to any person over escheat; and

(b) After diligent search and inquiry appropriate to the circumstances, the Department shall apply the following presumptions in a proceeding to determine whether a missing person has died:

(A) A missing person whose death cannot be proved by other means lives to 100 years of age.

(B) A missing person who was exposed to a specific peril at the time the person became missing has died if it is reasonable to expect from the nature of the peril that proof of death would be impractical.

(C) A missing person whose absence is unexplained has died if the character and habits of the person are inconsistent with a voluntary absence for the time that the person has been missing.

(D) A missing person known to have been alive who has not been seen or heard from for seven years has died if the person has been absent from the person's usual residence, the absence is unexplained, there are other persons who would have been likely to have heard from the missing person during that period were the missing person alive, and those other persons have not heard from the missing person.

(2) In any proceeding to determine the escheat share of an estate, a missing person who is presumed to be dead is also presumed to have had two children in addition to any known issue of the person unless the presumption of death arises by reason of the application of subsection (1)(b)(B) or (C) of this rule.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119  
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0050 Expiration of Recovery Period

If a petition to recover escheat property is not received by the Department within 10 years after the death of the decedent from whose estate the Department received the property, or within eight years after the entry of a decree or order escheating the property to the state, and upon resolution of any petitions filed during that period, the Department shall summarily close the file and permanently transfer the remainder of the estate to the Common School Fund.

Stat. Auth.: ORS 273.045, ORS 111 - 119  
Stats. Implemented: ORS 111 - 119

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Hist.: LB 5-1996, f. & cert. ef. 10-15-96; DSL 10-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; Renumbered from 141-030-0039; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-030-0055

### Interest Derived From Escheated Property

(1) All interest derived from escheated property before the date a claimant's right to the property is established belongs to the State of Oregon.

(2) A claimant's right to the property is established at the time the claimant negotiates the warrant.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; Renumbered from 141-030-0040; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0005

### Purpose

The purpose of these rules is to provide a uniform procedure for the administration of estates of decedents who die intestate without known heirs or with some missing heirs and to testate estates with missing heirs or missing devisees in accordance with Oregon Revised Statutes 111 through 119. These rules shall be liberally construed to secure just, speedy determination of the assets, liabilities, net worth and disposition of the decedents' estates.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0011

### Rights of Department of State Lands in Escheated Estates

(1) Any portion of a net estate that is not effectively disposed of by will or by intestate succession under ORS 112-025 to 112.045 escheats to the State of Oregon. Such property vests in the State of Oregon at the time the court enters its decree or order and is subject to a condition subsequent of divestment if a qualified claimant successfully asserts a claim for recovery under ORS 116.253 and OAR 141-030-0025. The Department of State Lands shall administer the estate or represent the interests of the State of Oregon with regard to the estate.

(2) If a devisee or a person entitled to take under intestate succession is not identified or found:

(a) The share of that person escheats to the State of Oregon;

(b) The Department has the same preference as the missing devisee or person for the purpose of appointment as personal representative under ORS 113.085;

(c) Title to property of the decedent that would vest in the missing devisee or person under ORS 114.215 vests in the Department; and

(d) The Department has all of the rights of the missing devisee or person for the purposes of ORS chapters 111, 112, 113, 114, 115, 116 and 117, including but not limited to the following:

(A) The right to contest any will of the decedent under ORS 113.075; and

(B) The right to information under ORS 113.145.

Stat. Auth.: ORS 273.045, ORS 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0012

### Authority of Department of State Lands in Administration of Estates

(1) In any estate administered by the Department pursuant to 141-035-0011, the Department may:

(a) Administer the estate under the probate laws of Oregon in accordance with ORS chapters 113 to 116;

(b) Administer the estate under the provisions for small estates in ORS 114.505 to 114.560;

(c) Submit an affidavit and receive funds from a financial institution under ORS 708A.430;

(d) Submit an affidavit to examine the contents of a safe deposit box under ORS 708A.655, 722.660 or 723.844;

(e) Submit an affidavit and receive the withdrawal of value of property in accordance with ORS 722.262;

(f) Submit an affidavit and receive the moneys of the decedent on deposit with a credit union in accordance with ORS 723.466; or

(g) Deposit to the Common School Fund without formal proceedings assets of a decedent which are voluntarily delivered to the Department or secured by the Department in accordance with Section 9, Chapter 395, Oregon Laws 2003. In such cases, the Department shall take reasonable steps under the circumstances to identify and notify heirs and to identify and pay from the assets received creditors of the estate.

(2) Except for expenses disallowed by the court with authority over the probate, any expenses of the Department in carrying out the authority set forth in subsection (1) of this rule shall be paid from the proceeds of the estate. Such expenses shall be calculated in the manner described in OAR 141-035-0068. The Department encourages personal representatives sending notices and documents required by statute to the Department to include a letter explaining the practical circumstances of the estate and such additional information as will assist the estate administrator in protecting the interest of the State of Oregon in the estate.

Stat. Auth.: ORS 273.045, ORS 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0013

### Delivery of Information to Division

(1) Upon appointment, a personal representative shall deliver or mail to an estate administrator a copy of the petition filed under ORS 113.035, and a copy of any last will of the decedent, if the personal representative has not identified and found all heirs and devisees of the decedent. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(2) If at any time after the appointment of a personal representative it appears that any heir or devisee of the decedent cannot be identified and found, the personal representative shall promptly deliver or mail to an estate administrator a notice indicating that an heir or devisee cannot be identified and found. The personal representative shall file an affidavit in the probate proceeding proving the delivery or mailing.

(3) A personal representative who files a report under ORS 116.203 that shows that payment or delivery of property cannot be made to a distributee entitled to the property shall provide to the Department of State Lands:

(a) A copy of the order of escheat;

(b) The property;

(c) The name of the person entitled to the property; and

(d) The relationship of the devisee or heir to the decedent.

Stat. Auth.: ORS 273.045, ORS 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0015

### Master Index

The Department shall maintain in its office an index of the names of persons who die intestate without heirs. The index shall contain the number assigned to the file, name of the decedent, county of probate, and estimated estate value. Upon notification of a new probate case, the Department shall add the decedent's name and file number to the index. When the Director has been appointed as personal representative or when the Department files a Small Estates Affidavit, the Department shall include the county of probate and estimated value of the estate.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0016

### Notice to Department of Decedent Who Died Without Known Heirs

(1) Any person who has knowledge that a decedent died wholly intestate, that the decedent owned property subject to probate in Oregon and that the decedent died without a known heir shall give notice of the death within 48 hours after acquiring that knowledge to an estate administrator of the Department of State Lands.

(2) Except as provided by ORS 708A.430, 722.262 and 723.466, a person may not dispose of or diminish any assets of the estate of a decedent who has died wholly intestate, who owned property subject to probate in Oregon and who died without a known heir unless the person has prior written approval of an estate administrator of the Department of State Lands. The prohibition of this subsection:

(a) Applies to a guardian or conservator for the decedent; and

(b) Does not apply to a personal representative appointed under ORS 113.085(3) or to an affiant authorized under ORS 114.520 to file an affidavit under ORS 114.515.

(3) For purposes of this rule, "person" includes, but is not limited to friends, neighbors, care centers, nursing homes, hospitals, banking institutions, attorneys, guardians and conservators, and nursing homes.

Stat. Auth.: ORS 273.045, ORS 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

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## 141-035-0018

### Taking Custody of Property; Payment of Expenses of Estate

(1) An estate administrator of the Department of State Lands may take custody of the property of a decedent who died owning property subject to probate in Oregon upon the estate administrator receiving notice that:

- (a) The decedent died wholly intestate and without a known heir; or
- (b) The decedent left a valid will, but no devisee has been identified and found.

(2) For any estate described in subsection (1) of this section, an estate administrator of the Department of State Lands may:

(a) Incur expenses for the funeral, burial or other disposition of the remains of the decedent in a manner suitable to the condition in life of the decedent;

(b) Incur expenses for the protection of the property of the estate;

(c) Incur expenses searching for a will or for heirs or devisees of the decedent;

(d) Have access to the property and records of the decedent other than records that are made confidential or privileged by statute;

(e) With proof of the death of the decedent, have access to all financial records of accounts or safe deposit boxes of the decedent at banks or other financial institutions; and

(f) Sell perishable property of the estate.

(3) The reasonable funeral and administrative expenses of the Department of State Lands incurred under this section, including a reasonable attorney fee, shall be paid from the assets of the estate with the same priority as funeral and administration expenses under ORS 115.125.

(4) When the Department receives notice of a person who has died and for whom it appears there are no known heirs to inherit and no known will, the Estate Administrator shall immediately take steps to ensure the protection of assets of the decedent. The Estate Administrator shall complete a discovery form, which shall include, but need not be limited to, the following information:

(a) Name of decedent, address, Social Security number, date of death, place of death, and date of birth, if known;

(b) Source of information, for example, friend, funeral director, sheriff's office, county coroner, medical examiner;

(c) Funeral home where the body has been taken, name of the director or principal;

(d) Information relative to assets belonging to the decedent, for example, real property, personal and household property, stocks, savings accounts, bank accounts, cash;

(e) Names, addresses and phone numbers of friends and neighbors who can lend assistance in trying to establish identity of nearest of kin; and

(f) The names and any available information concerning relatives of the decedent, whether or not they may be heirs, and all records supporting the relationships or providing information concerning the relatives or which would assist in locating them.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0020

### Initial Proceedings

(1) Pursuant to ORS 113.085, if it appears that the decedent died wholly intestate and without known heirs, the Court shall appoint the Department of State Lands personal representative or small estates affiant. The Department of Justice shall represent the Department of State Lands in the administration of the estate.

(2) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator approving the filing of the petition by the person. Except as provided in subsection (3) of this rule, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

(3) Any person who wishes to petition the court for appointment as a personal representative for the estate of a decedent who died wholly intestate and without known heirs shall submit a written request to the Department. The estate administrator may authorize the appointment of another person to act as personal representative if:

(a) After investigation, the estate administrator determines the estate is insolvent; or

(b) The estate administrator determines that the appointment is the most cost-effective method to administer the estate and protect the assets of the estate.

(4) A creditor of an estate shall give written notice to the Department informing the Director that the creditor intends to file a Small Estates

Affidavit. The Department shall investigate the assets and liabilities of the estate, and within 30 days after receipt of the notice, either:

(a) Give written authorization to the creditor to file the Small Estates Affidavit; or

(b) Inform the creditor that the Department will file a Small Estates Affidavit, and include the creditor as an interested person.

Stat. Auth.: ORS 273.045, ORS 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0025

### Funeral Arrangements

(1) If the body is delivered to a funeral home and it appears the decedent has died intestate and without known heirs, the funeral director shall contact the Estate Administrator within two working days after receipt of the body. The Department must approve all funeral arrangements.

(2) Either the funeral director or the Estate Administrator after consultation with the funeral director shall complete applications for Social Security, Veterans Administration, and other available death benefits.

(3) The Estate Administrator and the funeral director shall negotiate appropriate funeral services and their cost subject to the following guidelines:

(a) The decedent shall receive a funeral and disposition of remains in a manner suitable to the decedent's circumstances in life within the reasonable limits of the financial condition of the estate and in consideration of other available death benefits.

(b) The Estate Administrator may authorize cremation if all of the following conditions are met:

(A) It is apparent that there are no heirs or a properly executed disclaimer of heirs is on file pursuant to OAR 141-035-0046;

(B) The estate has no assets to cover burial; and

(C) The decedent's apparent religion permits cremation.

(4) The nature and cost of funeral services may be limited to those of a "plain and decent funeral," which may include:

(a) Professional services;

(b) First call reception of the remains;

(c) Preparation of the remains as required by law;

(d) Use of funeral home facilities and personnel for viewing and funeral services;

(e) Delivery of the remains to a local cemetery;

(f) The least expensive casket shown by the funeral home;

(g) Additional essential items, which may include:

(A) Newspaper notices;

(B) Minister's honorarium;

(C) Cemetery costs.

(h) Incidental items available as appropriate, which may include:

(A) Music;

(B) Flowers;

(C) Clothing;

(D) Extra transportation;

(E) Other requested items.

(5) In determining the nature and amount of services to be rendered for a "plain and decent funeral," the Estate Administrator shall consider the amount of assets available in the estate, the expressed desires of the decedent's friends and associates concerning appropriate funeral services, the number of persons expected to attend any funeral services offered, and the prominence of the decedent in the local community.

(6) Burial and cemetery costs are considered separate from funeral costs and the amount payable is contingent upon the amount of funds available in the estate. The funeral director shall notify the Estate Administrator of the proposed cemetery and the cost estimate for burial expenses. Expenses are limited to the available resources in the estate.

Stat. Auth.: ORS 273.045, 111 - 119

Stats. Implemented: ORS 111 - 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0030

### Protection of Assets

(1) As soon as possible but not more than five working days after the Department receives notification under OAR 141-035-0016(1) or 141-035-0025, the Estate Administrator shall travel to the decedent's residence to:

(a) Inventory and, if possible, take custody of and secure all tangible and intangible assets.

(b) Gather and secure all papers and records of the decedent to provide a source of information that may be reviewed to determine whether a will exists, and whether there are existing heirs as defined in ORS Chapter



# ADMINISTRATIVE RULES

111, and ORS 112.015 to 112.055, 112.065, 112.075, 112.095, 112.105 and 112.115.

(c) Contact local banks, savings and loan associations, credit unions, and other financial institutions to freeze accounts pending delivery of appropriate documents to withdraw the accounts and to obtain balances of accounts and information regarding safe deposit boxes.

(d) Contact utilities, delivery services, and postal authorities to forward billings and statements to the Department and to arrange for the termination of services if in the best interest of the estate to protect the property.

(2) The Estate Administrator may request assistance from available law enforcement personnel to provide for the security of real property, personal property, and household goods.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0035

### Inventory

(1) Within five working days after verifying that the decedent apparently has no legal will nor known heirs, the Estate Administrator shall compile a full and complete inventory of the assets of the decedent.

(2) The Estate Administrator shall assign an estimated value to each item of inventory. The value of investment-type assets shall be recorded at the value of the asset as of the date of death.

(3) The Estate Administrator may box miscellaneous household items or other incidental property in unit categories and inventory as a box.

(4) The Estate Administrator shall note individually on the inventory all items with commercial value including major household appliances, antiques, jewelry, vehicles, trailers, recreational vehicles, shop equipment, and real property.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0040

### Administration of the Estate

(1) If the value of the estate does not exceed the amounts stated in ORS 114.515 for a Small Estates Affidavit, the Department as a claiming successor of the decedent, may file an affidavit for a proceeding with the appropriate court as described in ORS 114.505 to 114.560. If the value of the estate exceeds the limits authorized under the procedure for a Small Estate, the Estate Administrator shall file a petition with the appropriate court to be appointed personal representative and administer the estate according to ORS 111.005 through 117.095.

(2) The Estate Administrator may pay funeral and cemetery costs as soon as the Estate Administrator determines that enough funds will remain to pay administrative costs.

(3) A formal claim against the estate may be allowed, contingent on the availability of funds. If it appears there are insufficient funds to pay all claims in full, the Estate Administrator shall follow the order of payment of expenses and claims as set forth in ORS 115.125.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 3-1982, f. & ef. 6-10-82; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0045

### Search for Heirs

(1) The Estate Administrator shall conduct a search of records to locate any heirs that may have a legal right to inherit. The search shall include but not be limited to the following:

(a) Papers, records, albums, newspaper clippings, letters, personal telephone books, etc., included in the personal effects of the decedent;

(b) Friends and neighbors;

(c) Employee unions, businesses or places of employment, retirement funds, insurance companies or any other association of which the decedent may have been a member;

(d) Banks, credit unions and other financial institutions, savings and loan associations, mortgage and investment funds with which the decedent may have conducted financial affairs;

(e) Public agencies; and

(f) Paid genealogists or other heir searchers.

(2) If the Estate Administrator finds a valid will before filing a full probate or Small Estates Affidavit, the Estate Administrator shall immediately contact the personal representative named in the will. If the Estate

Administrator cannot locate the personal representative, the Estate Administrator shall notify the primary beneficiary. The Department shall then make arrangements to turn over all assets, less the Department's personal representative expenses of administration, to the appropriate individual upon proof of identity.

(3) The probate file is a public record under Oregon's public meetings and records laws. Researching firms or heir finders must make an appointment with the Estate Administrator to view the Department files after the Department has filed the records with the probate court.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0047

### When Heirs Are Discovered

(1) If a person claims to be an heir of the decedent during the administration of a full probate or Small Estates Affidavit, the person must submit acceptable proof to substantiate kinship to the Estate Administrator. Acceptable proof includes, but is not limited to, certified copies of death and birth certificates, genealogical search records, obituaries, funeral notices, Baptism records, and family Bibles. The Department may continue to administer the estate until the Estate Administrator determines that evidence submitted is sufficient to prove that the person is legally entitled to the decedent's assets. If other heirs are identified but not located, the Department may continue to administer the estate in order to protect the interest of the missing heirs and the Common School Fund, or if administration of the probate is substantially complete and the Estate Administrator and the known heirs agree that it is in the best interests of the estate for the Department to complete administration of the estate.

(2) If the Department has filed a probate, and all heirs are subsequently identified and found, the heir shall file a substitution of personal representative with the probate court, and a court certified copy of the order of substitution with the Department.

(3) If the administration is by a Small Estates Affidavit, the heir shall file an amended Small Estates Affidavit with the court, which shows that the heir is taking over control and responsibility of the estate from the Department, and submit a court certified copy to the Department.

(4) Upon receipt of the court certified copy of the amended Small Estates Affidavit, the Estate Administrator shall turn over the assets, less the Department's administrative costs, to the claiming successor, including all bills and claims against the estate.

Stat. Auth.: ORS 273.045, 111 – 119

Stats. Implemented: ORS 111 – 119

Hist.: LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0048

### Disclaimer Of Interest In Estate

(1) In accordance with ORS 105.623 to 105.649, any heir or devisee to an estate may disclaim all interest in an estate by delivering the disclaimer to the Department as personal representative of the estate, or if the Department is not serving at the time the disclaimer is made, by delivering the disclaimer:

(a) If a personal representative other than the Department is presently serving, to that personal representative; or

(b) If a personal representative is not serving at the time the disclaimer is made the disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

(2) Upon notification to the Department of any heir or devisee who refuses to act as personal representative of the estate of a decedent, and who refuses an interest in the estate, the Department may forward a disclaimer to the disclaimant.

(3) The disclaimer shall:

(a) Be in writing or otherwise recorded by inscription on a tangible medium or by storage in an electronic or other medium in a manner that allows the disclaimer to be retrieved in perceivable form;

(b) Declare that the person disclaims the interest in the property or in the power of appointment;

(c) Describe the interest in property or power over property that is disclaimed;

(d) Be signed by the person making the disclaimer; and

(e) Be delivered in the manner provided in ORS 105.642.

(4) Upon receipt of the properly executed disclaimer by the Department, the decedent shall be treated as though he or she died wholly intestate and without heirs with respect to the disclaimant, and the Estate Administrator shall petition the court to be appointed as personal representative or Small Estates Affiant to administer the estate in the usual manner.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0050

### Sale of Real Property and Personal Effects

(1) When serving as affiant or personal representative for an estate, the Department shall obtain the greatest cash value for all property and personal effects belonging to the decedent at the time of death.

(2) In order to obtain the greatest value for all property and personal effects belonging to the decedent at the time of death, the Estate Administrator shall dispose of such property in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0055

### Accounting for Funds

(1) There is created within the Common School Fund a separate trust account for estate administration.

(2) All funds received by the Department in the Department's capacity of personal representative shall be deposited daily into the trust account, and credited to the appropriate subsidiary account established for each separate estate.

(3) The Estate Administrator may pay just, proper, and approved claims from an estate subsidiary account established pursuant to subsection (2) of this rule within the limits of the estate's resources in accordance with ORS 115.125 and OAR 141-035-0040(2)(c).

(4) At the end of each fiscal year, the Estate Administrator shall file a report setting forth the value of non-cash assets of each estate.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0060

### Income and Inheritance Taxes

The personal representative shall file and pay all taxes due on the estate. The Estate Administrator may obtain the services of a tax consultant when necessary to prepare appropriate and necessary tax returns.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0065

### Closing the Estate and Escheat of Assets

(1) The Department shall make every effort to close full estates admitted to probate within one year after the court appointment date. If the full probate cannot be closed within one year the Estate Administrator shall file an annual accounting with the appropriate probate court.

(2) Prior to closing, the Estate Administrator shall compute the administrative and Department of Justice expenses. If the estate was admitted to full probate, fees shall be computed in accordance with ORS 116.173. The Estate Administrator shall compute administrative expenses of the Department in the manner described in OAR 141-0350-0068. In addition, extraordinary expenses such as special trips by the Estate Administrator, additional manpower required to inventory, transport or dispose of personal property shall be computed and included as administrative expenses in the final account submitted to the court.

(3) If the estate was filed under the Small Estates procedure, the Estate Administrator shall:

(a) Complete administration and processing of claims and expenses immediately after the end of the four month period after the affidavit is filed with the probate court; and

(b) Compute administrative and legal expenses as actual costs incurred in accordance with ORS 116.183. The Estate Administrator shall compute administrative expenses of the Department in the manner described in OAR 141-0350-0068.

(4) The amount remaining after payment of expenses shall be placed in a trust fund of the Department and held on behalf of heirs for ten years

from the distribution date. If heirs claim the estate during that period, Department shall apply the procedures of OAR 141-030-0025 and ORS 116.253. If an heir does not present a claim within ten years after the final distribution date, the Department shall deposit the total amount credited to the estate subsidiary account in the Common School Fund.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0068

### Computation of Department Expenses

(1) The Department shall recover its actual expenses incurred in administering an estate probated under ORS chapter 113 and 114, a small estate proceeding under ORS 114.505 to 114.560, actions to recover the escheated portion of an estate under ORS 116.203, investigation or recovery of assets under ORS 708A.430, 708A.655, 722.262, 722.660, 723.466 or 723.844 and for any expenses incurred in securing an estate and identifying heirs when it is unknown as to whether the decedent died intestate and without known heirs.

(2) The calculation of the expenses of the Department under subsection (1) of this rule shall consist of the amount of the basic hourly rate of the employee in addition to the overhead for the time spent. As used in this subsection:

(a) "Basic hourly rate" means the actual salary and other personnel expenses of the employee, divided by the annual number of hours of employment.

(b) "Overhead" includes all other expenses of the agency proportionately attributable to the activities of the employee that are not separately itemized and billable as expenses.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0070

### Appeal

Any person aggrieved by a decision of the Department as personal representative or the designated Estate Administrator may request a hearing before the Director of the Department of State Lands in accordance with the applicable provisions of ORS 183.310 to 183.550 or file an objection or petition with the probate court.

Stat. Auth.: ORS 273.045, 111 – 119  
Stats. Implemented: ORS 111 – 119  
Hist.: LB 4-1980, f. & ef. 10-29-80; LB 5-1989, f. & cert. ef. 11-2-89; DSL 11-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-035-0075

### Requirements for Small Estate

(1) If it appears that a decedent died wholly intestate and without known heirs, and the value of the estate does not exceed the values established in ORS 114.515, the Department may administer the estate by filing an affidavit with the clerk of the probate court under ORS 114.515.

(2) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor may not file an affidavit under ORS 114.515 unless the Department gives written authorization. An estate administrator shall consent to the filing of an affidavit under ORS 114.515 by a creditor only if it appears after investigation that the estate is insolvent.

(3) A creditor of an estate who is subject to subsection (2) of this section shall submit a written notice to an estate administrator informing the estate administrator that the creditor intends to file an affidavit under ORS 114.515. Upon receiving the notice, the estate administrator shall investigate the assets and liabilities of the estate. Within 30 days after receiving the notice required by this subsection, the estate administrator shall either:

(a) Give written authorization to the creditor to file an affidavit by the creditor under ORS 114.515; or

(b) Inform the creditor that the Department will file an affidavit as claiming successor under ORS 114.515.

(4) If a decedent dies intestate and without heirs, a creditor of an estate who is a claiming successor and who files an affidavit under ORS 114.515 must notate at the top of the affidavit that the affidavit is being filed by a creditor of the estate. If the affidavit contains the notation required by this subsection, the clerk of the probate court may not accept the affidavit for filing unless there is attached to the affidavit written authorization for the filing of the affidavit by the creditor from an estate administrator. The written authorization may be a copy of a memorandum of an interagency agreement between the Department of State Lands and another state agency.

Stat. Auth.: ORS 273.045, 111 – 119

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 111 – 119  
Hist.: DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0005

### Administrative Fees

The Department may deduct a maximum charge of ten percent of the proceeds of each unclaimed property claim with a value of \$100 or more that the Department approves and for which the Department expended efforts to locate the owner under ORS 98.356(4).

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 16, f. 4-4-74, ef. 4-25-74; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0010

### Purpose

The purpose of these rules is to establish a uniform procedure for responding to requests for information about unclaimed and escheat property reported or remitted to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0020

### Definitions

As used in OAR 141-040-0010 to 141-040-0220:

(1) "Agent" means a person who is filing a claim to recover unclaimed property on behalf of a claimant.

(2) "Claimant" means a person or entity claiming to be the rightful owner and legally entitled to unclaimed property held by the Department.

(3) "Department" means the Department of State Lands.

(4) "Escheat property" means:

(a) Property paid or delivered to the Department because the distributee, devisee, or heir could not be found, or refused to accept the property;

(b) Funds paid or delivered to the State of Oregon prior to October 4, 1997 according to ORS 179.540 from state a state institution where an inmate or patient has been released, paroled, escaped, or died, and one year after such occurrence, the inmate or patient has not claimed funds left behind.

(5) "Finder" means any person who independently searches for and finds the owners of unclaimed or escheat property for a fee paid by the owner.

(6) "Finder's Report of Unclaimed and Escheat Property" means a report that lists the names of owners of unclaimed and escheat property in the custody of the Department, and may include additional information that would assist in finding the owners.

(7) "Holder" means a person, wherever organized or domiciled, who is in possession of property belonging to another, a trustee or indebted to another on an obligation.

(8) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(9) "Subscription Report of Claimed Property" means a report that details unclaimed or escheat property that has been refunded to owners or their heirs by the Department.

(10) "Unclaimed Property" means any asset that is paid or delivered to the Department pursuant to ORS 98.352 because the owner cannot be found by the company or person holding the asset.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0030

### Finder's Report

(1) The Department may compile information and produce a Finder's Report of Unclaimed and Escheat Property in a format chosen by the Department.

(2) To obtain a Finder's Report, a person shall submit a written request to the Department along with the appropriate fee. The Department may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

(3) The fee for the Finder's Report shall be a minimum of \$100 per release.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

## 141-040-0035

### In-House Review of Owner Records

(1) The Department shall allow a member of the public a reasonable opportunity to inspect records in the Department's custody that are not exempt from public review under ORS 98.352(4).

(2) A person wishing to review records under subsection (1) of this rule shall make an appointment with the Department and specify which records will be reviewed. To review records, the person shall make the appointment at least two working days in advance.

(3) The Department shall not schedule more than two people to review records at any single time.

(4) Copies of records shall be secured in the manner and at the cost determined by the Department in accordance with OAR chapter 141, division 91.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0040

### Subscription Report of Claimed Property

(1) In addition to the Finder's Report described in OAR 141-040-0030, the Department may prepare a Subscription Report of unclaimed and escheat property that is claimed from the Department during the current reporting year.

(2) Each report shall be prepared monthly, reflecting cumulative claims paid from July 1 through June 30. Subscribers of the service will receive monthly reports from the subscription date to June 30.

(3) Each monthly report shall be mailed by the 15th of the following month to all persons subscribing by the 25th of the preceding month.

(4) The annual fee for a monthly subscription report shall be \$50. Fees shall not be pro-rated.

(5) To subscribe, a person shall submit a written request to the Department along with the annual fee set forth in subsection (4) of this rule. The Department may require a waiting period of up to 20 days if payment is made by other than cashier's check or money order.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1989, f. 5-19-89, cert. ef. 6-1-89; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0200

### Purpose

The purpose of OAR 141-040-0200 to 141-040-0220 is to establish a uniform procedure for making claims to recover unclaimed money and property reported or remitted to the Department pursuant to ORS 98.352.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0211

### Claim Format

(1) Pursuant to ORS 98.392, a person claiming interest in unclaimed property reported or remitted to the Department may file a claim for the property or proceeds from the sale of the property at any time.

(2) A person shall file a claim with the Department on forms provided by the Department, or in a format acceptable by the Department.

(3) A complete claim shall be considered filed upon its receipt by the Department.

(4) In order to be complete, each claim shall include:

(a) The name and current photo identification or other satisfactory proof of identity of the claimant, such as a driver's license or passport;

(b) Current mailing address of the claimant and satisfactory documentation to prove current residence;

(c) A description of the claimant's interest in the property;

(d) Evidence of the claimant's Business Tax ID, or Federal Tax ID number for business entity claims;

(e) Evidence of ownership satisfactory to establish the validity of the claim; and

(f) An acknowledged indemnification agreement signed by the claimant that is provided by, or acceptable to the Department.

(5) In addition to the information required under subsection (4) of this section, if the claimant is the original owner, a description of the nature of the property.

# ADMINISTRATIVE RULES

(6) In addition to the information required under subsection (4) of this section, if the claimant is other than the original owner, a description of the relationship of the claimant to the original owner, and documentation of the basis on which the claimant has a legal interest in the property. If the original owner of the unclaimed property is deceased and the claimant is an heir, then the claimant must describe the claimant's relationship to the deceased owner and include documentation to support that heirship to the decedent. If the owner is a minor or is incapacitated, then the claimant must provide proof of guardianship or conservatorship. Proof of guardianship or conservatorship must be no more than 60 days old at the time the claim is submitted.

(7) In addition to the information required under subsection (4) of this section, if the claim is being filed by a finder:

(a) The claim shall include an original Power of Attorney or written notarized statement provided by each claimant to the finder authorizing the finder to act on behalf of the claimant.

(b) The finder shall be licensed and comply with the requirements of ORS 703.401 to 703.470. The finder shall include a copy of this license issued by the Oregon Board of Investigators with the initial Power of Attorney.

(c) An affidavit signed by the claimant for specified types of property as determined by the Department.

(8) In addition to the information required under subsections (4) to (7) of this section, in order to expedite the determination of the rightful owner, a claimant may include the claimant's Social Security number on the claim form.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045  
Stats. Implemented: ORS 98

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99, Renumbered from 141-040-0215; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0212

### Proof of Ownership

(1) The burden is on the claimant to provide sufficient proof to establish the elements of the claim, and it is the claimant's responsibility to contact persons and to search out documents relating to the claim.

(2) Name similarity alone is not sufficient to prove entitlement to unclaimed property.

(3) Documents submitted to establish ownership may include, but are not limited to:

(a) Copies of any documents showing addresses, including but not limited to utility bills, tax records, or original correspondence addressed to the owner at the address shown on the Department's records;

(b) Passbooks, statements of accounts, canceled checks, deposit slips;

(c) Copy of, or original stock certificate in the owner's name, copy of prior dividend payment or statement, stock transmittal receipt, brokerage firm statement;

(d) Original insurance policies, premium or dividend statements;

(e) Original deposit slips or receipts;

(f) Safe deposit box rental receipt or statement regarding the box;

(g) Original certified or photo copies of court documents;

(h) Newspaper articles including marriage announcements, birth or obituary notices;

(i) Family or church records, baptismal certificates, or personal correspondence;

(j) Public or business records;

(k) Signature verification cards from financial institutions;

(l) Testimonial evidence, including properly notarized affidavits; or

(m) Any other forms of evidence the Department may consider sufficient to satisfy a reasonable and prudent person under the circumstances of the particular claim.

(4) When a claimant submits a claim on behalf of the original owner of unclaimed property, the claimant shall provide evidence to link the claimant with the property.

(5) When a claimant submits a claim on behalf of a successor to the original owner of the property, the claimant shall provide:

(a) Evidence to link the original owner with the property; and

(b) Evidence establishing the legal relationship between the original owner and the claimant, including but not limited to certified copies of probate documents, small estate affidavit, Final Decree of Distribution, wills, death certificates, Letters Testamentary or Guardianship or Conservatorship, or other appropriate heirship documentation.

(6) If the claim is on behalf of a business entity, the claimant shall provide documentation showing the claimant's authority to claim on behalf of the company.

(7) If the claim is for a negotiable instrument, (cashier's check, money order, certified check, traveler's check) the payee shall be considered to be

the owner unless the purchaser possesses the instrument or provides evidence of payment satisfying the obligation to the payee.

(8) If the claim is for securities, claimants are entitled to receive either the securities that the holder delivered to the Department if they still remain with the Department, or the proceeds received from the sale, less any amounts deducted pursuant to ORS 98.386.

(9) If the claim is for securities or negotiable instruments, the claimant shall surrender to the Department with the claim the certificate or the original instrument, if the claimant possesses it. If the claimant does not surrender the original certificate, the Department may require the claimant to provide a lost instrument bond.

(10) If a claim is made on behalf of a creditor through a garnishment, the creditor shall provide evidence linking the original owner to the property. The Department shall review the claim in the order received with other claims.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0214

### Review Criteria/Time

(1) The administrator shall approve or deny a claim to recover unclaimed property within 120 days after the claimant files a completed claim form under ORS 98.392.

(2) The Department shall review claims in the order of receipt, unless the claimant provides evidence of extenuating circumstances warranting early review. After reviewing any such request, the Department will make a determination whether to advance the claim ahead of others. (3) In determining if there is sufficient evidence to support a claim, the Department shall consider:

(a) The age and likelihood of the existence of direct evidence to support the claim;

(b) The existence of any competing claims for the property; and

(c) Any other related evidence the Department determines appropriate under the circumstances of the particular claim.

(4) The Department shall determine whether a preponderance of the evidence proves the claimant is legally entitled to the unclaimed property.

(5) If the Department approves a claim, the Department shall request a warrant from the Oregon State Treasury. If the claim is allowed for funds deposited in the General Fund, the Department shall pay the claim and file a request for reimbursement from the State Treasurer, who shall reimburse the Department within five working days from the fund against which the warrant represented in the claim was issued.

(6) A holder may make payment to, or delivery of property to an owner and file a claim with the Department for reimbursement. The Department shall reimburse the holder within 60 days of receiving proof that the owner was paid. The Department may not assess any fee or other service charge to the holder. Upon receiving the funds from the Department, the holder shall assume liability for the claimed asset and hold the Department harmless from all future claims to the property.

(7) If the property is being recovered by a finder who has submitted a Power of Attorney that authorizes disbursement to the finder, the Department shall issue a warrant payable to both the claimant and Finder and mail the warrant to the finder.

(8) When a claim is for the benefit of the heirs of a deceased owner:

(a) If the amount of the claim is less than \$500, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)).

(b) If the amount of the claim is \$500 or more, but less than \$1000, the Department shall issue a warrant FBO (For the Benefit of the Heirs of (decedent's name)) and require the claimant to complete an Affidavit in Lieu of Probate.

(c) If the amount of the claim is more than \$1000, the Department shall require the estate of the decedent to be probated prior to payment.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-040-0220

### Claim Denial/Closure

(1) If the Department requests additional information from the claimant to substantiate a claim, and there is no response from the claimant within 90 days of the request, the Department shall close the file.

(2) If the Department is unable to determine legal entitlement from the evidence submitted and any supporting documentation received or provided by supplemental filings, the Department shall give written notice of denial.

(a) The notice of denial shall include the specific reason for denial and shall include a notice of an opportunity for a contested case hearing.

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(b) Within 60 days after the date of written notice of denial provided under paragraph (a) of this subsection, the claimant may resubmit the claim with additional information or request a contested case hearing on the matter.

(c) A request for a contested case hearing shall be in writing and shall identify issues of law or fact raised by the denial and include a summary of the evidence of ownership on which the claim was originally submitted.

(d) Within 30 days after the Department receives a request for a contested case hearing submitted under paragraph (c) of this section, the Department shall contact the claimant to schedule a hearing date by mutual agreement. The Department shall confirm the hearing date by written notice to the claimant.

(e) The contested case hearing shall be conducted by a hearings officer appointed by the Director.

(f) Additional evidence shall not be admissible at the hearing, except by mutual consent of the hearing's officer, the claimant and any other parties to the proceeding. If such additional evidence is not admitted, the hearings officer shall terminate the hearing and allow the claimant to resubmit the claim with the new evidence.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 27, f. 8-28-75, ef. 9-25-75; LB 36, f. & ef. 9-1-76; LB 5-1987, f. & ef. 8-18-87; LB 2-1995, f. & cert. ef. 6-15-95; DSL 12-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0005

### Purpose

The purpose of these rules is to provide consistent procedures for the administration of the Uniform Disposition of Unclaimed Property Act, Oregon Revised Statutes (ORS) 98.302 to 98.436, 98.991 and 98.992, and to ensure that all unclaimed money and property held in safekeeping are reported and paid over to the Department of State Lands in an accurate and timely manner.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0010

### Definitions

(1) "Capital Gain" means gain or profit realized on the sale or exchange of a capital asset, or the excess of proceeds over cost, or other basis, from the sale of a capital asset.

(2) "Credit Memorandum" or "Credit Memo" means a transaction posted to a customer account which reduced the account balance and is related to a previously posted invoice or charge, correcting and reducing the amount originally charged.

(3) "Department" means the Department of State Lands.

(4) "Dividend" means cash which accrues by the earnings of a company and which is paid to the owner of securities issued by that company.

(5) "Dividend Reinvestment Plan" means additional securities of the same company which are credited to an owner's account in lieu of cash.

(6) "Dormant" means without activity or owner contact for a prescribed time.

(7) "Due Diligence" means the degree of effort required by statute that holders of unclaimed property must take to find the rightful owner of property before the property is remitted to the state.

(8) "Financial Institution" means a financial institution, or a trust company, as those terms are defined in ORS 706.008, a safe deposit company, a private banker, a savings and loan association, a building and loan association or an investment company.

(9) "Holder" means a person, wherever organized or domiciled, who is:

(a) In possession of property belonging to another;

(b) A trustee; or

(c) Indebted to another on an obligation.

(10) "Inactive" means a lack of activity or owner contact for a prescribed time.

(11) "Insurance Company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including, but not limited to, accident, burial, casualty, workers' compensation, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(12) "Intangible Property" includes but is not limited to:

(a) Credit balances, customer overpayments, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances;

(b) Stocks and other intangible ownership interests in business associations;

(c) Money deposited to redeem stock, bonds, coupons, and other securities, or to make distributions;

(d) Amounts due and payable under the terms of insurance policies;

(e) Amounts distributed from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance or similar benefits; and

(f) Money, checks, drafts, deposits, interest, dividends, and income.

(13) "Last-known Address" means a description of the location of the apparent owner sufficient for the purpose of delivery of mail.

(14) "Negative Report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

(15) "Owner" means a depositor in case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in case of other intangible property, or a person, or the person's legal representative, having a legal or equitable interest in property.

(16) "Person" means an individual, business association, state or other governmental or political subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(17) "Positive Owner Contact" means documented contact by an owner to the holder either generated or initiated by the owner or in response to the holder.

(18) "Property" includes tangible and intangible property.

(19) "Reportable" means the appropriate dormancy period as set forth in OAR 141-045-026 after which time an owner has not claimed his or her asset from a holding company, and the holder has taken appropriate steps to find the owner, as described in OAR 141-045-0061.

(20) "Safekeeping Depository" means any leased or rented depository used as a deposit for safekeeping of tangible or intangible property.

(21) "Tangible Property" means:

(a) Property actually being held in a safekeeping depository and includes, but is not limited to:

(A) Contents of safe deposit boxes in financial organizations;

(B) Contents of safekeeping repositories located in hospitals, health-care facilities, motels, hotels, jewelry stores, department stores, professional offices, or any other site where the holder is acting as a safekeeping custodian for the rightful owner.

(b) Property held for the owner by a court, state or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority (for instance unclaimed court exhibits).

(22) "Third Party Administrator" is a person contracted by the holder to manage and process account records.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 2-1984, f. & ef. 3-13-84; LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0015

### Who Must File Reports

(1) Every holder shall annually review all accounts that appear to be dormant or unclaimed according to ORS 98.302 to 98.436 and report to the Department of State Lands in accordance with the schedule established in OAR 141-045-0021. Any person that manages account records or serves as a registrar, paying agent or third party administrator for a holder shall notify the holder annually of any unclaimed amounts reportable according to ORS 98.302 to 98.436. Such entities include but are not limited to persons that provide payroll record-keeping services.

(2) The holder is responsible for the accuracy of the reports and retention of all records associated with the reports as defined in ORS 98.354 whether the report is filed by the holder or another person on behalf of the holder.

Stat. Auth.: ORS 98.302 - 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0021

### Dormancy Periods

(1) Except as provided in this rule, the dormancy period for all tangible and intangible property is three years. After the expiration of the dormancy period, the property is presumed abandoned and subject to the provisions of these rules pertaining to unclaimed property.

(2) The dormancy period for the following deposits or refunds held by a utility is one year if unclaimed by the apparent owner after the date of termination of services or when the funds otherwise become payable or distributable:

# ADMINISTRATIVE RULES

(a) A deposit to secure payment, or a sum paid in advance for utility services, less lawful deductions; and

(b) A sum received for utility services, which the utility has been ordered to refund, including interest on the sum, less lawful deductions.

(3) The dormancy period is one year for all intangible personal property distributable in the course of dissolution of a business association or financial institution.

(4) The dormancy period for the following property is two years:

(a) Tangible and intangible property held in a safe deposit box or other safekeeping repository;

(b) Assets of dissolved cooperatives;

(c) Stale dated government checks or warrants including unrepresented payroll checks;

(d) Tangible and intangible property held by a court, state, or other government, governmental subdivision or agency, law enforcement agency, public corporation or public authority;

(e) Life or endowment insurance policies where the insured would have attained the limiting age under the mortality table of an existing policy; and

(f) All intangible personal property and any income or increment on such property held in a fiduciary capacity including funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated.

(5) The dormancy period for the following property is five years:

(a) Any demand, savings or matured time deposit with a financial institution and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution;

(b) Stock, certificates of ownership or other intangible equity ownership interests in a business association, except as provided in ORS 98.322(4); and

(c) Any dividend, profit distribution, interest, payment on principal or other sum held or owning by a business association.

(6) The dormancy period for money orders is seven years.

(7) The dormancy period for traveler's checks is 15 years.

Stat. Auth.: ORS 98.302 - 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0031

### Examples of Unclaimed Property

(1) The following types of property are considered unclaimed and reportable to the Department after five years without positive owner contact:

(a) Any account deposited in a financial institution and any accrued interest and dividends;

(b) Any account including shares, dividends, deposit accounts, and interest held by credit unions as defined in ORS 723.006 that are due or standing in the name of a member, beneficiary or other person who cannot be contacted by first class mail at the last address shown on the records of the credit union;

(c) Any sums payable for which a financial institution is directly liable, including checks, drafts, cashier's checks, certified checks, or similar instruments;

(d) Any stock, mutual fund, or other certificate of ownership, dividend, profit, distribution interest, payment on principal or other sum held or owing by a business association for a shareholder, certificate holder, member, bondholder or the actual instrument or book entry shares which shows ownership or interest in stocks, bonds, or mutual funds;

(e) Any certificate of deposit. If the account is in the form of a dividend reinvestment plan, the dormancy period shall begin at the first maturity date after the holder determines that the owner cannot be located;

(f) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated and has become due and payable as established from the records of the insurance company.

(2) The following types of property are considered unclaimed and payable to the Department after three years without positive owner contact:

(a) Credit memos issued in the ordinary course of the holder's business;

(b) Except as provided in OAR 141-045-0031(3)(c), unpaid wages, including commissions and wages represented by uncashed payroll checks owing in the ordinary course of the holder's business;

(c) Any other disbursements generated during the ordinary course of the holder's business; and

(d) All intangible personal property not otherwise covered by ORS 98.302 through 98.436 that is held or owing in the ordinary course of the holder's business after it becomes due and payable.

(3) The following types of property are considered unclaimed and payable to the Department after two years without owner contact:

(a) A life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the insurance company, pursuant to ORS 98.314(3);

(b) All tangible and intangible property held in a safe deposit box or any other safekeeping depository in the ordinary course of the holder's business after the lease or rental period has expired. This category of property does not include personal property that has been willfully abandoned by the owner, such as automobiles, furniture, household goods, or property covered by other statutes;

(c) All intangible property held for the owner by any court, state or other government, governmental subdivision or agency, county fiscal officer, public corporation, public authority, quasi-governmental agency, public officer of this state, political subdivision of this state, or Public Employees' Retirement System, except those with a court order prohibiting the withdrawal of same, including, but not limited to:

(A) Fines;

(B) Bail;

(C) Restitution;

(D) Child support;

(E) Condemnation payments;

(F) Judgment proceeds;

(G) Unclaimed municipal bonds and the interest thereon.

(d) All intangible personal property and any accrued interest held in a fiduciary capacity, including but not limited to property management security deposits, attorney trust accounts, escrow accounts, trust accounts and funds in an individual retirement account or a retirement plan or a similar account or plan established under the Internal Revenue laws of the United States if under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(e) Tangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation or public authority; law enforcement agency, other than property seized by a law enforcement agency as defined by ORS 98.245(1)(b);

(f) Property held by a dissolved cooperative.

(4) Funds in an individual retirement account or a retirement plan or a similar account or plan established according to the Internal Revenue laws of the United States of America are not payable or distributable within the meaning of OAR 141-045-0021(4)(f) unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(5) The following types of property are considered unclaimed and reportable to the Department after one year without positive owner contact:

(a) Deposits made by a subscriber with a utility to secure payment or any sum paid in advance for utility services;

(b) Sums received for utility services which a utility has been ordered to refund;

(c) All unclaimed intangible personal property distributable in the course of a dissolution of a business association, or financial institution.

(6) Any sums payable on a money order or similar written instrument, other than a third party bank check that has been outstanding for more than seven years after its issuance is considered unclaimed and reportable to the Department.

(7) Any sum payable on a traveler's check that has been outstanding for more than 15 years is considered unclaimed and reportable to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 2-1995, f. & cert. ef. 6-15-95; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0041

### Report Forms

(1) A holder may request a report form from the Department.

(2) A holder may submit a report electronically or may download a report form from the Department's website.

(3) The Department shall provide printed report forms or post the same on the Department's website and instructions no later than August 31st of each year to all holders.

(4) The Department may provide a separate reporting form to holders of any safekeeping repository, for a detailed listing of all contents and owners.

(5) The Department may, at its discretion, require holders to file negative reports. As used in this rule, "negative report" means a report showing the holder had no inactive accounts or other unclaimed assets to report for a particular reporting period.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

# ADMINISTRATIVE RULES

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0061

### Actions Required of Holders Before Reporting

(1) As soon as it appears that an account with a value of \$100 or more is inactive, but not later than August 31 of the report year, each holder shall exercise due diligence in making a reasonable, good faith effort to:

- (a) Confirm that an account is in fact inactive;
- (b) Notify the owner that the holder will report the account to the Department as unclaimed property; and
- (c) Locate the owner.

(2) In exercising due diligence under subsection (1) of this section, a holder may:

(a) Verify that the owner has not communicated in writing with the holder concerning the asset;

(b) Verify that the owner has not otherwise indicated an interest in the asset as evidenced by a memorandum or other record on file prepared by an employee of the holder;

(c) Verify that the owner does not own other accounts in the holder's organization about which the owner has communicated with the holder (for example, the Trust Department of a financial institution could contact other departments of that institution); or

(d) Where the account is that of a credit union member, verify that the member has participated in voting during a regularly scheduled credit union meeting.

(3) If a holder is unable to locate an owner, the holder may exercise due diligence under subsection (1) of this section by:

- (a) Verifying that the owner is not a current employee of the holder;
- (b) Reviewing telephone books to verify address and telephone number;

(c) Verifying that the owner is not a well-known individual or organization (for example, Department of Treasury, IRS); or

(d) Any other effort the holder may take to find an owner.

(4) A holder shall retain records or documentation of its compliance with the requirements of this section for three years and make the records or documentation available for inspection by the Department upon request.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0100

### Report and Delivery of Unclaimed Property to Division

(1) Every person holding funds or other tangible or intangible property, presumed abandoned according to ORS 98.302 to 98.352 shall report and pay or deliver all such property to the Department, except that funds transferred to the General Fund by governmental agencies pursuant to ORS 293.455(1)(a) shall only be reported to the Department.

(2) Each holder shall be responsible for the content, accuracy, and timeliness of the holder's report, regardless of whether the report is prepared by the holder or its agent. The holder shall designate a staff contact person responsible for the report.

(3) For accounts dormant as of June 30, the holder shall file the report after October 1, but not later than November 1.

(4) The Department may, at its discretion, postpone the reporting date, or allow early reporting and payment or delivery upon written request by any person required to file a report.

(5) A holder shall report property having a value of \$50 or more per account or owner of record, individually, and shall include the following information, if known:

(a) The complete name, address of record, Social Security number, previous names, and any previous addresses of each listed owner; and

(b) The type of account, identification number, reference number, and any specific description of the unclaimed property according to the records of the holder.

(6) A holder may report all property having a value of \$49.99 or less per account or owner of record, as a lump sum representing various accounts without breaking the amount down by account or by owner. However, the holder shall report separately the total amount held for any one owner who has several small accounts that individually total \$49.99 or less, but collectively equal or exceed \$50 dollars. In order to assist the Department in locating owners of record, the holder may report the information required under subsection (5) of this rule for property having a value of \$49.99 or less per account or owner of record.

(7) In addition to the information required above, a life insurance company shall also report the following information, if known:

(a) The full name of each insured or annuitant, or if a class of beneficiaries is named, the full name of each current beneficiary in the class, and last known address according to the holder's records;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured.

(8) A holder of safekeeping depositories shall comply with the following additional requirements:

(a) The holder shall complete the specific report form for safekeeping contents or include the required information in the holder's computer-generated format and file the report, separate from the contents, no later than November 1.

(b) In addition to the information required in subsection (5) of this section, list each item left in a safekeeping depository, and the identity of the owner. The holder shall include information about the original box if the holder moved items to a safekeeping area.

(c) In accordance with directions from the Department, the holder shall deliver the package of safekeeping depository contents marked "to be delivered unopened," to the Department by certified mail, return receipt requested or hand carried by a courier. The Department shall sign a receipt for the unopened package upon delivery to the Department, and forward the receipt to the holder within five working days.

(d) The holder shall clearly identify on the package the holder's complete name and return address.

(e) The holder shall forward the complete contents of safekeeping depositories to the Department intact. The holder may not convert, substitute or exchange any coins and currency found in the box.

(f) The holder may include information about safekeeping depository costs in its report to the Department. When the owner files a claim for the property, the Department shall require the owner to furnish a paid receipt or waiver for these costs from the holder before the claim will be approved.

(9) Any holder, business association, transfer agent, registrar or other person acting on behalf of the holder of an intangible equity ownership interest deemed unclaimed according to ORS 98.322 shall, in addition to supplying the information required in OAR 141-045-0100(5) above:

(a) Where the original certificate is being held by the holder for the owner (i.e., stock or other certificate of ownership of a business association which has been returned to the holder, who cannot find the owner), cancel that certificate and issue a replacement certificate of ownership to the Department; or

(b) When the holder does not hold the original certificate, issue a replacement certificate i.e., a duplicate certificate of ownership or other distribution or stock or other certificates of ownership of a business association issued in the name of the Department of State Lands as custodian of unclaimed property. The original certificate of ownership is presumed to be in the possession of the missing owner to the Department.

(c) In either case, the holder shall report and forward to the Department all outstanding accrued dividends, along with the certificate.

(d) When stock is reported and transferred to the Department's assigned stock broker or transfer agent in book entry form, the holder shall immediately forward a confirmation of stock transfer to the Department at the time of transfer.

(10) In addition to the information a holder reporting mutual funds in book entry form shall:

(a) Forward a confirmation of account transfer to the Department along with the report; and

(b) Forward future income in the form of cash (for example, dividends, capital gains, etc.) payable to the Department from mutual fund accounts with dividend reinvestment plans.

(11) If the holder is a dissolved agricultural cooperative, the holder shall forward the original reports detailing unclaimed dissolved agricultural cooperative accounts to the Department along with the funds, and file a copy of the report with the State Board of Higher Education. The Department shall reconcile the report to the delivered funds, deduct the costs as provided for in ORS 62.720 and forward the funds to the State Board of Higher Education within 14 working days after receiving the funds.

(12) The receiver or other liquidating agent for a dissolved corporation shall prepare a report containing the names and last-known addresses of the persons entitled to such funds.

(13) Before October 1 each year, each state agency shall prepare a report of all checks, warrants, and orders drawn by it which have been outstanding for a period of more than two years prior to July 1, and that have not been paid by the State Treasurer. The report shall not include checks or

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orders that have already been paid pursuant to indemnity bonds. The agency shall forward the report to the Department before November 1.

(14) After October 1, the State Treasurer may refuse payment of the unrepresented checks or orders included in the report, and upon instructions by the issuing agency shall:

(a) Transfer and credit the amounts of the unrepresented checks or orders dedicated for general funding to the General Fund;

(b) Except for federal funds governed by federal laws and rules as provided in ORS 291.003 and 409.040(2), transfer all other funds to the Department; and

(c) Report information about any payment made to an owner subsequent to filing the report, but before transferring the funds to the Department.

(15) If the holder of the unclaimed account is a successor to other persons who previously held the property, or if the holder has had a name change, the holder shall include in the initial report prior known names and addresses of the original or previous holder.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0105

### Confidentiality of Records

(1) All records of dormant accounts shall be exempt from public review as follows:

(a) The holders shall withhold dormant account information for 12 months from the time the property becomes reportable to the Department.

(b) The Department shall withhold unclaimed account information for 24 months after receipt of the report and property.

(c) All lists of uncashed warrants or stale dated checks issued by a government or public authority pursuant to ORS 98.336 shall be exempt from public review from the issued date until 24 months after the property is remitted to the Department.

(2) The Department may not disclose to any other state or any person any confidential information provided by the Department of Revenue from taxpayer returns.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0115

### Requirements of the Division of State Lands to Locate Owners

(1) Within one year after receipt of reports, payment, and delivery of accounts as required by OAR 141-045-0100, the Department shall provide public notice that the names of owners of unclaimed property have been added to the Department's unclaimed property Website by publishing notice at least twice in a newspaper or other generally circulated periodical published in this state.

(2) The Department also shall make reasonable efforts to locate the owners of unclaimed property reported and received by the Department. The Department's efforts shall include, but need not be limited to the following:

(a) Contracted services with established firms, credit bureaus, telephone networking companies; or

(b) Interagency agreements with other governmental agencies, such as Social Security Administration, Insurance Commission, Motor Vehicles Division, Corporation Commission; or

(c) Use of the internet, reverse directories, telephone books, or other such publications.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0120

### Examination of Holder Accounts

(1) In accordance with ORS 98.412, the Department may examine the records and other accounts of any holder to determine whether the holder has complied with the provisions of ORS 98.302 to 98.436.

(2) The Department may conduct an examination whether or not the holder believes it is in possession of reportable property.

(3) The examination may be performed by personnel employed by the Department of State Lands, employees of the Department of Consumer and Business Services, Division of Audits of the Office of the Secretary of

State, or any other designated person under contract with the Department of State Lands.

(4) To the extent possible, the Department shall enter into agreements with other state or federal entities who regularly examine the records of financial institutions. Under the agreements, the state and federal agencies shall examine the records of the financial institutions to determine compliance with ORS 98.352. If the state or federal agency does not enter into an agreement with the Department, the Department shall conduct the examination.

(5) The types of records and accounts subject to examination include, but are not limited to:

(a) Contractual agreements between depositors and the financial institution regarding the deduction of service charges authorized according to ORS 708.500, account increases or decreases, and the cessation of interest payments;

(b) Records of current accounts, dormant accounts, and accounts that may have been closed and archived;

(c) The holder's procedures for administering dormant accounts, including searching for and notifying owners to ensure compliance with OAR 141-045-0030;

(d) Bank reconciliations, outstanding checklists and bank statements;

(e) Aged accounts receivable reports;

(f) Reports from transfer agents showing last date of positive contact with stockholders;

(g) Uncashed checks that have been returned by the United States Post Office as undeliverable;

(h) Uncashed payroll checks that have been returned by a company plant or office;

(i) Journal entries that specifically write off stale dated checks;

(j) Third party administrators' contracts, records and reconciliations;

and

(k) Holder trial balance of accounts.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; Renumbered from 141-045-0120(5) & (6) to 141-045-0125(1) & (2); DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0121

### Procedure for Examination of Holder

(1) The Department shall give written notice to the holder at least ten days prior to an examination of all records and accounts subject to the Unclaimed Property Act.

(2) The Department may conduct an examination opening conference with a holder before beginning an examination. At the opening conference, the Department shall identify the examination period, describe the general examination methods that will be used, and provide the initial request for records.

(3) The Department shall issue a report of preliminary findings reflecting the potential liability for unclaimed property. The Department shall allow not less than 30 days for the holder to respond to the preliminary findings report.

(4) Upon completion of an examination, the Department shall provide a written report reflecting the total unclaimed property reporting liability and any interest due on amounts due and owing for failure to report and deliver property due and payable for prior years. The Department may hold a conference with the holder to provide the written report. The written report shall include information to the holder that includes:

(a) Recommendations for maintaining ongoing compliance, and

(b) Explaining the availability of an appeal of the findings as described in OAR 141-045-0126.

(5) Within 30 days after the Department delivers a final report of examination findings, the holder shall deliver to the Department any unclaimed property and interest due to the Department based on the examination findings. Upon request of the holder, the Department may establish a payment schedule or extend the payment period.

Stat. Auth.: ORS 98.302 - 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0122

### Entering into Contract with Contract Auditor

The Department may enter into a contract with a person for the sole purpose of examining the records of holders to determine compliance with ORS 98.302 to 98.436. The Department may consider any factors the Department deems relevant when entering into a contract for services requested in the performance of an unclaimed property examination.

Stat. Auth.: ORS 98.302 - 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04



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## 141-045-0123

### General Conditions and Requirements of Contract with Contract Auditor

(1) A contract auditor shall comply with all terms and conditions specified in the contract with the Department.

(2) A contract auditor may not subcontract any work without the prior written authorization from the Department. The contract auditor is responsible for ensuring that any subcontractors used during an examination possess sufficient training and experience to adequately perform the unclaimed property examination and agree to comply with all terms and conditions of the contract auditor's contract with the Department.

(3) A contract auditor shall possess an ability to examine the records of entities holding various types of unclaimed property.

(4) A contract auditor shall have security procedures in place to ensure that all unclaimed property examination reports and working papers are secure.

(5) A contract auditor shall have the ability to evaluate and comment on the holder's procedures and accounting systems related to capturing unclaimed property for present and future reporting period.

(6) A contract auditor shall maintain independence in mental attitude in all matters relating to an examination assignment.

(7) A contract auditor may not engage or present itself as representing the Department in any examination without the prior written consent from the Department.

Stat. Auth.: ORS 98.302 – 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0124

### Contract Auditor Guidelines

A contract auditor shall adhere to the following guidelines:

(1) A contract auditor shall not participate in examinations in which the contract auditor's participation could be construed or perceived as a conflict of interest. If either the Department or the contract auditor believes that the auditor cannot conduct an assigned examination due to a conflict of interest or for any other reason, the Department shall determine whether recusal of the contract auditor from the assignment is appropriate or necessary. If the contract auditor is recused from conducting the examination of a holder, the Department may authorize another contract auditor to complete the examination.

(2) A contract auditor shall maintain strict confidentiality of any non-public records or documents gathered during the course of an examination in accordance with the contract between the Department and the contract auditor.

(3) A contract auditor shall properly document the review and make the auditor's working papers gathered during examinations available on demand for review by the Department and the Department of Justice.

(4) Upon request of the Department or the holder, the contract auditor shall provide the holder with relevant copies of working papers supporting any calculation made of unclaimed property reportable and deliverable to the Department.

(5) A contract auditor shall maintain working papers for a minimum of five years following the completion of an examination assignment, the delivery of unclaimed property, the resolution of any appeal or the finality of judgment in any litigation, whichever is later.

(6) A contract auditor shall conduct examinations consistent with ORS 98.302 to 98.436, OAR 141-045-0121 (Procedures For Examination Of Holder) and other applicable statutes and rules, policies of the State Land Board and the Department of State Lands, generally accepted accounting principles, generally accepted auditing standards and any relevant rules related by examinations adopted pursuant to ORS 98.302 to 98.436 as such rules relate to the reporting and delivery of unclaimed property from holders.

Stat. Auth.: ORS 98.302 – 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0125

### Owner Identification Information

(1) Every holder shall maintain a record of the name and last-known address of the owner, any signature cards, or other evidence which would assist in the identification of the owner for three years after the holder has remitted the property to the Department.

(2) Any holder that sells traveler's checks, cashier's checks, credit memos, money orders, or other similar written negotiable instruments, other than third party bank checks for which the business is directly liable, or that provides such instruments to others for sale, shall maintain a record

of those instruments while they remain outstanding, including the state and date of issue, for three years after the date the holder has remitted the property to the Department.

Stat. Auth.: ORS 98.302 – 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94, Renumbered from 141-045-0120(5) & (6); LB 6-1996, f. & cert. ef. 10-15-96; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0126

### Appeal of Examination Findings

(1) Alternative Dispute Resolution Process. Any holder who disputes the findings set forth in a final written report delivered, as required under OAR 141-045-0121(4), may request the Department enter into an alternative dispute resolution process. The Department and the holder shall select a trained facilitator/mediator from a list of pre-qualified individuals and share the costs of the facilitator/mediator. The holder may retain the right of formal appeal as described in these rules.

(2) Any holder who disputes the findings set forth in a final written report delivered as required under OAR 141-045-0121(4), may request a hearing in accordance with the provisions of ORS 183.413 to 183.470 related to contested case proceedings.

Stat. Auth.: ORS 98.302 – 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0130

### Service Charges and Payments of Interest on Deposit Accounts

(1) With respect to any demand, savings or matured time deposit with a financial institution, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, mutual investment certificate or any other interest in a financial institution, a holder may not impose any charge or cease payment of interest due to dormancy or inactivity unless:

(a) There is a written contractual agreement between the holder and the owner of the account clearly and prominently setting forth the conditions under which a service charge may be imposed or the payment of interest terminated;

(b) The establishment of a service charge, the change of an existing service charge or the change of a policy pertaining to the payment of interest is uniformly applied to all dormant or inactive accounts;

(c) The holder shall give written notice to the owner at the owner's last-known address whenever an account becomes dormant or inactive; and

(d) Three months written notice is given by certified mail to the last-known address of the owner of a dormant or inactive account before the holder may apply a service charge to the account or stop paying interest on that account.

(2) A signature card is not a written contractual agreement for the purposes of subsection (1)(a) of this section, however, the signature card and the written contractual agreement may be contained in one instrument.

(3) A holder may not deduct from the amount of any instrument subject to ORS 98.308(5) or (6) any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them.

(4) Notwithstanding the provisions in subsections (1) to (3) of this section, a holder may not deduct a service charge or fee or otherwise reduce an owner's unclaimed account unless:

(a) There is a valid written contract between the holder and the owner that allows the holder to impose a charge;

(b) The service charge or fee is imposed uniformly on all accounts; and

(c) Three months' written notice is given by certified mail to the last-known address of all owners before the charge or fee is levied.

Stat. Auth.: ORS 98.302 – 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0150

### Disposition of Unclaimed Property

The Department shall dispose of all tangible property presumed abandoned and delivered to the Department in accordance with OAR 141-045-0185.

Stat. Auth.: ORS 98.302 – 98.436 & 273.045

Stats. Implemented: ORS 98

# ADMINISTRATIVE RULES

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0155

### Relief From Liability

(1) Upon delivery or payment of reportable unclaimed property to the Department in compliance with ORS 98.302 to 98.436, the state shall assume custody of the property and the holder is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the property, to the extent of the value of the property so paid or delivered.

(2) The Department shall indemnify the holder of securities presumed abandoned according to ORS 98.322 to the extent allowed under the Oregon Constitution.

(3) No person shall have any claim against the state, the holder, any transfer agent, registrar or other person acting for or on behalf of a holder for any change in market value of the property occurring after delivery by the holder to the Department, or after sale of the property by the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0160

### Deposit of Funds

(1) All funds received pursuant to ORS 98.302 to 98.436, including the proceeds from the sale of unclaimed property, shall be deposited by the Department of State Lands in the Common School Fund Account with the State Treasurer.

(2) Before making a deposit, the Department shall record the name and last-known address of each person reported by the holder to be entitled to the unclaimed property, the amount due the owner, the name of the holder, and any identifying account, policy or contract number.

(3) Before making a deposit, the Department may deduct:

(a) Any costs in connection with the sale of unclaimed property;

(b) Any costs of mailing, publication, or other efforts to locate owners of unclaimed property as set forth in OAR 141-045-0115; and

(c) Reasonable service charges.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0170

### Claims for Recovery of Unclaimed Property

(1) Any person may submit a claim for recovery of unclaimed property reported to the Department in accordance with ORS 98.302 to 98.436 and OAR 141-040-0200 through 141-040-0220.

(2) If the claim allowed is for property deposited in the Common School Fund Account, the Department shall return the property or make payment of the proceeds of the sale of the property to the claimant.

(3) If the claim allowed is for funds deposited in the General Fund, the Department shall pay the claim and file a request for reimbursement with the State Treasurer. The State Treasurer shall reimburse the Department within five working days from the fund against which the check or order represented in the claim was issued.

(4) A holder, subsequent to payment or delivery of accounts to the Department may make payment to the apparent owner, and file a claim with the Department. The Department shall reimburse the holder within 60 days after receiving proof from the holder that the owner was paid. The Department shall not assess any fee or other service charge. Upon receiving the funds from the Department, the holder shall assume liability for the claimed asset, and hold the Department harmless from all future claims to the account.

(5) A person making a claim pursuant to ORS 98.392 for securities is entitled to receive either the securities delivered to the Department by the holder, if they still remain with the Department, or the proceeds received from sale, less any amounts deducted pursuant to ORS 98.386. The Department may require claimants to provide a lost instrument bond if the original certificate is not surrendered to the Department.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0180

### Penalties

Penalty for failure to report, pay or deliver property under ORS 98.302 to 98.436. A person who willfully fails to render any report, to pay or deliver property or to perform other duties required by ORS 98.302 to 98.436 and 98.992 may be required to forfeit and pay to the State Treasurer to be deposited in the Common School Fund Account, an amount determined by the Department of State Lands pursuant to ORS 183.090 of not more than \$1,000 for individuals and \$50,000 for corporations. This penalty shall be assessed only after at least one reporting cycle, and only after the Department has provided the person with written instructions, including copies of applicable laws and policies. The Department may waive any penalty due under this section with appropriate justification.

Stat. Auth.: ORS 98.302 - 98.436 & 273.045

Stats. Implemented: ORS 98

Hist.: LB 4-1991, f. & cert. ef. 6-21-91; LB 5-1994, f. & cert. ef. 10-20-94; DSL 13-1999, f. & cert. ef. 4-5-99; DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## 141-045-0185

### Disposition of Unclaimed Property, Real Property and Personal Effects

(1) Except as otherwise provided in subsections (2), (3), (7) and (8) of this rule, the Department shall sell the contents of safe deposit boxes received from banks or credit unions or other safekeeping repository, all property and personal effects belonging to a deceased person and all other property presumed abandoned and delivered to the Department at such time and place, and in such manner as the Department determines will bring the highest return.

(a) In choosing the most favorable method for sale of property under this subsection, the Department may consider:

(A) A public oral auction;

(B) An electronic commerce forum;

(C) Any other method of sale that ensures the highest returns and provides for open, public participation.

(b) In choosing the most favorable location for the sale of property under this subsection, the Department may consider:

(A) The population of the location;

(B) The cost of conducting the sale in the location;

(C) The type of property being sold;

(D) The public access to the proposed sale location, including parking; and

(E) Any other indicator of market potential of the location.

(2) Contents of safe deposit boxes received from banks or credit unions or other safekeeping repository may be sold after one year unless the Department considers it in the best interest of the state to do otherwise.

(3) Securities shall be sold on the exchange at prices prevailing at the time of the sale or by any other method the Department considers advisable.

(4) In disposing of unclaimed property or property received as part of an escheated estate, the Department of State Lands may:

(a) Obtain the services of a qualified appraiser to assist with the determination of values;

(b) Employ a qualified investment advisor to assist with the custody and sale of securities;

(c) Employ an auctioneer to conduct a public, oral auction or estate sale to dispose of property;

(d) Offer the property through electronic commerce; or

(e) Contract with a real estate broker to sell real property.

(5) Sales shall be conducted by a contractor hired through a process conducted in accordance with the requirements of ORS 279.310 to 279.323. The contractor may not be an employee or relative of an employee of the Department.

(6) For a sale by public oral auction held under subsection (1) of this section, the Department shall publish at least a single notice of the sale at least 10 days in advance of the sale in a newspaper of general circulation in the county where the property is to be sold. For a sale by a method other than public oral auction, the Department shall publish at least a single notice in a newspaper of general circulation in Marion County.

(7) If the Department determines after investigation that any item delivered as unclaimed property or received as part of an escheated estate has insubstantial commercial value, the Department may:

(a) Destroy or otherwise dispose of the property at any time, pursuant to ORS 98.384 including personal papers obtained by escheat under ORS 112.055.

(b) Donate items with little or no commercial value including used clothing, worn-out or broken furniture, and common houseplants to chari-

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table service organizations or other persons such as friends or neighbors of the decedent.

(8) The Department may donate, sell or dispose of food that is part of an escheated estate on site.

(9) If the cost of a public auction would exceed the value of a particular item, the Department need not offer the property for sale. The Department may dispose of the item by obtaining at least three oral bids or request sealed bids from interested parties, selling the item to the highest bidder. Examples are old vehicles, trailers, and extremely heavy or awkward items that would require special handling.

(10) No donations, sales, or other disposition of any unclaimed property or property belonging to estates may be made to employees of the Department or the State Land Board or members of their immediate household, parents, or children not living at home.

(11) The Department may decline the highest bid and re-offer the property for sale if the Department considers the bid price insufficient.

(12) The purchaser of property at any sale conducted by the Department takes the property free of all claims of the owner or previous holder, and of all persons claiming through or under them. The Department shall execute any documents necessary to complete the transfer of ownership.

Stat. Auth.: ORS 98.302 – 98.436, 273.045

Stats. Implemented: ORS 98

Hist.: DSL 8-2002, f. 12-24-02 cert. ef. 1-1-03; DSL 3-2003, f. 12-15-03, cert. ef. 1-1-04

## Employment Department Chapter 471

**Adm. Order No.:** ED 13-2003

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

**Certified to be Effective:** 12-14-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 471-012-0010, 471-012-0015, 471-012-0020, 471-015-0005, 471-015-0010, 471-015-0015, 471-015-0020

**Subject:** The Employment Department is proposing to amend these rules as a result of SB 250 (2003 Legislative Session). No new information will be input into the Shared Information System after December 31, 2003, and "system participants" will now make use of the Performance Reporting Information System to collect, analyze and share statistical and demographic data for the development and reporting of workforce system performance measures.

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

### 471-012-0010

#### Definitions

(1) "Participant" means a participating state agency, as listed in ORS 657.732; and other state agencies, governmental entities or private organizations that have applied to be a participating state agency or organization and have been approved to participate in and provide information to the Interagency Shared Information System.

(2) "System administrator" means the Employment Department Director or staff designated by the Employment Department Director to administer the Interagency Shared Information System.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & ORS 657.732

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

### 471-012-0015

#### Data Collection for the Interagency Shared Information System

Participants shall provide data to the Interagency Shared Information System in a format that encodes identifying data, including the client's Social Security number, using a formula unique to the participant, according to protocols established by the system administrator, and based on the objectives articulated in ORS 657.732. Each participant must also ensure that any customer whose information is being submitted has been provided with full disclosure of:

(1) How the information will be used;

(2) The authority which authorizes the solicitation of the information and whether disclosure of such information by the customer is mandatory or voluntary; and

(3) The effects on the customer, if any, of not providing all or any part of the requested information.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & ORS 657.732

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

### 471-012-0020

#### Disclosure of Interagency Shared Information System Data

(1) Interagency Shared Information System data shall only be disclosed in the aggregate consisting of no fewer than six unit records ORS 657.732. All disclosures must comply with applicable federal and state law, including any written agreement between the participants and the system administrator.

(2) Participants may view the individual records input by the participant for their own customers, even if fewer than six unit records, provided that such viewing complies with applicable federal and state law.

(3) For purposes of ORS 192.410 to 192.505, the information submitted to the system and the information received from the system is a public record, and the custodian of such information is the participant that submits or receives the information. All requests for reports from the system will be referred to the participant that is the custodian of the records for the purposes of ORS 192.410 to 192.505. If the participating state agency or organization receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505.

(4) Requests for Interagency Shared Information System data, including reports that are not agency specific, will be reviewed by the system administrator who will accept or reject the requests based on the objectives articulated in ORS 657.732.

(5) All participating agencies and the system administrator shall take appropriate, necessary and prudent steps to prevent unauthorized disclosure or identification of an individual's data, including use of the provisions established by agreement with Interagency Shared Information System participants. Any individual who, without proper authority, discloses confidential information under ORS 657.732 may be disqualified from holding any appointment or employment with the State of Oregon.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & ORS 657.732

Hist.: ED 6-2000, f. 12-1-00, cert. ef. 12-3-00; ED 14-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

### 471-015-0005

#### Performance Reporting Information System Purpose

The Performance Reporting Information System was established exclusively for the purpose of collecting, analyzing and sharing statistical and demographic data for the development and reporting of the workforce system performance measures. The Performance Reporting Information System is intended to share the data, by agreement, with system participants, as defined in OAR 471-015-0010. For the purposes of ORS 192.410 to 192.505, the custodian of information is the system participant that submits or receives the information. If the system participant receiving the information is not a public body, as defined in ORS 192.410, the Employment Department shall keep a copy of the system information sent to that entity and shall be the custodian of that copy for purposes of ORS 192.410 to 192.505.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & ORS 657.734

Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

### 471-015-0010

#### Definitions

(1) "System participants" means:

(a) Mandatory partners under the federal Workforce Investment Act of 1998 (enacted as P.L. 105-220 and codified as 29 U.S.C. 2801 et seq.) and other one-stop system partners, which may include public bodies and private organizations; and

(b) Public bodies and private organizations that have been approved by the Director of the Employment Department, in consultation with the Education and Workforce Policy Advisor, to participate in the Performance Reporting Information System.

(2) "System administrator" means the Employment Department staff designated by the Employment Department Director to administer the Performance Reporting Information System.

(3) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 (Public Law 105-220).

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & ORS 657.734

Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

### 471-015-0015

#### Data Collection for the Performance Reporting Information System

System participants shall provide data to the Performance Reporting Information System in a format that encodes identifying data, including the client's Social Security number, using a formula unique to the system participant, and according to protocols established by agreement with the sys-

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tem administrator, based on the objectives articulated in ORS 657.734. Each system participant must also ensure that any customer whose information is being submitted has been provided with full disclosure of:

- (1) How the information will be used;
- (2) The authority which authorizes the solicitation of the information and whether disclosure of such information by the customer is mandatory or voluntary; [and]
- (3) The effects on the customer, if any, of not providing all or any part of the requested information; and
- (4) The customer's ability to "opt in" or "opt out" of giving their consent for their information to be shared for purposes of the Performance Reporting Information System.

Stat. Auth.: ORS 657.610  
Stats. Implemented: ORS 657.610 & ORS 657.734  
Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

## 471-015-0020

### Disclosure of Performance Reporting Information System Data

(1) Data from the Performance Reporting Information System shall only be disclosed in the aggregate consisting of no fewer than six unit records, and according to the protocols established by agreement with the system administrator, based on the objectives articulated in ORS 657.734. All disclosures must comply with applicable federal and state law, including any written agreement between the system participants and the system administrator.

(2) The system administrator shall make available that aggregate data necessary for the comprehensive workforce system-wide performance indicators. This data will be made available to all system participants, customers such as employers and job seekers, workforce investment boards and the general public.

(3) System participants may view the individual records input by the system participant for their own customers, provided that such viewing complies with applicable federal and state law.

(4) System participants and the system administrator shall take appropriate, necessary and prudent steps to prevent unauthorized disclosure or identification of an individual's data, including use of the protocols established by agreement. Any individual who, without proper authority, discloses confidential information under ORS 657.734 may be disqualified from holding any appointment or employment with the State of Oregon.

Stat. Auth.: ORS 657.610  
Stats. Implemented: ORS 657.610 & ORS 657.734  
Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03

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**Adm. Order No.:** ED 14-2003

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

**Certified to be Effective:** 12-14-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 471-030-0040, 471-030-0045

**Subject:** The Employment Department is amending the "Filing of Initial, Additional, Reopened Claims", and the "Continued Claims" rules to clarify the criteria and processes that will be used when filing these claims.

**Rules Coordinator:** Richard L. Luthé—(503) 947-1724

## 471-030-0040

### Initial, Additional, and Reopened Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Claimant" is an individual who has filed an initial, additional, or reopened claim for unemployment insurance purposes within a benefit year or other eligibility period;

(b) An "initial claim" is a new claim that is a certification by a claimant completed as required by OAR 471-030-0025 to establish a benefit year or other eligibility period;

(c) "Additional claim" is a claim certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies to the end of a period of employment;

(d) "Reopened claim" is a certification by a claimant completed as required by OAR 471-030-0025 that restarts a claim during an existing benefit year or other eligibility period and certifies that there was no employment in any week since last reporting on this claim;

(e) "Backdating" occurs when an authorized representative of the Employment Department corrects, adjusts, resets or otherwise changes the effective date of an initial, additional or reopened claim to reflect filing in a prior week. Backdating may occur based upon evidence of the individual's documented contact on the prior date with the Employment

Department or with any other state Workforce agency, or as otherwise provided in this rule.

(2) For the purposes of filing an initial, additional, or reopened claim:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) When filed by Internet, the date of filing shall be the initial date of transmission of the online claim; or

(e) When filed by telephone, the date of filing shall be the date recorded in the completed telephone initial claim record of the agency system or by an employee completing the filing of the claim record.

(f) An incomplete certification must be completed and returned within seven business days from the date of notification that the original was incomplete to preserve the original date of filing.

(3) An initial, additional, or reopened claim must be filed prior to or during the first week or series of weeks for which benefits, waiting week credit, or noncompensable credit is claimed and prior to or during the first week of any subsequent series thereafter. An authorized representative of the Employment Department shall backdate a claim seven days in all cases when a claimant requests backdating of an initial, additional or reopened claim no later than seven (7) calendar days from the end of the week to which backdating is requested.

(4) A series of claimed weeks is not interrupted and does not require filing a reopened claim solely because the individual failed to file a timely continued claim for one week, provided the continued claim is filed no later than 24 days following the end of the week claimed.

(5) The provisions of this section do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 657  
Stats. Implemented: ORS 657.260  
Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 1-1982, f. & ef. 6-30-82; ED 1-1987, f. & ef. 1-12-87; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03

## 471-030-0045

### Continued Claims

(1) As used in these rules, unless the context requires otherwise:

(a) "Continued Claim" means an application that certifies to the claimant's completion of one or more weeks of unemployment and to the claimant's status during these weeks. The certification may request benefits, waiting week credit, or non-compensable credit for such week or weeks. A continued claim must follow the first effective week of an initial, additional or reopen claim, or the claimant's continued claim for the preceding week;

(b) A "non-compensable credit week" is a week of unemployment for which benefits [shall] will not be allowed but which may qualify as a week allowed toward satisfying a disqualification as provided in ORS 657.215.

(2) A claimant, in order to obtain benefits, waiting week credit, or non-compensable credit for a week of unemployment, must file a continued claim for the week by any method approved by the Director.

(3) As directed by the Director, a continued claim must be filed:

(a) In person at any Employment Department office in the state of Oregon. When delivered in person to any Employment Department office in the state of Oregon, the date of filing shall be the date of delivery, as evidenced by the receipt date stamped or written by the public employee who receives the document;

(b) By United States mail. When filed by mail, the date of filing shall be the date of the postmark affixed by the United States Postal Service. In the absence of a postmarked date, the date of filing shall be the most probable date of mailing as determined by the Employment Department;

(c) By fax. When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, improbable or challenged, in which case the fax receipt date, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the filing date shall be the most probable date of faxing as determined by the Employment Department;

(d) By Internet. When filed on line, the date of filing shall be the initial date of transmission of the on line continued claim; or

# ADMINISTRATIVE RULES

(e) By telephone. When filed by telephone, the date of filing shall be the date marked, stamped, or imprinted on the document by the agency system that records the oral request or by the employee accepting the continued claim.

(4) A continued claim must be filed no later than twenty-four (24) days following the end of the week for which benefits, waiting week credit, or noncompensable credit, or any combination of the foregoing is claimed. If the twenty-fourth day falls on a legal holiday as described in ORS 187.010 (1)(b)-(j) and 187.020, the continued claim is timely if filed on the next business day. However, if the Director finds the claimant has good cause for failure to file a timely continued claim in accordance with instructions, the reporting schedule may be modified or extended.

(5) The Director may, with respect to individual claimants or groups of claimants, direct that continued claims be filed on any reporting schedule appropriate to existing facilities and conditions.

(6) "Good Cause," as used in section (4) of this rule, exists when satisfactory evidence establishes that factors or circumstances beyond the reasonable control of the claimant caused the late filing. The continued claim must be filed no later than seven days following the date determined by the Director to be the date such factors or circumstances no longer exist.

(7) The provisions of this rule do not apply to an individual claiming benefits as a "partially unemployed individual," as defined in OAR 471-030-0060.

Stat. Auth.: ORS 183.335, 657.260, 657.265-270, 657.335, 657.610, 729 & OL 1993  
Stats. Implemented: ORS 657.215 & ORS 657.260  
Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 3-1981, f. & ef. 2-16-81; IDE 1-1984, f. & ef. 3-21-84; ED 4-1993, f. & cert. ef. 11-22-93; ED 4-1994, f. & cert. ef. 9-2-94; ED 14-2003, f. 12-12-03 cert. ef. 12-14-03

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**Adm. Order No.:** ED 15-2003

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**Notice Publication Date:** 11-1-03

**Rules Adopted:** 471-031-0077, 471-031-0142

**Rules Amended:** 471-031-0076, 471-031-0140, 471-031-0141

**Subject:** The Employment Department is amending these rules to clarify the processes for reporting and paying Unemployment Insurance taxes.

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

## 471-031-0076

### Common Paymaster

(1) As provided in ORS 657.477, a common paymaster established for a group of related corporations is any member thereof that disburses remuneration to employees of two or more of those corporations on their behalf. However, the common paymaster is not required to disburse remuneration to all employees of the two or more related corporations:

(a) A common paymaster making disbursements on behalf of related corporations to employed individuals shall be responsible for taxes, interest and penalties imposed by ORS Chapter 657 on all wages disbursed by it;

(b) For purposes of charging benefits paid and mailing notices to base year employers, the common paymaster shall be considered the employer for all wages disbursed to individuals by the common paymaster whether payment was for services performed for the common paymaster or for a related corporation.

(2) If the common paymaster fails to remit taxes, interest and penalties on all wages disbursed by it as required by ORS Chapter 657, the Director may hold each of the related corporations liable for a proportionate share of the obligation. Such proportionate share may be based on sales, property, corporate payroll or any other reasonable basis that reflects the distribution of services of the pertinent employees between the related corporations. When there is no reasonable basis for allocating the amount owed, it shall be divided equally among the related corporations. If a related corporation fails to pay any amount allocated to it pursuant to this section, the Director may hold any or all of the other related corporations liable for the full amount of the unpaid taxes, interest and penalties.

(3) Two or more corporations shall be considered related corporations for an entire calendar quarter if they satisfy any of the following tests at any time during that calendar quarter:

(a) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the value of shares of all classes of stock of each corporation is owned by one or more of the other corporations, and the common parent corporation owns stock possessing more than 50 percent of the total combined voting power or more than 50 percent of the total value of shares of all classes of stock of at least one of the other corporations;

(b) Five or fewer persons who are individuals, estates or trusts own more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of all classes of stock of each corporation, taking into account the stock ownership of each person only to the extent such stock ownership is identical with respect to each such corporation;

(c) A group of two or more corporations is combined with a common parent corporation as described in subsection (a) of this section and also such parent corporation is a member of a group of corporations as described in subsection (b) of this section;

(d) Fifty percent or more of one corporation's officers are concurrently officers of the other corporation;

(e) Thirty percent or more of one corporation's employees are concurrently employees of the other corporation;

(f) When a corporation that does not issue stock is involved, either:

(A) Fifty percent or more of the members of one corporation's board of directors (or other governing body) are members of the other corporation's board of directors (or other governing body); or

(B) The Holders of fifty percent or more of the voting power to select members of one corporation's board of directors (or other governing body) are concurrently the holders of more than fifty percent of that power with respect to the other corporation.

(4) For purposes of section (3) of this rule, concurrent employment means the simultaneous existence of an employment relationship (within the meaning of ORS Chapter 657) between an individual and two or more corporations. Such a relationship contemplates the performance of services by the individual for the benefit of the employing corporation, not merely for the benefit of the group of corporations:

(a) The simultaneous existence of an employment relationship with each corporation is a decisive factor. If it exists, the fact that a particular employee is on leave or otherwise temporarily inactive is immaterial;

(b) Employment is not concurrent with respect to one of the related corporations if the employee's employment relationship with that corporation is completely nonexistent during the periods when the employee is not performing services for that corporation;

(c) An individual who does not perform substantial services for a corporation is presumed not employed by that corporation;

(d) A corporation which has no employees performing services for it in Oregon cannot be the common paymaster for Oregon employees of its related corporations.

(5) Related corporations which compensate their employees through a common paymaster shall file with the Director the details of their plan. The detail shall include the names of the related corporations, the name of the common paymaster corporation and the class or classes of workers involved. The filing shall include documentation to substantiate the corporations are related as defined in section (3) of this rule and that employees are concurrently employed. An amendment to the plan shall be filed whenever there is a change in the related corporations participating in the plan, a change in the common paymaster or a change in the class or classes of workers involved.

(6) Plans submitted pursuant to section (5) of this rule shall be filed within the 30 day period following the end of the calendar quarter in which the plan is in effect. Eligibility of an employee to be compensated through a common paymaster shall be determined on a quarterly basis.

(7) A common paymaster is not a successor corporation pursuant to ORS 657.480 for concurrent employees unless the related corporation ceases operations and is acquired in its entirety by the paymaster corporation.

(8) An employing unit may not report the payroll of any other employing unit, except as provided in this rule. For the purposes of ORS 657.095, wages paid by separate employing units may not be aggregated or combined for purposes of reporting payroll unless there is an actual transfer of entity and experience rating as provided by ORS 657.480.

(9) The term "common agent" as defined by federal law, is not recognized for the purposes of ORS 657.

Stat. Auth.: ORS 657  
Stats. Implemented: ORS 657.030 & ORS 657.477  
Hist.: IDE 1-1981, f. & ef. 1-15-81; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

## 471-031-0077

### Coemployment/Payrolling

An employing unit may not report the payroll of any other separate employing unit, unless done so under an authorized Common Paymaster plan as set forth in ORS 657.477.

Stat. Auth.: ORS 657  
Stats. Implemented: ORS 657.610; ORS 657.405-657.575  
Hist.: ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

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## 471-031-0140

### Successor-in-Interest: Determination, Tax Rate, Consolidation

(1) For purposes of ORS 657.480, "entire employing enterprise and all its incidents" means all of the employing enterprise necessary to carry on the business in the same manner as was done immediately prior to the transfer. If at the time of the purchase or transfer the acquired employing entity is inactive, no successorship or transfer of experience shall be allowed. No transfer of experience shall occur when an employing unit acquires an entity that does not engage in substantially the same business enterprise as the acquiring employing unit.

(2) An employer whose tax rate for a calendar year is determined in accordance with either ORS 657.462 or 657.435 and which has become final in accordance with ORS 657.485 shall pay taxes at the determined rate on all wages paid by all employing units of the employer during the calendar year for employment as defined in ORS Chapter 657.

(3) In consolidation of existing employing units, the tax rate experience will be consolidated for the next year's rate determination only if:

(a) The effective date of the consolidation is on or before August 31 of the current year; and

(b) The Department is notified of the consolidation in writing prior to November 15 of the same year.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.435, 657.462, 657.480 & ORS 657.485

Hist.: IDE 153, f. 12-23-77, ef. 1-1-78; ED 2-1989, f. & cert. ef. 10-30-89; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

## 471-031-0141

### Partial Transfer of Experience

(1) Under ORS 657.480(2) a new or existing employing unit that acquires an identifiable and segregable portion of an employer shall be deemed a partial successor. The identifiable and segregable unit of the transferring employing unit must be such that it could operate independently of the remainder of the transferring enterprise.

(2) For the period beginning with the date of the transfer of the employment experience record through the end of the calendar year in which the transfer occurs, the contribution rate of the predecessor shall be the same as if there had been no transfer. The contribution rate for a successor that was determined a subject employer prior to the transfer shall also be the same as if there had been no transfer. Upon approval of an application for partial transfer the Director shall:

(a) Assign a contribution rate for a successor that is a new employing unit, to be effective from the date of the transfer through the end of the calendar year in which the transfer occurs; and

(b) Notify the successor in writing of the tax rate assigned in subsection (3)(a) of this rule.

(3) In a partial consolidation, when both employing units are existing employers, the tax rate experience shall be consolidated for the next year's rate determination only if the date of the transfer is on or before August 31 of the current year.

(4) The percentage of employment experience to be transferred shall be calculated by dividing the number of employees transferred to the successor by the total number of employees of the predecessor prior to the transfer. This percentage, rounded to the nearest percentage number, shall then be applied to the benefit charges and taxable payroll of the predecessor and the resulting amounts shall comprise the employment experience to be transferred to the successor's account. The experience shall be added to the successor's account in the same quarter it is removed from the predecessor's account. The percent transferred plus the percent not transferred shall equal one hundred percent.

(5) Benefits charged to the predecessor in the quarter in which the transfer occurs and the next three quarters shall be split between the predecessor and successor in accordance with the percentage established in section (4) of this rule. For each quarter thereafter none of the benefits charged to the predecessor shall be transferred to the successor.

(6) For the limited purpose of calculating experience rates under this rule, if the transfer occurs after the fifteenth day of the middle month of a calendar quarter, wages paid by the predecessor during such quarter shall be split between the predecessor and successor in accordance with the percentage calculated in section (4) of this rule. If the transfer occurs on or before the fifteenth day of the middle month of a calendar quarter none of the wages paid by the predecessor during such quarter shall be split.

(7) For each calendar year commencing on or after the date of the transfer, the successor's contribution rate shall be based on its experience with taxable payroll and benefit charges, including the experience of the acquired portion of business as determined in sections (2), (3), (4), (5) and (6).

(8) The successor, if not an employer at the time of the transfer, shall become an employer as of the date of the transfer.

(9) In determining excess wages over the taxable wage amount, a successor may use the wages paid by the predecessor prior to the transfer.

(10) The Director may revoke, within three years of the date of the transfer, a previously approved transfer if the Director finds that either party submitted materially inaccurate or incomplete information.

(11) When the Employment Department determines that a partial transfer has occurred, the Employment Department shall give the successor notice of the determination and its effects to the partial successor. The partial successor may request a hearing in accordance with the provisions of ORS 657.683.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.480

Hist.: ED 1-2000, f. 3-31-00, cert. ef. 4-2-00; ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

## 471-031-0142

### Untitled

(1) For the purposes of ORS 657.430, when an employing unit acquires an inactive entity, the tax rate assigned the acquiring employing unit will be based solely on the experience of the acquiring employing unit and any of its predecessors.

(2) For the purposes of ORS 657.430, an inactive entity may be reactivated and retain its prior experience rating only if the business activity of the reactivated entity is the same as that performed prior to the period of inactivity.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.610; ORS 657.405-657.575

Hist.: ED 15-2003, f. 12-12-03 cert. ef. 12-14-03

.....  
**Employment Department,  
Child Care Division  
Chapter 414**

**Adm. Order No.:** CCD 2-2003

**Filed with Sec. of State:** 12-5-2003

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**Rules Amended:** 414-061-0000, 414-061-0010, 414-061-0020, 414-061-0030, 414-061-0040, 414-061-0050, 414-061-0060, 414-061-0070, 414-061-0080, 414-061-0090, 414-061-0100, 414-061-0110, 414-061-0120

**Subject:** The Employment Department is amending the "Criminal History Registry" rules to clarify the criteria that will be used in order to determine who may be enrolled in the Registry.

**Rules Coordinator:** Richard L. Luthé—(503) 947-1724

### 414-061-0000

#### Purpose

(1) The Child Care Division will conduct criminal records checks and child protective services records checks on subject individuals, as defined in OAR 414-061-0030, for enrollment of subject individuals in the Criminal History Registry.

(2) These rules provide guidelines on how CCD obtains criminal records and child protective services records on subject individuals, applies such information to its determination about the suitability of the subject individual, and enrolls approved subject individuals in the Criminal History Registry.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

### 414-061-0010

#### Scope of Rules

(1) Consistent with the purposes of these rules, CCD will issue decisions about persons defined as subject individuals as to their suitability to be enrolled in the Criminal History Registry and employed in programs defined as "Requesting Agencies" in OAR 414-061-0020(16).

(2) These rules (OAR 414-061-0000 through 414-061-0120) shall be construed and implemented consistent with the regulations governing:

(a) Child care licensing in OAR 414-205-0000 through 414-205-0170, 414-300-0000 through 414-300-0410, and 414-350-0000 through 414-350-0400;

(b) Pre-kindergarten programs in OAR 581-019-0005 through 581-019-0035;

(c) Parent-as-teacher programs in OAR 581-019-0050 through 581-019-0080; and

(d) Early childhood special education and early intervention programs in OAR 581-015-0900 through 581-015-1060.

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

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Stats. Implemented: ORS 657A.030  
Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0020

### Definitions

(1) "Agency Agreement" means the written agreement between the Oregon State Police and the Oregon Child Care Division.

(2) "CCD" means the Child Care Division of the Employment Department.

(3) "Child Protective Services Records" means information on child abuse and neglect cases from the Department of Human Services.

(4) "Computerized Criminal History (CCH) System" means the on-line computer files of significant criminal offender information maintained by the Oregon State Police (OSP).

(5) "Conditional Enrollment" means temporary approval to be enrolled in the Criminal History Registry following an OSP criminal records check and child protective services records check but prior to receipt by the Division of the results of a required FBI criminal records check.

(6) "Criminal Records" means information, 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.

(7) "Early Childhood Care and Education Program" means a regulated child care facility, federally-funded Head Start program, Oregon Department of Education funded pre-kindergarten program, parent-as-teacher program, or early childhood special education/early intervention program.

(8) "Employee" means any individual caring for, overseeing, or who has or may have access to children, who holds a paid position in a requesting agency.

(9) "Employee of the Child Care Division" means any individual employed by the Child Care Division who works in the child care licensing unit.

(10) "Enrollment" means approval for a two-year period to be enrolled in the Criminal History Registry following an OSP criminal records check, child protective services records check and, if required, an FBI records check.

(11) "Fee" means the charges assessed the subject individual for processing each criminal records check and/or fingerprint-based criminal records check.

(12) "FBI" means the Federal Bureau of Investigation.

(13) "Fingerprint-Based Criminal Records" means criminal offender information compiled and maintained by the Federal Bureau of Investigation.

(14) "Incident" means the commission of a Category I or Category II crime or a founded child protective services case.

(15) "OSP" means the Oregon State Police.

(16) "Requesting Agency" means a childhood care and education program or individual providing care to children which is:

(a) Regulated by CCD under ORS 657A.280 or 657A.330; or

(b) An early childhood care and education program.

(17) "Unsupervised Contact with Children" means contact with children that provides the person opportunity for personal communication or touch when not under the direct supervision of a child care provider or employee.

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

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0030

### Subject Individuals

(1) For purposes of criminal records checks, including fingerprint-based criminal records checks, and child protective services records checks, "Subject Individual" means a person who wishes to seek employment as:

(a) The owner, operator or an employee or volunteer of a certified, registered or otherwise regulated facility caring for children that is subject to the jurisdiction of the Child Care Division of the Employment Department;

(b) The operator or an employee of an Oregon pre-kindergarten program or parent-as-teacher program under ORS 329.170 to 329.200;

(c) The operator or an employee of a federal Head Start Program regulated by the United States Department of Health and Human Services;

(d) An employee of the Child Care Division of the Employment Department;

(e) A contractor or an employee of the contractor who provides early childhood special education or early intervention services pursuant to ORS 343.455 to 343.534; or

(f) A child care provider who is required to be enrolled in the Criminal History Registry by any state agency.

(2) An individual in any of the above facilities or programs who may have unsupervised contact with children is also a subject individual.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0040

### Limitations of Inquiries

(1) Only CCD employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal records information pursuant to a valid agency agreement, as defined in OAR 414-061-0020(1). All such information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal records information (OAR 257-015-0000 to 257-015-0100). It is the responsibility of CCD to assure strict compliance with federal and state laws, rules, and procedures regarding, access, dissemination, maintenance, and destruction of criminal records information.

(2) Criminal records information obtained from OSP and/or the FBI will not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal records information, including fingerprint-based criminal records information, and child protective services information shall be obtained by CCD to determine whether a subject individual has been convicted of a crime or has a founded child protective services record which is related to enrollment in the Criminal History Registry.

(4) If a subject individual has been convicted of a crime which is related to enrollment in the Criminal History Registry, the subject individual will be notified by CCD that he or she:

(a) Has a right to inspect and challenge the accuracy of his/her Oregon criminal records by contacting the Oregon State Police;

(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; and

(c) May inspect his/her own OSP record, but not his/her FBI record, by requesting the opportunity from CCD in writing.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0050

### History to be Considered

(1) CCD has determined that serious felonies and misdemeanors involving violence or unauthorized sexual conduct, especially with children or otherwise vulnerable persons, is fundamentally inconsistent with any responsibility for care of children. Conviction of crimes listed in Category I of this rule shall disqualify a subject individual from being enrolled in the Criminal History Registry, unless the subject individual provides sufficient evidence of suitability as described in section (6) of this rule.

(a) The crimes in Category I include:

(A) 162.165 Escape I;

(B) 162.185 Supplying Contraband;

(C) 163.095 Aggravated Murder;

(D) 163.115 Murder;

(E) 163.118 Manslaughter I;

(F) 163.125 Manslaughter II;

(G) 163.145 Criminally Negligent Homicide;

(H) 163.165 Assault III;

(I) 163.175 Assault II;

(J) 163.185 Assault I;

(K) 163.200 Criminal Mistreatment II;

(L) 163.205 Criminal Mistreatment I;

(M) 163.225 Kidnapping II;

(N) 163.235 Kidnapping I;

(P) 163.275 Coercion;

(Q) 163.355 Rape III;

(R) 163.365 Rape II;

(S) 163.375 Rape I;

(T) 163.385 Sodomy III;

(U) 163.395 Sodomy II;

(V) 163.405 Sodomy I;

(W) 163.408 Unlawful Sexual Penetration II;

(X) 163.411 Unlawful Sexual Penetration I;

(Y) 163.415 Sexual Abuse III;

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(Z) 163.425 Sexual Abuse II;  
(AA) 163.427 Sexual Abuse I;  
(BB) 163.435 Contributing to Sexual Delinquency of Minor;  
(CC) 163.445 Sexual Misconduct;  
(DD) 163.515 Bigamy;  
(EE) 163.525 Incest;  
(FF) 163.535 Abandonment of a Child;  
(GG) 163.545 Child Neglect II;  
(HH) 163.547 Child Neglect I;  
(II) 163.555 Criminal Nonsupport;  
(JJ) 163.575 Endangering the Welfare of a Minor;  
(KK) 163.670 Using Child in Display of Sexually Explicit Conduct;  
(LL) 163.684 Encouraging Child Sexual Abuse I;  
(MM) 163.685 Encouraging Child Sexual Abuse II;  
(NN) 163.686 Encouraging Child Sexual Abuse III;  
(OO) 163.688 Possession of Materials Depicting Sexually Explicit Conduct of a Child I;  
(PP) 163.689 Possession of Materials Depicting Sexually Explicit Conduct of a Child II;  
(QQ) 163.693 Failure to Report Child Pornography;  
(RR) 163.732 Stalking;  
(SS) 164.075 Theft by Extortion;  
(TT) 164.225 Burglary I;  
(UU) 164.325 Arson I;  
(VV) 164.395 Robbery III;  
(WW) 164.405 Robbery II;  
(XX) 164.415 Robbery I;  
(YY) 166.085 Abuse of Corpse II;  
(ZZ) 166.087 Abuse of Corpse I;  
(AAA) 166.155 Intimidation II;  
(BBB) 166.165 Intimidation I;  
(CCC) 166.220 Unlawful Use of a Weapon;  
(DDD) 166.270 Possession of Weapons by Certain Felons;  
(EEE) 166.272 Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers;  
(FFF) 166.275 Possession of Weapons by Inmates of institutions;  
(GGG) 166.382 Possession of Destructive Device;  
(HHH) 166.384 Unlawful Manufacture of Destructive Device;  
(III) 166.429 Firearms Used in Felony;  
(JJJ) 166.660 Unlawful Paramilitary Activity;  
(KKK) 166.720 Racketeering Activity;  
(LLL) 167.012 Promoting Prostitution;  
(MMM) 167.017 Compelling Prostitution;  
(NNN) 167.062 Sadoomasochistic Abuse or Sexual Conduct in Live Show;  
(OOO) 167.065 Furnishing Obscene Materials to Minors;  
(PPP) 167.070 Sending Obscene Materials to Minors;  
(QQQ) 167.075 Exhibiting an Obscene Performance to a Minor;  
(RRR) 167.080 Displaying Obscene Materials to Minors;  
(SSS) 167.087 Disseminating Obscene Material;  
(TTT) 167.090 Publicly Displaying Nudity or Sex for Advertising Purposes;  
(UUU) 167.212 Tampering with Drug Records;  
(VVV) 167.262 Adult Using Minor in Commission of Controlled Substance Offense; or  
(WWW) 181.599 Failure to Report as Sex Offender.  
(b) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Assault III; Bigamy; Burglary I; Coercion; Contributing to Sexual Delinquency of Minor; Criminal Mistreatment II; Criminal Nonsupport; Kidnapping II; Possession of Weapons by Certain Felons; Racketeering Activity; Rape III; Robbery II; Robbery III; Sexual Misconduct; Stalking; Supplying Contraband; and Unlawful Use of a Weapon.  
(c) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Abuse of a Corpse I; Abuse of a Corpse II; Adult Using Minor in Commission of Controlled Substance Offense; Arson I; Assault I; Assault II; Compelling Prostitution; Criminal Mistreatment I; Criminally Negligent Homicide; Disseminating Obscene Material; Escape I; Failure to Report Child Pornography; Failure to Report as Sex Offender; Firearms Used in Felony; Incest; Intimidation I; Intimidation II; Kidnapping I; Manslaughter I; Manslaughter II; Possession of Destructive Device; Possession of Weapons by Inmates of Institutions; Promoting Prostitution; Publicly Displaying Nudity or Sex for Advertising Purposes; Robbery I; Sadoomasochistic Abuse or Sexual Conduct in Live Show; Tampering with

Drug Records; Theft by Extortion; Unlawful Manufacture of Destructive Device; Unlawful Paramilitary Activity; and Unlawful Possession of Machine Guns, Certain Short Barreled Firearms and Firearms Silencers.

(d) CCD will consider the following crimes regardless of the length of time since they were committed: Abandonment of a Child; Aggravated Murder; Child Neglect I; Child Neglect II; Displaying Obscene Materials to Minors; Encouraging Child Sexual Abuse I; Encouraging Child Sexual Abuse II; Encouraging Child Sexual Abuse III; Endangering the Welfare of a Minor; Exhibiting an Obscene Performance to a Minor; Furnishing Obscene Materials to Minors; Murder; Possession of Materials Depicting Sexually Explicit Conduct of a Child I; Possession of Materials Depicting Sexually Explicit Conduct of a Child II; Rape I; Rape II; Sending Obscene Materials to Minors; Sexual Abuse I; Sexual Abuse II; Sexual Abuse III; Unlawful Sexual Penetration I; Unlawful Sexual Penetration II; Sodomy I; Sodomy II; Sodomy III; and Using Child in Display of Sexually Explicit Conduct.

(e) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category I;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category I; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category I.

(f) 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.

(2) CCD has further determined that felonies and misdemeanors involving theft, fraud, or deception, crimes against the state and public justice, and major traffic violations may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual was convicted of a crime listed in Category II of this rule, CCD will seek to obtain and review information on all intervening circumstances and other background information related to criminal activity, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Criminal History Registry.

(a) The crimes in Category II include:

(A) 162.025 Bribe Receiving;

(B) 162.065 Perjury;

(C) 162.155 Escape II;

(D) 162.205 Failure to Appear I;

(E) 162.235 Obstructing Governmental or Judicial Administration;

(F) 162.265 Bribing a Witness;

(G) 162.275 Bribe Receiving by a Witness;

(H) 162.285 Tampering with a Witness;

(I) 162.305 Tampering with Public Records;

(J) 162.325 Hindering Prosecution;

(K) 162.405 Official Misconduct II;

(L) 162.415 Official Misconduct I;

(M) 163.160 Assault IV;

(N) 163.190 Menacing;

(O) 163.195 Recklessly Endangering Another Person;

(P) 163.208 Assault on a Public Safety Officer;

(Q) 163.465 Public Indecency;

(R) 163.700 Invasion of Personal Privacy;

(S) 164.055 Theft I;

(T) 164.057 Aggravated Theft I;

(U) 164.215 Burglary II;

(V) 164.315 Arson II;

(W) 164.365 Criminal Mischief I;

(X) 165.013 Forgery I;

(Y) 165.022 Criminal Possession of a Forged Instrument I;

(Z) 165.032 Criminal Possession of a Forgery Device;

(AA) 165.055 Fraudulent Use of a Credit Card (over \$750);

(BB) 165.070 Possessing Fraudulent Communications Device;

(CC) 165.074 Unlawful Factoring of Credit Card Transaction;

(DD) 165.085 Sports Bribery;

(EE) 165.090 Sports Bribe Receiving;

(FF) 166.015 Riot;

(GG) 166.065 Harassment;

(HH) 166.090 Telephone Harassment;

(II) 166.190 Pointing Firearm at Another;

(JJ) 166.240 Carrying of Concealed Weapons;

(KK) 166.250 Unlawful Possession of Firearms;

(LL) 167.007 Prostitution;

(MM) 167.222 Frequenting a Place Where Controlled Substances are Used;



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(NN) 167.320 Animal Abuse I;  
(OO) 167.322 Aggravated Animal Abuse I;  
(PP) 167.330 Animal Neglect I;  
(QQ) 411.630 Unlawfully Obtaining Public Assistance;  
(RR) 411.675 Submitting Wrongful Claim or Payment Prohibited;  
(SS) 411.840 Unlawfully Obtaining or Disposing of Food Stamp Benefits;  
(TT) 471.410 Providing Liquor to Person under 21 or to Intoxicated Person;  
(UU) 475.992 Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses);  
(VV) 475.993 Prohibited Acts for Registrants; Penalties;  
(WW) 475.994 Prohibited Acts Involving Records and Fraud; Penalties;  
(XX) 475.995 Penalties for Distribution to Minors;  
(YY) 475.996 Crime Category Classification for Violation of ORS 475.992; Proof of Commercial Drug Offense;  
(ZZ) 475.999 Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School;  
(AAA) 811.140 Reckless Driving;  
(BBB) 811.182 Criminal Driving while Suspended or Revoked;  
(CCC) 811.540 Fleeing or Attempting to Elude Police Officer;  
(DDD) 811.700 Failure to Perform Duties of Driver When Property Damaged (hit and run, property);  
(EEE) 811.705 Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); or  
(FFF) 813.010 Driving Under the Influence of Intoxicants.

(b) CCD will consider the following crimes if they were committed 5 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Bribe Receiving; Bribe Receiving by a Witness; Bribing a Witness; Criminal Driving while Suspended or Revoked; Criminal Possession of a Forged Instrument I; Criminal Possession of Forgery Device; Failure to Appear I; Forgery I; Fraudulent use of a Credit Card (over \$750); Hindering Prosecution; Failure to Perform Duties of Driver to Injured Persons (hit and run, injury); Failure to Perform Duties of Driver When Property Damaged (hit and run, property); Obstructing Governmental or Judicial Administration; Criminal Driving while Suspended or Revoked; Official Misconduct I; Official Misconduct II; Perjury; Possessing Fraudulent Communications Device; Reckless Driving; Sports Bribe Receiving; Sports Bribery; Submitting Wrongful Claim or Payment Prohibited; Tampering with a Witness; Tampering with Public Records; Unlawful Factoring of Credit Card Transaction; Unlawfully Obtaining or Disposing of Food Stamp Benefits; Unlawfully Obtaining Public Assistance.

(c) CCD will consider the following crimes if they were committed 7 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Aggravated Animal Abuse I; Animal Abuse I; Animal Neglect I; Assault IV; Carrying of Concealed Weapons; Criminal Mischief I; Driving under the Influence of Intoxicants; Fleeing or Attempting to Elude Police Officer; Harassment; Menacing; Recklessly Endangering Another Person; Telephone Harassment; Theft I; and Unlawful Possession of Firearms.

(d) CCD will consider the following crimes if they were committed 10 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Aggravated Theft I; Arson II; Assault on a Public Safety Officer; Burglary II; Escape II; Invasion of Personal Privacy; Pointing Firearm at Another; Providing Liquor to Person Under 21 or to Intoxicated Person; Public Indecency; and Riot.

(e) CCD will consider the following crimes if they were committed 15 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Crime Category Classification for Violation of ORS 475.992/Proof of Commercial Drug Offense; Frequenting a Place Where Controlled Substances are Used; Prohibited Acts for Registrants; penalties; (C) Prohibited Acts Generally; Penalties; Affirmative Defense for Certain Peyote Uses (controlled substance offenses); (D) Prohibited Acts involving Records and Frauds; Penalties; and (E) Prostitution.

(f) CCD will consider the following crimes if they were committed 20 years or less prior to the date the subject individual signed the Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry: Penalties for Distribution to Minors; and Penalty for Manufacture or Delivery of Controlled Substance within 1,000 feet of School.

(g) These rules also apply to:

(A) A conviction of a crime in another jurisdiction which is the substantial equivalent of a crime listed in Category II;

(B) An adjudication by a juvenile court that a youth has committed an act that is the substantial equivalent of a crime listed in Category II; and

(C) Any attempts or solicitations to commit any Felony or Misdemeanor crime listed in Category II.

(h) 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.

(3) CCD has determined that founded child protective services cases may substantially jeopardize the safety of children and are inconsistent with any position of unsupervised contact with children or otherwise vulnerable persons. If any subject individual has a founded child protective services case, CCD will seek to obtain and review information related to the case, subject to section (6) of this rule. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Criminal History Registry.

(4) If CCD determines that additional information is needed to assess a person's suitability to be enrolled in the Criminal History Registry, the subject individual shall provide the requested information within the required timeframes. The additional information may include, but is not limited to, an evaluation or assessment by a physician, counselor or other qualified person, documents to determine positive identification of the subject individual, and court documents.

(5) If a subject individual is in a diversion program or similar agreement for any Category I or Category II crime, the subject individual must provide written documentation of compliance with the terms of diversion or similar agreement. Based on this information, the Division will make a decision whether or not to enroll the subject individual in the Criminal History Registry.

(6) Factors to be considered in determining suitability, based on information available to CCD and information provided by the subject individual, include:

- (a) Types and number of incidences;
- (b) Passage of time since the incident occurred;
- (c) Circumstances surrounding the incident;
- (d) Intervening circumstances since the occurrence of the incident;

and  
(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children.

(7) CCD will not bar from enrollment in the Criminal History Registry any subject individual because of the existence or contents of a juvenile record that has been expunged by the court.

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

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0060

### Requirements of Requesting Agencies

Requesting agencies, as defined in OAR 414-061-0020(16), must comply with the following requirements:

(1) A requesting agency's application forms must contain a notice that employees and other persons who are subject individuals must be enrolled in the Criminal History Registry and that employment is subject to fingerprinting and criminal records checks.

(2) A requesting agency may hire a subject individual on a probationary basis if the subject individual is conditionally enrolled in the Criminal History Registry. A requesting agency may hire a subject individual on a permanent basis if the subject individual is enrolled in the Criminal History Registry.

(3) A requesting agency shall not hire or continue to employ on a probationary or permanent basis an individual if the individual is not enrolled in the Criminal History Registry or has been removed from the Criminal History Registry and has not been re-enrolled.

(4) A requesting agency may allow a subject individual who is not yet enrolled or conditionally enrolled in the Criminal History Registry to participate in training, orientation and work activities if the training, orientation and work activities are at a location other than the child care facility or are conducted at the facility when children are not present and the subject individual is not in contact with any children.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

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## 414-061-0070

### Procedures for Conducting Oregon State Police Criminal Records Checks and Department of Human Services Child Protective Services Record Checks

(1) Subject individuals shall consent to a criminal records check of the Oregon State Police Computerized Criminal History (CCH) System and a child protective services check at the time they request enrollment in the Criminal History Registry.

(2) Criminal History Registry enrollment forms shall contain notice that criminal records checks will be conducted as required by ORS 181.537 and 657A.030. The form shall also contain notice that child protective services checks will be conducted.

(3) Subject individuals shall provide all information required for a criminal records check and a child protective services check. Information includes:

(a) A properly completed and signed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry;

(b) For a subject individual who acknowledges a prior conviction of a criminal offense, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided by the individual; and

(c) On the application for enrollment in the Criminal History Registry, CCD may request subject individuals to consent to the use of their social security numbers for criminal and child protective services records checks, for identifying enrollees in the Criminal History Registry, for sharing information with other agencies to verify child care licensing status for child care payments, and for compiling statistical information for program planning and evaluation.

(4) CCD will review the criminal records information, child protective services information, and any additional information and will determine whether or not a subject individual may be enrolled in the Criminal History Registry.

(5) Fees for each name checked through OSP CCH and child protective services systems are as follows:

(a) For registered family child care applicants and other adults in the household, the fee is included in the application fee for family child care registration;

(b) No charge for CCD employees; and

(c) All other requests for criminal record checks and child protective services checks and enrollment in the Criminal History Registry will cost \$3 per person.

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

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0080

### Procedures for Conducting FBI Criminal History Checks

(1) An FBI criminal records check will be done on a subject individual whose OSP CCH record shows multi-state offender status, who has lived in Oregon less than 18 months or when CCD has information that the individual has committed a crime in another state.

(2) The subject individual shall supply to CCD the following information:

(a) Two properly completed FBI fingerprint cards, with printing in the "reason fingerprinted" block which reads "ORS 181.537/NCPA/VCA — Child Care";

(b) Properly completed form CCD 199, Consent for Criminal Records Check and Request for Enrollment in the Criminal History Registry; and

(c) For a subject individual who acknowledges a prior conviction, as listed in OAR 414-061-0050, an explanation of the relationship of the facts which support the conviction and all intervening circumstances. On request of CCD, the subject individual must authorize CCD to verify information provided under this rule.

(3) As part of the consent to a criminal records check, CCD may request the subject individual to consent to the use of his/her social security number in conducting the check.

(4) CCD will review the criminal records information and any additional information and will determine whether or not a subject individual may be enrolled in the Criminal History Registry.

(5) CCD will charge the subject individual \$46 for an FBI records check, to be paid at the time of the request.

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

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98 ; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0090

### CCD Enrollment Procedures

(1) A subject individual shall be enrolled in the Criminal History Registry if CCD has determined that the individual:

(a) Has provided all information and/or documents requested by CCD;

(b) Has no criminal or child protective services history or has dealt with the issues and provided adequate evidence of suitability;

(c) Has paid the applicable fee; and

(d) Has complied with the rules of CCD adopted pursuant to the Criminal History Registry (OAR 414-061-0000 through 414-061-0120).

(2) Enrollment in the Criminal History Registry shall expire two years from the date of enrollment, unless rescinded sooner, and may be renewed upon application to CCD, payment of the required fee and compliance with the rules adopted by CCD pursuant to the Criminal History Registry (OAR 414-061-0000 through 414-061-0120).

(3) A subject individual who has been enrolled in the Criminal History Registry will be notified by CCD of his or her enrollment and the enrollment dates. Such notification will not be sufficient evidence of enrollment for employment by a requesting agency.

(4) A subject individual may be conditionally enrolled in the Criminal History Registry pending the results of an FBI criminal records check if the individual has been determined to be suitable based on OSP criminal records information and child protective services information.

(a) A conditionally enrolled subject individual who has been determined to be suitable based on FBI criminal records information shall be enrolled in the Criminal History Registry.

(b) The two-year enrollment period will include the time the subject individual was conditionally enrolled.

(c) A conditionally enrolled subject individual who has been determined not to be suitable based on FBI criminal records information shall be removed from the Criminal History Registry, according to the provisions of OAR 414-061-0110.

(d) A conditional enrollment will expire if the subject individual has not been enrolled in the Registry within one year of the conditional enrollment.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0100

### CCD Denial Procedures

(1) A subject individual shall be denied enrollment in the Criminal History Registry if the individual:

(a) Has been determined not suitable;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open child protective services case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) A subject individual may appeal CCD's determination not to enroll the subject individual in the Criminal History Registry, pursuant to OAR 414-061-0120.

(3) A subject individual who has been denied enrollment in the Criminal History Registry due to a determination of unsuitability shall not be eligible for enrollment in the Registry for 3 years from the date of denial.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0110

### Removal Procedures

(1) An individual enrolled in the Criminal History Registry shall be removed from the Registry by CCD if, during the period of enrollment, the individual :

(a) Has been determined not suitable for enrollment in the Registry;

(b) Has failed to submit requested information or documentation;

(c) Has been charged with, arrested for, or a warrant is out for a Category I or Category II crime with final disposition not yet reached;

(d) Has an open child protective services case with final disposition not yet reached; or

(e) Is in a diversion program or similar agreement and has failed to provide written documentation of compliance with the terms of diversion or the agreement.

(2) CCD may immediately, and without prior hearing, remove a subject individual from the Criminal History Registry when, in the opinion of

# ADMINISTRATIVE RULES

CCD, such action is necessary to protect children from physical or mental abuse or a substantial threat to health and safety. Such action may be taken before an investigation is completed.

(3) CCD may reinstate a subject individual in the Criminal History Registry if the condition(s) that resulted in the removal is corrected.

(4) When a subject individual is removed from the Criminal History Registry, CCD will notify the subject individual and the requesting agencies which have inquired about the subject individual's enrollment of the removal.

(5) A subject individual who has been removed from the Criminal History Registry and has not subsequently been re-enrolled shall not be eligible for enrollment in the Registry for 3 years from the date of removal.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-061-0120

### Rights for Review and Contested Case Hearings

(1) CCD shall conduct contested case hearings per ORS 183.413 to 183.470 and afford subject individuals the right to appeal a decision made by CCD that the subject individual may not be enrolled in or has been removed from the Criminal History Registry. Subject individuals must notify CCD of their request for a contested case hearing not later than 14 calendar days from the date of service of the denial or removal notice.

(2) CCD has no jurisdiction in a contested case hearing over allegations that the criminal records information received from OSP or the FBI or child protective services information received from the Department of Human Services is inaccurate, incomplete or maintained in violation of any federal or state law. Therefore, a contested case hearing cannot be held by CCD for that purpose. Challenges to the accuracy or completeness of the information provided by the Department of State Police, the FBI and agencies reporting information to CCD must be made through those departments, bureaus or agencies and not through the contested case process.

(3) CCD is entitled to rely on the criminal records information supplied by OSP or the FBI or child protective services information supplied by the Department of Human Services until OSP, the FBI, or the Department of Human Services notifies CCD that information has been changed or corrected in a manner that would alter the CCD decision. If a subject individual has requested a contested case hearing, CCD will stay the hearing until the subject individual has been afforded a reasonable time to correct or complete the record or has declined to do so.

(4) To preserve the confidentiality of the records and the privacy of the subject individual, any contested case hearing will not be open to the public unless requested by the subject individual.

(5) A subject individual who is also an employee of the licensing unit of the Child Care Division and who is determined unsuitable for enrollment in the Criminal History Registry may appeal the determination through either the contested case process or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions shall constitute an election of remedies as to the rights of the subject individual with respect to the disqualification determination and shall constitute waiver of the contested case process.

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

Stats. Implemented: ORS 657A.030

Hist.: CCD 1-1998, f. 9-30-98, cert. ef. 10-1-98; CCD 2-2003, f. 12-5-03 cert. ef. 12-7-03

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**Adm. Order No.:** CCD 3-2003(Temp)

**Filed with Sec. of State:** 12-5-2003

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**Rules Suspended:** 414-600-0000, 414-600-0010, 414-600-0020, 414-600-0030, 414-600-0040, 414-600-0050, 414-600-0060, 414-600-0070, 414-600-0080, 414-600-0090, 414-600-0100

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

**Rules Coordinator:** Richard L. Luthe—(503) 947-1724

## 414-600-0000

### Purpose

(1) The purpose of these rules is provide guidance for administration of the child care investment tax credit program as authorized in ORS 314.752, 315.202 and 318.031 and section 10, chapter 682, Oregon Laws 1987, and section 87, chapter 625, Oregon Laws 1989. The child care investment tax credit was enacted by the 2001 legislature to:

(a) Encourage taxpayers to make contributions to the Child Care Division or a selected community agency by providing a financial return on qualified contributions and by soliciting other contributions.

(b) Achieve specific and measurable goals for targeted communities and populations by strategically allocating tax credit certificates.

(c) Set standards for the child care industry concerning the cost of providing quality, affordable child care.

(d) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families.

(2) The Child Care Division, in collaboration with the Advisory Committee established in OAR 414-600-0020 shall establish regions in the state in a manner that facilitates the planning of the program, the allocation of tax credit certificates to taxpayers, and the distribution to child care providers of moneys from contributions made to the Child Care Division and selected community agencies.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0010

### Definitions

(1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.

(2) "Community agency" means a nonprofit agency that is:

(a) Located in a region, established in OAR 414-600-0030, in which it provides services related to child care, children and families, community development or similar services; and

(b) Eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.

(3) "Qualified contribution" means a contribution made by a taxpayer to the Child Care Division of the Employment Department or a selected community agency for the purpose of promoting child care, and for which an application is submitted for a tax credit certificate.

(4) "Tax credit certificate" means a certificate issued by the Child Care Division to a taxpayer to qualify the taxpayer for a tax credit.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0020

### Advisory Committee

(1) The Child Care Division shall guide and direct the implementation of this program in collaboration with an Advisory Committee appointed by the Division.

(2) The Advisory Committee shall be comprised of representatives of state agencies, local organizations, advocates, and consumers with experience or interest in tax credit programs, high quality child care, or community development. Members shall serve staggered terms of either one or two years. A member may be re-appointed upon completion of their term.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0030

### Regions

For the purpose of implementing this program, there are five regions established within the state. The regions shall include the following counties:

(1) Region 1: Harney; Malheur; Grant; Baker; Union; Wallowa; Gilliam; Wheeler; Morrow; Umatilla.

(2) Region 2: Coos; Curry; Jackson; Douglas; Josephine; Klamath; Lake.

(3) Region 3: Lane; Linn; Benton; Yamhill; Polk; Marion; Lincoln; Tillamook.

(4) Region 4: Multnomah; Washington; Clackamas; Clatsop Columbia.

(5) Region 5: Jefferson; Crook; Sherman; Deschutes; Hood River; Wasco

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

# ADMINISTRATIVE RULES

## 414-600-0040

### Community Agencies

(1) The Child Care Division shall select the community agency that, in the judgment of the Child Care Division and based on the criteria set forth in OAR 414-600-0050(a) through (d), will best serve the interests of the region.

(2) Community agencies shall:

(a) Encourage taxpayers to make contributions for child care by promoting the program and by soliciting other contributions;

(b) Distribute moneys to child care providers in the region;

(c) Coordinate an application process by which persons may apply to be participating providers;

(d) Enter into agreements with participating providers under which the duties and responsibilities of providers and the community agency are stated;

(e) Provide or coordinate required training for participating providers;

(f) Monitor providers through on-site visits;

(g) Oversee the process by which a provider verifies the income of a family and establishes the total child care fee charged to a family;

(h) Report on provider compliance with OAR 414-600-0080 and other applicable requirements to contributors and the Child Care Division;

(i) Establish a maximum family income level for the region for purposes of the child care fee limitation to which providers are subject under OAR 414-600-0080; and

(j) Forward applications and moneys it receives from taxpayers as contributions to the Child Care Division.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0050

### Application and Renewal Process for Community Agencies

(1) A community agency desiring to represent a region described in OAR 414-600-0030 shall submit an application to the Child Care Division, in a form prescribed and provided by the Child Care Division. The application will demonstrate and describe the agency's experience and abilities in the following areas:

(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit program.

(b) Demonstrated ability to serve low- and moderate- income families.

(c) A governing board that is stable, has experience with financial matters, is representative of the community, and has a history of collaboration with other community agencies.

(d) An executive officer and staff with skill and experience in child care business management and small business development.

(2) The Child Care Division, in collaboration with the Advisory Committee established in OAR 414-600-0020, shall select a community agency to represent a region.

(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.

(4) A selected community agency shall represent a region for a period of two years, unless earlier terminated by the Child Care Division for cause or by mutual consent of the parties as specified in the written agreement.

(a) A community agency may apply to continue as a selected community agency for subsequent two-year periods by submitting a renewal application to the Child Care Division.

(b) In deciding whether to renew an application, the Child Care Division and the Advisory Committee shall consider community satisfaction with services delivered and the agency's performance of responsibilities under the written agreement.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0060

### Distribution of Funds to Community Agencies

(1) The Child Care Division shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Child Care Division, in collaboration with the Advisory Committee appointed in OAR 414-600-0020 and transmit those determinations to the selected community agencies by February 1 of each year. The Child Care Division shall dis-

tribute moneys to the community agencies by June 30 of the year following the year the application is made.

(a) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from taxpayers during the tax year, minus any reasonable administrative costs incurred by the Child Care Division and the selected community agencies.

(b) Distributions shall be made to selected community agencies in the proportion that the Child Care Division determines best promotes the provision of child care in the state.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0070

### Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

(a) Be certified or registered by the Child Care Division;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Child Care Division in collaboration with the Advisory Council;

(d) Have training required by the Child Care Division;

(e) Maintain adequate liability insurance, financial records and parent policies and contracts; and

(f) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

(a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and

(b) Provide care to children from at least two families that have incomes of 80 percent or less of the median income for the region.

(3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 80 percent or less of the median income for the region.

(4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established in subsections (2) and (3) of this section, the fee charged to the family by an eligible provider shall not exceed the percentage of the family's gross monthly income established by the Child Care Division in collaboration with the Advisory Committee appointed in OAR 414-600-0020.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-550-0080

### Distribution of Funds to Participating Providers

(1) The selected community agency shall identify providers in the region that meet the requirements of OAR 414-600-005070 for the purpose of distribution of moneys. The selected community agency shall develop a process by which child care providers apply to receive distributions of moneys from contributions made by taxpayers.

(2) By the end of each calendar year, the selected community agency must distribute to participating child care providers all moneys available to the region as a result of this program. Distributions shall be based on:

(a) The actual costs of providing quality, affordable child care in the region for which distributions are being made, including training costs, operating expenses and wages.

(b) The incomes of the families the provider serves and the child care fees the provider charges.

(3) The selected community agency shall, through a process approved by the Child Care Division, determine the amount of moneys each eligible provider receives.

(4) A substantial portion of the moneys shall be distributed to providers who operate home-based child care businesses.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

# ADMINISTRATIVE RULES

## 414-600-0090

### Allocation of Certificates

(1) The Child Care Division shall determine the total value of tax credit certificates available to taxpayers in each region.

(a) The Child Care Division shall transmit those determinations to the community agencies by February 1 of each year.

(b) The total value of tax credit certificates available to all community agencies may not exceed \$500,000 per calendar year.

(2) If a taxpayer makes a contribution to the Child Care Division or to a selected community agency for the purpose of receiving a tax credit under this program, the taxpayer shall submit an application for a tax credit certificate with the contribution.

(a) If the contribution is made to a community agency, the community agency shall forward the application and contribution to the Child Care Division.

(b) The application for a tax credit certificate shall be available to taxpayers from the Child Care Division and from selected community agencies.

(c) Applications must be submitted by December 31 of each year.

(3) The Child Care Division shall consider applications for tax credit certificates in the chronological order in which the applications are received by the Child Care Division.

(4) The Child Care Division may not issue a tax credit certificate to a taxpayer to the extent the claim for credit in the application, when added to the total amount of claims for credit previously certified by the Child Care Division for distribution, exceeds the value of tax credit certificates available to the Child Care Division for the calendar year.

(5) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the Child Care Division's denial or issuance of the certificate.

(a) The Child Care Division shall send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request.

(b) The refund shall be made from the Child Care Fund.

(6) The Child Care Division shall send a copy of all tax credit certificates issued to the Department of Revenue.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

## 414-600-0100

### Taxpayer Requirements

(1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions made to the Child Care Division or a selected community agency under OAR 414-600-0090.

(a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated in the tax credit certificate.

(b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the credit is claimed.

(2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be carried forward for any tax year thereafter.

(a) A taxpayer shall include the tax credit certificate received under OAR 414-600-0090 with the return filed with the state Department of Revenue for the tax year in which the tax credit certificate applies.

(b) A credit under this section may be claimed by a non-resident or part-year resident without proration.

(3) The credit allowed under this section is in addition to, and not in lieu of, any credit or deduction allowed under ORS chapters 316, 317, or 318 for charitable contributions and contributions made in relation to child care.

(4) If a taxpayer makes a contribution to the Child Care Division or a selected community agency but does not want to receive a tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a charitable contribution.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 657A.010.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 657A.010.

Stat. Auth.: ORS 657A.706 & ORS 657A.712

Stats. Implemented: ORS 657A.700 - ORS 657A.718

Hist.: CCD 2-2002(Temp), f. 7-1-01, cert. ef. 7-2-02 thru 12-29-02; CCD 4-2002, f. 11-22-02, cert. ef. 11-24-02; Suspended by CCD 3-2003(Temp), f. 12-05-03 cert. ef. 12-7-03 thru 6-4-04

**Adm. Order No.:** CCD 4-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-7-03

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 414-700-0000, 414-700-0010, 414-700-0020, 414-700-0030, 414-700-0040, 414-700-0050, 414-700-0060, 414-700-0070, 414-700-0080, 414-700-0090

**Subject:** The Employment Department, Child Care Division, is proposing to implement a new rule in response to HB 3184 (ORS Chapter 657A.700 through 657A.718), which creates a new tax credit for certified contributions to the Child Care Division and/or a qualified community agency for the purpose of promoting child care; and establishes a fund for collecting these contributions.

**Rules Coordinator:** Richard L. Luthe—(503) (503) 947-1724

## 414-700-0000

### Purpose

The purpose of these rules is provide guidance for administration of the child care contribution tax credit program as authorized in ORS 314.752, 315.202 and 318.031 and Section 10, chapter 682, Oregon Laws 1987, Section 87, chapter 625, Oregon Laws 1989 and ORS Chapter 657A.700 to 657A.718. The child care contribution tax credit was enacted by the 2003 legislature to:

(1) Encourage taxpayers to make contributions to the Child Care Division by providing a financial return on qualified contributions and by soliciting other contributions.

(2) Achieve specific and measurable goals for targeted communities and populations.

(3) Set standards for the child care industry concerning the cost of providing quality, affordable child care.

(4) Strengthen the viability and continuity of child care providers while making child care more affordable for low and moderate income families.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0010

### Definitions

(1) "Child care provider" means a provider, for compensation, of care, supervision or guidance to a child on a regular basis in a center or in a home other than the child's home. Child care provider does not include a person who is the child's parent, guardian or custodian.

(2) "Community" means a recognized unit of government, service delivery area other commonly recognized area or region within the state of Oregon.

(3) "Community agency" means a nonprofit agency that:

(a) Provides services related to child care, children and families, community development or similar services; and

(b) Is eligible to receive contributions that qualify as deductions under section 170 of the Internal Revenue Code.

(4) "High quality child care" means child care that meets standards for high quality child care established or approved by the Commission for Child Care.

(5) "Qualified contribution" means a contribution made by a taxpayer to the Child Care Division of the Employment Department or a selected community agency for the purpose of promoting child care, and for which an application is submitted for a tax credit certificate.

(6) "Tax credit certificate" means a certificate issued by the Child Care Division to a taxpayer to qualify the taxpayer for a tax credit.

(7) "Tax credit marketer" means an individual or entity selected by the Child Care Division to market tax credits to taxpayers.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0020

### Advisory Committee

(1) The Child Care Division shall guide and direct the implementation of this program in collaboration with an Advisory Committee appointed by the Division.

(2) The Advisory Committee shall be comprised of representatives of state agencies, local organizations, advocates, and consumers with experience or interest in tax credit programs, high quality child care, or community development. Members shall serve staggered terms of either one or two years. A member may be re-appointed upon completion of their term.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

# ADMINISTRATIVE RULES

## 414-700-0030

### Community Agencies

(1) The Child Care Division shall select one or more community agencies that, in the judgment of the Child Care Division and based on the criteria set forth in OAR 414-700-0050(a) through (d), will best serve the interests of their community.

(2) Community agencies shall:

(a) Disburse moneys to child care providers in their community;

(b) Coordinate an application process by which persons may apply to be participating providers as described in 414-700-0060;

(c) Enter into agreements with participating providers under which the duties and responsibilities of providers and the community agency are stated;

(d) Provide or coordinate required training for participating providers;

(e) Monitor providers through on-site visits and other appropriate means;

(f) Oversee the process by which a provider verifies the income of a family and establishes the total child care fee charged to a family;

(g) Report on provider compliance with OAR 414-700-0080 and other applicable requirements to contributors and the Child Care Division; and,

(h) Establish a maximum family income level for the region for purposes of the child care fee limitation to which providers are subject under OAR 414-700-0080.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0040

### Application and Renewal Process for Community Agencies

(1) A community agency desiring to represent a community described in OAR 414-700-0030 shall submit an application to the Child Care Division, in a form prescribed and provided by the Child Care Division. The application will demonstrate and describe the agency's experience and abilities in the following areas:

(a) Financial soundness, net worth, cash flow, and accounting capacity to manage a tax credit program.

(b) Demonstrated ability to serve low- and moderate- income families.

(c) A governing board that is stable, has experience with financial matters, is representative of the community, and has a history of collaboration with other agencies in the community.

(d) An executive officer and staff with skill and experience in child care business management and small business development.

(2) The Child Care Division, in collaboration with the Advisory Committee established in OAR 414-700-0020, shall select a community agency to represent a community.

(3) A selected community agency shall enter into a written agreement with the Child Care Division that specifies the duties and performance expectations required of the agency.

(4) A selected community agency shall represent a community for a period of two years, unless earlier terminated by the Child Care Division for cause or by mutual consent of the parties as specified in the written agreement.

(5) A community agency may apply to continue as a selected community agency for subsequent two-year periods by submitting a renewal application to the Child Care Division.

(6) In deciding whether to renew an application, the Child Care Division and the Advisory Committee shall consider community satisfaction with services delivered and the agency's performance of responsibilities under the written agreement.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0050

### Distribution of Funds to Community Agencies

(1) The Child Care Division shall determine the total value of moneys to be available to each selected community agency to distribute to providers based on goals established for the program by the Child Care Division, in collaboration with the Advisory Committee appointed in OAR 414-700-0020 and transmit those determinations to the selected community agencies of each year.

(2) The Child Care Division shall distribute moneys to the community agencies in a manner that will facilitate timely implementation of the program in that community.

(3) The total value of moneys available to all selected community agencies may not exceed the amount of contributions received from tax-

payers during the tax year, minus any reasonable administrative costs incurred by the Child Care Division and the selected community agencies.

(4) Distributions shall be made to selected community agencies in the proportion that the Child Care Division determines best promotes the provision of child care in the state.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0060

### Participating Provider Eligibility Requirements

(1) To be eligible for disbursements under this program, child care providers shall:

(a) Be regulated by the Child Care Division;

(b) Accept children for whom child care is paid for through Department of Human Services subsidy;

(c) Provide high quality child care as defined by the Child Care Division in collaboration with the Advisory Council;

(d) Maintain adequate liability insurance, financial records and parent policies and contracts; and

(e) Permit the community agency to conduct visits for monitoring purposes.

(2) If the provider is a home-based business, the provider shall meet the following requirements in addition to those in subsection (1) of this section:

(a) Enter into an agreement with the community agency to continue to provide child care services for at least two additional years; and

(b) Provide care to children from at least two families that have incomes of 85 percent or less of the median income for the region.

(3) If the provider is a child care center, at least 25 percent of the families served by the center must have incomes that are 85 percent or less of the median income for the region.

(4) In selecting participating child care providers, selected community agencies must give preference to providers that provide child care to low and moderate income families.

(5) For care provided to children of families whose income does not exceed the level established in subsections (2) and (3) of this section, the fee charged to the family by an eligible provider shall not exceed the percentage of the family's gross monthly income established by the Child Care Division in collaboration with the Advisory Committee appointed in OAR 414-700-0020.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0070

### Distribution of Funds to Participating Providers

(1) The selected community agency shall identify providers in the community that meet the requirements of OAR 414-700-0060 for the purpose of distribution of moneys. The selected community agency shall develop a process by which child care providers apply to receive distributions of moneys from contributions made by taxpayers.

(2) By the end of each calendar year, the selected community agency must distribute to participating child care providers all moneys available to the community as a result of this program. Distributions shall be based on:

(a) The actual costs of providing quality, affordable child care in the community for which distributions are being made, including training costs, operating expenses and wages.

(b) The incomes of the families the provider serves and the child care fees the provider charges.

(3) The selected community agency shall, through a process approved by the Child Care Division, determine the amount of moneys each eligible provider receives.

(4) A substantial portion of the moneys shall be distributed to providers who operate home-based child care businesses.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0080

### Allocation of Certificates

(1) Tax credit certificates shall be available to taxpayers on a statewide basis. The Child Care Division shall allocate tax credit certificates to taxpayers that make qualified contributions Child Care Fund.

(2) If a taxpayer makes a contribution to the Child Care Division for the purpose of receiving a tax credit under this program, the taxpayer shall submit an application for a tax credit certificate with the contribution. The applications shall:

(a) Be available to taxpayers from the Child Care Division; and,

(b) Be submitted by December 31 of each year.

# ADMINISTRATIVE RULES

(3) Contributions made under this subsection shall be deposited in the Child Care Fund.

(4) The Child Care Division shall consider applications for tax credit certificates in the chronological order in which the applications are received by the Child Care Division. The division shall issue tax credit certificates to applicants until the total credit value of all certificates issued by the division for the calendar year equals \$500,000. Each issued certificate shall state the value of the contribution being certified as eligible for the tax credit allowed under ORS 315.213.

(5) The Child Care Division may not issue a tax credit certificate to a taxpayer to the extent the claim for credit in the application, when added to the total credit value previously certified by the Child Care Division exceeds the \$500,000 tax credit value available for the calendar year requested.

(6) A taxpayer who receives a notice of denial of a tax credit certificate or that receives a tax credit certificate issued for an amount that is less than the amount contributed may request a refund for the amount contributed within 90 days of the Child Care Division's denial or issuance of the certificate.

(a) The Child Care Division shall send notice of a denial or changed amount and refund the amount for which a tax credit will not be granted within 30 days after receiving the request.

(b) The refund shall be made from the Child Care Fund.

(7) The Child Care Division shall send a copy of all tax credit certificates issued to the Department of Revenue.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## 414-700-0090

### Taxpayer Requirements

(1) A credit against the taxes otherwise due under ORS Chapter 316 or, if the taxpayer is a corporation, under ORS Chapter 317 or 318, is allowed to a taxpayer for certified contributions made to the Child Care Division under OAR 414-700-0080.

(a) The amount of a tax credit available to a taxpayer for a tax year shall equal the amount stated in the tax credit certificate.

(b) The tax credit may not exceed the tax liability of the taxpayer for the tax year in which the credit is claimed.

(2) Any tax credit not used by the taxpayer in a particular tax year may be carried forward and offset the taxpayer's tax liability in any of the four succeeding tax years. The credit cannot be carried forward for any tax year thereafter.

(a) A taxpayer shall retain the tax credit certificate received under OAR 414-700-0080 with their copy of their tax return filed with the state Department of Revenue for the tax year in which the tax credit certificate applies.

(b) A credit under this section may be claimed by a non-resident or part-year resident without proration.

(3) The credit allowed under this section is in addition to, and not in lieu of, any credit or deduction allowable under ORS chapters 316, 317, or 318 for charitable contributions and contributions made in relation to child care.

(4) If a taxpayer makes a contribution to the Child Care Division but does not want to receive a tax credit, the taxpayer may receive only deductions and credits otherwise allowed for a charitable contribution.

(5) Contributions made under this program shall be deposited in the Child Care Fund established under ORS 657A.010.

Statutory Authority: ORS 657A.706

Statutes Implemented: ORS 657A.700-657A.718

Hist.: CCD 4-2003, f. 12-5-03 cert. ef. 12-7-03

## Landscape Contractors Board Chapter 808

**Adm. Order No.:** LCB 7-2003(Temp)

**Filed with Sec. of State:** 11-28-2003

**Certified to be Effective:** 12-1-03 thru 5-29-04

**Notice Publication Date:**

**Rules Amended:** 808-003-0040

**Subject:** This rule amendment modifies references to incorrect licensing regarding tree service, prune trees, remove tree limbs or stumps or engage in tree or limb guying. ORS 671 does not give the Landscape Contractor's License to authority to perform these functions.

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 986-6570

## 808-003-0040

### Limitation of Service by License

(1) A licensed landscaping business shall perform only those phases of landscape contracting for which its landscape contractor employees are licensed.

(2) The landscape contracting service or services a licensee offers shall be limited to the following:

(a) An all phases holder is entitled to perform all areas of landscape contracting, including the installation of backflow prevention equipment unless, in lieu of LIBDI, the landscape contractor has signed an agreement with the Board prior to April 30, 1995 stating that the contractor will not perform LIBDI work.;

(b) A general limited license holder may perform all landscape contracting functions except irrigation;

(c) An irrigation limited license holder may only perform irrigation functions;

(d) A sod and seed limited license holder may only perform grass seed planting or sod laying;

(e) A tree limited license holder may only install new or transplant trees;

(f) A Standard limited license holder may perform all areas of landscape contracting except irrigation and backflow prevention;

(g) An irrigation limited license holder may perform only irrigation and backflow prevention equipment work.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow prevention equipment shall be done by plumbers licensed by the State Plumbers Board or by landscape contractors who have been qualified by examination and are licensed by the Landscape Contractors Board to install backflow prevention devices. If the device is installed by a landscape contractor, the landscape contractor shall obtain all required permits and shall install the devices in conformance with the permits;

(b) If a landscape contractor or a landscaping business fails to obtain permits to tap into the potable water system and install irrigation or ornamental water feature backflow prevention devices or fails to comply with applicable code requirements, in addition to any other remedy, the Board may suspend, condition or revoke the landscape contractor's and the landscaping business's license.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 447.060, ORS 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04

## Oregon Economic and Community Development Department Chapter 123

**Adm. Order No.:** EDD 10-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 5-31-04

**Notice Publication Date:**

**Rules Adopted:** 123-068-0015, 123-068-0105, 123-068-0205, 123-068-0305

**Subject:** This rulemaking temporarily adopts administrative rules based on ones recently repealed as part of an overall updating of ORS Ch. 123 (EDD 4-2003, f. & cert. ef. 3-26-03). There remains, however, a residual statutory/fiscal basis to continue the program in question, for which similar rules must be restored immediately. The "Industrial Modernization Program" is for the purpose of operating an Industrial Extension Service, by which funds may be awarded to entities that will assist small to medium-sized manufactures with accessing and incorporating technological, organizational and workforce improvements to foster Oregon competitiveness.

**Rules Coordinator:** Steven Santos—(503) 986-0102

## 123-068-0015

### Purpose and Scope

This division of administrative rules establishes the Industrial Modernization Program to manage the Industrial Extension Service under ORS 329.930(2). This service is intended to provide customer-directed assistance, so that traded-sector, small to medium-sized business firms can determine and adopt the appropriate technology, management technique, work organization and workforce strategies to become and stay competitive in the global economy.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 329.930(2)

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 329.930  
Hist.: EDD 10-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04

## 123-068-0105

### Definitions

For purposes of this division of administrative rules, unless the context demands otherwise:

(1) **Appropriate Technology** means the application of activities, manufacturing methods or products determined to best fulfill the competitive needs of Firms within a given industry or sector.

(2) **Department** means the State of Oregon Economic and Community Development Department organized under ORS 285A.070.

(3) **Director** means the director of the Department appointed under ORS 285A.070.

(4) **Firm** means a traded sector business firm as described in ORS 285B.360(5) with 500 or fewer full-time equivalent employees in this state

(5) **Industrial Extension Service** means problem-solving assessment, expertise and implementation for Firms, as authorized and described under ORS 329.930(2).

(6) **Industrial Modernization Program or Program** means the activities of the Department associated with the Industrial Extension Service.

(7) **Matching Funds** mean money or in-kind contributions used in conjunction with Program funds to complete a Project, including but not limited to private funds, other public funds, services, materials, labor or other items with discernible value directly related to the Project.

(8) **Project** means a task, improvement or action that implements the Program.

(9) **Technology Assessment** means an audit performed by Industrial Extension Service staff to determine the type of activity, product or expertise most appropriate to a firm.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 329.930(2)

Stats. Implemented: ORS 329.930

Hist.: EDD 10-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04

## 123-068-0205

### Program Administration

(1) The Department will manage the Industrial Extension Service through the Industrial Modernization Program, and as determined by the Department to be appropriate, the Program shall:

(a) Provide funding and administrative services to the Industrial Extension Service;

(b) Manage and promote technology transfer, appropriate manufacturing techniques and workforce development; and

(c) Focus on building partnerships among public and private sector organizations and Industrial Extension Service provider(s).

(2) The Department shall designate public or private entity or entities to provide access to and deliver the Industrial Extension Service throughout the state. Any such provider is accountable to the Industrial Modernization Program.

(3) To select the provider(s) of the Industrial Extension Service, the Department shall conduct an application process that in addition to other requirements of law for relevant public procurement, shall give preference to entities that:

(a) Are organized as a nonprofit or not-for-profit, with an executive board that is majority-represented by persons primarily employed in traded-sector businesses; and

(b) Is judged to be best capable of fulfilling the responsibilities listed in section (4) of this rule.

(4) The responsibilities of an Industrial Extension Service provider are as follows:

(a) Engaging in one-on-one assistance with participating Firms, including Technology Assessment;

(b) Handling outreach and marketing of the Industrial Extension Service to Firms;

(c) Establishing a review process, with direct involvement by Department staff, to evaluate the appropriateness of services delivered to Firms and to monitor results in general;

(d) Receiving Program funds to contract for or directly provide services or products to participating Firms at a reasonable cost;

(e) Executing and fulfilling service agreements with participating Firms, such that a Firm requests services and the provider works with the Firm to:

(A) Define a performance-based Project;

(B) Identify and obtain Matching Funds; and

(C) Monitor the use all funds and the Project's completion;

(f) Maintaining organized, accessible data on participating Firms, activities and performance, including but not limited to the following:

(A) Type(s) of service provided;

(B) Name, location, industry and so forth of the Firm;

(C) Size attributes of Firm, such as number of employees or gross sales;

(D) Impact of service on Firm measured in terms of the Firm's output productivity, value added, revenues, market growth/penetration or similar quantified measures that demonstrate a return on investment from the Industrial Extension Service Project; and

(E) Number of participating Firms gaining formal industry recognition or certification, including supplier status from major customers;

(g) Providing ongoing follow-up assistance to participating Firms in the application and deployment of Appropriate Technology or services rendered; and

(h) Reporting regularly to the Department with respect to achievements as specified in the contract between the Department and the provider.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 329.930(2)

Stats. Implemented: ORS 329.930

Hist.: EDD 10-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04

## 123-068-0305

### Director's Waiver

The Director may waive non-statutory requirements described in this division of administrative rules, if it is demonstrated that such a waiver serves to further the goals and objectives of the Industrial Modernization Program.

Stat. Auth.: ORS 285A.075(5), 285A.110(1) & 329.930(2)

Stats. Implemented: ORS 329.930

Hist.: EDD 10-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04

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## Oregon Liquor Control Commission Chapter 845

**Adm. Order No.:** OLCC 18-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 12-1-03

**Notice Publication Date:** 8-1-03

**Rules Amended:** 845-003-0670

**Subject:** This rule describes and delineates the Commissioners' authority regarding Final Orders and reconsideration of hearing. We added language to section (5) of the rule specifically addressing stay requests based on a request for reconsideration or rehearing.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-003-0670

### Retained Authority of Commissioners

(1) The Commissioners retain all authority not specifically delegated.

(2) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to request a hearing and file an answer or when a party, after requesting a hearing, withdraws the request, or fails to appear at the hearing.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement.

(4) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon a proposed order where exceptions are not filed timely and the order is not otherwise subject to review by the Commissioners.

(5) The Commissioners delegate to the Administrator the authority to summarily deny requests for reconsideration or rehearing and any stay request based on these requests for reconsideration or rehearing when exceptions or a request to reopen the record has been made by the same participant in the same case.

(6) The Commissioners delegate to the Administrator the authority to grant or deny requests for extension of time within which to file exceptions or comments to a proposed order, in conformity with the requirements of OAR 845-003-0590(3).

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6), 472.060(1) & (2)(d)

Stats. Implemented: ORS 183.341(2), 471.730(5) & (6), 472.060(1) & (2)(d)

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 18-2003, f. 11-24-03, cert. ef. 12-1-03

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**Adm. Order No.:** OLCC 19-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 12-1-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 845-006-0441



# ADMINISTRATIVE RULES

**Subject:** This rule describes licensees' responsibilities and requirements for selling kegs of malt beverages to go, specifically the requirements for filling out and verifying information on the Receipt for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual, more commonly known as the Keg Tag Form.

Ors 471.478 requires that identification and information the Commission may require on the form must be described in an administrative rule. We are amending the rule to add specific language describing precisely what information is required on the form.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-006-0441

### Sale of Malt Beverages in Kegs

(1) Before selling a keg of malt beverages as ORS 471.478 allows, a licensee will:

- (a) Complete a Receipt for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual (**Form 760**);
- (b) Have the purchaser read and sign the receipt;
- (c) Give the purchaser a copy of the signed receipt;
- (d) Make sure the information on the receipt is accurate; and
- (e) Securely attach a Commission-issued, serially-numbered identification label (keg tag) to each keg.

(2) If the licensee has reason to question the purchaser's legal age or identity, the licensee will ask the purchaser for two additional pieces of identification. One of these pieces must include the purchaser's physical description or picture, date of birth, and signature.

(3) A licensee must keep the original of the receipt (Form 760) for one year.

(4) The licensee must allow an authorized representative of the Commission or any person authorized under ORS 471.605 to inspect receipts and keg tags at any time during the licensee's business hours.

(5) The Receipt for Sale of Malt Beverages in Kegs to Unlicensed Group or Individual (receipt) will be completed by the licensee. The licensee is required to verify the following information on the receipt:

(a) Name, address, date of birth and phone number of the purchaser, the driver's license number of the purchaser, license state of issue, and, if necessary under section (2) of this rule, other identification verifying the name, address, physical description and date of birth of the purchaser;

(b) The license plate number of the vehicle in which the keg(s) will be transported. (For purposes of this rule, "automobile registration" as required by ORS 471.478 is the license plate number of the vehicle in which the keg(s) will be transported);

(c) The year, make, type, color, and state of registration (Oregon, California, Washington, for example) of the vehicle in which the keg(s) will be transported;

(d) The precise location (for example: street address, geographic location within a park) where the malt beverages will be consumed;

(e) A sworn, signed statement that the information given in the receipt is true and correct, and a warning about penalties for false swearing and failure to obey Oregon liquor laws;

(f) A signature block and certification by the seller stating that the seller checked the purchaser's identification and the identifying information regarding the vehicle in which the keg(s) will be transported.

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

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

Stats. Implemented: ORS 471.478

Hist.: LCC 66, f. 9-22-77, ef. 1-1-78; LCC 26-1979, f. 10-26-79, ef. 10-29-79; Renumbered from 845-010-0320; LCC 12-1986, f. 7-1-86, ef. 10-1-86; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; Renumbered from 845-006-0085; OLCC 19-2003, f. 11-24-03, cert. ef. 12-1-03

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**Adm. Order No.:** OLCC 20-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 12-1-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 845-009-0015

**Subject:** This rule describes a licensee's responsibilities for ensuring that servers have valid services permits or fill out a service permit application before beginning work selling or serving alcoholic beverages.

We are adding a new section (4) which specifies that licensees have a continuing duty to verify that their employee has completed Server Education requirements and has received a service permit.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

## 845-009-0015

### Licensee and Authorized Person's Responsibility for Verifying Identification

(1) Before allowing anyone who is required to have a service permit to mix, sell or serve alcoholic beverages for on-premises consumption, a licensee must:

(a) Make sure the person has a valid service permit; and

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description).

(2) If the person does not have a service permit but has filed an application with the Commission, the licensee must, before allowing the person to mix, sell or serve alcoholic beverages for on-premises consumption:

(a) Verify that the person has a pending application (for example, see a copy of the service permit application the person filed or call the person's former employer);

(b) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description); and

(c) Verify the person's age.

(3) If the person does not have a service permit or a pending application, the licensee must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission by the end of the first work day following the person's first work shift.

(4) If the person does not have a service permit or has a pending application, the licensee has a continuing duty to verify that the person has taken and passed a Server Education course, and that the person's service permit has been issued.

(5) All other persons authorized to indorse applications under ORS 471.375 must:

(a) Verify the person's identity (for example, make sure the person's physical description matches the person's driver's license photo and description);

(b) Verify the person's age; and

(c) Mail or personally deliver a completed service permit application, with the appropriate fee, to the Commission within 36 hours of indorsement. Holidays and weekends are not included in counting the 36 hours.

(6) If a company authorized by ORS 471.375(2)(b) fails to follow the standards of OAR 845-009-0015(5), OLCC will rescind the company's approval to indorse service permit applications.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1)

Stats. Implemented: ORS 471.375

Hist.: OLCC 3-1991, f. 3-1-91, cert. ef. 4-1-91; OLCC 10-2001(Temp), f. 10-12-01, cert. ef. 11-1-01 thru 4-29-02; OLCC 5-2002, f. 4-12-02, cert. ef. 4-29-02; OLCC 9-2003, f. 6-27-03, cert. ef. 7-1-03; OLCC 20-2003, f. 11-24-03, cert. ef. 12-1-03

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**Adm. Order No.:** OLCC 21-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 2-10-04

**Notice Publication Date:** 9-1-03

**Rules Amended:** 845-003-0590

**Subject:** The Attorney General's Hearing Panel rules were amended effective July 21, 2003. We need to change this rule in order to continue our practice of requiring that exceptions or comments be received by the deadline in order to be timely filed.

Under existing language, written exceptions and comments to a proposed order had to be filed with the Administrator within 15 days of the mailing date of the proposed order. Changes to the Attorney General's rules omitted language in a more general rule which stated that a mailed document was considered filed when received.

Without amending our rule, the mailed exceptions/comments would be considered filed when postmarked, contrary to our past practice, and delaying issuance of final orders by an extra week. A temporary amendment is in effective August 15, 2003 through February 9, 2004.

**Rules Coordinator:** Katie Hilton—(503) 872-5004

# ADMINISTRATIVE RULES

845-003-0590

## Exceptions

(1) Only parties and limited parties may file exceptions to a proposed order. Commission staff may file written comments on the proposed order.

(2) Exceptions and comments must be in writing and received by the Administrator of the Commission within 15 days of the mailing date of the proposed order to be considered by the Commissioners. If an interpreter is required to translate a proposed order for one participant, all participants shall have an additional 10 days to file exceptions or comments to the proposed order.

(3) The Administrator may grant a participant's written request to extend the period to file exceptions or comments for good cause shown. The request must be received within 15 days of the mailing date of the proposed order.

(4) Oral argument to the Commissioners on written exceptions or comments will be taken at a regularly scheduled meeting of the Commissioners. The participants shall be notified by the Commission of the date, time, and place of the meeting where such argument will be heard.

Stat. Auth.: ORS 183.341(2), 471.730(5) & (6)

Stats. Implemented: ORS 183.341(2), 183.460

Hist.: OLCC 9-1998, f. 10-21-98, cert. ef. 1-1-99; OLCC 1-2000(Temp), f. & cert. ef. 1-14-00 thru 7-11-00; OLCC 8-2000, f. 6-23-00, cert. ef. 7-1-00; OLCC 11-2003(Temp), f. & cert. ef. 8-15-03 thru 2-10-04; OLCC 21-2003, f. 11-24-03, cert. ef. 2-10-04

## Oregon Public Employees Retirement System Chapter 459

**Adm. Order No.:** PERS 14-2003

**Filed with Sec. of State:** 11-20-2003

**Certified to be Effective:** 11-20-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 459-005-0001, 459-045-0001

**Rules Repealed:** 459-005-0001(T), 459-045-0001(T)

**Subject:** These proposed rule modifications conform existing rules with the provisions of HB 2003 (2003) relating to employee contributions and the new definition of the term "vested". In addition, other miscellaneous changes were made to OAR 459-005-0001 to update the rule as well as substantive changes to the definition of "regular account" and the consolidation of some terms from Div 007 to Div 005.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-005-0001

### Definitions, Generally

The words and phrases used in Chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in Chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) "Casual employee" means an individual whose employment is at incidental, occasional, irregular, or unscheduled intervals.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(6).

(10) "Emergency employee" means an individual employed on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(7).

(12) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS chapter 238.

(13) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee, and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(14) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(15) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

(c) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(18) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(19) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12)(b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(6) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

(22) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(23) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

# ADMINISTRATIVE RULES

(24) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(25) "Salary," "remuneration" and "compensation" have the same meanings as provided in ORS 238.005(20).

(a) For a Tier One member, the lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(b) For a Tier Two member, the lump sum payment for accrued vacation pay:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(26) "Seasonal employee" means an individual whose employment is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(27) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(28) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(29) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(30) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(31) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(32) "Variable Annuity Account" means the account established in ORS 238.260(2).

(33) "Volunteer" means a person who performs a service for a public employer as other than an employee, an independent contractor or employee of an independent contract, and who receives no compensation for the service performed and there is not an expectation by the employer for any continuity of service performed.

(34) "Year" means any period of 12 consecutive calendar months.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03

## 459-045-0001

### Definitions

The words and phrases used in this Division shall have the same meaning given them in ORS chapter 238. Specific and additional terms are defined as follows unless context requires otherwise.

(1) "Board" shall have the same meaning as the Public Employees Retirement Board as defined in ORS 238.630.

(2) "PERS" shall have the same meaning as the Public Employees Retirement System as defined in ORS 238.600.

(3) "Fund" shall have the same meaning as the Public Employees Retirement Fund in ORS 238.660.

(4) "Staff" means the employees of the Public Employees Retirement System as provided in ORS 238.645.

(5) "Member" means a person described in ORS 238.005(12) and 238.500(3), and who is the current or former spouse of an alternate payee.

(6) "Alternate payee" means a spouse or former spouse of a PERS member, who is awarded a portion of the member's PERS benefits by a court.

(7) "Member's PERS account" means:

(a) The member's individual account in the Fund as defined in ORS 238.250; and

(b) The member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(c) The accounts described in subsections (a) and (b) of section consist of:

(A) Member before-tax contributions paid to PERS under ORS 238.200;

(B) Member after-tax contributions paid to PERS under ORS 238.205; and

(C) Interest and earnings credited to each of the accounts described in paragraphs (A) and (B) of this subsection.

(d) Shall apply only to an active or an inactive member, and shall not apply to a retired member.

(8) "PERS funds" means the member's PERS account as defined in section (7) of this rule and the member's vested interest in employer contributions paid into the Fund in accordance with ORS 238.225, but shall not include:

(a) Employer contributions for police and fire benefit units pursuant to ORS 238.440.

(b) Employer contributions paid into the Fund that the member is not vested in pursuant to ORS 238.265.

(9) "Alternate Payee Account" means a court-ordered separate account created under ORS 238.465 in the name of an alternate payee, and established as of the award date stated in the court order. The award date shall be before, or at the time refund, death, service or disability retirement benefits become payable to the member or the member's beneficiary.

(10) "Alternate payee's award" is the portion of a member's PERS account or of the member's PERS funds awarded to an alternate payee by a court order, and may include the creation of a separate account in the Fund in the name of the alternate payee.

(11) "Member Release" means a written statement that is signed by a member and received by staff authorizing the release of information, and directing to whom and where information is to be sent:

(a) Pertaining to the member's PERS account,

(b) Pertaining to the member's interest in the Fund, or

(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this section.

(d) Pertaining to award information contained in any draft or final court order in regard to the member on record with PERS.

(12) "Alternate Payee Release" means a written statement that is signed by the alternate payee and received by staff authorizing the release of information, and directing to whom and to where the information is to be sent:

(a) Pertaining to the alternate payee's interest in the member's PERS account or member's vested interest in the Fund,

(b) Pertaining to the alternate payee's account and benefit information if a separate account has been created in the name of the alternate payee; or

(c) Pertaining to benefit information applicable to either subsection (a) or (b) of this section.

(d) Pertaining to award information contained in any draft or final court order in regard to the alternate payee on record with PERS.

(13) A "Member Release" and an "Alternate Payee Release" shall include a valid subpoena or court order requiring PERS to provide information to someone other than the member or the alternate payee.

(14) "Vested" has the same meaning as provided in ORS 238.005(23). Whether or not a member is considered to be vested shall be determined solely by ORS 238.265 regardless of any language that may be contained in any type of court order received by PERS.

(15) "Separation from service" means the member separates from PERS covered employment due to death, service retirement, disability retirement, or termination of employment for which the requirements set forth in ORS 238.265 have been met.

(16) "Service retirement" shall have the same meaning as provided in ORS 238.300.

(17) "Disability retirement" shall have the same meaning as provided in ORS 238.320.

(18) "Joint and survivor annuity" shall mean any retirement annuity option under which a monthly lifetime annuity is payable to a surviving beneficiary of a member. The current joint and survivor annuities payable under PERS are Options 2, 2A, 3, and 3A described in ORS 238.305, and 238.325.

(19) "Integration" shall have the same meaning as provided in ORS 238.035, 238.680 and 238.690.

(20) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may

# ADMINISTRATIVE RULES

become due and payable and PERS is not bound by any estimates it provides.

(21) "The earliest date the member would be eligible to receive retirement" shall have the same meaning as provided in ORS 238.005(17), or 238.280, or the date the member is approved for disability retirement prior to reaching earliest service retirement eligibility.

(22) "PERS Plan Year" means a calendar year beginning January 1, and ending December 31.

(23) "PERS Administrative Fee" means the fee, not to exceed \$300, that shall be charged in accordance with ORS 238.465(9) to the member and/or alternate payee for actual and reasonable administrative cost incurred by PERS for establishing benefits for an alternate payee.

(24) "Fraction of the benefit" used to allocate expenses and costs under ORS 238.465(9) means the percentage or ratio of a member's PERS account or member's vested interest in the Fund that is awarded by court decree or order to the alternate payee and the member as of the date of divorce, separation or annulment.

(25) "Court Order" means a court decree or judgment of dissolution of marriage, separation, or annulment, or the terms of any court order or court approved marital property settlement agreement, incident to any court decree or judgment of dissolution of marriage, separation, or annulment.

(26) "Final Court Order" means a court order or judgment that has been signed by a judge, and which shows the stamp of the court clerk or trial court administrator indicating the order is a certified copy of the original record that is on file with the court.

(27) "Draft Court Order" means an order for dividing a PERS account or benefits has been prepared but not approved or signed by the court or filed with the court clerk that contains proposed language on how PERS benefits are to be divided.

Stat. Auth: ORS 238.465(3) & ORS 238.650

Stats. Implemented: ORS 238.465

Hist.: PERS 5-1996, f. & cert. ef. 6-11-96; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 14-2003, f. & cert. ef. 11-20-03

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**Adm. Order No.:** PERS 15-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03

**Notice Publication Date:** 7-1-03

**Rules Amended:** 459-005-0001

**Subject:** The original filing of this rule with the Secretary of State contained an error in the text of the rule. Specifically, the definition of "volunteer" was incorrect.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-005-0001

### Definitions, Generally

The words and phrases used in chapter 459, Oregon Administrative Rules, have the same meaning given them in ORS 238.005 to 238.750. Specific and additional terms used in chapter 459 generally are defined as follows unless context of a particular division or rule within this chapter requires otherwise:

(1) "Ad hoc" means one-time for a specific purpose, case, or situation without consideration of a broader application.

(2) "After-tax" contributions means:

(a) Member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has not elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "After-tax" contributions are included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "After-tax" contributions are included in computing FAS and in computing the employer's contributions paid to PERS.

(b) Payments made by a member to PERS for the purchase of additional benefits.

(3) "Before-tax" contributions means member contributions required or permitted by ORS 238.200 or 238.515 which a participating employer has elected to "pick up," assume or pay in accordance with ORS 238.205 and 238.515(b). "Before-tax" contributions are not included in the member's taxable income for purposes of state or federal income taxation at the time paid to PERS. "Before-tax" contributions are included in:

(a) Computing final average salary; and

(b) Computing the employer's contributions paid to PERS if the employer has elected to "pick up" the member contributions.

(4) "Calendar month" means the Julian Calendar beginning with the first calendar day of a month through the last calendar day of that month.

(5) "Casual employee" means an individual whose employment is at incidental, occasional, irregular, or unscheduled intervals.

(6) "Contributions" means any contributions required or permitted pursuant to ORS 238.200 or 238.515.

(7) "Effective date of withdrawal" is the later of:

(a) The first day of the calendar month in which PERS receives the completed documents required of the member who is requesting a withdrawal of the member's regular account and variable account, if any; or

(b) The first day of the calendar month in which PERS receives the required notice of separation from the member's former employer(s).

(8) "Effective retirement date" means:

(a) For service retirements, the date described in OAR 459-013-0260; or

(b) For disability retirements, the date described in OAR 459-015-0015.

(9) "Elected official" means an individual who is a public official holding an elective office or an appointive office with a fixed term for the state or for a political subdivision of the state who has elected to participate in PERS pursuant to ORS 238.015(6).

(10) "Emergency employee" means an individual employed on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency.

(11) "Employee" has the same meaning as provided in ORS 238.005(7) and shall be determined in accordance with OAR 459-010-0030.

(a) For the purposes of ORS 238.005 to 238.750 the term "employee" includes public officers whether elected or appointed for a fixed term.

(b) The term "employee" does not include:

(A) A member of the governing board of a political subdivision unless the individual qualifies for membership under ORS 238.015.

(B) An individual who performs services for a public employer as a contractor in an independently established business or as an employee of that contractor in accordance with OAR 459-010-0030.

(C) An individual providing volunteer service to a public employer without compensation for hours of service as a volunteer, except for volunteer firefighters who establish membership in accordance with ORS 238.015(7).

(12) "Employer contribution account" means a record of employer contributions to the Fund, as required by ORS 238.225(1), and investment earnings attributable to those contributions, that the Board has credited to the account after deducting amounts required or permitted by ORS chapter 238.

(13) "Employment" is compensated service to a participating employer as an employee whose:

(a) Period or periods of employment includes only the actual hours of compensated service with a participating employer as an employee, and

(b) Compensated service includes, but is not limited to, paid vacation, paid sick leave, or other paid leave.

(14) "Estimate" means a projection of benefits prepared by staff of a service or disability retirement allowance, a death or a refund payment. An estimate is not a guarantee or promise of actual benefits that eventually may become due and payable, and PERS is not bound by any estimates it provides. (ORS 238.455(6))

(15) "FAS" and "final average salary" have the same meaning as provided in:

(a) ORS 238.005(8) for all PERS Tier One members;

(b) ORS 238.435(2) for all PERS Tier Two members; or

(c) ORS 238.535(2) for judge members of PERS for service as a judge.

(16) "General service member" means membership in PERS as other than a judge member, a police officer, a firefighter, or a legislator.

(17) "Good cause" means a cause beyond the reasonable control of an individual. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the reasonable control of a rational and prudent individual of normal sensitivity, exercising ordinary common sense.

(18) "Independent contractor" means an individual or business entity that is not subject to the direction and control of the employing entity as determined in accordance with OAR 459-010-0032.

(19) "Judge member" has the same meaning as provided in 238.500(3). For purposes of this chapter, active, inactive, and retired membership of a judge member shall have the same meaning as ORS 238.005(12) (b), (c), and (d), respectively.

(20) "Legislator" means an individual elected or appointed to the Oregon Legislative Assembly who has elected to participate in PERS pursuant to ORS 238.015(6) as a member of the Oregon Legislative Assembly as provided in ORS 238.068.

(21) "Member cost" means after-tax member contributions and payments made by or on behalf of a member to purchase additional benefits.

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(22) "Participating employer" means a public employer who has one or more employees who are active members of PERS.

(23) "PERS" and "system" have the same meaning as the Public Employees Retirement System in ORS 238.600.

(24) "Regular account" means the account established under ORS 238.250 for each active and inactive member who has made contributions to the Fund or the account of an alternate payee of such a member.

(25) "Salary," "remuneration" and "compensation" have the same meanings as provided in ORS 238.005(20).

(a) For a Tier One member, the lump sum payment for accrued vacation pay is considered salary:

(A) In determining employee and employer contributions.

(B) In determining final average salary for the purpose of calculating PERS benefits.

(b) For a Tier Two member, the lump sum payment for accrued vacation payment:

(A) Is considered salary in determining employee and employer contributions.

(B) Is not considered salary in determining final average salary for the purpose of calculating PERS benefits.

(26) "Seasonal employee" means an individual whose employment is characterized as recurring for defined periods that are natural divisions of the employer's business cycle or services.

(27) "Staff" means the employees of the Public Employees Retirement System as provided for in ORS 238.645.

(28) "Tier One member" means a member who established membership in the system before January 1, 1996, as defined in ORS 238.430(2).

(29) "Tier Two member" means a member who established membership in the system on or after January 1, 1996, in accordance with ORS 238.430.

(30) "Vacation pay" means a lump sum payment for accrued leave in a Vacation Leave Program provided by a public employer which grants a period of exemption from work for rest and relaxation with pay, and does not include:

(a) Sick leave programs;

(b) Programs allowing the accumulation of compensatory time, holiday pay or other special leaves unless the public employer's governing body indicates by resolution, ordinance, or other legislative process, that such leave is intended to serve as additional vacation leave; and

(c) Other programs, such as a Personal Time Off (PTO) plan, which are a combination of vacation, sick, bereavement, personal and other leaves of pay as defined and described by a public employer unless the employer has a written policy that clearly indicates the percentage of the plan that represents vacation leave. If the employer's PTO has a cash option, the employer shall report to PERS the amount of any lump sum pay-off for the percentage that represents vacation leave.

(31) "Variable account" and "member variable account" mean the account in the Variable Annuity Account established under ORS 238.260(2) for each active and inactive member who has elected to have amounts paid or transferred into the Variable Annuity Account.

(32) "Variable Annuity Account" means the account established in ORS 238.260(2).

(33)(a) "Volunteer" means an individual who performs a service for a public employer, and who receives no compensation for the service performed.

(b) The term "volunteer" does not include an individual whose compensation received from the same public employer for similar service within the same calendar year exceeds the reasonable market value for such service.

(34) "Year" means any period of 12 consecutive calendar months.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005 - 238.715

Hist.: PERS 2-1998, f. & cert. ef. 3-16-98; PERS 3-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 12-2003, f. & cert. ef. 11-14-03; PERS 14-2003, f. & cert. ef. 11-20-03; PERS 15-2003, f. & cert. ef. 12-15-03

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**Adm. Order No.:** PERS 16-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03

**Notice Publication Date:** 9-1-03

**Rules Amended:** 459-060-0001, 459-060-0010, 459-060-0020

**Subject:** These rule modifications pertain to the administration of public records maintained by PERS. The modifications to OAR 459-060-0001 and 459-060-0020 clarify to whom PERS may release a member's information and which records are exempt from public disclosure under ORS 192.502(2) and (12). Modifications in OAR 459-060-0010 are necessary to delete language regarding the waiv-

er of fees. The agency needs to clarify that as a fiduciary, PERS is prohibited from waiving fees for public records and must charge actual costs.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-060-0001

### Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms are defined as follows unless context requires otherwise.

(1) For the purposes of division 060, the term "member" means an employee of a PERS participating employer, a PERS member as described in ORS 238.005(12), a former PERS member, the beneficiary of a PERS member, an alternate payee as defined in ORS 238.465, or the beneficiary of an alternate payee.

(2) "Medical records" means any reports, letters, or notes containing information regarding the member's health condition (mental or physical), or ability to perform any work.

(3) "Public disclosure" means disclosure of information to any individual other than the member or an individual that is legally authorized to act on behalf of the member as to PERS matters.

Stat. Auth.: ORS 192.502 & ORS 238.650

Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 16-2003, f. & cert. ef. 12-15-03

## 459-060-0010

### Requests and Fees for Public Records

(1) **Requesting public records.** Anyone may request to inspect or obtain copies of a public record(s), as defined in ORS 192.410(4), that is in the custody of the Public Employees Retirement System. PERS will allow reasonable access to any public record which an individual has a right to inspect during regular business hours, as long as the record is not exempt from disclosure by law. PERS may determine the time and manner of inspection or copying to protect the records and to prevent interference with the regular activities of PERS and its employees. A request for public records must be made in writing, and must include:

(a) The name, address, and telephone number, if any, of the requestor;

(b) The identification, description, type, and format of the public record, if known to the requestor; and

(c) The number of copies requested of the public record, if copies are requested.

(2) A reasonable period of time, as determined by PERS, will be allowed for staff to locate and assemble the requested records, and consult with the Attorney General's office, if needed.

(3) **Fees for public records.** In accordance with ORS 192.440, PERS may charge a reasonable fee. Fees are calculated to reimburse PERS for the actual costs of providing and conveying copies of public records. A fee schedule is available upon request.

(a) For each request, the requestor will be informed of the estimated cost, including the employee hourly rate of pay for staff time charges, before the service(s) is performed.

(b) All fees must be paid in advance of releasing the requested public records for inspection or before photocopies are provided, unless otherwise directed by the Director or designee. Payments must be made by check or money order and made payable to the Public Employees Retirement System.

(4) **Records available at no cost.** No fee will be charged to a member or an employer for one copy of the following public records:

(a) Approved Board minutes or Board orders for the past 12 months;

(b) Current PERS administrative rules;

(c) Current Oregon Revised Statutes pertaining to PERS;

(d) Current PERS publications;

(e) A PERS member's record to the extent permitted under OAR 459-060-0030 and 459-060-0020, excluding paragraph (3)(a)(D); and

(f) No fee will be charged for providing such records:

(A) In an alternative format when required under the Americans with Disabilities Act; or

(B) If the records can be provided at nominal expense where collection of the fee would be more than the cost to provide the records.

(5) Except as provided under section (4) of this rule, PERS may not reduce or waive fees for making public records available and must charge the actual costs for services provided.

Stat. Auth.: ORS 192.440, ORS 238.650 & ORS 243.470

Stats. Implemented: ORS 237.410-520, 237.610-620, 237.950-980, 238, 243.401-507 & 192.410-505

Hist.: PERS 11-2000, f. 12-15-00 cert. ef. 1-1-01; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03

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## 459-060-0020

### Confidentiality of Member's Records

(1) ORS 192.502(12) unconditionally exempts from public disclosure a member's nonfinancial membership records and an active or inactive member's financial records maintained by PERS. PERS shall not release such records to anyone other than the affected member or an authorized representative of the member or the member's estate except:

(a) Upon the written authorization of the member, or an individual that is legally authorized to act on behalf of the member or the member's estate as to PERS matters; or

(b) As otherwise provided in OAR 459-060-0030.

(2) ORS 192.502(2) conditionally exempts from public disclosure a retired member's financial information maintained by PERS. PERS shall not release such records to anyone other than the retired member or the retired member's estate unless:

(a) To do so would not constitute an unreasonable invasion of privacy and if there is clear and convincing evidence that disclosure is in the public's interest;

(b) PERS receives written authorization from the retired member, or an individual that is legally authorized to act on behalf of the retired member or the retired member's estate as to PERS matters; or

(c) Release is provided for under OAR 459-060-0030.

(3)(a) Subject to subsection (b) of this section, PERS may provide a member's current or former employer with information from the member's records that is otherwise protected from public disclosure to the extent necessary to enable the employer:

(A) To determine whether a retirement plan maintained by the employer (other than PERS) complies with any benefit or contribution limitations or nondiscrimination requirement imposed by applicable federal or state law;

(B) To apply any coordination of benefits requirement contained in any non-PERS benefit plan maintained by the employer;

(C) To perform any necessary account reconciliation following an integration of the employer's retirement plan into PERS; or

(D) To reconcile an actuarial valuation by providing the employer with the following member information:

(i) Salary information;

(ii) Employment history; or

(iii) Contribution history.

(b) PERS will not provide the information described in subsection (a) of this section unless the employer demonstrates to the satisfaction of PERS that the information is necessary to accomplish one of the purposes described in paragraphs (A), (B), (C) and (D) of section (3) of this rule and the employer certifies in writing that it will not disclose the information to any third party except to the extent permitted under OAR 459, division 060 and ORS 192.502(10).

(4) PERS shall not provide a mailing list of its members or their dependents to any individual or enterprise.

Stat. Auth.: ORS 192.502 & ORS 238.650

Stats. Implemented: ORS 192.410-505, 237.410-520, 237.610-620, 237.950-980 & 238

Hist.: PERS 8-1996, f. & cert. ef. 11-12-96; PERS 7-2002, f. & cert. ef. 5-24-02; PERS 16-2003, f. & cert. ef. 12-15-03

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**Adm. Order No.:** PERS 17-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03

**Notice Publication Date:** 7-1-03

**Rules Adopted:** 459-013-0300

**Subject:** This new rule implements and clarifies section 10 of Enrolled HB 2003 which requires the PERS Board to perform retirement allowance recalculations for certain retirees. It specifies to whom the rule applies, describes the calculations of the "revised service retirement allowance" and the "fixed service retirement allowance," indicates that the member will receive the higher of the two calculations, and specifies that the provisions of the rule are effective July 1, 2003.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-013-0300

### HB 2003 Retirement Allowance Recalculations

(1)(a) The provisions of this rule apply to Tier One members, and the alternate payees and beneficiaries of Tier One members, who receive a service retirement allowance calculated under ORS 238.300(2)(b)(A) and who have an effective retirement date that is on or after April 1, 2000, and before April 1, 2004.

(b) The provisions of this rule do not apply to:

(A) Judge members and the beneficiaries or alternate payees of judge members.

(B) A member who receives a disability retirement allowance.

(2) Revised service retirement allowance. The "revised service retirement allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as amended by section 13, Enrolled HB 3020) shall be calculated as follows:

(a) An account balance for the member as of the member's effective retirement date shall be determined as though the balance in the member's regular account as of December 31, 1999, had been credited with 11.33 percent earnings for the calendar year 1999.

(b) The member's service retirement allowance shall then be calculated for that member as of the member's effective retirement date using the account balance established in subsection (a) of this section. This calculation shall be made under ORS 238.300; section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004); and any other provisions of ORS Chapter 238 that are applicable to the calculation or adjustment of the member's service retirement allowance.

(c) The retirement allowance calculated in subsection (b) of this section shall be converted to the form of benefit selected by the member under ORS 238.305, if any, and adjusted as required by section 4, chapter 68, Oregon Laws 2003 (Enrolled HB 2004), or by any other provision of ORS Chapter 238.

(d) The allowance calculated under subsection (b) or, if applicable, subsection (c) of this section shall then be adjusted as if the cost of living adjustment provided for in ORS 238.360 had applied to that benefit for each calendar year after the member's effective retirement date.

(3) Fixed service retirement allowance. The "fixed service retirement allowance" provided for in section 10, chapter 67, Oregon Laws 2003 (Enrolled HB 2003, as amended by section 13, Enrolled HB 3020) shall be the amount payable to or on account of the member on July 1, 2003, or on the member's effective retirement date, whichever is later. The fixed service retirement allowance includes any benefit increases such as those provided by ORS 238.375, 238.385, or 238.387, and cost of living adjustments that have been made to the member's actual retirement allowance prior to July 1, 2003.

(4) The service retirement allowance payable to or on account of members described in section (1) of this rule shall be the greater of the revised service retirement allowance calculated under section (2) of this rule or the fixed service retirement allowance calculated under section (3) of this rule.

(5) The provisions of this rule are effective July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: OL 2003 Ch. 67 & Ch. 625 (Enrolled HB 2003 & HB 3020)

Hist.: PERS 6-2003(Temp), f. 6-13-03 cert. ef. 7-1-03 thru 12-26-03; Suspended by PERS 7-2003(Temp), f. 6-30-03, cert. ef. 7-1-03 thru 12-26-03; PERS 17-2003, f. & cert. ef. 12-15-03

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**Adm. Order No.:** PERS 18-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 5-31-04

**Notice Publication Date:**

**Rules Amended:** 459-017-0060

**Subject:** The proposed temporary rule describes the limitations retirees have when they return to work after retirement if they want to continue their retirement benefit under ORS 238.082. A retired member may work either 1,039 hours or work so that their annual compensation does not exceed the Social Security earnings limits in a calendar year, whichever limit is greater. The modified language updates the Social Security earnings limits to reflect calendar year 2003 and incorporates the new legislation regarding members who can now exceed the 1,039 hour limit.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-017-0060

### Reemployment of Retired Members

(1) **Reemployment under ORS 238.082(2).** A retired member of the system, receiving a service retirement allowance, may be employed under ORS 238.082(2) by a participating employer without loss of benefits and a participating employer may employ a retired member provided:

(a) The period or periods of employment by one or more public employers participating in the system shall not exceed 1039 hours in a calendar year; or

(b) If a retired member is receiving old age, survivors or disability benefits under the federal Social Security Act, employment is limited to the greater of 1039 hours in a calendar year or the total number of hours at a

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specified hourly rate of pay, so that the annual compensation of the retiree does not exceed the following:

(A) For retired members who are 62 through 64 years of age, the limit is \$11,520 for the calendar year 2003;

(B) For retired members who are 65 through 69 years of age, the limit is \$30,720 for the calendar year 2003; or

(C) Retired members who are 70 years of age or older may work an unlimited number of hours.

(c) Limitations on employment in this section shall be based on the number of hours employed on and after the retired member's effective date of retirement.

(d) Except as provided under subsection (1)(e) of this rule, limitations on employment in this section shall apply to all retired members of PERS, including retired members who, upon reemployment, elect to participate in an Optional Retirement Plan under ORS 243.800, or an Alternative Retirement Plan under ORS 353.250(2).

(e) The limitations on employment in this section do not apply if the retired member meets the requirements under ORS 238.082(3), (4), (5) or (6), or 399.075(8).

(2) A participating employer may be required to certify to PERS that a retired member has not been employed by that employer a greater number of hours than allowed in ORS 238.082(2) and this rule. In addition, the participating employer may be required to make available to PERS, business and employment records to substantiate the actual number of hours a retired member was employed.

(3) **Exceeding the hourly limitation.** If a retired member is reemployed within the limitations of ORS 238.082(2) and section (1) of this rule, but the period or periods of employment subsequently exceeds those limits, the following shall occur if employment continues into the month following the date the limits are exceeded:

(a) PERS shall terminate the retired member's benefits. The last monthly service retirement allowance the member is entitled to shall be for the month in which the limits were exceeded.

(b) The member shall reestablish active membership in accordance with ORS 238.078 the first of the calendar month following the date the limits were exceeded.

(4) A retired member who qualifies for reemployment without loss of benefits under section (1) of this rule shall continue to receive a service retirement allowance and the status of the individual as a retired member shall not be affected.

(5) **Reemployment under ORS 238.078.** If a retired member is reemployed by a participating employer under the provisions of ORS 238.078, the following shall occur and will be effective on the date of reemployment:

(a) PERS shall terminate the retired member's benefits. The last monthly service retirement allowance the member is entitled to shall be for the month prior to the first of the calendar month the member is reemployed;

(b) The member shall reestablish active membership; and

(c) If the member has been retired less than six months as of the effective date of reemployment, all retirement benefits received by the member must be repaid to PERS in a lump sum payment before the member can be reemployed.

(6) **Reporting requirement.** The employer shall notify PERS under which statute the retiree is reemployed in a format acceptable to PERS.

(7) The provisions of this rule are not applicable to a person who is not defined as an employee in OAR 459-005-0001.

(8) **Sick Leave.** Accumulated unused sick leave reported by the employer to PERS upon retirement, as provided for in ORS 238.350, shall not be made available to a retired employee returning to work under the provision of sections (1) or (5) of this rule and as provided for in ORS 238.078 and 238.082.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.078, ORS 238.082

Hist.: PERS 1-1994, f. 3-29-94, cert. ef. 4-1-94; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0182; PERS 13-1998, f. & cert. ef. 12-17-98; PERS 7-2001, f. & cert. ef. 12-7-01; PERS 18-2003(Temp), f. & cert. ef. 12-15-03 thru 5-31-04

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**Adm. Order No.:** PERS 19-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04 thru 6-25-04

**Notice Publication Date:**

**Rules Adopted:** 459-080-0200

**Subject:** The proposed temporary rule specifies that contributions to the Oregon Public Service Retirement Plan (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. Upon withdrawal, the account value will be determined as of the first of the next month after the withdrawal request is received.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-080-0200

### IAP Account Adjustments for Earnings or Losses

(1) Employee, employer, and rollover contributions under the OPSRP Individual Account Program ("IAP") will be posted to the applicable individual accounts only when funds are actually received by PERS and have been successfully matched to the corresponding wage and contribution record. The effective date for posting these contributions shall be the first of the calendar month following the month funds are received and matched as described above. Accounts will be adjusted monthly thereafter to reflect any net earnings or losses and to pay reasonable administrative expenses. This effective date applies to all contributions, whether for a current period or those sent as adjustments for prior periods.

(2) When a member requests a withdrawal of the member's employee, rollover, and employer accounts under section 40 of chapter 733, Oregon Laws 2003 (Enrolled HB 2020), those accounts will be adjusted to reflect any net earnings or losses and to pay reasonable administrative expenses only through the end of the month in which the request for withdrawal is received, regardless of when the payment is issued.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 19-2003(Temp), f. 12-15-03 cert. ef. 1-1-04 thru 6-25-04

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**Adm. Order No.:** PERS 20-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 4-1-04

**Notice Publication Date:** 10-1-03

**Rules Amended:** 459-007-0070, 459-007-0080, 459-007-0090

**Subject:** These amended rules under Division 007, Earnings and Interest Distribution, are necessary to conform with the provisions of HB 2001, as amended by HB 2003, effective on July 1, 2003. OAR 459-007-0070, 459-007-0080, 459-007-0090 amend language that previously guaranteed earnings for Tier One members based on the assumed interest rate. These rules apply to service and disability retirements that have an effective retirement date on or after April 1, 2004.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-007-0070

### Crediting Earnings at Tier One Service or Disability Retirement

Upon the service retirement or disability retirement of a Tier One member, earnings from the effective date of the last annual rate to the effective retirement date shall be credited to the member account in the manner specified in this rule.

(1) Earnings shall be credited to the member's regular account as follows:

(a) If earnings for the prior calendar year have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited to the member's variable account as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(8); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-2000; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04

# ADMINISTRATIVE RULES

## 459-007-0080

### Crediting Earnings at Tier One Service Retirement, Single Payment

Notwithstanding OAR 459-007-0070, when a Tier One member retires and elects to receive a single payment of benefits under ORS 238.305(2) or (3), earnings from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings on the member's regular account shall be credited as follows:

(a) If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings for that year shall be credited to the member's regular account based on the latest year-to-date calculation available for that year.

(b) Earnings credited for the calendar year of the effective retirement date shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective retirement date.

(c) Earnings from the effective retirement date to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

(2) If the member is participating in the Variable Annuity Account at time of retirement, earnings or losses shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited, earnings or losses for that year shall be credited to the member's variable account based on the latest year-to-date calculation available for that year.

(b) Earnings or losses from January 1 of the year of the effective retirement date to the effective retirement date shall be credited to the member's variable account based on the latest year-to-date calculation as of the effective retirement date.

(3) Earnings on the combined amount of the accounts credited under sections (1) and (2) of this rule from the effective retirement date to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(9); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04

## 459-007-0090

### Crediting Earnings upon Tier One Service Retirement, Two or More Installment Payments

Notwithstanding 459-007-0070, if a Tier One member retires on or after April 1, 2004, and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) **Regular account.** Earnings shall be credited to the member's regular account as follows:

(a) **Prior year earnings.** If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings for the calendar year of the effective retirement date shall be based on the latest year-to-date calculation as of the effective retirement date.

(2) **Variable account.** If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) **Prior year earnings.** If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) **Retirement year earnings.** Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) **Initial installment.** Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment

based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) **Annual earnings** — initial year. Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding the remaining earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The annual rate for that year less the latest year-to-date calculation as of the effective retirement date.

(5) **Annual earnings** — subsequent years. Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the date of distribution of the annual installment; multiplied by

(B) The annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

(A) The member's regular account balance as of December 31; multiplied by

(B) The annual rate for that year, prorated from the date of distribution to December 31.

(6) **Final installment.** The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest year-to-date calculation as of the date of distribution of the final installment.

Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & ORS 238.315

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(10); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 20-2003, f. 12-15-03 cert. ef. 4-1-04

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**Adm. Order No.:** PERS 21-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 459-080-0010, 459-080-0500

**Subject:** New administrative rules are needed to implement and clarify Enrolled House Bill 2020, which establishes the Oregon Public Service Retirement Plan. OAR 459-080-0010 specifies the requirements for becoming a member of the individual account program. OAR 459-080-0500 clarifies annual addition limitations for member accounts.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-080-0010

### Membership

(1) An employee who is eligible for membership in the pension program under OAR 459-075-0010 shall become a member of the individual account program on the same day membership is established in the pension program.

(2) An employee who was an active or inactive member of PERS on August 28, 2003, and retains membership in PERS through January 1, 2004, shall become a member of the individual account program on January 1, 2004.

(3) An employee who performed a period of service before August 29, 2003, that was credited to the six-month period required under ORS 238.015 for membership in PERS shall become a member of the individual account program on the date the employee becomes a member of PERS, or January 1, 2004, whichever is later.

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04



# ADMINISTRATIVE RULES

459-080-0500

## Limitation on Contributions

(1) **Definitions.** For purposes of this rule:

(a) "Annual addition" has the same meaning given the term in 26 U.S.C. 415(c)(2) as in effect on August 29, 2003.

(b) "Compensation" has the same meaning given the term in 26 U.S.C. 415(c)(3) as in effect on August 29, 2003.

(2) **Annual addition limitation.** Except as otherwise provided in this rule, the annual addition to a member account for any calendar year shall not exceed the lesser of:

(a) \$41,000; or

(b) 100 percent of the member's compensation for the calendar year.

(3) **Purchase of military service.** If a member makes a payment to purchase retirement credit for military service under OAR 459-080-0100:

(a) The payment shall be treated as an annual addition for the calendar year of the military service to which it relates;

(b) The payment shall not be treated as an annual addition for the calendar year in which it is made; and

(c) The member's compensation shall be the amount described in OAR 459-080-0100(3)(c).

Stat. Auth.: OL 2003 Ch. 733

Stats. Implemented: OL 2003 Ch. 733

Hist.: PERS 21-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** PERS 22-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 459-005-0250

**Subject:** This new rule pertains to charging fees for retirement benefit estimates to recover actual administrative costs to the system. Members within two years of eligibility for retirement will continue to be offered two estimates per calendar year at no charge, but the new rule states that any additional estimates will cost the member \$60 per estimate. Statutory authority to recover costs was granted in HB 2401 §5, effective January 1, 2004.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

459-005-0250

## Recovery of Administrative Costs

(1) Any active or inactive member within two years of eligibility for service retirement may request from PERS an estimate of retirement benefits ("estimate").

(2) Upon request, PERS shall provide a member with a maximum of two estimates in a calendar year at no cost.

(3) PERS shall charge a fee of \$60 for each estimate that exceeds the limit specified in section (2) of this rule.

(4) A fee charged under section (3) of this rule shall be paid in full prior to receipt of the requested estimate(s). Payment shall be made by check or money order payable to the Public Employees Retirement System.

(5) The provisions of this rule do not apply to current judge members during their term of office.

Stat. Auth.: ORS 238.650, 238.610

Stat. Implemented: ORS 238.610 & OL 2003 Ch. 105

Hist.: PERS 22-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** PERS 23-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Amended:** 459-035-0050

**Subject:** This rule outlines the collection of data and the calculation method for the Retiree Health Insurance Premium Account premium subsidy for eligible State of Oregon retirees. The factor identified in subparagraph (2)(b)(E)(iii) has been updated as required in 459-035-0050(3). This factor is used in the calculation of the subsidy and is the estimated ratio of non-Medicare retiree claims cost to active member claims cost. This factor must be recalculated every three years.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

459-035-0050

## Contribution Payment From Retiree Health Insurance Premium Account for Eligible Retired State Employees Not Eligible for Medicare

This rule establishes the procedure for determining the amount of contribution that will be paid from the Retiree Health Insurance Premium Account (RHIPA)(ORS 238.415) on behalf of an eligible retired state employee under age 65, as described in OAR 459-035-0040, who is enrolled in a health insurance plan sponsored by PERS.

(1) **Definitions:**

(a) "Health Insurance Premium" means the self-sustaining premium calculated to cover the projected claims and costs incurred by the insurance company for a participant in a health care plan. "Health Insurance Premium" includes retrospective premiums and employee contributions. "Health Insurance Premium" does not include any intentional load to cover dependents or other groups or participants;

(b) "Net to Carrier" means the health insurance premium due to the insurance company. "Net to Carrier" does not include any charges for PEBB or PERS health insurance administration;

(c) "Retrospective Premium" means any additional premium liability that is determined at the end of the plan year, based on any pre-determined formula.

(2) On or before November 1 of each calendar year, staff shall determine the monthly amount available to be paid from the RHIPA on behalf of an eligible retired state employee enrolled in a PERS health insurance plan contracted for under ORS 238.410. In determining the average difference between the health insurance premiums paid by retired state employees under contracts entered into by the Public Employees Retirement Board and the health insurance premiums paid by state employees who are not retired under contracts entered into by PEBB (without regard to employees who have opted out of PEBB - sponsored health insurance coverage), the staff shall calculate the change in value of the average of active PEBB plans after adjusting for the demographic (age/sex) differences between:

(a) The active employee participants; and

(b) Retired members receiving a subsidy and participating in one of the PERS non-Medicare health insurance plans as follows:

(A) Obtain the average employee participation for each health insurance plan sponsored by PEBB for the most recent three-month period;

(B) Obtain the health insurance premium for each health insurance plan sponsored by PEBB for the plan year next following;

(C) Obtain the average eligible retired state employee participation for each health insurance plan sponsored by PERS for the most recent three-month period;

(D) Compute the average health insurance premium for all plans sponsored by PEBB pursuant to the following formula:

(i) Step 1. Multiply the average participation in paragraph (A) of this subsection by the health insurance premium in paragraph (B) of this subsection for each plan;

(ii) Step 2. Total the average participation for all plans;

(iii) Step 3. Total the result for all of the calculations in Step 1 of subparagraph (i) of this paragraph;

(iv) Step 4. Divide the total in Step 3 of subparagraph (iii) of this paragraph by the total in Step 2 of subparagraph (ii) of this paragraph.

(E) Compute the change in value of the average active PEBB plan pursuant to the following formula:

(i) Step 1. Divide the total in paragraph (C) of this subsection by the total in Step 2 of paragraph (D) of this subsection;

(ii) Step 2. Multiply the average participation for each plan in paragraph (A) of this subsection by the result of Step 1 of subparagraph (E)(i) of this subsection for each plan;

(iii) Step 3. Multiply the premium for each plan in paragraph (B) of this subsection by the factor 1.6240. The factor 1.6240 is the estimated ratio of non-Medicare retiree claims cost to active claims cost;

(iv) Step 4. Multiply the result of Step 2 of subparagraph (ii) of this paragraph by the result of Step 3 of subparagraph (iii) of this paragraph for each plan;

(v) Step 5. Total the results for all of the calculations in Step 4 of subparagraph (iv) of this paragraph;

(vi) Step 6. Total the results of the average participation calculations for all plans in Step 2 of subparagraph (ii) of this paragraph;

(vii) Step 7. Divide the total premium in Step 5 of subparagraph (v) of this paragraph by total average participation as calculated in Step 6 of subparagraph (vi) of this paragraph.

(F) The result of Step 7 of subparagraph (E)(vii) of this subsection minus Step 4 of subparagraph (D)(iv) of this subsection is the maximum monthly amount available to be paid by the PERS on behalf of an eligible retired state employee. Under no circumstances will this amount be less than \$0.

# ADMINISTRATIVE RULES

(3) The factor in Step 3 of sub-paragraph (2)(E)(iii) of this rule shall be evaluated no less frequently than every three years.

(4) The monthly amount available established under section (2) of this rule shall be published by November 1 of each calendar year, or as soon as possible thereafter, and shall be effective for the plan year next following for PERS sponsored plans.

(5) In the event an active plan is not to be renewed for a subsequent plan year, the participants shall be deemed to be covered by another existing plan most similar in benefits.

(6) This rule applies to the amount to be paid by PERS for the plan year 1993 and subsequent plan years.

(7) No person eligible for a contribution from the RHIPA as provided for in this rule shall be entitled to a contribution from the RHIA.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238.415  
Hist.: PERS 8-1992, f. 12-14-92, cert. ef. 12-31-92; PERS 4-1996, f. & cert. ef. 6-11-96; PERS 4-1998, f. & cert. ef. 3-16-98; PERS 15-1998, f. & cert. ef. 12-17-98; PERS 12-2000(Temp), f. 12-15-00 cert. ef. 1-1-01 thru 6-29-01; PERS 2-2001, f. & cert. ef. 4-12-01; PERS 14-2002, f. & cert. ef. 11-18-02; PERS 23-2003, f. 12-15-03 cert. ef. 1-1-04

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**Adm. Order No.:** PERS 24-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03

**Notice Publication Date:** 7-1-03, 10-1-03

**Rules Adopted:** 459-007-0003, 459-007-0095

**Rules Amended:** 459-007-0001, 459-007-0040, 459-007-0050, 459-007-0060

**Rules Repealed:** 459-007-0001(T), 459-007-0040(T), 459-007-0050(T), 459-007-0060(T), 459-007-0100

**Subject:** These new and amended rules under Division 007, Earnings and Interest Distribution, are necessary to conform with the provisions of HB 2001, as amended by HB 2003, effective on July 1, 2003. The rules address crediting earnings to member accounts for withdrawals, service and disability retirement, and upon death of a member. OAR 459-007-0100 is no longer necessary as disability retirements are not addressed in 459-007-0070.

**Rules Coordinator:** Yvette S. Elledge—(503) 603-7713

## 459-007-0001

### Definitions

The words and phrases used in this Division have the same meaning given them in ORS Chapter 238 and OAR 459-005-0001. Specific and additional terms for purposes of this Division are defined as follows unless context requires otherwise:

(1) "Annual rate" means the rates determined by the Board for crediting earnings to Tier One regular accounts, Tier Two regular accounts and member variable accounts, effective as of December 31 of each year.

(2) "Assumed rate" means the actuarial assumed rate of return on investments as adopted by the Board for the most recent actuarial valuation.

(3) "Average annualized rate" means the monthly rate provided by the Oregon State Treasury representing the rate credited to cash accounts.

(4) The "Benefits-in-Force Reserve" or "BIF Reserve" means the reserve established under ORS 238.670(2).

(5) "Capital Preservation Reserve" means the reserve established under ORS 238.670(3).

(6) "Contingency Reserve" means the reserve established under ORS 238.670(1).

(7) The "date of distribution" is the date inscribed on the check, warrant, or electronic transfer issued to or on behalf of the member, the member's beneficiary, or an alternate payee.

(8) "Date of payment" means the date a payment is received by PERS.

(9) "Earnings" means all income to the Fund from investments and other sources, but does not include member or employer contributions.

(10) "Tier One Member Deficit Reserve" and "Deficit Reserve" mean the deficit reserves established in ORS 238.255(1) that have been used to fund crediting of the assumed rate to Tier One regular accounts and that are used to reflect losses attributable to Tier One regular accounts.

(11) "Tier One Member Rate Guarantee Reserve" and "Rate Guarantee Reserve" mean the reserve referenced in ORS 238.255(1) that enables the Board to credit earnings at or above the assumed rate under the conditions specified in ORS 238.255.

(12) "Year-to-date calculation" means the factor used to credit a pro-rata distribution of year-to-date earnings, allowing for reserves and expenses, to Tier One regular accounts, Tier Two regular accounts, or member variable accounts. These factors are calculated by staff on a monthly basis using the market value of investments in the Fund as supplied by the

Oregon State Treasury. Year-to-date calculations for Tier One member regular accounts will be determined in accordance with OAR 459-007-0003.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238  
Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(1); PERS 6-1998, f. & cert. ef. 5-22-98, Renumbered from 459-007-0010; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03

## 459-007-0003

### Determination of Tier One Year-to-Date Calculation

Any year-to-date calculation ("factor") used to credit earnings to Tier One member regular accounts is subject to the following conditions:

(1) If the balance in the Deficit Reserve is other than zero at the time the factor would be applied, the factor shall be zero.

(2) In any month in which the factor would be less than a year-to-date equivalent of the assumed rate, the Rate Guarantee Reserve shall be used to the extent available to credit Tier One regular accounts up to a year-to-date equivalent of the assumed rate.

(3) The factor shall not be greater than a year-to-date equivalent of the assumed rate until the conditions in ORS 238.255(3) have been met.

(4) For purposes of crediting the regular accounts of Tier One members who retire before April 1, 2004, and alternate payees of those members, the factor shall be determined in accordance with the Oregon Administrative Rules in effect on June 30, 2003.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238  
Hist.: PERS 24-2003, f. & cert. ef. 12-15-03

## 459-007-0040

### Crediting Earnings upon Withdrawal of a Tier One Member's Account

When a Tier One member withdraws his or her member account under ORS 238.265, earnings from the effective date of the last annual rate to the date of distribution shall be credited in the manner specified in this rule.

(1) Earnings on the member's regular account shall be credited as follows:

(a) If earnings for the calendar year prior to the effective date of withdrawal have not yet been credited, earnings for that year shall be credited to the member's regular account based on the latest year-to-date calculation available for that year.

(b) Earnings from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's regular account based on the latest year-to-date calculation as of the effective date of withdrawal.

(2) If the member is participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited as follows:

(a) If earnings or losses for the calendar year prior to the effective date of withdrawal have not yet been credited, earnings or losses for that year shall be credited to the member's variable account based on the latest year-to-date calculation available for that year.

(b) Earnings or losses from January 1 of the calendar year of the effective date of withdrawal to the effective date of withdrawal shall be credited to the member's variable account based on the latest year-to-date calculation as of the first of the month of the effective date of withdrawal.

(3) After earnings and losses have been credited in accordance with sections (1) and (2) of this rule, the value of the variable account shall be added to the value of the regular account and the sum shall constitute the withdrawal amount.

(4) Earnings on the withdrawal amount from the effective date of withdrawal to the date of distribution shall be paid to the member based on the average annualized rate prorated for that period.

(5) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650  
Stats. Implemented: ORS 238.265  
Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(5); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03

## 459-007-0050

### Crediting Earnings for a Deceased Tier One Active or Inactive Member

Upon the death of an active or inactive Tier One member, earnings from the date of death to the date of distribution shall be credited as specified in this rule.

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(1) Definitions. For purposes of this rule:

(a) "Death benefit amount" means the funds held by PERS for the beneficiary or beneficiaries of a deceased member until benefits are distributed.

(b) "Effective date of request" means the first of the month in which PERS receives a valid request for distribution of the death benefit amount.

(2) For a member whose date of death is on or after January 1, 2000:

(a) If the member's death is prior to July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the greater of the assumed rate, prorated from January 1 to the first of the month of the member's death, or the latest year-to-date calculation as of the first of the month of the member's death.

(b) If the member's death is on or after July 1, 2003, earnings shall be credited to the member's regular account as follows:

(A) If earnings for the calendar year prior to the date of the member's death have not yet been credited, earnings for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(c) If the member was participating in the Variable Annuity Account, earnings or losses of the Variable Annuity Account shall be credited to the member's variable account as follows:

(A) If earnings or losses for the calendar year prior to the calendar year of the member's death have not yet been credited, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(B) Earnings or losses for the calendar year of the member's death shall be credited based on the latest year-to-date calculation as of the first of the month of the member's death.

(d) After earnings have been credited in accordance with subsections (a), (b) and (c) of this rule, the value of the member's variable account shall be added to the value of the member's regular account and the sum shall constitute the death benefit amount as of the first of the month of the member's death.

(e) Earnings on the death benefit amount from the first of the month of the member's death to the end of the calendar year shall be credited based on the Tier Two annual rate less the latest year-to-date calculation for Tier Two as of the first of the month of the member's death.

(f) Earnings on the death benefit amount for calendar years following the year of the member's death and prior to the year funds are requested shall be credited in accordance with OAR 459-007-0005 for Tier Two regular accounts.

(g) Earnings on the death benefit amount from January 1 of the year funds are requested to the effective date of request shall be based on the latest year-to-date calculation for Tier Two regular accounts.

(h) Earnings from the effective date of request to the date of distribution shall be based on the average annualized rate.

(3) If a member's date of death is prior to January 1, 2000, and the effective date of request is prior to June 1, 2004, earnings shall be credited as follows:

(a) Earnings from the date of death through December 31, 1999, shall be credited to the member's regular account as of December 31, 1999, in accordance with the provisions of this rule in effect from the date of death through December 31, 1999.

(b) Earnings from January 1, 2000, to the date of distribution shall be credited in accordance with ORS 238.390 as simple interest prorated for that period based on the assumed rate.

(4) If a member's date of death is prior to January 1, 2000, but the effective date of request is on or after June 1, 2004, earnings shall be credited in accordance with section (2) of this rule.

(5) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, ORS 38.430 & ORS 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PER 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(6); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03

## 459-007-0060

### Crediting Earnings to the Tier One Employer Death Benefit

(1) Upon the death of a Tier One member who is entitled to an employer death benefit under ORS 238.395, the amount of the employer

benefit shall be added to the death benefit amount, as defined in OAR 459-007-0050(1), as of the first of the month of the member's death.

(2) Earnings shall thereafter be credited to the death benefit amount in accordance with OAR 459-007-0050(2)(c) through (g).

(3) The provisions of this rule are effective on July 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.390, ORS 38.430 & ORS 238.435

Hist.: PER 8, f. 12-15-55; PER 4-1980(Temp), f. 11-26-80, ef. 12-1-80; PER 1-1984(Temp), f. & ef. 6-29-84; PER 2-1984(Temp), f. & ef. 9-26-84; PER 1-1985, f. & ef. 3-22-85; PERS 1-1995, f. 9-12-95, cert. ef. 1-1-96; PERS 1-1996, f. & cert. ef. 3-26-96; Renumbered from 459-010-0135(7); PERS 9-1998, f. 5-22-98, cert. ef. 1-1-00; PERS 1-2000, f. & cert. ef. 1-7-00; PERS 4-2003(Temp), f. 6-13-03, cert. ef. 7-1-03 thru 12-26-03; PERS 24-2003, f. & cert. ef. 12-15-03

## 459-007-0095

### Crediting Earnings upon Tier One Service Retirement Prior to April 1, 2004, Two or More Installment Payments

Notwithstanding 459-007-0070, if a Tier One member retires with an effective retirement date on or after August 1, 2003, and prior to April 1, 2004, and elects to receive installment payments under ORS 238.305(4), earnings shall be credited from the effective date of the last annual rate to the date of distribution of the final installment payment in the manner specified in this rule.

(1) Regular account. Earnings shall be credited to the member's regular account as follows:

(a) Prior year earnings. If earnings for the calendar year prior to the effective retirement date have not yet been credited, earnings shall be credited for that year based on the greater of the assumed rate or the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings for the calendar year of the effective retirement date shall be based on the greater of the assumed rate or the latest year-to-date calculation as of the effective retirement date.

(2) Variable account. If the member is participating in the Variable Annuity Account, earnings or losses shall be applied to the member's variable account as follows:

(a) Prior year earnings. If earnings or losses for the calendar year prior to the effective retirement date have not yet been credited to the member's variable account, earnings or losses for that year shall be credited based on the latest year-to-date calculation available for that year.

(b) Retirement year earnings. Earnings or losses for the calendar year of the effective retirement date shall be credited based on the latest year-to-date calculation as of the effective retirement date.

(c) In accordance with ORS 238.305(4)(a)(F), after crediting earnings or losses as provided in subsections (a) and (b) of this section, and prior to the distribution of the first installment, the adjusted balance of the member's variable account shall be transferred to the member's regular account as of the effective retirement date.

(3) Initial installment. Earnings shall be credited to the initial installment as follows:

(a) If the initial installment is distributed in the same year as the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from the effective retirement date to the date of distribution of the initial installment.

(b) If the initial installment is distributed in the year following the effective retirement date, earnings shall be paid with the initial installment based on the average annualized rate prorated from January 1 of the year following the effective retirement date to the date of distribution of the initial installment.

(4) Annual earnings — initial year. Earnings from the effective retirement date to December 31 of the year of retirement shall be credited to the member's regular account in the following amount:

(a) The member's regular account balance as of December 31 of the year of retirement, excluding earnings credited to the member's regular account under subsection (1)(b) of this rule and to the member's variable account under subsection (2)(b) of this rule; multiplied by

(b) The Tier Two annual rate for that year less the latest year-to-date calculation for Tier Two as of the effective retirement date.

(5) Annual earnings — subsequent years. Earnings shall be credited to the member's regular account as of December 31 of each calendar year subsequent to the effective retirement date in the manner specified in this section.

(a) Earnings from January 1 to the date of distribution of the annual installment shall be credited in the following amount:

(A) The member's regular account balance as of the day before the date of distribution of the annual installment; multiplied by

(B) The Tier Two annual rate for that year, prorated from January 1 to the date of distribution.

(b) Earnings from the date of distribution of the annual installment to December 31 shall be credited in the following amount:

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(A) The member's regular account balance as of December 31; multiplied by

(B) The Tier Two annual rate for that year, prorated from the date of distribution to December 31.

(6) Final installment. The final installment shall include the remaining balance of the member's regular account as of the date of distribution of the final installment, plus earnings credited as follows:

(a) If earnings for the calendar year prior to the year of the final installment have not yet been credited to the member's regular account, earnings shall be credited based on the latest Tier Two year-to-date calculation available for that year.

(b) Earnings for the calendar year of the final installment shall be credited based on the latest Tier Two year-to-date calculation as of the date of distribution of the final installment.

(7) The provisions of this rule are effective on July 30, 2003.

Stat. Auth.: ORS 238.305(3)(c) & ORS 238.650

Stats. Implemented: ORS 238.260, 238.300, 238.305 & 238.315; OL 2003 Ch.625 (Enrolled HB 3020)

Hist.: PERS 24-2003, f. & cert. ef. 12-15-03

## Oregon State Library Chapter 543

**Adm. Order No.:** OSL 2-2003

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 1-1-04

**Notice Publication Date:** 11-1-03

**Rules Adopted:** 543-060-0000, 543-060-0010, 543-060-0020, 543-060-0030, 543-060-0040, 543-060-0060

**Rules Repealed:** 543-050-0000, 543-050-0020, 543-050-0030, 543-050-0040, 543-050-0050

**Subject:** SB 12, enacted by the 2003 Regular Session of the Oregon Legislative Assembly, eliminates reimbursements to libraries that make interlibrary loans, and establishes matching grants or other assistance for purposes of licensing electronic databases and facilitating statewide ground delivery of library materials. It further declares an emergency, effective July 1, 2003. The implementation of the electronic database licensing component of SB 12 has immediate ramifications due to existing contracts, with payment deadlines of September 1, 2003. This being the case, it is necessary to implement and administer the database subsidy component without delay.

**Rules Coordinator:** James B. Scheppeke—(503) 378-4243, ext. 243

### 543-060-0000

#### Scope

OAR chapter 543, division 60, applies only to statewide licensing of electronic databases to public, school and academic libraries.

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12,

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

### 543-060-0010

#### Definitions

The following definitions apply to the terms used in this division:

(1) "Public library" has the meaning given to public library in ORS 357.400(3), and shall be established in accordance with ORS 357.410.

(2) "Academic library" means any library of a not-for-profit institution of postsecondary education in Oregon, whether publicly or privately funded.

(3) "School library" means any library in a common school district or union high school district.

(4) "Resource sharing systems" means all public, academic, or school libraries participating in a resource sharing system. The State Library Board will annually review and distribute a list of resource sharing systems.

(5) "Fiscal Year" means the period of one year commencing on July 1 and closing on June 30th.

(6) "Interlibrary Loan" means one item of library material, or one copy from library materials, that is made available from a library's holdings to another library upon request.

(7) "Statewide database licensing" means the cooperative contract negotiation and purchase to make collections of electronically stored data, records or full text available to public, school and academic libraries in Oregon.

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12,

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

### 543-060-0020

#### Authorized Activities

Oregon State Library is authorized to negotiate and contract with commercial database providers on behalf of public, school and academic libraries to provide access to full text periodicals databases and a newspaper database that includes the Oregonian. The statewide database subsidy program is established under the provisions of this division to assist eligible public and academic libraries to participate in the statewide full text periodicals database program. The Oregon State Library is authorized to collect and administer funds from these libraries in payment for such databases. A statewide database subsidy is established under the provisions of this division to assist eligible school, public and academic libraries to participate in the statewide newspaper database program.

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12,

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

### 543-060-0030

#### Statewide Database Licensing Process

(1) Eligibility: Any public, academic, school library or resource sharing system as defined above is eligible to participate in the program if the following criteria are met:

(a) The library or resource sharing system provides interlibrary loans without charge to requesting in-state public, academic, school libraries and resource sharing systems.

(b) The public, academic library or resource sharing system is a signatory to and abides by the "Interlibrary Loan Code for Oregon Libraries."

(c) The library or resource sharing system certifies the above criteria are met and agrees to participate in the Statewide Database Licensing Program.

(2) The Statewide Database Licensing Advisory Committee shall be appointed by the Library Services and Technology Act (LSTA) Advisory Council.

(a) Role: The Statewide Database Licensing Advisory Committee shall advise the LSTA Advisory Council and the Oregon State Library staff in request for proposal development and database product evaluation, and provide ongoing database product assessment and customer feedback. The Statewide Database Licensing Advisory Committee shall also advise the LSTA Advisory Council on the appropriate percentage allocation of periodicals database costs to public, academic and school libraries.

(b) Membership of the Statewide Database Licensing Advisory Committee: One representative from the LSTA Advisory Council; three public library representatives, one each from libraries serving populations over 100,000, between 25,000-100,000, and 25,000 or less; three academic library representatives, one each from a community college, Oregon University System, and private academic institution; one representative from a resource sharing system; and, two school library representatives, one representing the Oregon Education Technology Consortium (OETC) and one from a school library. Orbis Cascade Alliance will have one representative serving in a non-voting, ex officio capacity. In making appointments the LSTA Advisory Council will seek representatives with experience in database licensing and the use of databases.

(c) Terms of appointment: Terms shall be for three years, except initial terms shall be staggered. The LSTA Advisory Council representative shall serve a two year term.

(d) Meetings: The Statewide Database Licensing Advisory Committee shall meet at least twice each calendar year, and may meet more often as needed.

(3) Request for proposal process: The Oregon State Library shall be the fiscal agent for the program and shall use Federal funds under the Library Services and Technology Act to subsidize the program. Oregon State Library shall work with the Department of Administrative Services to procure periodical and newspaper full text databases.

(4) Database subsidy process:

(a) The Oregon State Library administers the database subsidy process.

(b) Participating libraries and resource sharing systems shall be billed annually, in July, for periodicals database charges for the upcoming service year. Invoices to participants represent the difference in the subsidized annual costs paid by the State Library and the cost to the participants.

(5) Formula for periodicals database subsidy to public, academic libraries or resource sharing systems: Once a determination has been made of the percentage allocation of periodicals database cost among school,

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public and academic libraries, the costs will be further allocated to participants in the following manner:

(a) The public library or resource sharing system cost is based on the population served during the previous year, as determined by the State Library.

(b) The academic library cost is based on the student enrollment during the previous academic year, as determined by official sources, such as the Integrated Postsecondary Education Data System (IPEDS), and the Oregon Community College Unified Reporting System (OCCURS).

(c) Individual library periodicals database costs per year of \$200 or less are subsidized in full by the State Library. Periodicals database costs per year of more than \$200 are subsidized at 50% of the total annual periodicals database costs. Participants will be billed for the 50% unsubsidized portion of total annual periodicals database costs.

(6) Formula for periodicals database costs to school libraries:

(a) The annual database contract costs to school libraries, as determined by the LSTA Advisory Council and State Library Board of Trustees, shall be allocated in consultation with the Oregon Education Technology Consortium.

(b) Oversight of annual billing to school libraries shall be negotiated between the State Library and the Oregon Education Technology Consortium.

(7) Formula for newspaper database subsidy: All eligible public, school, and academic libraries, or resource sharing systems accessing the full text newspaper database are subsidized in full by the State Library.

(8) Statewide database expenditure plan: An annual budget for the Statewide Database Licensing Program shall be recommended by the Library Services and Technology Act Advisory Council to the State Library Board of Trustees and shall be adopted by the State Library Board of Trustees.

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12.

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

## 543-060-0040

### Calendar

The Statewide Database Licensing Program in Request for Proposal years shall follow a calendar of events as listed below:

(1) The Request for Proposal shall be issued no later than January 15 in a year requiring proposal development, and responses shall be received no later than the end of February.

(2) Request for Proposal evaluations shall be completed by the Statewide Database Licensing Advisory Committee within 30 days of receipt of responses.

(3) Recommendations by the Statewide Database Licensing Advisory Committee to the Library Services and Technology Act Advisory Council shall occur no later than April 30.

(4) The Library Services and Technology Act Advisory Council shall review the database recommendations at its May meeting, and make recommendations to the State Library Board of Trustees in June.

(5) Participating libraries shall be invoiced in July, and payments shall be due in August or as determined by the vendor contract.

Annual invoicing in non-Request for Proposal years shall follow a calendar of events as listed below:

(1) Recommendations by the Statewide Database Licensing Advisory Committee to the Library Services and Technology Act Advisory Council shall occur no later than April 30.

(2) The Library Services and Technology Act Advisory Council shall review the database recommendations at its May meeting, and make recommendations to the State Library Board of Trustees in June.

(3) Participating libraries shall be invoiced in July, and payments shall be due in August or as determined by the vendor contract.

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12.

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

## 543-060-0060

### Population Determination for Public Libraries

(1) The State Librarian shall use the population estimates for cities and counties included in the publication, Population Estimates for Oregon, published by the Center for Population Research and Census, Portland State University, as amended by the latest supplements to this publication.

(2) In accordance with ORS 357.780(2)(c), a public library may be assigned population beyond its governing authority's jurisdiction in cases where the library has a valid contract with a unit of local government to provide services to this population. The contract, which must be on file at

the State Library, must grant the library the sole responsibility to serve the population in question, and the population must be specified in the contract in a clear and precise manner, in order for additional population to be assigned for grant purposes. Public libraries established as non-profit corporations under Oregon law may be assigned population and may receive grants only in this manner.

(3) In cases other than those described in section (2) of this rule, where the same population is served by two or more public libraries, the State Librarian shall determine which public library is the primary service provider to the population in question, and shall assign the population to the primary service provider. In making this determination the State Librarian shall consider the location of library facilities and any available statistics on patterns of library use by the population in question.

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

Stat. Auth.:

Stats. Implemented: ORS 357.206 amended sec. 1 SB 12, ORS 357.209 amended sec. 1 SB 12, ORS 357.212 amended sec. 1 SB 12,

Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04

## Oregon University System Chapter 580

**Adm. Order No.:** OSSHE 3-2003(Temp)

**Filed with Sec. of State:** 12-1-2003

**Certified to be Effective:** 12-1-03 thru 5-21-04

**Notice Publication Date:**

**Rules Adopted:** 580-020-0006

**Subject:** The proposed OAR, under Division 020, Academic Classification and Compensation, distinguishes positions in unclassified service. These positions do not provide academic instruction nor do they fit within the Oregon University System classification system for represented employees. The Oregon University System, Office of Human Resources worked with representatives throughout the Oregon University System to determine a list of positions that meet this criteria.

**Rules Coordinator:** Marcia M. Stuart—(541) 346-5749

## 580-020-0006

### Definition of Unclassified Service

Unclassified service includes positions that do not meet the criteria for academic teaching, and which do not fit within the Oregon University System classification system for represented employees. The following positions meet this criteria:

(1) Chancellor, Chancellor's Cabinet (Senior Vice Chancellors, Vice Chancellors, Board Secretary, Deputy for Planning/Chief Information Officer, General Counsel and Deputy to the Chancellor, Director of Government Relations, Associate Vice Chancellors, Assistant Vice Chancellors, Associate Board Secretary

(2) Presidents, President's Cabinet

(3) Provosts, Vice Provosts, Associate Vice Provosts, and Assistant Vice Provosts

(4) Vice Presidents and Associate Vice Presidents

(5) Deans and Associate Deans

(6) Directors and Associate Directors of academic, administrative, and service units

(7) Controllers and Budget Officers

(8) Registrars and Associate Registrars

(9) Legal Counsel and Attorneys

(10) Athletic Directors and Associate Athletic Directors

(11) Executive and other special assistants to each of the positions listed above (items 1 through 10)

(12) Assistant Vice Presidents, Assistant Deans, Department Heads/Chairs, Assistant Directors, Managers, and Assistant Registrars

(13) Professors, Associate Professors, Assistant Professors, Instructors, Lecturers, Research Associates, Research Assistants, Scholars, and Fellows

(14) Librarians, Archivists, and Museum or Collection Curators

(15) Advisors and Counselors, including academic, financial aid, admissions, career, residential life, and athletic

(16) Assistant Athletic Directors, Athletic Coaches, Assistant Athletic Coaches, Athletic Trainers, Assistant Athletic Trainers, and Athletic Eligibility & Compliance Officers

(17) Human Resources personnel

(18) Interpreters

(19) Development and Advancement Officers

(20) Physicians, Psychologists, and Clinical Counselors

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(21) General Managers, Directors, Producers, and Announcers of state radio and television service

(22) Positions assigned responsibility integral to creating or contributing to instruction, scholarship, and/or scholarly products as a peer/collaborator or require specific credentials, background, and/or experience intrinsic to the academic, administrative, or service program responsibilities assigned.

(23) Positions assigned in student affairs functions, such as administrators of the judicial affairs officers, including Student Conduct Coordinators

(24) Other positions that do not primarily provide academic instruction and that do not fit within the Oregon University System classification system for represented employees.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: OSSHE 3-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04

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**Adm. Order No.:** OSSHE 4-2003(Temp)

**Filed with Sec. of State:** 12-1-2003

**Certified to be Effective:** 12-1-03 thru 5-21-04

**Notice Publication Date:**

**Rules Adopted:** 580-021-0044

**Subject:** This new rule under Division 021, Conditions of Service, is necessary to provide authority for the Oregon University System (OUS) and institutions that make up the OUS to request use of employees' social security numbers for non-mandatory purposes. OAR 580-021-0044 describes mandatory and voluntary uses of a social security number for an employee or the employee's spouse, dependent or partner who is participating in an OUS benefit, program or service. The rule describes information that must be included in a request for disclosure of an employee's social security number for voluntary purposes, protections that apply if disclosure is denied, and the requirement for campuses to adopt a model consent notice prepared by the Chancellor's Office.

**Rules Coordinator:** Marcia Stuart—(541) 346-5749

## 580-021-0044

### Use of Employees' Social Security Numbers

(1) The Oregon University System and each institution within the system shall comply with the requirements of Section 7 of the Privacy Act of 1974 when requesting disclosure of an employee's Social Security Number. Pursuant to the authority of the Oregon University System to implement personnel systems and exercise payroll authority, the Chancellor's Office and each institution within the Oregon University System may request that employees furnish valid Social Security Numbers for mandatory and voluntary uses, subject to the use and disclosure provisions of the Privacy Act.

(2)(a) An institution may require disclosure of an employee's Social Security Number for mandatory uses as provided for under Section 7(a)(2) of the Privacy Act, including:

(A) Use and disclosure for certain program purposes, including disclosure to the Internal Revenue Service, the Social Security Administration, the Federal Parent Locator Service, the Department of Veterans Affairs, the Bureau of Citizenship and Immigration Services, Aid to Families with Dependent Children, Medicare and Medicaid, Unemployment Insurance, Workers Compensation, and, in appropriate cases, epidemiological research.

(B) Administration and accounting purposes including the payment of state, federal and local payroll taxes; withholdings for FUTA and FICA; calculation and applicable reporting of pre-tax salary deductions for benefits including, but not limited to, IRC 117 and IRC 127 scholarship and educational assistance programs; IRC 457 deferred compensation and IRC 403(b) tax-sheltered annuity plans; IRC 401(a) retirement plans; IRC 132 pre-tax parking and transit plans, IRC 125 flexible spending account or cafeteria plans; or IRC 105 or 106 health reimbursement arrangements.

(C) To the extent required by federal law, an employee's Social Security Number may be provided to a foreign, federal, state, or local law enforcement agency for investigation of a violation or potential violation of a law for which that entity has jurisdiction for investigation or prosecution.

(b) An institution may request voluntary disclosure and consent to use an employee's Social Security Number for the following purposes: internal verification and identification for personnel administration, payroll records, enrollments or elections for participation in campus programs and services provided by the public universities.

(c) An institution may request voluntary disclosure and consent to use the Social Security Number of an employee or the spouse, partner or

dependent of the person requesting participation, as required by the administrator of each record-keeping system, benefit, program or service.

(3) A request for disclosure of an employee's Social Security Number will notify the employee:

(a) Whether disclosure is mandatory or voluntary;

(b) Under what statutory or other authority the social security number is requested;

(c) What specific use or uses will be made of the number; and

(d) What effect, if any, refusal to provide the number or to grant consent for a voluntary use as described above in (2)(b) and (c) will have on an individual.

(4) An employee's Social Security Number may not be put to a voluntary use as described above in (2)(b) and (c) unless the employee has granted consent for that use. If, after having provided notice and received consent to use an employee's Social Security Number for specified purposes, an institution wishes to use the Social Security Number for additional purposes not included in the original notice and consent, the requesting entity must provide the employee notice and receive the employee's consent to use the number for those additional purposes.

(5) An employee's refusal to permit a voluntary use of his or her Social Security Number will not be used as a basis to deny the employee a right, benefit, or privilege provided by law.

(6) The Office of the Chancellor will develop a model disclosure and consent form for use by institutions in the Oregon University System. An institution may use a disclosure and consent form that differs from the model form only if:

(a) The differences are required to satisfy specific programmatic requirements or the entity's particular administrative needs, and

(b) The form complies with all requirements of the Privacy Act of 1974 and this rule.

Stat. Auth.: ORS 351.070; 292.043-292.180; 192.502(3)(a)

Stats. Implemented:

Hist.: OSSHE 4-2003(Temp), f. & cert. ef. 12-1-03 thru 5-21-04

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**Adm. Order No.:** OSSHE 5-2003

**Filed with Sec. of State:** 12-3-2003

**Certified to be Effective:** 12-3-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 580-010-0029, 580-010-0030, 580-010-0031, 580-010-0033, 580-010-0035, 580-010-0037, 580-010-0040, 580-010-0041, 580-010-0045

**Subject:** 580-010-0029: Clarifies and expands definitions of "domicile," "financially independent person," and "dependent person. 580-010-0030: Clarifies and expands language relating to determination of residence. 580-010-0031: Clarifies and expands language relating to residency consideration factors. 580-010-0033: Further clarifies evidence of financial dependency. 580-010-0035: Makes permanent the temporary rule change (adopted by the Board of Higher Education on July 18, 2003) that provides compliance with SB 525, which was signed by the Governor, and became effective, on June 6, 2003. Also amends language pertaining to residence classification of military members recently released from service. 580-010-0037: Provides for the inclusion of enrolled members of the Yurok Tribe (of California) as a group eligible for Oregon Residency. 580-010-0040: Modifies the eligibility for Oregon residency based on a non-citizen's visa status (based on recent changes in and interpretations of immigration law). 580-010-0041: Amends language relating to changes in residence classification. 580-010-0045: Amends language relating to the appeals process.

**Rules Coordinator:** Marcia Stuart—(541) 346-5795

## 580-010-0029

### Definitions

For the purpose of OAR 580-010-0030 through 580-010-0045, the following words and phrases mean:

(1) "Domicile" is a person's true, fixed, and permanent home and place of habitation. It is the place where a person intends to remain and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere. In order to establish a domicile in Oregon, a person must maintain a predominant physical presence in Oregon for 12 consecutive months after moving to the state.

(2) A "financially independent person" is a person who, at the time of application for residency status: (a) declares himself or herself to be financially independent; (b) has not been claimed as a dependent during the

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immediately preceding tax year, and will not be claimed as a dependent during the current tax year, on the federal or state income tax returns of any other person; and (c) has not received in the immediately preceding calendar year, and will not receive during the current calendar year, one-half or more of his or her support, in cash or in kind, from another person or persons, except for support received from his or her spouse.

(3) A "financially dependent person" is a person who, at the time of application for residency status: (a) declares himself or herself to be financially dependent; and (b) has been claimed as a dependent on the federal and state income tax returns of another person during the immediately preceding tax year.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0030

### Determination of Residence

(1) For purposes of admission and instruction fee assessment, OUS institutions shall classify a student as Oregon resident or nonresident. In determining resident or nonresident classification, the primary issue is a person's intent in coming to Oregon. Intent is inferred from a person's conduct and history as they relate to the requirements of these residency rules. If a person is in Oregon primarily for the purpose of obtaining an education, that person will be considered a nonresident. It is possible for an individual to qualify as a resident of Oregon for purposes of voting or obtaining an Oregon driver's license and not meet the residency requirements established by these rules.

(2) An Oregon resident is a financially independent person who, prior to the term for which Oregon resident classification is requested, has both: (a) established and maintained a domicile in Oregon as provided under OAR 580-010-0029(1) 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

(3) A student may be considered primarily engaged in educational activities regardless of the number of hours for which the student is enrolled. However, a student who is enrolled for more than 8 hours in any semester or quarter during the 12-month period referred to in section (2) of this rule shall be presumed to be in Oregon for primarily educational purposes. Such period of enrollment shall not be counted toward the establishment of a bona fide domicile of 12 consecutive months in this state unless the student proves, in fact, establishment of a bona fide domicile in this state primarily for purposes other than educational.

(4) An Oregon resident is also a financially dependent person who is claimed as a dependent by another person who has both: (a) established and maintained an Oregon domicile as provided under OAR 580-010-0029(1) for 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

(5) A financially dependent person who is claimed as a dependent by another person who has not established and maintained an Oregon domicile shall be presumed to be a non-resident. This presumption may be overcome by evidence of the student's long-standing presence in Oregon and demonstration of other factors under OAR 580-010-0031.

(6) The criteria for determining Oregon resident classification shall also be used to determine whether a person who has moved from Oregon has established a non-Oregon residence.

(7) If institution records show that the residence of a student or the person upon whom the student is dependent is outside of Oregon, the student shall continue to be classified as a nonresident until entitlement to resident classification is shown. The burden of showing that the residence classification should be changed is on the student requesting the change.

(8) Notwithstanding section (4) of this rule, a student who is financially dependent on a non-Oregon resident may nonetheless be considered an Oregon resident if the student resides in Oregon for at least 12 consecutive months with a parent or legal guardian who has both: (a) established and maintained an Oregon domicile under OAR 580-010-0029(1) for 12 consecutive months; and (b) during that period, has been primarily engaged in activities other than those of being a college student.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; HEB 1-1987, f. & ef. 1-12-87; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0031

### Residency Consideration Factors

(1) The following factors, although not necessarily conclusive or exclusive, have probative value in support of a claim for Oregon resident classification:

- (a) Reside in Oregon for 12 consecutive months prior to the beginning of the term for which resident classification is sought and during that period be primarily engaged in activities other than those of a college student;
- (b) Reliance upon Oregon resources for financial support;
- (c) Domicile in Oregon of persons legally responsible for the student;
- (d) Acceptance of an offer of permanent employment in Oregon; and
- (e) Ownership by the person of his or her living quarters in Oregon.

(2) The following factors, standing alone, do not constitute sufficient evidence to effect classification as an Oregon resident:

- (a) Voting or registration to vote;
- (b) Employment in any position normally filled by a student;
- (c) The lease of living quarters;
- (d) Admission to a licensed practicing profession in Oregon;
- (e) Automobile registration;
- (f) Public records, for example, birth and marriage records, Oregon driver's license;
- (g) Continuous presence in Oregon during periods when not enrolled in school;
- (h) Ownership of property in Oregon or the payment of Oregon income or other Oregon taxes; or
- (i) Domicile in Oregon of the student's spouse.

(3) Reliance upon non-Oregon resources for financial support is an inference of residency in another state.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0033

### Evidence of Financial Dependency

(1) In determining whether a student is financially dependent, a student must provide:

(a) Evidence of established domicile as provided under OAR 580-010-0029(1) of the person claiming the student as a dependent; and

(b) The identification of the student as a dependent on the federal and state income tax returns of the person claiming the student as a dependent. Additional documentation to substantiate dependency during the current calendar year may be required at a later time if deemed necessary by the institution.

(2) A student who provides evidence that he or she is a financially dependent person under these rules shall not be required to establish a 12-month domicile prior to classification of resident status, provided such a student may not be classified as a resident while receiving financial assistance from another state or state agency for educational purposes.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 9-1992, f. & cert. ef. 12-2-92; HEB 10-1992, f. & cert. ef. 12-23-92; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0035

### Residence Classification of Armed Forces Personnel

(1) For purposes of this rule, members of the armed forces means officers and enlisted personnel of:

(a) The Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States;

(b) Reserve components of the Army, Navy, Air Force, Marine Corps, and Coast Guard of the United States;

(c) The National Guard of the United States and the Oregon National Guard.

(2) Notwithstanding OAR 580-010-0030, active members of the armed forces and their spouses and dependent children shall be considered residents for purposes of the instructional fee if the members:

(a) Reside in this state while assigned to duty at any base, station, shore establishment, or other facility in this state;

(b) Reside in this state while serving as members of the crew of a ship that has an Oregon port of shore establishment as its home port or permanent station; or

(c) Reside in another state or a foreign country and file Oregon state income taxes no later than 12 months before leaving active duty.

(3) An Oregon resident entering the armed forces retains Oregon residence classification until it is voluntarily relinquished.

(4) An Oregon resident who has been in the armed forces and assigned on duty outside of Oregon, including a person who establishes res-

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idency under section (2)(c) of this rule, must, within a reasonable time, demonstrate an intent to retain classification as an Oregon resident. Such intent may be shown by returning to Oregon within six months after completing service in the armed forces.

(5) A person who continues to reside in Oregon after separation from the armed forces may count the time spent in the state while in the armed forces to support a claim for classification as an Oregon resident.

(6) The dependent child and spouse of a person who is a resident under section (2) of this rule shall be considered an Oregon resident. "Dependent child" includes any child of a member of the armed forces who:

(a) Is under 18 years of age and not married, otherwise emancipated or self-supporting; or

(b) Is under 23 years of age, unmarried, enrolled in a full-time course of study in an institution of higher learning, and dependent on the member for over one-half of his/her support.

Stat. Auth.: ORS 351.070, ORS 351.642

Stats. Implemented: ORS 174.070 & ORS 351.070

Hist.: HEB-3-1978, f. & ef. 6-5-78; HEB 10-1979, f. & ef. 8-22-79; HEB 8-1981, f. & ef. 9-30-81; HEB 4-1985, f. & ef. 7-30-85; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1995, f. & cert. ef. 11-2-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 3-2001(Temp), f. 6-15-01, cert. ef. 7-1-01 thru 12-27-01; OSSHE 5-2001, f. & cert. ef. 11-7-01; OSSHE 1-2003(Temp), f. & cert. ef. 7-25-03 thru 1-18-04; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0037

### Residence Classification of Members of Oregon Tribes

(1) Students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon shall be assessed resident tuition regardless of their state of residence.

(2) For purposes of this rule, the federally recognized tribes of Oregon are:

- (a) Burns Paiute Tribe;
- (b) Confederated Tribes of Coos, Lower Umpqua and Siuslaw;
- (c) Confederated Tribes of Grand Ronde Community of Oregon;
- (d) Confederated Tribes of Siletz Indians of Oregon;
- (e) Confederated Tribes of the Umatilla Indian Reservation;
- (f) Confederated Tribes of the Warm Springs Indian Reservation;
- (g) Coquille Indian Tribe;
- (h) Cow Creek Band of Umpqua Indians;
- (i) Klamath Tribes.

(3) For purposes of this rule, the Native American tribes which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon are:

- (a) CALIFORNIA:
  - (A) Benton Paiute Tribe;
  - (B) Big Bend Rancheria;
  - (C) Big Lagoon Rancheria;
  - (D) Blue Lake Rancheria;
  - (E) Bridgeport Indian Colony;
  - (F) Cedarville Rancheria;
  - (G) Fort Bidwell Indian Tribe;
  - (H) Hoopa Valley Tribe;
  - (I) Karuk Tribe of California;
  - (J) Likely Rancheria;
  - (K) Lookout Rancheria;
  - (L) Lytton Rancheria;
  - (M) Melochundum Band of Tolowa Indians;
  - (N) Montgomery Creek Rancheria;
  - (O) Pit River Tribe;
  - (P) Quartz Valley Indian Community;
  - (Q) Redding Rancheria;
  - (R) Roaring Creek Rancheria;
  - (S) Smith River Rancheria;
  - (T) Susanville Rancheria;
  - (U) Tolowa-Tututni Tribe;
  - (V) Winnemucca Colony;
  - (W) XL Ranch;
  - (X) Yurok Tribe.

- (b) IDAHO:
  - (A) Nez Perce Tribe of Idaho;
  - (B) Shoshoni-Bannock Tribes.

- (c) NEVADA:
  - (A) Duck Valley Shoshone-Paiute Tribes;
  - (B) Fallon Paiute-Shoshone Tribe;
  - (C) Fort McDermitt Paiute-Shoshone Tribe;
  - (D) Lovelock Paiute Tribe;

- (E) Pyramid Lake Paiute Tribe;
- (F) Reno-Sparks Indian Colony;
- (G) Summit Lake Paiute Tribe;
- (H) Walker River Paiute Tribe;
- (I) Winnemucca Indian Colony;
- (J) Yerington Paiute Tribe.

(d) OKLAHOMA: Modoc Tribe of Oklahoma.

(e) WASHINGTON:

- (A) Chehalis Community Council;
- (B) Colville Confederated Tribes;
- (C) Quinault Indian Nation;
- (D) Shoalwater Bay Tribe;
- (E) Yakama Indian Nation.

(4) A student seeking to be assessed resident tuition under the provisions of this rule shall submit, following procedures prescribed by the OUS institution where the student seeks to enroll, a photocopy of tribal enrollment which documents tribal membership.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: OSSHE 3-1998, f. & cert. ef. 7-22-98; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0040

### Residence Classification of Non-Citizens

A person who is not a citizen of the United States may be considered an Oregon resident if the person qualifies as a resident under OAR 580-010-0030 and is one of the following:

(1) A lawful permanent resident. The date of approval of lawful permanent residency shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue.

(2) An immigrant granted refugee or political asylum in the United States. The date of approval of political asylum or refugee status shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue.

(3) A person holding one of the following non-immigrant visa classifications: A, E, G, H-1B, H-1C, the spouse or child of a person holding an H-1B or H-1C visa, I, K, L, NATO, O, R, S, T, TN, U, or V. The date of the issuance of a visa for one of these classifications shall be the earliest date upon which the 12-month residency requirements under OAR 580-010-0030 may begin to accrue. A person possessing a non-immigrant or temporary visa that is not identified under this rule shall not be considered an Oregon resident.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. & cert. ef. 12-2-92; HEB 1-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0041

### Changes in Residence Classification

(1) If an Oregon resident student enrolls in an institution outside of Oregon and later seeks to re-enroll in an OUS institution, the residence classification of that student shall be re-examined and determined on the same basis as for any other person.

(2) A financially dependent student who is dependent on a person who establishes a permanent Oregon residence as defined in OAR 580-010-0030(2) during a term when the dependent student is enrolled at an OUS institution may register as a resident at the beginning of the next term.

(3) Once established, classification as a resident continues so long as the student remains in continuous academic year enrollment in the classifying institution.

(4) A person who seeks classification as a resident under these rules shall complete and submit a notarized Residence Information Affidavit. The affidavit and all required supportive documents and materials must be submitted by the last day to register for the term in which resident status is sought.

(5) No OUS institution is bound by any determination of residency except by duly authorized officials under procedures prescribed by these rules including timely submittal of the notarized affidavit.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1981, f. & ef. 9-30-81; Renumbered from 580-10-025; HEB 4-1985, f. & ef. 7-30-85; HEB 14-1986, f. & ef. 10-27-86; HEB 2-1987, f. & ef. 1-12-87; HEB 4-1988, f. & cert. ef. 5-13-88; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 9-1992, f. & cert. ef. 12-2-92; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2003, f. & cert. ef. 12-3-03

## 580-010-0045

### Review of Residence Classification Decisions by IRC

(1) An interinstitutional residency committee (IRC) is established consisting of the officers determining student residence classification at



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OUS institutions and a member of the Chancellor's staff appointed by the Chancellor. The member of the Chancellor's staff shall serve as chairperson. A majority of the members of the Committee shall constitute a quorum. A majority of a quorum may make decisions.

(2) Residence cases of unusual complexity, especially where there may be conflict of rules, may be referred by an institution residence classification officer to the IRC for decision.

(3) Any person who is aggrieved by the institution residence classification may, within ten days of the date of mailing or other service of classification decision, appeal the classification to the IRC. The appeal must be in writing and shall be filed with the institution. An aggrieved person may supply written statements to the IRC for consideration in reviewing the case and may also make an oral presentation to the IRC on a date to be scheduled by the IRC. The decision of the IRC shall be final unless appealed.

(4) A person dissatisfied with the IRC decision may, within ten days of the date of the mailing or other service of the IRC decision, appeal the IRC decision to Vice Chancellor for Academic Affairs or designee. An appeal to the vice chancellor shall be in writing only. The vice chancellor's decision shall be final.

(5) A person granted a meritorious hardship exception to residency under this rule prior to July 1, 1990, shall not lose the exception solely because of the repeal of the exception authorization.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 4-1985, f. & ef. 7-30-85; HEB 4-1988, f. & cert. ef. 5-13-88; Section (2) Renumbered to 580-010-0046 and section (3) Renumbered to 580-010-0047; HEB 1-1990, f. 2-13-90, cert. ef. 7-1-90; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1995, f. & cert. ef. 11-2-95; OSSHE 5-2003, f. & cert. ef. 12-3-03

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## Oregon University System, Portland State University Chapter 577

**Adm. Order No.:** PSU 4-2003(Temp)

**Filed with Sec. of State:** 11-18-2003

**Certified to be Effective:** 11-18-03 thru 5-14-04

**Notice Publication Date:**

**Rules Amended:** 577-060-0020

**Subject:** The amendment establishes additional fees, charges, fines, and deposits for General Services for the 2003-2004 fiscal year.

**Rules Coordinator:** Tyrene Bada—(503) 725-3443

### 577-060-0020

#### Schedule of Fees for General Services and Other Charges

The Schedule of Fees for General Services and Other Charges for the 2003-2004 Fiscal Year are hereby adopted by reference by Portland State University.

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

Stat. Auth.: ORS 351.070(d)

Stats. Implemented: ORS 351.070(d)

Hist.: PSU 16(Temp), f. 8-24-77, ef. 9-1-77; PSU 18, f. & ef. 10-4-77; PSU 19(Temp), f. & ef. 10-11-77; PSU 20, f. & ef. 11-18-77; PSU 3-1978(Temp), f. 6-19-78, ef. 7-1-78; PSU 7-1978, f. & ef. 9-5-78; PSU 1-1979, f. & ef. 9-17-79; PSU 3-1980, f. & ef. 9-4-80; PSU 2-1981, f. & ef. 9-10-81; PSU 3-1982, f. & ef. 9-3-82; PSU 1-1983, f. & ef. 2-8-83; PSU 2-1983, f. 6-22-83, ef. 7-1-83; PSU 1-1984, f. 6-8-84, ef. 7-1-84; PSU 1-1985, f. 6-26-85, f. 7-1-85; PSU 1-1986, f. 6-25-86, ef. 7-1-86; PSU 1-1987, f. 6-19-87, ef. 7-1-87; PSU 3-1987(Temp), f. & ef. 8-11-87; PSU 5-1987, f. & ef. 10-27-87; PSU 5-1988, f. & cert. ef. 7-18-88; PSU 7-1988(Temp), f. & cert. ef. 11-29-88; PSU 3-1989, f. & cert. ef. 7-26-89; PSU 5-1990, f. & cert. ef. 7-5-90; PSU 2-1991(Temp), f. & cert. ef. 6-28-91; PSU 3-1991, f. & cert. ef. 8-7-91; PSU 4-1991(Temp), f. & cert. ef. 12-4-91; PSU 1-1992, f. & cert. ef. 1-17-92; PSU 2-1992, f. & cert. ef. 6-16-92 (and corrected 6-19-92); PSU 1-1993, f. & cert. ef. 6-11-93; PSU 2-1993(Temp), f. & cert. ef. 7-13-93; PSU 3-1993(Temp), f. & cert. ef. 7-30-93; PSU 4-1994, f. & cert. ef. 11-3-94; PSU 1-1995, f. & cert. ef. 8-9-95; PSU 1-1996(Temp), f. 1-18-96, cert. ef. 3-1-96; PSU 3-1996, f. & cert. ef. 6-27-96; PSU 1-1997, f. & cert. ef. 8-1-97; PSU 4-1998, f. & cert. ef. 9-17-98; PSU 4-1999, f. & cert. ef. 8-11-99; PSU 2-2000, f. & cert. ef. 8-1-00; PSU 1-2001, f. & cert. ef. 8-14-01; PSU 2-2003, f. 6-27-03, cert. ef. 7-1-03; PSU 4-2003(Temp), f. & cert. ef. 11-18-03 thru 5-14-04

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## Public Utility Commission Chapter 860

**Adm. Order No.:** PUC 22-2003

**Filed with Sec. of State:** 11-28-2003

**Certified to be Effective:** 11-28-03

**Notice Publication Date:** 10-1-03

**Rules Amended:** 860-024-0020, 860-024-0021

**Subject:** This rulemaking keeps OPUC's gas safety rules current with the federal gas pipeline safety regulations. Pursuant to ORS 757.039(3), the Commission has agreements with the US Department of Transportation (USDOT) that Oregon PUC will adopt cur-

rent federal pipeline safety regulation amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments are from the Code of Federal Regulations, Title 49, Part 192, Part 193 and Part 199.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

### 860-024-0020

#### Gas Pipeline Safety

Every gas operator shall construct, operate, and maintain natural gas and other gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 192, and amendments through No. 90 — Transportation of Natural and Other Gas by Pipeline; Minimum Safety Standards in effect on September 5, 2002.

(3) 49 CFR, Part 199, and amendments through No. 19 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

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

Stat. Auth.: ORS 183, ORS 756 & ORS 757

Stats. Implemented: ORS 757.039

Hist.: PUC 164, f. 4-18-74, ef. 5-11-74 (Order No. 74-307); PUC 172, f. & ef. 1-14-76 (Order No. 76-036); PUC 180, f. 4-8-77, ef. 5-1-77 (Order No. 77-232); PUC 2-1978, f. & ef. 3-16-78 (Order No. 78-158); PUC 6-1980, f. & ef. 10-22-80 (Order No. 80-777); PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 18-1984, f. & ef. 9-4-84 (Order No. 84-685); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03

### 860-024-0021

#### Liquid Natural Gas Facility

Every gas operator shall construct, operate, and maintain liquefied natural gas facilities in compliance with the standards prescribed by:

(1) 49 CFR, Part 191, and amendments through No. 14 — Transportation of Natural and Other Gas by Pipeline; Annual Reports and Incident Reports in effect on July 13, 1998.

(2) 49 CFR, Part 193, and amendments through No. 17 — Liquefied Natural Gas Facilities; Minimum Safety Standards in effect on March 31, 2000.

(3) 49 CFR, Part 199, and amendments through No. 19 — Control of Drug and Alcohol Use in Natural Gas, Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations in effect on September 11, 2001.

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

Stat. Auth.: ORS 183, ORS 756 & ORS 757

Stats. Implemented: ORS 757.039

Hist.: PUC 3-1981, f. & ef. 6-4-81 (Order No. 81-361); PUC 12-1984, f. & ef. 6-5-84 (Order No. 84-424); PUC 4-1986, f. & ef. 5-5-86 (Order No. 86-456); PUC 11-1987, f. & ef. 10-8-87 (Order No. 87-861); PUC 16-1989, f. & cert. ef. 11-22-89 (Order No. 89-1529); PUC 8-1992, f. & cert. ef. 5-13-92 (Order No. 92-618 & 92-677); PUC 14-1994, f. & cert. ef. 10-20-94 (Order No. 94-1533); PUC 9-1998, f. & cert. ef. 4-28-98; PUC 19-1998, f. & cert. ef. 11-18-98; PUC 22-2003, f. & cert. ef. 11-28-03

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**Adm. Order No.:** PUC 23-2003(Temp)

**Filed with Sec. of State:** 11-28-2003

**Certified to be Effective:** 11-28-03 thru 5-26-04

**Notice Publication Date:**

**Rules Adopted:** 860-028-0895

**Subject:** Under federal statute the PUC must take final action on a pole attachment complaint within 180 days after the complaint is filed unless its rules and regulations prescribe a specific time period, not exceeding 360 days. Oregon currently has no rules that prescribe a time period for responding to such complaints.

The Commission has recently received a number of complex pole attachment complaints that will require more than 180 days to complete. This rule will allow time for the Commission to sufficiently review the pole attachment complaints while still issuing a final order within the maximum time frame prescribed by the FCC.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

### 860-028-0895

#### Time Frame for Final Action by Commission

Upon receipt of a complaint regarding any individual matter under these rules, the Commission shall, within 360 days, issue a final order.

Stat. Auth.: ORS 183, 756, 757 & 759, 47 USC § 224(c)(3)(B)(ii)

Stats. Implemented: ORS 756.040, 757.270-290, 759.045 & 759.650-675

Hist.: PUC 23-2003(Temp), f. & cert. ef. 11-28-03 thru 5-26-04

# ADMINISTRATIVE RULES

**Adm. Order No.:** PUC 24-2003(Temp)

**Filed with Sec. of State:** 12-10-2003

**Certified to be Effective:** 12-10-03 thru 6-7-04

**Notice Publication Date:**

**Rules Adopted:** 860-036-0370, 860-036-0380, 860-036-0412, 860-036-0420, 860-036-0757, 860-037-0308, 860-037-0309, 860-037-0407, 860-037-0547, 860-037-0570

**Rules Amended:** 860-036-0010, 860-036-0900, 860-036-0905, 860-036-0910, 860-036-0915

**Rules Suspended:** 860-036-0330

**Subject:** This rulemaking revises the definition of a public utility (water/wastewater); subjects to permanent regulation a water utility that comes under PUC regulation for reasons such as providing inadequate or discriminatory service; allows water companies to request to be rate regulated; allows members of an association to petition for rate regulation of an association; allows Construction Work in Progress (CWIP) into rates for water/wastewater company capital improvements; authorizes the PUC to assess civil penalties on water/wastewater companies; makes application for Service Territory voluntary; and authorizes the PUC to use gross revenue fees to make emergency repairs for water/wastewater utilities.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-036-0010

### Definitions for Water Utilities and Associations

As used in Division 036:

(1) "Actual cost" means the direct cost of parts, materials and labor of a specific item or project separated from indirect costs.

(2) "Applicant" means a person who:

(a) Applies for service with a utility; or

(b) Reapplies for service at a new or existing location after service has been discontinued.

(3) "Association" means an incorporated or homeowner association providing water service, as defined in ORS 757.005.

(4) "Co-customer" means a person who meets the definition of "customer" and is jointly responsible with another person for payments for water utility service on an account with the water utility. If only one of the co-customers discontinues service in his/her name, the remaining co-customer shall retain customer status only if he/she reapplies for service in his/her own name within 20 days of such discontinuance provided the water utility contacts the co-customer or mails a written request for an application to the remaining co-customer within one business day of the discontinuance.

(5) "Commercial customer" means a customer who performs or produces a service or product that is a source of revenue, income or livelihood to the customer or others using the premises.

(6) "Commission" means the Public Utility Commission of Oregon.

(7) "Contributions in aid of construction" means any money, services or property received by a water utility to fund capital investments at no cost to the company with no obligation to repay.

(8) "Construction work in progress (CWIP)" means account 105 in the utility plant section of the balance sheet representing the costs of utility plant under construction but not yet placed in service.

(9) "Cooperative" means a cooperative corporation as defined in ORS Chapter 62.

(10) "Cost-based" means the direct and indirect costs of a specific item or project, including overhead and a reasonable expected return on investment.

(11) "Customer" means a person who has applied for, been accepted, and is currently receiving service unless otherwise noted. Notwithstanding section (1) of this rule, a customer who voluntarily disconnects service and subsequently asks for service with the same water utility at a new or existing location within 20 days after disconnection retains customer status.

(12) "District" means a corporation as defined under ORS Chapter 553.

(13) "Emergency" means an extraordinary interruption of the usual course of water service by a natural cause, an unforeseen event, or a combination of unexpected circumstances; an urgent need for assistance or relief; or the resulting state that calls for immediate action.

(14) "End-user" means a domestic water user.

(15) "Exempt water company" means a water company that meets the definition of a public utility in ORS 757.005, but is exempt from regulation as provided in ORS 757.005(1)(b)(E).

(16) "Forced connection" means a water utility or its customers being required by law, regulation, rule, or company policy to retrofit, improve, or

change the original service connection. All retrofits, improvements, additions or changes to the original service connection will be the operational and financial responsibility of the company, with the following exceptions (1) any national or state laws or rules clearly assigning such costs to the customer, or (2) the Commission otherwise approves as provided in OAR 860-036-0105(1) and (2).

(17) "Formal complaint" means a written complaint filed with the Commission's Administrative Hearings Division.

(18) "Large commercial customer" means a commercial customer with a meter or pipe diameter of two inches or larger.

(19) "Mainline extension" means the extension of a main line to an area not previously served. If the main line extension is required at the request of a potential customer to receive service, the cost of such extension shall comply with the water utility's main line extension policy.

(20) "Meter set" means the parts, material, and labor necessary to install a meter. The meter set assembly is owned, installed, and maintained by the utility. The meter set does not include any components of the service connection required to provide unmetered service.

(21) "People's utility district" (PUD) means a corporation as defined in ORS chapter 261.

(22) "Public utility" has the meaning given the term in ORS 757.005 and 757.061. The term does not include districts, People's Utility Districts (PUDs), cooperatives, or municipalities.

(23) "Rate-regulated utility" means a water utility that is not exempt from certain financial regulations and conditions under ORS 757.061.

(24) "Registered dispute" means an unresolved issue between a customer or applicant and a water utility that is under investigation by the Commission's Consumer Services, but is not the subject of a formal complaint.

(25) "Residential customer" means a customer who receives domestic or irrigation water in residential areas and is not considered a commercial customer.

(26) "Small commercial customer" means a commercial customer with a meter or pipe diameter of less than two inches.

(27) "System development fee or charge" is the proportionate fee charged by a water company prior to service being initiated that encompasses the cost of the system allocated to all potential customers.

(28) "Utility" means any water utility, except when a more limited scope is explicitly stated.

(29) "Water utility" has the same meaning as public utility in section (21) of this rule, except if a more limited scope is explicitly stated.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 695, OL 1999, 756.040 & 756.105

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 3-1999, f. & cert. ef. 8-10-99; PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 9-2001, f. & cert. ef. 3-21-01; PUC 22-2001(Temp), f. & cert. ef. 9-26-01 thru 3-24-02; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0330

### Service Credit for Inadequate Service

(1) Upon finding that a water utility rendered inadequate service, the Commission may require the water utility to provide service credits to affected customers as follows:

(a) Credits shall be based upon the duration of the inadequate service as follows: 1 – 30 days, one third of customer regular fixed or flat monthly charges; 31 – 60 days, one half of customer regular fixed or flat monthly charges; 61 – 90 days, two thirds of customer regular fixed or flat monthly charges; 91 days until corrected, credit entire monthly fixed or flat charges.

(b) Such credits shall be limited to a six-month period unless otherwise extended by the Commission.

(2) Inadequate service credits are applicable only to deficiencies found in the water utility's system or those found to be in the control of the water utility. Deficiencies originating on the customer's portion of the system caused by the customer's negligence or willful misconduct, a natural disaster, or damage to the water system caused by a third party unaffiliated with the water utility will not be eligible for inadequate service credits.

Stat. Auth.: ORS 183, 756 & ORS 757

Stats. Implemented: ORS 756.040

Hist.: PUC 13-1997, f. & cert. ef. 11-12-97; PUC 8-2002, f. & cert. ef. 2-26-02; Suspended by PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0370

### Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for water utilities. The Commission may expend monies under the provisions of this rule if the Commission determines that:

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(a) Customers of a utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0380

### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to water utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the water utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the water utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the water utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the water utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the water utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the water utility does not request a hearing within the time allowed, or if the water utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of water utilities affected by the violation(s).

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0412

### Request for Rate Regulation of an Association by Members

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a water system owned or operated by an association. Petitioners must be current members of the water association.

(2) Petitions must be in writing, state the purpose of the petition, and include the member's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission must issue an order notifying the association of its change in regulatory status to a rate-regulated water utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0420

### Request for Rate Regulation by a Water Utility

(1) Any water utility serving fewer than 500 customers may, at any time, file a petition with the Commission for full rate regulation of the water utility.

(2) When the water utility files the petition with the Commission requesting rate regulation, the water utility must also provide written notification to its customers. The water utility must provide the Commission with a copy of the notice. At a minimum, the notice must include the following information:

(a) Name, address, and telephone number of the water utility;

(b) Purpose of the notice;

(c) The reason(s) the water utility is seeking rate regulation;

(d) The Commission's toll-free telephone number, TTY number, and its mailing and location addresses. The information is available on the Commission website or by calling the Commission; and

(e) A statement informing customers that ORS 757.061 was amended in 2003 to allow water utilities to petition the Commission for rate regulation.

(3) Within 30 days after the water utility files its petition requesting rate regulation, the Commission must issue an order notifying the water utility of its change in regulatory status to a rate-regulated water utility.

(4) Within 60 days after the Commission notifies the water utility of its change in regulatory status, the water utility must file appropriate tariffs pursuant to ORS 757.205.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0757

### Accounting for Construction Work In Progress (CWIP)

The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The water utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The water utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS 183, 756, 757 & Ch. 202, OL 2003

Stats. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-036-0900

### Service Territory Allocation

(1) For purposes of service territory allocation OAR 860-036-0900 through 860-036-0930:

(a) "Allocated territory" means an approved area with boundaries set out in a Commission order granting an application for the allocation of service territory.

(b) "Community water supply system" means a water source and distribution system, whether publicly or privately owned, that serves more than three residences or other users to whom water is provided for public consumption, including but not limited to schools, farm labor camps, industrial establishments, recreational facilities, restaurants, motels, mobile home parks, or group care homes.

(c) "Utility service" means service provided by a water utility as defined in subsection (1)(d) of this rule, any equipment, plant, or facility for the distribution of water to users through a connected and interrelated distribution system. "Utility service" does not include service provided through or by the use of any equipment, plant, or facilities solely for the production and sale of water to other water utilities.

(d) "Water utility" as used in OAR 860-036-0900 through 860-036-0930 means any water system that meets the definition of a water utility in ORS 758.300.

(2) The requirements of this rule apply to all water utilities.

(3) A water utility providing water service may make application to the Commission, on forms provided by the Commission, for an order designating the territory it serves adequately and exclusively as its exclusive service territory.

(4) The Commission shall recognize the exclusive service territory of a water utility that has an existing franchise as of October 23, 1999, with a municipality. A water utility may apply to the Commission to designate exclusive service territory area other than that identified in the franchise agreement, if the water utility is currently providing adequate and exclusive service to areas identified in the franchise agreement.

Stat. Auth.: ORS 183, 756, 757 & ORS 758

Stats. Implemented: ORS 758.300-758.320

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Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 8-2002, f. & cert. ef. 2-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-036-0905

### Original Application Requirements

(1) A completed application requesting an exclusive service territory for area the water utility is currently serving shall include the following:

(a) The water utility's complete name, address, and telephone number;

(b) The nature of the water utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name(s) and address(es) of all corporate officers, directors, partners, or any other person(s) owning an interest in the water utility;

(d) A statement showing the financial and technical ability of the applicant to provide service to the current territory;

(e) A detailed map or maps of the water system showing the existing lines and facilities;

(f) A detailed map or maps identifying the boundaries of the water utility's current service territory marked with a fine-tipped RED pen. The map must identify the map source and the date of the map in the upper left corner of the map. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the utility's current service territory boundaries and enable correlation with a written description of such territory;

(g) A complete and accurate written description of the water utility's current service territory. The description may be a legal description or may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) Evidence that the water utility owns the land upon which the water utility facilities are located, or a copy of an agreement that provides for the continued use of the land, such as an easement or 99-year lease;

(i) A schedule showing the number of customers currently served, by class and meter size, as well as the number of customers projected to be served when the current service territory is fully occupied; and

(j) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities having concern with the application, and all known water utilities and community water supply systems in the general area of the current service territory.

(2) The application may also include any adjacent territory that the water utility plans to serve within six months following the date of the application:

(a) If another water utility or community water supply system is not serving such territory; and

(b) If the applicant demonstrates that it is more economical and feasible to serve the area by an extension of the applicant's existing facilities than by an extension of the facilities of another water utility or community water supply system. Application requirements for expanded service territory are contained in OAR 860-036-0915.

(3) Within 15 days of making its proposed service territory filing pursuant to OAR 860-036-0906, a water utility must provide written notice to its customers by mail or hand delivery. The notice shall include the following information:

(a) Name, address, and telephone number of water utility;

(b) The purpose of the notice;

(c) An accurate and detailed written description of the territory applied for;

(d) Filing date;

(e) A statement that customers may file a protest with the Commission's Administrative Hearings Division; and

(f) The Commission's toll-free telephone number, TTY number, and mailing and location addresses.

(4) The water utility's application to the Commission must include a copy of the notice to customers and a customer mailing list.

(5) In reviewing a completed application for current exclusive service territory, the Commission shall consider the applicant's ability to provide adequate and exclusive service to its existing customers which may include but is not limited to, financial resources, technical ability, customer service history, physical facilities, system capacity, revenue and cost studies, and system compliance with the Oregon Health Division's water rules and regulations.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300-758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 13-2002, f. & cert. ef. 3-26-02; PUC 18-2003, f. & cert. ef. 10-6-03; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-036-0910

### Commission Notice and Procedure

(1) Within 30 days of receipt of a completed service territory application, the Commission shall give written notice to any municipality, county, planning council, and governmental authority known to have a concern with the application, and to all known water utilities and community water supply systems in the areas adjacent to the proposed area described in the application.

(2) The Commission shall publish notice of the filing in a newspaper or newspapers of general circulation in the proposed territory at least once weekly for two consecutive weeks.

(3) Any objections to the application must be filed with the Commission no later than 30 days after the last date that the notice was mailed or published, whichever is later.

(4) The Commission may, on its own motion, hold a hearing on the application; however, the Commission must hold a hearing on the application if a customer of the water utility requests a hearing on the application within 30 days after the final publication of notice as required in section (2) of this rule.

(5) If a hearing is scheduled, the Commission shall give notice of the hearing, setting the time, date, and place of hearing. If the hearing is by reason of a customer's request, the Commission shall give notice of the hearing within 30 days after the request is received by the Commission. The hearing shall be held at a place within or conveniently accessible to the area described in the application.

(6) The Commission shall enter an order granting or denying an application for an exclusive service territory under OAR 860-036-0900. The Commission may grant an application subject to such conditions and limitations as the Commission deems appropriate.

(7) The applicable provisions of ORS 756.500 through 756.610 shall govern the conduct of hearings under this section and any appeal of the Commission's order.

Stat. Auth.: ORS 183, 756, 757 & 758

Stats. Implemented: ORS 758.300-758.320

Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-036-0915

### Filing an Application to Expand Exclusive Service Territory

(1) A water utility may apply to expand its service territory to serve an area not currently being provided water service. It shall file an expanded service territory application with the Commission.

(2) Upon application by the water utility or by the Commission's own motion, an approved service territory may be expanded to include unserved areas.

(3) In reviewing a completed application for an expanded exclusive service territory, the Commission shall consider the applicant's ability to adequately and exclusively provide service to the expanded territory, which may include but is not limited to, financial resources, technical ability, physical facilities, customer demand, system capacity, revenue and cost studies, regional planning, environmental impact, customer service history, impact on existing customers, compliance with the Oregon Health Division's water rules and regulations, economic and feasibility studies, and availability of alternate service.

(4) Notice and hearing of the proposed expansion shall be given as provided in OAR 860-036-0910.

(5) The application must include:

(a) The water utility's complete name and address;

(b) The nature of the utility's business organization, that is, corporation, partnership, limited partnership, sole proprietorship, association, etc.;

(c) The name and address of any other water utility or community water supply system that could potentially provide water service within the proposed expanded territory;

(d) The name and address of all corporate officers, directors, partners, or any other person owning an interest in the utility;

(e) The name and address of the nearest municipality, county, any known planning councils, any known governmental authorities that may have a concern with the application, and all known water utilities and community water supply systems in the general area of the proposed expanded service territory;

(f) A map identifying the boundaries of the proposed expanded service territory (currently unserved) marked with a fine-tipped BLUE pen. Appropriate maps may include: a GIS map, city or county map, tax lot map, plat map, or telephone book map. The map must be of sufficient scale and detail to identify the expanded service territory boundaries and enable correlation with the description of the proposed expanded territory;

(g) A complete and accurate written description of the proposed expanded territory. The description may reference township, range, and section; interstates, state roads, and local streets; rivers, streams, and major

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bodies of water; and recorded plats or lots, tracts, or other recorded instruments identifying permanent fixtures references;

(h) The total projected number of customers to be served in the proposed expanded territory by meter size and customer class, that is, single family homes, mobile homes, duplexes, golf course clubhouse, commercial, etc.;

(i) The estimated date applicant plans to begin providing service to customers in the proposed expanded territory;

(j) The estimated flat rate or base and usage rate structure to be utilized, unless an alternative rate structure is supported by the applicant and authorized by the Commission;

(k) A cost study including customer growth projections supporting the proposed water service rates and charges;

(l) A schedule showing by account the projected operating expenses of the water system to serve the expanded service territory when 100 percent of the system is being utilized;

(m) A schedule showing the projected capital structure including the methods of financing the construction and operation of the utility until the utility reaches 100 percent of the design capacity of the system;

(n) A statement describing the need for water service in the proposed expanded service territory;

(o) Evidence demonstrating adequate existing or proposed capacities of the system and facilities to serve the proposed expanded territory in terms of estimated average daily customer demand, customer peak demand, and daily pumping capacity per water source in gallons or cubic feet. If development will be in phases, separate this information by phases;

(p) A written description of the type of water treatment required, if necessary;

(q) A schedule showing the projected cost of the proposed system(s) by accounts. If the system is to be built in phases, show information for each phase individually;

(r) A list of all entities, including affiliates, upon which the applicant is relying to provide funding to the water utility for capital improvement, and an explanation of the manner and amount of such funding, including their financial statements and a copy of all contracts or agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility;

(s) Financial statements demonstrating applicant's financial capability to provide service;

(t) A statement showing applicant's technical ability or capacity to procure technical skill necessary to provide service;

(u) A statement describing any impact the expansion of service territory may have on existing customers.

Stat. Auth.: ORS 183, 756, 757 & 758  
Stats. Implemented: ORS 758.300-758.320  
Hist.: PUC 9-1999(Temp), f. 10-22-99, cert. ef. 10-23-99 thru 4-19-00; PUC 6-2000, f. 4-18-00, cert. ef. 4-20-00; PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-037-0308

### Expenditure of Fees Collected Under ORS 756.310 to Make Emergency Repairs

(1) The Commission may use up to \$5,000 per biennium of the fees collected under ORS 756.310 to make emergency repairs for privately-owned wastewater utilities that provide service within the boundaries of a city. The Commission may expend monies under the provisions of this rule if the Commission determines that:

(a) Customers of a wastewater utility are without service and are likely to remain without service for an unreasonable period of time;

(b) The wastewater utility is unwilling or unable to make emergency repairs, or cannot be found after reasonable effort; and

(c) Restoration of the service is necessary for the health and safety of the customers of the utility.

(2) The Commission shall promptly attempt to recover fees used under this rule from the utility providing water service. No interest shall accrue on the outstanding balance.

(3) The Commission may also recover penalties as provided in ORS 756.350 from the time the fees are expended.

Stat. Auth.: ORS Ch. 183, 756, 757 & Ch. 202, OL 2003  
Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003  
Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-037-0309

### Commission-Assessed Civil Penalties for Noncompliance

(1) In addition to any other penalty provided by law, the Commission may impose a civil penalty not to exceed \$500 for each violation of state statutes, Oregon administrative rules, or Commission orders related to wastewater utilities.

(2) Prior to assessing civil penalties, the Commission may send a warning letter to the wastewater utility by registered or certified mail. The warning letter must include, but not be limited to, the following:

(a) A statement that the wastewater utility is in violation of state statutes, Oregon administrative rules, or Commission orders;

(b) The time allowed for correcting the violation(s); and

(c) A statement that, if the violations are not corrected within the time allowed, staff may make a recommendation to the Commission to assess civil penalties.

(3) The Commission must give notice of civil penalties by registered or certified mail to the wastewater utility incurring the penalties. The notice must include, but is not limited to the following:

(a) The section of the statute, rule, or order violated;

(b) A concise statement of the violation(s) asserted or charged;

(c) A statement of the amount of civil penalties that may be assessed;

(d) A statement of the wastewater utility's right to request a hearing within 20 calendar days of the date of service of the notice; and

(e) A statement of the authority and jurisdiction under which the hearing is to be held.

(4) Within 20 calendar days of the date of service of the notice, the wastewater utility incurring the penalties may request a hearing. Such request must be in writing and shall state what actions, if any, have been made to correct the violation(s) stated in the notice. If the wastewater utility does not request a hearing within the time allowed, or if the wastewater utility requesting a hearing fails to appear, the Commission may issue a final order imposing the penalty.

(5) The Commission may require that penalties imposed under this rule be used for the benefit of the customers of wastewater utilities affected by the violation(s).

Auth.: ORS Ch. 183, 756, 757 & Ch. 202, OL 2003  
Stats. Implemented: ORS 757.061 & Ch. 202, OL 2003  
Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-037-0407

### Request for Rate Regulation of an Association within the Boundaries of a City

(1) Association members may submit a petition to the Commission at any time for full rate regulation of a wastewater utility owned or operated by an association located within the boundaries of a city. Petitioners must be current customers of the wastewater utility.

(2) Petitions must be in writing, state the purpose of the petition, and include the customer's name, address, telephone number, and signature.

(3) Individual members may submit letters in lieu of a petition.

(4) If 20 percent of association members petition the Commission, the Commission shall issue an order notifying the association of its change in regulatory status to a rate-regulated utility.

(5) The association must file tariffs pursuant to ORS 757.205 within 60 days after receiving notification from the Commission of its change in regulatory status.

(6) If the association fails to file appropriate tariffs within 60 days, the Commission may initiate a tariff filing proceeding on its own motion to establish rates.

(7) Petitions filed with the Commission may not be withdrawn or rescinded and are valid for six months.

Stat. Auth.: ORS Ch. 183, 756 & Ch. 082, OL 2003  
Stat. Implemented: ORS 756.040 & Ch. 082, OL 2003  
Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thru 6-7-04

## 860-037-0547

### Allocation of Costs by a Wastewater Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with a wastewater utility;

(b) "Affiliate transaction" means a transfer of assets, a sale of supplies, or a sale of services between accounts for regulated activities of a wastewater utility and accounts for nonregulated activities of a separate entity that is either an affiliated interest or another company in which the wastewater utility owns a controlling interest. The term also means a transfer of assets, a sale of supplies, or a sale of services between accounts for the regulated and nonregulated activities of a single wastewater utility;

(c) "Asset" means any tangible or intangible property of a wastewater utility or other right, entitlement, business opportunity, or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as a capital expenditure in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services or supplies;

(d) "Cost" means fully distributed cost, including the wastewater utility's authorized rate of return and all overheads;

# ADMINISTRATIVE RULES

(e) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(f) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(g) "Net book value" means original cost less accumulated depreciation;

(h) "Nonregulated activity" means an activity that is not a regulated activity of the wastewater utility as defined in subsection (1)(j) of this rule;

(i) "Regulated activity" means a Commission regulated activity that is provided by a wastewater utility directly or indirectly relating to the general operations of the wastewater utility such as production, transmission, delivery, or furnishing of water, and the provision of wastewater services to the public inside the boundaries of a city unless the Commission has determined the activity to be exempt from regulation;

(j) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered assets, services, or supplies; and

(k) "Supplies" means any tangible or intangible property of a wastewater utility or other thing of value to which a wastewater utility holds claim that is recorded or should be recorded as an operating expense in the wastewater utility's financial statements. All wastewater utility tangible or intangible property, rights, entitlements, business opportunities and things of value should be considered assets, services, or supplies.

(2) For purposes of this rule, regulated and nonregulated activities of a wastewater utility shall be accounted for in accordance with the Uniform System of Accounts for Water Utilities published by the National Association of Regulatory Utility Commissioners as modified by the Commission.

(3) When a wastewater utility is conducting an affiliate interest transaction, as defined in this rule, the wastewater utility must use the following cost allocation methods:

(a) When an asset is transferred to a wastewater utility from an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from a wastewater utility to an affiliate, the transfer shall be recorded in the wastewater utility's accounts at the tariff rate if an appropriate tariff is on file with the Commission. If no tariff is applicable, proceeds from the transfer shall be recorded in the wastewater utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from a wastewater utility to an affiliate at a fair market value that is greater than net book value, the difference shall be considered a gain to the wastewater utility. The wastewater utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by a wastewater utility to an affiliate, sales shall be recorded in the wastewater utility's accounts at tariffed rates if an applicable tariff is on file with the Commission. Tariffed rates shall be established whenever possible. If services or supplies are not sold pursuant to a tariff, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is higher.

(e) When services or supplies are sold to a wastewater utility by an affiliate, sales shall be recorded in the wastewater utility's accounts at the wastewater utility's cost or the market rate, whichever is lower. The affiliate's cost shall be calculated using the wastewater utility's most recently authorized rate of return.

(f) Income taxes shall be calculated for the wastewater utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the wastewater utility shall record income tax expense as if it were determined for the wastewater utility separately for all time periods.

Stat. Auth.: ORS 183, 756 & 757

Stats. Implemented: ORS 756.040, 757.490 & 757.495

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

## 860-037-0570

### Accounting for Construction Work In Progress (CWIP)

This rule applies to wastewater utilities that provide services inside the boundaries of a city. The Commission may allow into rates the costs of a specific capital improvement project in progress if:

(1) The wastewater utility uses the additional revenues solely for the purpose of completing the capital improvement project;

(2) The wastewater utility demonstrates that its access to capital is limited and it is in the public interest to provide funding for the capital improvement through rates; and

(3) Such costs are approved through tariffs filed with the Commission.

Stat. Auth.: ORS Ch. 183, 756 & 757

Stat. Implemented: ORS 756.040, 757.355 & Ch. 202, OL 2003

Hist.: PUC 24-2003(Temp), f. & cert. ef. 12-10-03 thur 6-7-04

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**Adm. Order No.:** PUC 25-2003

**Filed with Sec. of State:** 12-11-2003

**Certified to be Effective:** 12-11-03

**Notice Publication Date:** 10-1-03

**Rules Adopted:** 860-027-0048

**Rules Amended:** 860-038-0580

**Subject:** This rulemaking affirms the Commission's Transfer Pricing Policy for Affiliated Transactions (Allocation of Costs) for energy utilities. The rule states how transactions between energy (electric, natural gas and steam heat) utilities and their non regulated affiliates are to be accounted for and recorded in financial records. It includes methods for cost allocations by energy utilities and will require energy utilities to submit Cost Allocation Manuals to the Commission.

**Rules Coordinator:** Lauri Salisbury—(503) 378-4372

## 860-027-0048

### Allocation of Costs by an Energy Utility

(1) As used in this rule:

(a) "Affiliate" means a corporation or person who has an affiliated interest, as defined in ORS 757.015, with an energy utility;

(b) "Approved rates" means rates established by the Commission or FERC;

(c) "Asset" means any tangible or intangible property of an energy utility or other right, entitlement, business opportunity, or other thing of value to which an energy utility holds claim that is recorded or should be recorded as a capital expenditure in the energy utility's financial statements. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies;

(d) "Commission" means the Public Utility Commission of Oregon;

(e) "Cost" means fully distributed cost, including the energy utility's authorized rate of return and all overheads;

(f) "Energy utility" is that defined in OAR 860-027-0001(1);

(g) "Fair market value" means the potential sales price that could be obtained by selling an asset in an arm's-length transaction to a nonaffiliated entity, as determined by commonly accepted valuation principles;

(h) "FERC" means the Federal Energy Regulatory Commission;

(i) "Market rate" means the lowest price that is available from nonaffiliated suppliers for comparable services or supplies;

(j) "Net book value" means original cost less accumulated depreciation;

(k) "Nonregulated activity" means an activity that is not a regulated activity of the energy utility as defined in subsection (1)(l) of this rule;

(l) "Regulated activity" means a Commission regulated activity that is provided by an energy utility directly or indirectly relating to the general operations of the energy utility such as production, transmission, delivery, or furnishing of heat, light, or power unless the Commission has determined the activity to be exempt from regulation;

(m) "Services" means labor-related activities including, but not limited to advice, auditing, accounting, sponsoring, engineering, managing, operating, financing, and legal. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies; and

(n) "Supplies" means any tangible or intangible property of an energy utility or other thing of value to which an energy utility holds claim that is recorded or should be recorded as an operating expense in the energy utility's financial statements. All energy utility tangible or intangible property, rights, entitlements, business opportunities, and things of value should be considered an asset, a service, or supplies.

(2) Regulated and nonregulated activities of an energy utility shall be accounted for in accordance with OARs 860-027-0045, 860-027-0055, or 860-027-0065, as appropriate.

(3) The energy utility shall use the following cost allocation methods when transferring assets or supplies, or providing or receiving services between regulated and nonregulated activities:

(a) When an asset is transferred to regulated accounts from nonregulated accounts, the transfer shall be recorded in regulated accounts at the lower of net book value or fair market value.

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(b) When an asset is transferred from regulated accounts to nonregulated accounts, the transfer shall be recorded in regulated accounts at the approved rate if an appropriate rate is on file with the Commission or with FERC. If no approved rate is applicable, proceeds from the transfer shall be recorded in regulated accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from regulated accounts to nonregulated accounts at a fair market value that is greater than net book value, the difference shall be a gain to the regulated activity. The energy utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are transferred or provided by a regulated activity to a nonregulated activity, transfers shall be recorded in regulated revenue accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies are not transferred or provided pursuant to an approved rate, transfers shall be recorded in regulated accounts at the energy utility's cost or the market rate, whichever is higher. Approved rates shall be established as appropriate.

(e) When services or supplies (except for generation) are transferred or provided to a regulated activity by a nonregulated activity, transfers shall be recorded in regulated accounts at the nonregulated activity's cost or the market rate, whichever is lower. The nonregulated activity's cost shall be calculated using the energy utility's most recently authorized rate of return.

(f) For generation, when services or supplies are transferred or provided to a regulated activity by a nonregulated activity, transfers shall be recorded in regulated accounts at the market rate.

(g) Income taxes shall be calculated for the regulated activity on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the regulated activity shall record income tax expense as if it were determined for the regulated activity separately for all time periods.

(4) The energy utility shall use the following cost allocation methods when transferring assets or supplies or providing or receiving services involving its affiliates:

(a) When an asset is transferred to an energy utility from an affiliate, the transfer shall be recorded in the energy utility's accounts at the lower of net book value or fair market value.

(b) When an asset is transferred from an energy utility to an affiliate, the transfer shall be recorded in the energy utility's accounts at the approved rate if an appropriate rate is on file with the Commission or with FERC. If no approved rate is applicable, proceeds from the transfer shall be recorded in the energy utility's accounts at the higher of net book value or fair market value.

(c) When an asset is transferred from an energy utility's accounts to an affiliate at a fair market value that is greater than net book value, the difference shall be a gain to the energy utility. The energy utility shall record the gain so the Commission can determine the proper disposition of the gain in a subsequent rate proceeding.

(d) When services or supplies are sold by an energy utility to an affiliate, sales shall be recorded in the energy utility's revenue accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies are not sold pursuant to an approved rate, sales shall be recorded in the energy utility's accounts at the energy utility's cost or the market rate, whichever is higher. Approved rates shall be established as appropriate.

(e) When services or supplies (except for generation) are sold to an energy utility by an affiliate, sales shall be recorded in the energy utility's accounts at the approved rate if an applicable rate is on file with the Commission or with FERC. If services or supplies (except for generation) are not sold pursuant to an approved rate, sales shall be recorded in the energy utility's accounts at the affiliate's cost or the market rate, whichever is lower.

(f) For generation, when services or supplies are sold to an energy utility by an affiliate, sales shall be recorded in regulated accounts at the market rate.

(g) When services or supplies are sold to an energy utility by an affiliate under contract, the transfer price shall be based upon the tariff or terms of the contract approved by the Commission Order under ORS 757.495.

(h) Income taxes shall be calculated for the energy utility on a standalone basis for both ratemaking purposes and regulatory reporting. When income taxes are determined on a consolidated basis, the energy utility shall record income tax expense as if it were determined for the energy utility separately for all time periods.

(5) Each energy utility shall maintain a current cost allocation manual on file with the Commission. The cost allocation manual shall contain the following:

(a) A description of each of the energy utility's nonregulated activities and affiliates (or a referral to such a description already on file with the Commission);

(b) A chart showing the energy utility's nonregulated activities and affiliates (or a referral to such a chart already on file with the Commission); and

(c) A detailed description of the methods used by the energy utility to allocate costs to nonregulated activities and affiliates including the method used by the energy utility to calculate costs that are applied to sales or transfers with nonregulated activities and transactions with affiliates.

(6) The energy utility must file its initial cost allocation manual within 180 days of the effective date of this rule. The cost allocation manual shall also be filed annually as an appendix to the Affiliated Interest Report required under OAR 860-027-0100.

(7) When an energy utility proposes any change to cost allocation methods in the cost allocation manual previously filed with the Commission, the utility shall file the proposed change with the Commission no less than 45 days before the effective date of the change. The changes shall go into effect unless rejected by the Commission before the effective date of the change.

Stat. Auth.: ORS 183, 756 & 757  
Stats. Implemented: ORS 756.040, 757.490 & 757.495  
Hist.: PUC 25-2003, f. & cert. ef. 12-11-03

## 860-038-0580

### Prevention of Cross-subsidization Between Competitive Operations and Regulated Operations

(1) Other than information that is routinely made public by an electric company, an electric company must not provide electric company operational information to its competitive operations unless it makes such information available to ESSs and other entities on identical terms and conditions.

(2) Any goods or services provided by an electric company's utility operation to its competitive operations or provided by an electric company's competitive operations to its utility operation must be provided in accordance with OAR 860-027-0048.

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 25-2003, f. & cert. ef. 12-11-03

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**Secretary of State,  
Archives Division  
Chapter 166**

**Adm. Order No.:** OSA 3-2003

**Filed with Sec. of State:** 11-20-2003

**Certified to be Effective:** 11-20-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 166-500-0000, 166-500-0015, 166-500-0040, 166-500-0045, 166-500-0050, 166-500-0055

**Subject:** Publications Unit rules amended to implement new fee schedule for publications, and to bring other fees in line with rest of the Archives Division fees. Clarified language of Notice Rule. Amending filing requirements to eliminated outdated references to ASCII formatted text.

**Rules Coordinator:** Julie Yamaka—(503) 373-0701, ext. 240

## 166-500-0000

### Notice of Proposed Rulemaking

Before adopting, amending, or repealing any permanent rules, the Administrative Rules Unit shall give notice of the proposed adoption, amendment, or repeal:

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

(2) By mailing a copy of the Notice to persons on the Administrative Rules Unit's mailing list established pursuant to ORS 183.335(7).

(3) By mailing a copy of the Notice to the following persons and organizations:

- (a) Associated Press;
- (b) Capitol Press Room;
- (c) Oregon Bar Association;
- (d) Department of Justice.

(4) By mailing a copy of the Notice to legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183.360  
Stats. Implemented: ORS 183.335 & ORS 183.360

# ADMINISTRATIVE RULES

Hist.: PRD 1-1988, f. & cert. ef. 2-5-88; Former paragraphs (3)(b)(A) - (K) & (c)(A) - (M) renumbered to 160-001-0000; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0000; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 3-2003, f. & cert. ef. 11-20-03

## 166-500-0015

### Fees

Fees charged by the Administrative Rules Unit are based upon actual personnel, equipment usage and materials costs and shall be as follows:

(1) Charges for services and products identified in this section, except services identified in subsections (a) through (i) of this section, may be billed upon request.

(a) Basic records request — \$5 in-state; \$10 out-of-state. This includes copying charges, postage and supplies. It applies to one-page documents. A Basic Records Request must provide an exact citation to a record (e.g., a citation of an Administrative Order number or a rule number) in the custody of the Archives Division.

(b) Basic Case File Request — \$10 in-state; \$15 out-of-state. This includes up to 10 photocopies, postage and supplies. Additional photocopy pages are charged at .75 cents per page. A Basic Case File Request must provide an exact citation to a record in the custody of the Archives Division.

(c) Other Requests — \$5 out-of-state. In addition, all other requests will include labor charges and copying, supply and postage charges when incurred.

(d) Labor charges — \$30 per hour charged in \$5 (10-minute) increments. There is a maximum of \$120 (four hours labor) for any request.

(e) Photocopies. Copies made by the customer — 25 cents per page. Copies made by Archives Division staff — 75 cents per page.

(f) Fax Charges — 75 cents per page.

(g) PDF Transfers — 75 cents per page.

(h) Certifying administrative rule records — \$5 per certification plus any copying, labor or research fees incurred in filling the request;

(i) CD Rom/Zip Disk, or FTP — \$15 per file copied, plus any associated costs.

(j) Oregon Administrative Rules Compilation bound set — \$500 per year;

(k) Oregon Administrative Rules Compilation bound set purchased with a one-year subscription to the Oregon Bulletin; — \$600 per year;

(l) Individual volumes of the OAR Compilation — \$40

(m) Oregon Bulletin:

(A) One-year subscription — \$125;

(B) Per issue — \$11 each.

(2) Walk-in customers or customers with large requests will be assisted as workloads permit.

(3) The Secretary of State shall not refund fees paid in excess of the amount legally due the Division if the amount is \$10 or less, unless a refund is requested in writing by the applicant or the applicant's legal representative. Such requests must be made within three years of the date payment is received by the Division.

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

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 177.130, 183.370, 192 & 357.885

Hist.: SOS-AD 1-1992, f. & cert. ef. 2-11-92; OSA 4-1993, f. & cert. ef. 11-10-93, Renumbered from 164-001-0015; OSA 7-1994(Temp), f. & cert. ef. 10-14-94; OSA 11-1994, f. & cert. ef. 11-21-94; OSA 8-1997, f. & cert. ef. 10-6-97; OSA 6-2001(Temp), f. & cert. ef. 10-23-01 thru 4-15-02; OSA 1-2002, f. & cert. ef. 1-25-02; OSA 4-2002, f. & cert. ef. 7-3-02; OSA 3-2003, f. & cert. ef. 11-20-03

## 166-500-0040

### Components of a Permanent Administrative Rule Filing

(1) Permanent Administrative Rule filings have three components. These are:

(a) Two Certificate and Order for Filing Permanent Administrative Rules forms, including:

(A) One original filing form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original filing form.

(b) A computer disk which contains the text of the rule in both plain text and the original text format as described in 166-500-0045. Graphs, formulas, tables, appendices, etc. will not be included in the Oregon Administrative Rules Compilation. Agencies are still required to file a paper copy but do not have to file an electronic copy;

(c) One 8 1/2 by 11 inch paper copy of the rule text printed from the computer disk included with the filing:

(A) Agencies shall number paper copy pages consecutively and note any special formatting in the left margin where the formatting occurs.

(B) Agencies adopting or amending rules incorporating published works by reference may omit copies of the publications from their rule filings if:

(i) The publications are unusually voluminous, and/or costly to reproduce;

(ii) The location of the publication and its availability to the public are stated in the rule.

(2) Each Certificate and Order for Filing Permanent Administrative Rules shall be comprised only of administrative rules for which prior notice was published in the Oregon Bulletin.

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

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.325, 183.330, 183.335, 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-97, Renumbered from 166-510-0011; OSA 3-2003, f. & cert. ef. 11-20-03

## 166-500-0045

### Computer Disk to Be Filed as Part of Permanent Administrative Rule Filing

Computer Disk: One 3.5-inch, double-sided, high density computer disk (or more as needed) which contains two electronic copies of the text of each rule shall be filed. One electronic file shall be in plain text. The other electronic file shall be in the format of the original word processing program in which it was created. Computer disks which do not meet these requirements will not be accepted as filed and will be returned to the submitting agency. This disk shall meet the following requirements:

(1) Text layout in both files:

(a) Rule text shall contain only final wording;

(b) Formatting:

(A) Rules shall be typed in 10 or 12 point size;

(B) Typing shall be from margin to margin, not in column form;

(C) Single spaces shall be used between sentences, words or any place multiple spaces might be used;

(D) Division titles shall be centered, boldface and use all uppercase letters;

(E) Division subtitles shall be centered, boldface and use initial capitalization only;

(F) Rule numbers shall be flush left and boldface;

(G) Rule titles shall be flush left, boldface and use initial capitalization;

(H) Text has one level of indention throughout. Hanging paragraphs should not be used;

(I) The text of each rule shall be followed by:

(i) The specific statutory authority for that rule; and

(ii) The specific statute(s) being implemented by that rule.

(J) One extra line space (hard return) shall be inserted only in the following locations in the text:

(i) Before and after centered titles;

(ii) After the text of each rule.

(c) Text shall appear in consecutive order by rule number;

(d) Acceptable special formatting:

(A) Special font usage (eg. bold, italics, underline etc.);

(B) Special characters (eg. degree symbol)

(C) Graphs, formulas, tables, appendices, etc. will not be included in the Oregon Administrative Rules Compilation. Agencies are still required to file a paper copy but do not have to file an electronic copy;

(D) Quoted text;

(E) Centered text or titles; and

(F) Adoptions by reference.

(2) Files:

(a) The affected rules only in each OAR division shall be in two separate files on the computer disk;

(b) Filenames for each ASCII formatted file shall begin with OAR three digit chapter number, followed by a hyphen (-), followed by three digit division number, followed by a period (.); followed by the lower-case letters "txt." A complete ASCII formatted filename would be as follows: 166-010.txt. Filenames for each file saved in the original word processing format shall be the same as the ASCII formatted files, except contain a different file name suffix. The file name suffix shall be the suffix customarily used by the original word processing program or designated by the agency. A complete formatted filename would be as follows: 166-000.doc or 166-000.wp.

(3) Labeling: The outside of each disk shall be labeled with:

(a) Agency name;

(b) OAR chapter number;

(c) Division number(s);

(d) Whether formatted for IBM or Macintosh; and

(e) Name and version of word processing program used to create files.

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.355 & 183.360



# ADMINISTRATIVE RULES

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-97, Renumbered from 166-510-0025; OSA 3-2003, f. & cert. ef. 11-20-03

## 166-500-0050

### Components of a Temporary Administrative Rule Filing

(1) Temporary Administrative Rule filings have four components These are:

(a) Two copies of the Certificate and Order for Filing Temporary Administrative Rules, including:

(A) One original filing form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original form.

(b) A computer disk which contains the text of the rule in both plain text and the original text format as described in 166-500-0050. Graphs, formulas, tables, appendices, etc. will not be included in the Oregon Administrative Rules Compilation. Agencies are still required to file a paper copy but do not have to file an electronic copy;

(c) One 8 1/2 by 11 paper copy of the rule text printed from the computer disk:

(A) Agencies shall number paper copy pages consecutively and note special formatting in the left margin where the formatting occurs.

(B) Agencies adopting or amending rules incorporating published works by reference may omit copies of the publications from their rule filings if:

(i) The publications are unusually voluminous, and/or costly to reproduce;

(ii) The location of the publication and its availability to the public are stated in the rule.

(d) Two copies of the Statement of Need and Justification.

(A) One original form bearing the original signature of the agency's authorized signer; and

(B) One photocopy of the original form.

(2) The Administrative Rules Unit will accept Temporary Rule filings by fax when:

(a) Notification is received by the Administrative Rules Unit prior to the fax transmission; and

(b) A complete Temporary Administrative Rule Filing, as described in sub-sections 1(a) through 1(d) of this rule, is received by the Administrative Rules Unit within three working days.

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.325, 183.330, 183.335, 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; [OSA 4-1995, f. 8-15-95, cert. ef. 9-1-95; Suspended by OSA 9-1997(Temp), f. & cert. ef. 10-6-97]; OSA 13-1997, f. & cert. ef. 11-3-97, Renumbered from 166-510-0031; OSA 3-2003, f. & cert. ef. 11-20-03

## 166-500-0055

### Computer Disk to Be Filed as Part of Temporary Administrative Rule Filing

Computer Disk: One 3.5 inch, double-sided, high density computer disk (or more as needed) which contains two electronic copies of the text of each rule shall be filed. One electronic file shall be in plain text. The other electronic file shall be in the format of the original word processing program in which it was created. Computer disks which do not meet these requirements will not be accepted as filed and will be returned to the submitting agency. This disk shall meet the following requirements:

(1) Text layout in both files:

(a) Rule text shall contain temporary wording;

(b) Formatting:

(A) Rules shall be typed in 10 or 12 point size;

(B) Typing shall be from margin to margin, not in column form;

(C) Single spaces shall be used between sentences, words or any place multiple spaces might be used;

(D) Division titles shall be centered, boldface and use all uppercase letters;

(E) Division subtitles shall be centered, boldface and use initial capitalization only;

(F) Rule numbers shall be flush left and boldface;

(G) Rule titles shall be flush left, boldface and use initial capitalization.

(H) Text has one level of indentation throughout. Hanging paragraphs should not be used;

(I) The text of each rule shall be followed by:

(i) The specific statutory authority for that rule; and

(ii) The specific statute(s) being implemented by that rule.

(J) One extra line space (hard return) shall be inserted only in the following locations in the text:

(i) Before and after centered titles;

(ii) After the text of each rule.

(c) Text shall appear in consecutive order by rule number;

(d) Acceptable special formatting:

(A) Special font usage (eg. bold, italics, underline etc.);

(B) Special characters (eg. degree symbol);

(C) Graphs, formulas, tables, appendices, etc. will not be included in the Oregon Administrative Rules Compilation. Agencies are still required to file a paper copy but do not have to file an electronic copy;

(D) Quoted text;

(E) Centered text or titles; and

(F) Adoptions by reference.

(2) Files:

(a) The affected rules only in each OAR division shall be in two separate files on the computer disk;

(b) Filenames for each plain text file shall begin with OAR three digit chapter number, followed by a hyphen (-), followed by three digit division number, followed by a period (.); followed by the lower-case letters "txt." A complete filename would be as follows: 166-010.txt. Filenames for each file saved in the original word processing format shall be the same as the plain text files, except contain a different file name suffix. The file name suffix shall be the suffix customarily used by the original word processing program or designated by the agency. A complete formatted filename would be as follows: 166-000.doc or 166-000.wp.

(3) Labeling: The outside of each disk shall be labeled with:

(a) Agency name;

(b) OAR chapter number;

(c) Division number(s);

(d) Whether formatted for IBM or Macintosh; and

(e) Name and version of word processing program used to create files.

Stat. Auth.: ORS 183.360

Stats. Implemented: ORS 183.355 & 183.360

Hist.: OSA 9-1997(Temp), f. & cert. ef. 10-6-97; OSA 13-1997, f. & cert. ef. 11-3-97; OSA 3-2003, f. & cert. ef. 11-20-03

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**Adm. Order No.:** OSA 4-2003

**Filed with Sec. of State:** 11-24-2003

**Certified to be Effective:** 11-24-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 166-101-0010, 166-200-0130

**Subject:** Amendments update both the County and City General Records Retention Schedules for Elections records.

**Rules Coordinator:** Julie Yamaka—(503) 373-0701, ext. 240

## 166-101-0010

### Elections

(1) **Absentee Ballot Requests** Used to enter a citizen's request for a ballot to be sent to them for the purpose of voting, without going to their designated polling place, or to change their current status as an absentee voter. Information includes voter name, address of residence, mailing address, and witness signature for illiterates making their mark. (Minimum retention: 1 year)

(2) **Abstract of Votes (Record of Elections)** Documents election results for General, Primary, Emergency, and Special Elections. Information includes candidate name/ballot title, precinct name, total votes per candidate/ballot title, total per precinct, under/over votes, and certification by County Clerk or election official. (Minimum retention: Permanent)

(3) **Ballots** Documents ballots and stubs of ballots of voters who voted in Primary, General, Emergency, and Special District elections. Includes ballots cast at polls, by vote-by-mail, or by absentee request. Used to register and count votes. Information contains numbers that correspond to a candidate or "yes" or "no" on an issue. May also include written challenge statements and replacement affidavits. (Minimum retention: (a) Special District and Emergency Election: 90 days after last date to contest election; (b) Primary and General Election: 2 years after last date to contest election)

(4) **Contribution and Expenditure Reports** Documents contributions and expenditures by candidates or political action committees. Includes statement of organization, amount, source, and detail of expenditures over the amount of fifty dollars. May also include receipts for expenditures. (Minimum retention: (a) Statement of Organization: Permanent; (b) All other records: 4 years after the date required to file update reports)

(5) **Election Filings** Documents all necessary papers required to be filed by a candidate or governing body for primary, general, emergency, and special elections. May include petition of nomination, declaration of candidacy, certification of nomination, filing forms for county voters pamphlet, notice of measure election, and withdrawal of candidates. (Minimum retention: 4 years)

(6) **Election Preparation Records** Used to prepare and administrate elections within each precinct in the county. Records may include such

# ADMINISTRATIVE RULES

information as number of ballots going to each precinct, number and type of pages for each voting machine for each precinct, listing of issues and candidates by precinct order, guides to preparing voting machines, ballot layout records, and public certification test notice. Also may include guides to assist Election Board personnel in reconciling votes cast with eligible voters. (Minimum retention: 2 years)

(7) **Initiative, Referendum, and Recall Records** Documents the initiative, referendum, and recall process by which voters propose laws and amendments to the State Constitution, refer an act of the Legislature or other governing body to a vote of the electorate, or recall a public official. Includes petitions, signature sheets, summaries of signature verification, text of proposed law, amendment, or response from public. (Minimum retention: (a) Signature sheets: 6 years after election if measure is approved; (b) 90 days after election if measure is not approved or 90 days after deadline for sufficient signatures; (c) All other records: Permanent)

(8) **Legal Notices and Publications** Documents required pre-election legal notices by the County Clerk. May include publication of ballot title, notice of election, sample ballot, and the county voters pamphlet. (Minimum retention: (a) County Voters Pamphlet (One copy): Permanent; (b) All other records: 4 years)

(9) **Poll Books** Records issuance of ballot to eligible voter in an election. Includes name of elector, party affiliation, home address, ballot number, precinct number, and signature of voter. Cover includes number of voters casting ballots for the election and names, signatures, and oaths of Election Board members. May also include certificates of registration. (Minimum retention: (a) Records created prior to 1931: Permanent; (b) All other records: 2 years)

(10) **Registration List Authorizations** Documents the request and authorization for transmittal of voter registration information to citizens. Record consists of request and authorization for list of electors for a particular political boundary. (Minimum retention: 2 years)

(11) **Secretary of State Reports** Documents required reports to the Office of the Secretary of State summarizing election registration, participation, and costs. May include Special District Election Report, Election Equipment Amortization Worksheet, Average Ballots Cast Worksheet, Allocated Cost Worksheet, and Local Elections Billing Worksheet. (Minimum retention: 2 years)

(12) **Vote-by-Mail Records** Records are used to prepare, administer and abstract elections conducted by mail. Records include: Ballots — counted, duplicated, rejected and or defective; Envelopes — returned signed envelopes, non-deliverable envelopes, and secrecy envelopes; and other documents used to prepare, administer and abstract elections conducted by mail. (Minimum Retention: (a) Retain counted, duplicated, rejected and or defective ballots 22 months for elections containing federal candidates and 90 days after the last day to contest the election for all other elections; (b) Retain returned signed envelopes 2 years for elections containing federal candidates and 90 days after the last day to contest for all other elections; (c) Retain secrecy and non deliverable envelopes for 60 days after the last day to contest for all elections regardless of federal/non-federal candidates; (d) Retain all other documents used to prepare, administer and abstract elections conducted by mail 2 years following the election to which it relates)

(13) **Voter Registration Records** Documents registration or cancellation of registration of eligible voters. Voter Registration Cards include the following information: name, signature, mailing and residence address, previous registration information, if ever registered in Oregon, date (and place) of birth, (parents names, spouse name,) affirmation of citizenship, state residency, (telephone number) and political party. May also include records canceling or making inactive voter registration such as the notice of deceased list from Secretary of State, notice of change of address from Department of Motor Vehicles, U.S. Postal Service notice, and related correspondence. (Minimum retention: 2 years after cancelled)

(14) **Help America Vote Act Identification Records** Records are used to verify the identity of a person registering to vote exists and their residence in the county they are attempting to register to vote in. Records include but are not limited to current and valid photo identification containing voter name and address, or a current copy of a utility bill, bank statement, government check, paycheck, or other government document that shows their name and address. The address listed must match the residence or mailing address submitted on their voter registration card. (Minimum Retention: Retain until verified by county elections official)

Stat. Auth.: ORS 192 & ORS 357

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

Hist.: OSA 2, f. & ef. 11-21-75; OSA 5, f. 12-30-77, ef. 1-1-78; OSA 10-1994, f. & cert. ef. 11-2-94; Renumbered from 166-040-0300; OSA 3-1996, f. 4-9-96, cert. ef. 4-15-96; OSA 5-1998, f. & cert. ef. 10-29-98, Renumbered from 166-040-1400; OSA 6-1999(Temp), f. & cert. ef. 12-15-99 thru 6-12-00; OSA 1-2000, f. & cert. ef. 3-9-00; OSA 4-2003, f. & cert. ef. 11-24-03

## 166-200-0130

### Recorder — Election Records

(1) **Abstract of Votes (Record of Elections)** Documents election results for General, Primary, Emergency, and Special Elections. Information includes candidate name/ballot title, precinct name, total votes per candidate/ballot title, total per precinct, under/over votes, and certification by County Clerk. (Minimum retention: Permanent)

(2) **Contribution and Expenditure Reports** Documents contributions and expenditures by candidates or political action committees. Includes statement of organization, amount, source, and detail of expenditures over the amount of fifty dollars. May also include receipts for expenditures and supplemental reports. (Minimum retention: (a) Retain statement of organization permanently (b) Retain other records 4 years after the date required to file update reports)

(3) **Election Filings** Documents all necessary papers required to be filed by a candidate or governing body for primary, general, emergency, and special elections. May include petition of nomination, declaration of candidacy, certification of nomination, filing forms for city and county voters' pamphlet, notice of measure election, and withdrawal of candidates. (Minimum retention: 4 years)

(4) **Election Preparation Records** Used to prepare and administrate elections within each precinct in the city. Records may include such information as number of ballots going to each precinct, number and type of pages for each voting machine for each precinct, listing of issues and candidates by precinct order, guides to preparing voting machines, ballot layout records, and public certification test notice. Also may include guides to assist Election Board personnel in reconciling votes cast with eligible voters. (Minimum retention: 2 years)

(5) **Initiative, Referendum, and Recall Records** Documents the initiative, referendum, and recall process by which voters propose laws and amendments to the State Constitution, refer an act of the Legislature or other governing body to a vote of the electorate, or recall a public official. Includes petitions, signature sheets, summaries of signature verification, text of proposed law, amendment, or response from public official. (Minimum retention: (a) Retain signature verification records 6 years (b) Retain signature sheets including verification, if measure approved, 6 years after election (c) Retain signature sheets, if measure not approved, 90 days after election or 90 days after deadline for sufficient signatures (d) Retain petitions qualified to ballot permanently (e) Retain petitions not qualified to ballot 6 years)

(6) **Legal Notices and Publications** Documents required pre-election legal notices by the City Recorder. May include publication of ballot title, notice of election, sample ballot, and the City voters' pamphlet. (Minimum retention: (a) Retain one copy of city voters' pamphlet permanently (b) Retain other records 4 years)

(7) **Poll Books** Records issuance of ballot to eligible voter in an election. Includes name of elector, party affiliation, home address, ballot number, precinct number, and signature of voter. Cover includes number of voters casting ballots for the election and names, signatures, and oaths of Election Board members. May also include certificates of registration. Some records may have historical value. For appraisal assistance, contact the Oregon State Archives.

(Minimum retention: (a) Retain records created prior to 1931 permanently (b) Retain other records 2 years)

(8) **Vote-By-Mail Records** Records are used to prepare, administer, and abstract elections conducted by mail. Records include: Ballots — counted, duplicated, rejected and or defective; Envelopes - returned signed envelopes, non-deliverable envelopes, and secrecy envelopes; and other documents used to prepare, administer and abstract elections conducted by mail. (Minimum Retention: (a) Retain counted, duplicated, rejected and or defective ballots 22 months for elections containing federal candidates and 90 days after the last day to contest the election for all other elections (b) Retain returned signed envelopes two years for elections containing federal candidates and 90 days after the last day to contest for all other elections (c) Retain secrecy and non-deliverable envelopes for 60 days after the last day to contest for all elections regardless of federal/nonfederal candidates (d) Retain all other documents used to prepare, administer and abstract elections conducted by mail 2 years following the election to which it relates)

(9) **Voter Registration Records** Documents registration or cancellation of registration of eligible voters. Voter Registration Cards include the following information: name, signature, mailing and residence address, previous registration information, if ever registered in Oregon, date of birth, affirmation of citizenship, state residency, and political party. May also include records canceling or making inactive voter registration such as the notice of deceased list from Secretary of State, notice of change of address from Department of Motor Vehicles, U.S. Postal Service notice, and related correspondence. (Minimum retention: 2 years after canceled)

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(10) **Help America Vote Act Identification Records** Records are used to verify the identity of a person registering to vote exists and their residence in the county they are attempting to register to vote in. Records include but are not limited to current and valid photo identification containing voter name and address, or a current copy of a utility bill, bank statement, government check, paycheck, or other government document that shows their name and address. The address listed must match the residence or mailing address submitted on their voter registration card. (Minimum Retention: Retain until verified by county elections official)

Stat. Auth.: ORS 192 & ORS 357  
Stats. Implemented: ORS 192.005 - 192.170 & ORS 357.805 - 357.895  
Hist.: OSA 1-1998, f. & cert. ef. 1-7-98; OSA 3-2002, f. & cert. ef. 7-2-02; OSA 4-2003, f. & cert. ef. 11-24-03

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**Adm. Order No.:** OSA 5-2003  
**Filed with Sec. of State:** 11-24-2003  
**Certified to be Effective:** 11-24-03  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 166-001-0000

**Subject:** Amending the Notice Rule to include new language provided for Model Rules in the 2001 Attorney General's Administrative Law Manual, including the provision for giving Legislators 49 days notice, and clarifying that notice be given before adoption, amendment or repeal of Permanent rules.

**Rules Coordinator:** Julie Yamaka—(503) 373-0701, ext. 240

## 166-001-0000

### Notice Rule for Rulemaking

Prior to the adoption, amendment, or repeal of any permanent rule, the State Archivist shall give notice of the proposed adoption, amendment, or repeal:

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

(2) By mailing a copy of the Notice to persons on the State Archivist's mailing list established pursuant to ORS 183.335(7) at least 28 days before the effective date of the rule.

(3) By mailing or furnishing a copy of the Notice to the following persons, organizations, or publications:

- (a) Oregon State Bar Bulletin;
- (b) Association of Oregon Counties Bulletin;
- (c) League of Oregon Cities;
- (d) Oregon Historical Society.
- (e) The Associated Press;
- (f) Capitol Press Room; and

(4) By mailing a copy of the Notice to the legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule.

Stat. Auth.: ORS 183 & ORS 357.895  
Stats. Implemented: ORS 183  
Hist.: OSA 3, f. & ef. 11-21-75; OSA 4-1994, f. & cert. ef. 8-29-94; OSA 5-2003, f. & cert. ef. 11-24-03

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## Secretary of State, Elections Division Chapter 165

**Adm. Order No.:** ELECT 16-2003  
**Filed with Sec. of State:** 12-5-2003  
**Certified to be Effective:** 12-5-03  
**Notice Publication Date:** 11-1-03  
**Rules Amended:** 165-020-0005

**Subject:** 165-020-0005 - This rule adopts the *2004 City Elections Manual* and the *2004 District Elections Manual* and associated forms as the procedures and forms used for in the city and district elections process. These manuals have been updated from the 2002 versions to clarify the procedures for these processes.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-020-0005

### Designating the City and District Elections Manuals and Forms

(1) The Secretary of State designates the **2004 City Elections Manual** and associated forms as the procedures and forms to be used for city elections processes.

(2) The Secretary of State designates the **2004 District Elections Manual** and associated forms as the procedures and forms to be used for district elections processes.

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

Stat. Auth.: ORS 246.120 & 246.150  
Stats. Implemented: ORS 246.120 & 246.150  
Hist.: SD 33-1980, f. & ef. 3-6-80; SD 47-1980, f. & ef. 10-17-80; SD 12-1984, f. & ef. 6-20-84; SD 40-1985, f. & ef. 11-15-85; SD 12-1986, f. & ef. 4-3-86; ELECT 34-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 11-1992(Temp), f. & cert. ef. 4-14-92; ELECT 33-1992, f. & cert. ef. 10-8-92; ELECT 36-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 4-1999, f. & cert. ef. 3-1-99; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 16-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 17-2003  
**Filed with Sec. of State:** 12-5-2003  
**Certified to be Effective:** 12-5-03  
**Notice Publication Date:** 11-1-03

**Rules Amended:** 165-002-0005, 165-002-0010, 165-002-0025  
**Subject:** 165-002-0005 outlines the procedures used to refund fees in excess of the amount legally due. The amendment removes outdated information and makes the rule consistent with state law.

165-002-0010 sets forth the schedule of fees for providing copies, faxes, certified copies, computer disks, and emails to the public. This rule is proposed for amendment to better service our customer requests for information.

165-002-0025 designates the Elections Division as the filing officer for the Secretary of State in chapters 246 through 260. We propose to amend this rule to specify that a document is only considered filed, when it is received in its entirety at the Elections Division.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-002-0005

### Refunds

(1) This rule provides for the refund of fees paid in excess of the amount legally due to the Elections Division.

(2) The Elections Division shall not refund fees paid in excess of the amount legally due to the Division if the amount is \$10 or less, unless a refund is requested in writing by the applicant or the applicant's legal representative within three years after the date of the overpayment.

Stat. Auth.: ORS 293  
Stats. Implemented: ORS 293.445  
Hist.: SD 17-1984, f. & ef. 9-14-84; ELECT 17-2003, f. & cert. ef. 12-5-03

## 165-002-0010

### Schedule and Fees for Providing Copies of Public Records

(1) Any person may request photocopies, facsimile (fax) copies, electronically distributed (email) copies, certifications and computer disks of public records which are on file in the Office of the Secretary of State, Elections Division in person, in writing, by telephone, by facsimile (fax) or by electronic submission (email).

(2) Charges for photocopy orders shall be as follows:

(a) \$0.25 per page; or

(b) \$0.03 per page, plus the actual cost of providing an employee to process the order, for orders which require more than 4 hours;

(c) If the completed photocopy order is mailed, the minimum charge will be \$1.00 prepaid. If the order is to be billed, the minimum charge will be \$5.00;

(d) There is no minimum charge for credit card transactions.

(3) Completion of copy orders is contingent upon the number of pending requests and staff availability. A request log will be maintained at peak times, and orders will be processed in the order in which they are received.

(4) Facsimile (fax) copy orders shall be processed as follows:

(a) The cost of records transmitted by facsimile (fax) will be \$5.00 for the first page and \$1.00 for each additional page;

(b) Facsimile (fax) orders are limited to a 20 page maximum, not including the cover page;

(c) Facsimile (fax) orders are limited to in-state customers unless prepayment is received.

(5) Certified copies of public records shall be provided at a cost of \$5.00 for each certification plus \$0.25 for each page copied. Certified copies means photocopies which are certified to be true and accurate copies of the original documents.

(6) Copies of public records may also be provided on a 3.5-inch computer disk or compact disk (CD) if the document(s) are stored in the computer system. Disks will be provided at a cost of \$5.00 per disk and may contain as much information as it will hold.

(7) Labor charges for research projects shall be as follows:

(a) No charge for the first 15 minutes of staff time;

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(b) Beginning with the 16th minute, the charge per total request shall be \$25.00 per hour or \$6.25 per quarter-hour. No proration will be done for less than a quarter-hour;

(c) "Research", for purposes of this rule, is defined as the compilation of information:

(A) Which is not readily and immediately available from a single source or a group of related sources;

(B) Which requires a search to locate the requested information; or

(C) Where the request is not specific and a staff determination must be made as to the nature of the information which would fulfill the request.

(8) Billing will be done on the following basis:

(a) Payment must be made not later than 30 days after the billing date. If payment is not received and a second notice is required, an additional \$5.00 may be charged;

(b) Billing will not be provided to any customer who has a past due balance from a previous order. Additional orders will be processed only upon receipt of the balance owed and prepayment of the cost of the new order.

(9) For orders, including research projects, which have an estimated total cost exceeding \$50.00, a deposit of one-half of the estimated total cost of the order will be required prior to processing.

(10) The following will be provided free of charge: lists of federal and statewide elected officials, the legislative assembly, judges, and district attorneys; voter registration statistics; press releases, 8.5" X 11" maps, and any document distributed electronically (email).

Stat. Auth.: ORS 192.440 & 246.150

Stats. Implemented: ORS 192.440

Hist.: ELECT 21-1989, f. & cert. ef. 10-31-89; ELECT 10-1994, f. & cert. ef. 5-31-94;

ELECT 10-1998, f. & cert. ef. 11-3-98; ELECT 17-2003, f. & cert. ef. 12-5-03

## 165-002-0025

### Secretary of State as Filing Officer

(1) ORS Chapters 246 through 260 name the Secretary of State as the filing officer for certain candidate filings, initiative, referendum and recall filings, campaign finance reports and other elections documents.

(2) For purposes of ORS Chapters 246 through 260, when the Secretary of State is designated as the filing officer, "Secretary of State" is defined as the Elections Division, Room 141, State Capitol, Salem, OR 97310; telephone number (503) 986-1518; facsimile (fax) number (503) 373-7414; and for documents required or allowed to be filed electronically (email), elecfile.sos@state.or.us.

(3) For any document for which the Secretary of State is the filing officer, such document will not be considered filed until it is physically received in its entirety at the location described in section (2) of this rule.

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 246.021

Hist.: ELECT 11-1994, f. & cert. ef. 6-3-94; ELECT 17-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 18-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 165-010-0005, 165-010-0060, 165-010-0080, 165-010-0090

**Subject:** 165-010-0005 - This rule adopts the *2004 State Candidate's Manual: Major Political Party*; *2004 State Candidates Manual: Nonpartisan*; *2004 State Candidate's Manual: Minor Political Party*; *2004 State Candidate's Manual: Assembly of Electors*; *2004 State Candidate's Manual: Individual Electors*; and the *2004 State Candidate's Manual* and associated forms as the procedures and forms used by candidates filing and running for elected office. In addition this rule designates the *2004 State Candidate's Manual: Minor Political Party* to be used for the formation of a Minor Party.

165-010-0060 - This rule clarifies the procedure for filling a legislative vacancy.

165-010-0080 - This rule updates form SEL 141, the Write-In Candidate Acceptance Form.

165-010-0090 - This amendment deletes the portion of the rule that repeats statutory requirements.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-010-0005

### Designating the State Candidates Manuals, County Candidate's Manual and Forms

(1) The Secretary of State designates the *2004 State Candidate's Manual: Major Political Party* and associated forms as the procedures and

forms to be used by major political party candidates filing and running for state elective office.

(2) The Secretary of State designates the *2004 State Candidate's Manual: Nonpartisan* and associated forms as the procedures and forms to be used by nonpartisan candidates filing and running for state elective office.

(3) The Secretary of State designates the *2004 State Candidate's Manual: Minor Political Party* and associated forms as the procedures and forms to be used to form a Minor Political Party and by minor political party candidates filing and running for state elective office.

(4) The Secretary of State designates the *2004 State Candidate's Manual: Assembly of Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by assembly of electors for state elective office.

(5) The Secretary of State designates the *2004 State Candidate's Manual: Individual Electors* and associated forms as the procedures and forms to be used by nonaffiliated candidates filing and running by individual electors for state elective office.

(6) The Secretary of State designates the *2004 County Candidate's Manual* and associated forms as the procedures and forms to be used by county office candidates and precinct committeeperson candidates filing and running for elective office.

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

Stat. Auth.: ORS 246.120, 246.150 & 249.009

Stats. Implemented: ORS 246.120, 246.150 & 249.009

Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03

## 165-010-0060

### Procedure for Conduct of Meeting to Fill Vacancy in Legislative Assembly

The following procedures govern the conduct of a meeting of a county court or board of commissioners (hereafter, county governing body(ies)) to fill a vacancy in the Legislative Assembly. These meeting procedures apply to appointments made under either ORS 171.060(1) (vacancy to be filled by nominee affiliated with a major political party) or ORS 171.060(2) (vacancy need not be filled by member of a particular major political party).

(1) A meeting of the members of the county governing body(ies) shall convene at the time designated by the Secretary of State. If the legislative district includes more than one county, the Secretary of State shall also name the temporary chairperson for the meeting and designate its location, which shall be within the legislative district. The Secretary of State shall also notify the county governing body(ies) of the nominees and of the number of votes apportioned to each member of the county governing body(ies) under ORS 171.062 and 171.064.

(2) The chairperson conducting the meeting shall open the meeting at the time designated by the Secretary of State. The chairperson shall announce that the purpose of the meeting is to appoint a person to fill the vacancy in the Legislative Assembly. If applicable, the appointment will be made from the list of nominees from the major political party as furnished by the Secretary of State.

(3) Members of the county governing body eligible to vote on the selection are those physically or electronically present at the meeting, who are currently holding office by election or appointment.

(4) The county governing body(ies), in making its determination, may allot time for interviewing nominees or applicants and for other pertinent deliberations prior to voting.

(5) The vote shall be taken in a manner specified by a majority of those present and eligible to vote on the selection. The person receiving the highest number of votes shall be the appointee. However, in any case, the vote of each member of the governing body(ies) shall be recorded and included in the written statement required by ORS 171.060(3).

(6) The Secretary of State hereby adopts forms SEL 145a, Statement of Democratic Nominee's Willingness to Serve, and SEL 145b, Statement of Republican Nominee's Willingness to Serve, as the forms to be used to accept a nomination to fill a legislative vacancy.

Stat. Auth.: ORS 171.051, 171.060 & 249.200

Stats. Implemented: ORS 171.060(1)

Hist.: ELECT 7-1993, f. & cert. ef. 2-16-93; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 18-2003, f. & cert. ef. 12-5-03

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## 165-010-0080

### Write-In Candidate Acceptance Form (SEL 141)

The Secretary of State hereby adopts by reference and designates SEL 141 to be used to accept the nomination or election to office by write-in votes. SEL 141 shall be the filing form and shall contain:

- (1) Declaration of nomination or election;
- (2) Designation of party;
- (3) Office and department or position number, if any, for which candidate accepts nomination or election;
- (4) Candidate's full name;
- (5) If nomination, candidate's name as it should appear on ballot (may use nickname in parentheses);
- (6) Mailing address of candidate's residence;
- (7) Candidate's home and work telephone numbers and optional space for fax number, email address and/or web address;
- (8) If nomination, statement candidate is willing to accept nomination and will qualify if elected;
- (9) If elected, statement candidate will accept office;
- (10) Candidate's signature and date signed;
- (11) Statements warning against filing false information on form.

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

Stat. Auth.: ORS 254.548

Stats. Implemented: ORS 254.548

Hist.: ELECT 8-1992(Temp), f. & cert. ef. 3-27-92; ELECT 30-1992(Temp), f. & cert. ef. 10-2-92; ELECT 8-1993, f. & cert. ef. 3-8-93; ELECT 18-2003, f. & cert. ef. 12-5-03

## 165-010-0090

### Order of Candidate Names on the Ballot

(1) The purpose of this rule is to establish the procedure for determining the order in which candidate names will appear on the ballot.

(2) The Secretary of State shall provide to the county clerk a random ordering of the letters of the alphabet. The county clerk shall place each candidate's name on the ballot in the order that the first letter of the candidate's last name appears on the random order alphabet. For candidates whose last names begin with the same letter of the alphabet, the following procedure shall be followed:

(a) For candidates whose last names begin with the same letter, the order of placement of these names (within the order allocated to the first letter of the last name) shall be determined according to the second letter of the last name. The county clerk shall place the candidates' names in the order the second letter appears on the randomly ordered alphabet. If both the first two letters are the same, the procedure shall be followed for the third and following letters in the surname;

(b) If two or more surnames are identical, the order of placement of these names (within the allocated order) shall be according to the first letter of the first name of the candidates. If the first letter of the first name is identical the ordering shall be based on the second letter of the first name. If both the first two letters of the first name are identical, the same procedure is followed for the third and subsequent letters of the first name;

(c) If two or more candidates have identical last and first names, the order of names will be according to the letters of the middle name in a like manner.

Stat. Auth.: ORS 246.150 & 254.155

Stats. Implemented: ORS 245.155

Hist.: ELECT 4-1994, f. & cert. ef. 3-31-94; ELECT 18-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 19-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 165-012-0050, 165-012-0060, 165-012-0230

**Subject:** 165-012-0050 - This rule is amended to streamline the process for reporting the contribution of poll results.

165-012-0060 - This rule is amended to update a statutory reference.

165-012-0230 - This rule is amended to update the electronic filing requirements for committees.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-012-0050

### Contribution of Polls, Allocation of Polling Expenses

(1) The purpose of this rule is to establish procedures for reporting the contribution of poll results, the allocation of polling expenses, the valuation of poll results, and the reporting of in-kind contributions of poll results.

(2) This rule does not apply to:

- (a) Individuals mentioned in a poll who are not candidates; and

(b) Polls conducted internally by a campaign or entity that are not contributed.

(3) For purposes of this rule and, except where otherwise defined:

(a) "Candidate" includes an agent of the candidate or an agent of the candidate's principal campaign committee.

(b) "Contributor" means a purchaser of a poll or agent who gives the poll results to one or more nonpurchaser candidates or non-purchaser political committees.

(c) "Date of purchase" means the date that a person pays for a poll.

(d) "Person" includes an agent of the person.

(e) "Political Committee" includes an agent of the political committee.

(f) "Poll:"

(A) Means a questioning of selected participants regarding one or more candidates or issues that comprises one or more questions, whether the questioning is commissioned or conducted by volunteers; and

(B) Includes a sample of participants that is a self-contained subset of all participants under paragraph (A) of this subsection.

(g) "Purchaser" means a person or political committee that requests or otherwise commissions and pays for a poll.

(h) "Receipt" means in the custody of a candidate or political committee. Examples of custody include but are not limited to physical or electronic possession or possession by means of telephonic or facsimile communication.

(i) "Results" means the raw data of a poll or any compiled conclusions and analysis supported by the raw data.

(4) The purchase of the results of a poll by a candidate or a political committee is an expenditure by the candidate or political committee.

(5) The acceptance of the results of a poll that have a value under section 9 of this rule by a candidate or political committee is an in-kind contribution by the contributor and an in-kind expenditure in the amount determined under sections 8 and 9 of this rule and must be reported by:

(a) The recipient candidate or political committee; and

(b) If the contributor is required to file statements of contributions received and expenditures made under ORS 260.058 to 260.073, the contributor.

(6) A candidate or political committee accepts the results of a poll if the candidate or political committee:

(a) Requests the poll results; or

(b) Obtains the poll results from the contributor.

(7) A contributor of poll results shall retain records for two years sufficient to support the valuation of poll results and any allocation of poll costs.

(8) The contributor of a poll shall determine:

(a) The percentage of the poll's overall cost to be allocated to each of the candidates directly or indirectly affected by the poll (Divide the number of questions in the sample received by a candidate by the total number of questions asked in the sample); and

(b) The base amount of in-kind contribution to each recipient candidate (Multiply the overall cost of the poll by a particular candidate's percentage of the overall cost as calculated under subsection (a) of this section).

(9) For purposes of valuing poll results accepted by a candidate or political committee:

(a) A poll shall have no value to any recipient candidate or political committee if the poll is simultaneously released to each candidate who is running for nomination or election to an office covered by the poll.

(A) The provisions of this subsection may be used only if a poll covers more than one candidate.

(B) If any individual files for an office covered by a contributed poll within 90 days of the poll being valued under this subsection, the contributor must give the individual the poll results not later than the 30th day after the date the individual files for the office.

(b) A poll shall have no value to any recipient candidate or political committee if the poll is released (prior to or simultaneously with delivery to a candidate covered in the poll or any political committee) to:

(A) The newspaper of largest circulation in the district from which a candidate or candidates are running, or if the district is statewide, to at least ten of the largest daily circulation newspapers in the state; and

(B) At least one broadcast media outlet licensed for commercial operations by the FCC whose primary broadcast coverage encompasses the district in which a candidate or candidates are running.

(c) A poll that is not valued under subsections (a) or (b) of this section shall be valued according to the valuation schedule provided in this subsection. Except as provided in subsection (d) of this section, poll results received by a candidate or political committee within the following time periods after the last (closing) day that the purchaser or other entity conducting the poll accepts data from which the poll results will be compiled

# ADMINISTRATIVE RULES

(for example, the day the last oral questions are asked or the day that the purchaser stops accepting mail returns) shall have the corresponding value to the recipient as an in-kind contribution:

(A) One to 15 days after the closing day, 100 percent of the:

(i) Recipient candidate's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule;

(ii) Overall cost of a poll for a recipient political committee; or

(iii) Overall cost of a poll for a recipient candidate or political committee.

(B) 16 to 60 days after the closing day, 50 percent of the:

(i) Recipient candidate's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule; or

(ii) Overall cost of a poll for a recipient candidate or political committee.

(C) Sixty one to 180 days after the closing day, five percent of the:

(i) Recipient candidate's base amount of in-kind contribution for a poll calculated under section 8(b) of this rule; or

(ii) Overall cost of a poll for a recipient candidate or political committee.

(D) More than 180 days after the closing day, no value to the recipient candidate or political committee.

(d) Notwithstanding subsection (c) of this section, a poll conducted and completed more than 180 days prior to the next election to be held after the poll is conducted and completed shall have no value to any recipient candidates or political committees. "Conducted and completed" means that all questions, in any format, have been asked and further replies are not being accepted by the purchaser or other entity in charge of gathering data from which the poll results will be compiled, and that the poll results have been compiled.

(10) A candidate or political committee that has accepted the results of a poll believing that the results have no value or a particular value is liable for any fees or penalties owed as a result of having to report the acceptance as a previously unreported or underreported in-kind contribution and expenditure if the results of the poll are subsequently determined to have value or a higher value to the candidate or political committee.

Stat. Auth.: ORS 246.150 & Ch. 1, OL 1995

Stats. Implemented: Ch. 1, OL 1995

Hist.: SD 24-1986, f. & ef. 8-1-86; ELECT 2-1996, f. & cert. ef. 1-3-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 19-2003, f. & cert. ef. 12-5-03

## 165-012-0060

### Slate Mailer Organizations

(1) Under ORS 260.737(2) and (4), the Secretary of State must adopt rules defining certain terms relating to slate mailer organizations.

(2) As used in ORS 260.005, 260.735 and 260.737, these terms shall have the following meanings:

(a) "Legible size" means that the printing of the required notice will be no less than eight-point Helvetica type for any slate mailer 8-1/2 x 11 inches or less, and ten-point Helvetica type for any slate mailer larger than 8-1/2 x 11 inches. The required notice will be printed at the top or bottom of the front surface of the mailer;

(b) "Legible size and type" means that the notice shall be in a color of print which contrasts with the background of the mailer so as to be readily and easily legible, and in a printed (bold, italicized, or other means) or drawn box and set apart from any other printed matter. The size shall be as defined in subsection (a) of this section;

(c) "Payment" means the payment or furnishing of money or any thing of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person for the purpose of participating in a mass mailing that supports or opposes a total of three or more candidates or measures.

Stat. Auth.: ORS 246.150 & 260.737

Stats. Implemented: ORS 260.737

Hist.: ELECT 2-1994, f. & cert. ef. 2-2-94; ELECT 19-2003, f. & cert. ef. 12-5-03

## 165-012-0230

### Electronic Filing Rule

The purpose of this rule is to adopt standards and procedures for contribution and expenditure reports filed electronically under ORS 260.159.

(1) For each election, the following reports shall be filed electronically by state committees and candidates required to file electronically:

(a) First Preelection report;

(b) Second Preelection report;

(c) Post-Election report;

(d) September supplemental report; and

(e) Reports required under ORS 260.118.

(2) The supplement to the second preelection, supplement to the post-election, and contributions received during legislative session reports may not be filed electronically. These reports must be filed in a paper format.

(3) Once a committee begins filing reports electronically, all subsequent reports must be filed electronically (other than the reports that this rule requires to be filed in a paper format) unless the committee demonstrates to the Secretary that extraordinary and unforeseeable calamitous circumstances have made it impracticable to continue to file electronically.

(4) State candidates and committees must file electronically if, during the election or reporting period, as described in ORS 260.159 (1), the committee or candidate has an aggregate amount of contributions received and expenditures made of more than \$50,000. This means that when the committee has a total of contributions and expenditures exceeding \$50,000 (such as \$25,100 in contributions and \$25,000 in expenditures), it must begin filing electronically, starting with the report covering the next accounting period after the accounting period in which the threshold is exceeded.

(5) Candidates and committees filing electronically must have their own software that they use to enter data. The software must be capable of generating final data for detailed contribution and expenditure reports, including forms PC 1, PC 2, PC 3, PC 4A, PC 4B, PC 5, PC 6, and PC 9. The information provided on the forms must fully comply with ORS Chapter 260 and the current Campaign Finance Manual. To file reports electronically, the committee or candidate must export the data of the final contribution and expenditure report generated in its software into an ASCII tab-delimited file that is formatted with the following file format specifications. Reports not corresponding to the required file format will not be considered filed.

(a) All reports must correspond to the required file format. (Attachment 1 to this rule);

(b) The character set must be ASCII.

(c) Files must have been created by or be readable by an operating system that is compatible with Microsoft Windows 95 or higher.

(d) Records must end with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF).

(7) Amendments to electronically filed reports must consist of a complete version of the original filing, as amended. It is not sufficient to submit just the portions of the original filing that have been changed. A committee must make any necessary changes in its database and transmit the entire report using the same file format. The PC 1 form of the file must indicate that the filing is an "Amendment" in the "Filing Type" field. When a file is loaded into the Election Division's database, the division will compare this filing with the committee's previous filing of the same report and print amendment forms noting any changes.

(8) Reports must be submitted in one of the following formats, and must be received by 5:00 p.m. on the filing deadline to be considered filed timely:

(a) 3-1/2-inch high-density MS DOS-formatted diskette, or

(b) PC-readable CD; or

(c) Attached to an e-mail to elecfile.sos@state.or.us .

(9) Each report filed electronically must be named as follows:

(a) The committee's six-digit identification number;

(b) The date of the election in MMDDYY format;

(c) The report type (1st, 2nd, Post, Supp. or I&R);

(d) The filing type (Orig. or Amend.); and

(e) The current date in MMDDYY format. An example of a file name is XXXXX MMDDYY 1st Orig MMDDYY. If the committee transmits its report via email, the subject line of the email must consist of the file name.

(10) Electronic reports must not contain viruses. The Election Division's computer system will screen and reject all reports filed electronically that are detected to contain viruses. Any report rejected for this reason is considered not filed.

(11) Each committee or candidate filing electronically must also submit a paper copy or PDF of the Summary Statement of Contributions and Expenditures (form PC 1) containing the candidate's or treasurer's signature. The paper copy may be submitted by mail, fax or hand delivery, and must be received by the filing deadline. The PDF must be attached to an email of the report.

(12) Unless the committee or candidate required to file electronically obtains a waiver from the Secretary of State, it is a violation of ORS 260.159 to file a report in a format other than electronic. **Attachment 1** contains the required file format specifications for electronic filing. [Attachment not included. See ED. NOTE.]

[ED. NOTE: The Attachment referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 260.159 & Ch. 824, Sec. 8, OL 1999

Stats. Implemented: ORS 260.159 & Ch. 824, Sec. 8, OL 1999

Hist.: ELECT 5-2000, f. & cert. ef. 3-6-00; ELECT 19-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 20-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

# ADMINISTRATIVE RULES

**Notice Publication Date:** 11-1-03

**Rules Amended:** 165-014-0005

**Subject:** 165-014-0005 - This rule adopts the *2004 State Initiative and Referendum Manual*; *2004 Recall Manual*; and the *2004 County Initiative and Referendum Manual* and associated forms as the procedures and forms to be used for the initiative, referendum and recall process. These manuals have been updated from the 2002 versions to clarify the procedures for these processes.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0005

### Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the **2004 State Initiative and Referendum Manual** and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the **2004 Recall Manual** and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the **2004 County Initiative and Referendum Manual** and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the county initiative and referendum process.

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

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

Stat. Auth.: ORS 264.120, 246.150 & 250.015

Stats. Implemented: ORS 246.120, 246.150 & 250.015

Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991(Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993(Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 21-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Repealed:** 165-014-0006, 165-014-0080, 165-014-0085

**Subject:** 165-014-0006, 165-014-0080, and 165-014-0085 are proposed for repeal because the content of these rules has been incorporated into the manuals adopted in OAR 165-014-0005.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

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**Adm. Order No.:** ELECT 22-2003

**Filed with Sec. of State:** 12-5-2003

**Certified to be Effective:** 12-5-03

**Notice Publication Date:** 11-1-03

**Rules Amended:** 165-013-0010, 165-013-0020

**Subject:** 165-013-0010 - This rule amendment updates the penalty matrix and mitigating circumstances for campaign finance violations, other than those covered in the 2004 Campaign Finance Manual.

165-013-0020 - This rule amendment updates the penalty matrix and mitigating circumstances for non-campaign finance election law violations.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-013-0010

### Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2) **Mitigating Circumstances.** The only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate or treasurer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. Personal emergency does not include a common cold or flu, or a long-term illness where other

arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer or candidate, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity;

(d) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight); or

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider (this does not include delivery by fax).

(3)(a) **Penalty Matrix.** These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) The penalty amount for a violation will be calculated against the same candidate or treasurer for a period based on the number of violations by the candidate or treasurer of the same offense in the two years preceding the date the violation occurs.

(c) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule **Appendix A** of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: The Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.232

Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03

## 165-013-0020

### Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-013-0010. In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(D) One occurrence is considered one violation.

(E) Notwithstanding (F), if a violation is the first on record for the person, and multiple occurrences of the same statutory provision are described in an election law complaint, the occurrences will be combined (to be considered as one violation) and considered a first violation of the statutory provision, except in such cases where specific circumstances warrant separating the occurrences to impose fines for each violation. This would be appropriate when different persons were affected by the election law offense. Each subsequent occurrence of violation of the same statutory provision after the issuance of a notification letter or a determination of election law violation, within the four-year cycle, may be considered as separate violations.

(F) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence with a minimum civil penalty of \$100.

(2) **Mitigating Circumstances:** The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

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(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, committee records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(d) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the governing body's legal counsel before its distribution. The legal counsel must have advised the governing body in writing that the publication as distributed was impartial information that the governing body could legally produce and distribute, and was not in violation of election law;

(e) The violation of ORS 260.432 occurred after a publication produced and distributed by a governing body relating to a ballot measure was reviewed by the Secretary of State's office, Elections Division, in consultation with legal counsel from the Attorney General's office, before its publication. The Secretary of State must have advised the governing body in writing that the publication as drafted was impartial information that the governing body could legally produce and distribute or for which suggestions were provided towards the goal of assuring the publication was impartial information regarding the ballot measure. If the Secretary of State issued an advice letter with suggested changes, the governing body must have substantially followed the advice provided. However, this mitigating factor may be disallowed, even if such an advice letter was issued, if a complaint and investigation indicates sufficient evidence that the public body presented inaccurate or unbalanced information, not within the purview of this office to have knowledge of prior to the complaint, which has the effect of promoting or opposing the adoption of the measure;

(f) The violation of ORS 260.432(2) occurred, but the public employee had voiced their objection to the person who coerced, commanded or required the employee to perform the prohibited campaign activity during their work time. Despite the stated objection, the person was still required to perform the activity that violated ORS 260.432(2); or

(g) The violation of ORS 260.432(2) occurred when a supervisor asked the public employee to perform the prohibited campaign activity, consisting of clerical tasks, as a part of the public employee's job duties during work time. A "request" made by a supervisor is considered a command or requirement within the meaning of ORS 260.432(1). If the violation involves a written document, the public employee performed clerical tasks only and is not the author of the material.

(3)(a) **Penalty Matrix.** These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, **Appendix A** of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: The Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150

Stats. Implemented: ORS 260.995

Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03

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**Adm. Order No.:** ELECT 23-2003

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

**Certified to be Effective:** 12-12-03

**Notice Publication Date:**

**Rules Amended:** 165-012-0005

**Subject:** 165-012-0005 - This rule adopts the *2004 Campaign Finance Manual* and associated forms as the procedures and guidelines used for compliance with campaign finance regulations. The manual has been updated from the 2002 version.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-012-0005**

**Designating the Campaign Finance Manual and Forms**

Pursuant to ORS 260.156, the Secretary of State designates the 2004 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

Stat. Authority: ORS 246.120, 246.150, 260.156 & 260.200

Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200

Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef. 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03

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**Adm. Order No.:** ELECT 24-2003(Temp)

**Filed with Sec. of State:** 12-15-2003

**Certified to be Effective:** 12-15-03 thru 6-12-04

**Notice Publication Date:**

**Rules Amended:** 165-012-0230

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

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-012-0230**

**Electronic Filing Rule**

The purpose of this rule is to adopt standards and procedures for contribution and expenditure reports filed electronically under ORS 260.159.

(1) For each election, the following reports shall be filed electronically by state committees and candidates required to file electronically:

- First Preelection report;
- Second Preelection report;
- Post-Election report;
- September supplemental report; and
- Reports required under ORS 260.118.

(2) The supplement to the second preelection, supplement to the post-election, and contributions received during legislative session reports may not be filed electronically. These reports must be filed in a paper format.

(3) Once a committee begins filing reports electronically, all subsequent reports must be filed electronically (other than the reports that this rule requires to be filed in a paper format) unless the committee demonstrates to the Secretary that extraordinary and unforeseeable calamitous circumstances have made it impracticable to continue to file electronically.

(4) State candidates and committees must file electronically if, during the election or reporting period, as described in ORS 260.159(1), the committee or candidate has an aggregate amount of contributions received and expenditures made of more than \$50,000. This means that when the committee has a total of contributions and expenditures exceeding \$50,000 (such as \$25,100 in contributions and \$25,000 in expenditures), it must begin filing electronically, starting with the report covering the next accounting period after the accounting period in which the threshold is exceeded.

(5) Candidates and committees filing electronically must have their own software that they use to enter data. The software must be capable of generating final data for detailed contribution and expenditure reports, including forms PC 1, PC 2, PC 3, PC 4A, PC 4B, PC 5, PC 6, and PC 9. The information provided on the forms must fully comply with ORS Chapter 260 and the current *Campaign Finance Manual*. To file reports electronically, the committee or candidate must export the data of the final contribution and expenditure report generated in its software into an ASCII tab-delimited file that is formatted with the following file format specifications. Reports not corresponding to the required file format will not be considered filed.

(a) All reports must correspond to the required file format. (Attachment 1 to this rule);

(b) The character set must be ASCII.

(c) Files must have been created by or be readable by an operating system that is compatible with Microsoft Windows 95 or higher.

(d) Records must end with a carriage return ASCII character (CR) followed by a line feed ASCII character (LF).



# ADMINISTRATIVE RULES

(7) Amendments to electronically filed reports must consist of a complete version of the original filing, as amended. It is not sufficient to submit just the portions of the original filing that have been changed. A committee must make any necessary changes in its database and transmit the entire report using the same file format. The PC 1 form of the file must indicate that the filing is an "Amendment" in the "Filing Type" field. When a file is loaded into the Election Division's database, the division will compare this filing with the committee's previous filing of the same report and print amendment forms noting any changes.

(8) Reports must be submitted in one of the following formats, and must be received by 5:00 p.m. on the filing deadline to be considered filed timely:

- (a) 3-1/2-inch high-density MS DOS-formatted diskette, or
  - (b) PC-readable CD; or
  - (c) Attached to an e-mail to elecfile.sos@state.or.us.
- (9) Each report filed electronically must be named as follows:
- (a) The committee's six-digit identification number;
  - (b) The date of the election in MMDDYY format;
  - (c) The report type (1st, 2nd, Post, Supp. or I&R);
  - (d) The filing type (Orig. or Amend.); and

(e) The current date in MMDDYY format. An example of a file name is XXXXX MMDDYY 1st Orig MMDDYY. If the committee transmits its report via email, the subject line of the email must consist of the file name.

(10) Electronic reports must not contain viruses. The Election Division's computer system will screen and reject all reports filed electronically that are detected to contain viruses. Any report rejected for this reason is considered not filed.

(11) Each committee or candidate filing electronically must also submit a paper copy or PDF of the Summary Statement of Contributions and Expenditures (form PC 1) containing the candidate's or treasurer's signature. The paper copy may be submitted by mail, fax or hand delivery, and must be received by the filing deadline. The PDF must be attached to the email of the report or included on the diskette or CD.

(12) Unless the committee or candidate required to file electronically is excused by the Secretary of State under subsection (3), a report is not considered filed until it is successfully filed electronically. **Attachment 1** contains the required file format specifications for electronic filing. [Attachment not included. See ED. NOTE.]

[ED. NOTE: The Attachment referenced is available from the agency.]  
Stat. Auth.: ORS 246.150, 260.159 & Ch. 824, Sec. 8, OL 1999  
Stats. Implemented: ORS 260.159 & Ch. 824, Sec. 8, OL 1999  
Hist.: ELECT 5-2000, f. & cert. ef. 3-6-00; ELECT 19-2003, f. & cert. ef. 12-5-03; ELECT 24-2003(Temp), f. & cert. ef. 12-15-03 thur 6-12-04

## Water Resources Department Chapter 690

**Adm. Order No.:** WRD 3-2003

**Filed with Sec. of State:** 12-4-2003

**Certified to be Effective:** 12-4-03

**Notice Publication Date:** 8-1-03

**Rules Adopted:** 690-502-0210

**Rules Amended:** 690-502-0160

**Rules Transferred:** 690-502-0160 to 690-502-0170, 690-502-0160 to 690-502-0180, 690-502-0160 to 690-502-0190, 690-502-0160 to 690-502-0200, 690-502-0160 to 690-502-0240, 690-502-0160 to 690-502-0250, 690-502-0160 to 690-502-0260

**Subject:** On November 20, 2003, the Water Resources Commission adopted rules under OAR Chapter 690, Division 502 to designate the Amity Hills/Walnut Hill Ground Water Limited Area (GWLA) in Yamhill County. New ground water uses in the area from the Columbia River Basalt aquifers are limited to short-term irrigation use under a limited license pursuant to ORS 537.143 and uses that are statutorily exempt from the requirement to obtain a permit. The rules also make minor "housekeeping" and renumbering changes. The rules do not effect current existing uses of ground water.

The Amity Hills/Walnut Hill GWLA's southern boundary is one mile north of the Yamhill/Polk County line; the northern boundary is approximately seven miles north of the Yamhill/Polk County line. The area's western boundary is Highway 99W; the eastern boundary is the Willamette River.

**Rules Coordinator:** Adam Sussman—(503) 986-0877

## 690-502-0160

### Groundwater Classifications and Conditions

(1) Use of groundwater from the basalt aquifer within the Cooper-Bull Mountain Critical Groundwater Area shall be as described in the State Engineer's order designating the Cooper-Bull Mountain Critical Groundwater Area dated May 17, 1974.

(2) Groundwater Classification: The groundwater resources of the Willamette Basin are classified for domestic, livestock, irrigation, municipal, industrial, agricultural, commercial, power, mining, recreation, fish life, wildlife, pollution abatement, wetland enhancement and statutorily exempt groundwater uses except as described in OAR 690-502-0170 to 690-502-0210.

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

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: Upper Willamette River Basin Program: WRB 8, f. 4-21-59?; WRB 19, f. 6-5-62; WRB 27, f. 5-11-64; WRB 30, f. 7-3-64; WRD 9-1980, f. & cert. ef. 11-26-80; WRD 2-1981, f. & cert. ef. 4-30-81; WRD 5-1985, f. & cert. ef. 6-14-85; Middle Willamette River Basin Program: WRB 29, f. 7-1-64; WRB 32, f. 7-27-65; WRB 11-1985, f. & cert. ef. 9-5-85; Lower Willamette River Basin Program: WRB 35, f. 6-10-66; WRB 40, f. 9-6-68; WRB 42, f. 5-1-70; WRB 47, f. 4-30-71; WRB 63, f. 6-5-75; WRD 2, f. 11-5-76; WRD 7-1980, f. & cert. ef. 8-12-20; WRD 1-1980, f. & cert. ef. 12-19-80; WRD 11-1985, f. & cert. ef. 9-5-85; WRD 3-1986(Temp), f. & cert. ef. 3-11-86; WRD 4-1992, f. & cert. ef. 3-13-92. Renumbered from 690-080-0021 - 690-080-0023; WRD 12-1993, f. & cert. ef. 9-9-92; WRD 3-1994, f. & cert. ef. 3-10-94; WRD 13-1994, f. & cert. ef. 11-7-94; WRD 3-2003, f. & cert. ef. 12-4-03

## 690-502-0170

### Sandy-Boring Ground Water Limited Area

Groundwater from the shallow Troutdale aquifer and the specially designated portion of the deep Troutdale aquifer in the Sandy-Boring area is classified for exempt uses only. The Sandy-Boring Groundwater Limited Area is as described and shown in Exhibit 1. Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed and shall contain the Special Permit Conditions specified in OAR 690-502-0260. Applications may be rejected if the aquifer displays any of the adverse impacts defined in OAR chapter 690, division 008. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications.

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

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0180

### Damascus, Glad Tidings, Kingston, Mt. Angel, Parrett Mountain, and Stayton-Sublimity Ground Water Limited Areas

(1) Groundwater from the basalt aquifers in the Damascus, Glad Tidings, Kingston, Mt. Angel, Parrett Mountain, and Stayton-Sublimity areas, and the Troutdale aquifer in the Damascus area is classified for exempt uses only.

(2) The Damascus Groundwater Limited Area is as described and shown in Exhibit 2. The Glad Tidings Groundwater Limited Area is as described and shown in Exhibit 3. The Kingston Groundwater Limited Area is as described and shown in Exhibit 4. The Mt. Angel Groundwater Limited Area is as described and shown in Exhibit 5. The Parrett Mountain Groundwater Limited Area is as described and shown in Exhibit 9. The Stayton-Sublimity Groundwater Limited Area is as described and shown in Exhibit 7.

(3) Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed. Permits may be issued for a period not to exceed five years and shall contain the Special Permit Conditions specified in OAR 690-502-0250. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications may be rejected or permit or certificate extensions may be denied if the aquifer displays any of the adverse impacts defined in OAR chapter 690, division 008. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications. Within two years of permit issuance, the applicant shall prepare a plan for the Water Resources Commission which shall indicate the steps for obtaining an alternate long-term water supply.

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

Stat. Auth.: ORS 536 & ORS 537

Stats. Implemented:

Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0190

### Sherwood-Damascus-Wilsonville Ground Water Limited Area

Groundwater from the basalt aquifers in the Sherwood-Damascus-Wilsonville Groundwater Limited Area as described and shown in Exhibit 6 is classified for exempt uses only.

# ADMINISTRATIVE RULES

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0200

### Chehalem Mountain, Eola Hills and South Salem Hills Ground Water Limited Areas

(1) Groundwater in the basalt aquifers in the Chehalem Mountain, Eola Hills and South Salem Hills Groundwater Limited Areas is classified for exempt uses, irrigation and rural residential fire protection systems only. Permits may be issued, for a period not to exceed five years, for fire protection and for drip or equally efficient irrigation provided the Director finds the proposed use and amount do not pose a threat to the groundwater resource or existing permit holders. The amount of water used for irrigation shall be further limited to one acre-foot per acre per year. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications may be rejected or permit or certificate extensions may be denied if the aquifer displays any of the adverse impacts defined in OAR chapter 690, division 008.

(2) The Chehalem Mountain Groundwater Limited Area is as described and shown in Exhibit 8. The Eola Hills Groundwater Limited Area is as described and shown in Exhibit 10. The South Salem Hills Groundwater Limited Area is as described and shown in Exhibit 11.

(3) Groundwater applications pending on October 4, 1991 shall be processed according to the classifications in effect on the date the application was filed. Permits may be issued for a period not to exceed five years and shall contain the Special Permit Conditions specified in OAR 690-502-0250. Permits may be extended for additional five-year periods if the Director finds that the groundwater resource can probably support the extended use. Applications submitted after October 4, 1991 shall be processed according to the requirements of these rules and classifications. Within two years of permit issuance, the applicant shall prepare a plan for the Water Resources Commission which shall indicate the steps for obtaining an alternate long-term water supply.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0210

### Amity Hills/Walnut Hill Ground Water Limited Area

(1) Ground water in the Columbia River Basalt Group aquifers in the Amity Hills/Walnut Hill Ground Water Limited Area is classified for exempt uses and irrigation only. Irrigation use shall be limited to use under a limited license pursuant to ORS 537.143 and for the sole purpose of providing water necessary to establish a crop for which no further irrigation will be required after the crop is established. Irrigation use under this rule shall be further limited to drip or equally efficient irrigation and an annual duty of one acre-foot per acre per year.

(2) The Amity Hills/Walnut Hill Ground Water Limited Area is as described and shown in Exhibit 12.

[ED. NOTE: Exhibits referenced are available from the agency.]  
Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03

## 690-502-0240

### Groundwater-Surface Water Hydraulic Connection

These rules are in addition to the requirements of OAR chapter 690, division 009. Groundwater in unconfined alluvium within 1/4 mile of the banks of a stream or surface water source is presumed to be in hydraulic connection with the surface water source, unless the applicant or appropriator provides satisfactory information or demonstration to the contrary. This hydraulically connected groundwater shall be classified the same as the surface source. This section shall not apply to those groundwater uses exempted by ORS 537.545. Notwithstanding such classification, permits may be issued for the use of water from a well in an unconfined aquifer that

is hydraulically connected to groundwater, within a quarter mile of a stream, provided that surface water impacts are mitigated through storage releases.

Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0250

### Special Columbia River Basalt Group Aquifer Permit Conditions

New permits issued to appropriate groundwater from Columbia River Basalt Group aquifers shall be specially conditioned. The conditions shall specify:

(1) A static water level measurement be made and submitted before any use of water may commence at the well;

(2) The permittee/appropriator install a meter or other suitable measuring device approved by the Director and submit an annual report of water used to the Department;

(3) Limits on acceptable amounts of depletion and interference with other users;

(4) Use of water from the well be controlled or shut off if limits specified in the permit to protect the resource from depletion, and prior appropriators from interference, are exceeded;

(5) The Department shall determine, from measurements submitted by the permittee/appropriator, or other data on file in the department, the initial and subsequent water levels from which the previously cited declines are referenced;

(6) Following the issuance of a permit, the permittee/appropriator shall measure the water levels in the permitted well each year between March 1 and March 31 (spring high-water level) and submit the data to the Department within 90 days of measurement. Water level measurements shall be made by a certified water rights examiner, licensed water well driller, licensed pump installer, registered geologist, licensed land surveyor, registered professional engineer or the permittee/appropriator;

(7) Any other conditions derived from OAR chapter 690, division 008 as deemed necessary to protect the groundwater resource.

Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## 690-502-0260

### Special Permit Conditions

New permits issued to appropriate groundwater from aquifers within the Sandy-Boring Groundwater Limited Area and the Troutdale aquifer in the Damascus Groundwater Limited Area shall be specially conditioned. The conditions shall specify:

(1) A static water level measurement be made and submitted before any use of water may commence at the well;

(2) Limits on acceptable amounts of depletion and interference with other users;

(3) Use of water from the well be controlled or shut off if limits specified in the permit to protect the resource from depletion, and prior appropriators from interference, are exceeded;

(4) The Department shall determine, from measurements submitted by the permittee/appropriator, or other data on file in the department, the initial and subsequent water levels from which the previously cited declines are referenced;

(5) Following the issuance of a permit, the permittee/appropriator shall measure the water levels in the permitted well each year between March 1 and March 31 (spring high-water level) and submit the data to the Department within 90 days of measurement. Water level measurements shall be made by a certified water rights examiner, licensed water well driller, licensed pump installer, registered geologist, licensed land surveyor, registered professional engineer or the permittee/appropriator;

(6) Any other conditions as specified in OAR chapter 690, division 008 as deemed necessary to protect the groundwater resource.

Stat. Auth.: ORS 536 & ORS 537  
Stats. Implemented:  
Hist.: WRD 3-2003, f. & cert. ef. 12-4-03, Renumbered from 690-502-0160

## OAR REVISION CUMULATIVE INDEX

<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
101-001-0020	12-4-03	Adopt	1-1-04	137-003-0000	1-1-04	Amend	1-1-04
101-005-0010	12-4-03	Adopt	1-1-04	137-003-0501	1-1-04	Amend	1-1-04
101-005-0020	12-4-03	Adopt	1-1-04	137-003-0510	1-1-04	Amend	1-1-04
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101-005-0060	12-4-03	Adopt	1-1-04	137-003-0528	1-1-04	Amend	1-1-04
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101-005-0100	12-4-03	Adopt	1-1-04	137-003-0545	1-1-04	Amend	1-1-04
101-005-0110	12-4-03	Adopt	1-1-04	137-003-0555	1-1-04	Amend	1-1-04
101-005-0120	12-4-03	Adopt	1-1-04	137-003-0560	1-1-04	Amend	1-1-04
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101-020-0030	12-4-03	Amend	1-1-04	137-003-0600	1-1-04	Amend	1-1-04
101-020-0035	12-4-03	Amend	1-1-04	137-003-0605	1-1-04	Amend	1-1-04
101-020-0040	12-4-03	Amend	1-1-04	137-003-0610	1-1-04	Amend	1-1-04
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101-040-0010	12-4-03	Amend	1-1-04	137-003-0640	1-1-04	Amend	1-1-04
101-040-0025	12-4-03	Amend	1-1-04	137-003-0645	1-1-04	Amend	1-1-04
101-040-0030	12-4-03	Amend	1-1-04	137-003-0650	1-1-04	Amend	1-1-04
101-040-0035	12-4-03	Amend	1-1-04	137-003-0655	1-1-04	Amend	1-1-04
101-040-0040	12-4-03	Amend	1-1-04	137-003-0660	1-1-04	Amend	1-1-04
101-040-0045	12-4-03	Amend	1-1-04	137-003-0665	1-1-04	Amend	1-1-04
101-040-0050	12-4-03	Amend	1-1-04	137-003-0670	1-1-04	Amend	1-1-04
101-040-0060	12-4-03	Repeal	1-1-04	137-003-0675	1-1-04	Amend	1-1-04
101-040-0070	12-4-03	Repeal	1-1-04	137-003-0690	1-1-04	Amend	1-1-04
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101-050-0010	12-4-03	Amend	1-1-04	137-004-0800	12-9-03	Amend	1-1-04
101-050-0015	12-4-03	Amend	1-1-04	137-008-0000	12-9-03	Amend	1-1-04
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122-070-0000	12-4-03	Amend	1-1-04	137-045-0010	12-9-03	Amend	1-1-04
122-070-0010	12-4-03	Amend	1-1-04	137-045-0015	12-9-03	Amend	1-1-04
122-070-0030	12-4-03	Amend	1-1-04	137-045-0030	12-9-03	Amend	1-1-04
122-070-0060	12-4-03	Amend	1-1-04	137-045-0035	12-9-03	Amend	1-1-04
122-070-0065	12-4-03	Adopt	1-1-04	137-045-0050	12-9-03	Amend	1-1-04
122-070-0070	12-4-03	Amend	1-1-04	137-045-0055	12-9-03	Adopt	1-1-04
122-070-0080	12-4-03	Amend	1-1-04	137-045-0060	12-9-03	Amend	1-1-04
123-068-0015	12-15-03	Adopt(T)	1-1-04	137-045-0070	12-9-03	Amend	1-1-04
123-068-0105	12-15-03	Adopt(T)	1-1-04	137-045-0080	12-9-03	Amend	1-1-04
123-068-0205	12-15-03	Adopt(T)	1-1-04	137-045-0090	12-9-03	Amend	1-1-04
123-068-0305	12-15-03	Adopt(T)	1-1-04	141-030-0010	1-1-04	Amend	1-1-04
137-001-0070	12-9-03	Amend	1-1-04	141-030-0015	1-1-04	Amend	1-1-04
137-001-0085	12-9-03	Repeal	1-1-04	141-030-0025	1-1-04	Amend	1-1-04

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141-030-0035	1-1-04	Amend	1-1-04	141-045-0125	1-1-04	Amend	1-1-04
141-030-0036	1-1-04	Amend	1-1-04	141-045-0126	1-1-04	Amend	1-1-04
141-030-0037	1-1-04	Amend	1-1-04	141-045-0130	1-1-04	Amend	1-1-04
141-030-0038	1-1-04	Repeal	1-1-04	141-045-0150	1-1-04	Amend	1-1-04
141-030-0039	1-1-04	Am. & Ren.	1-1-04	141-045-0155	1-1-04	Amend	1-1-04
141-030-0040	1-1-04	Renumber	1-1-04	141-045-0160	1-1-04	Amend	1-1-04
141-030-0045	1-1-04	Adopt	1-1-04	141-045-0170	1-1-04	Amend	1-1-04
141-035-0005	1-1-04	Amend	1-1-04	141-045-0180	1-1-04	Amend	1-1-04
141-035-0010	1-1-04	Repeal	1-1-04	141-045-0185	1-1-04	Amend	1-1-04
141-035-0011	1-1-04	Adopt	1-1-04	141-085-0010	11-26-03	Amend	1-1-04
141-035-0012	1-1-04	Adopt	1-1-04	141-085-0027	11-26-03	Amend	1-1-04
141-035-0013	1-1-04	Amend	1-1-04	141-085-0028	11-26-03	Amend	1-1-04
141-035-0015	1-1-04	Amend	1-1-04	141-085-0029	11-26-03	Amend	1-1-04
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141-035-0025	1-1-04	Amend	1-1-04	141-085-0121	11-26-03	Amend	1-1-04
141-035-0030	1-1-04	Amend	1-1-04	141-085-0126	11-26-03	Amend	1-1-04
141-035-0035	1-1-04	Amend	1-1-04	141-085-0131	11-26-03	Amend	1-1-04
141-035-0040	1-1-04	Amend	1-1-04	141-085-0141	11-26-03	Amend	1-1-04
141-035-0045	1-1-04	Amend	1-1-04	141-085-0146	11-26-03	Amend	1-1-04
141-035-0047	1-1-04	Amend	1-1-04	141-085-0151	11-26-03	Amend	1-1-04
141-035-0048	1-1-04	Amend	1-1-04	141-085-0156	11-26-03	Amend	1-1-04
141-035-0050	1-1-04	Amend	1-1-04	141-085-0161	11-26-03	Amend	1-1-04
141-035-0055	1-1-04	Amend	1-1-04	141-085-0176	11-26-03	Amend	1-1-04
141-035-0060	1-1-04	Amend	1-1-04	141-085-0263	11-26-03	Amend	1-1-04
141-035-0065	1-1-04	Amend	1-1-04	141-085-0410	11-26-03	Amend	1-1-04
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141-035-0070	1-1-04	Amend	1-1-04	141-085-0430	11-26-03	Amend	1-1-04
141-035-0075	1-1-04	Adopt	1-1-04	141-085-0450	11-26-03	Adopt	1-1-04
141-040-0005	1-1-04	Amend	1-1-04	141-089-0180	11-26-03	Amend	1-1-04
141-040-0010	1-1-04	Amend	1-1-04	141-090-0020	11-26-03	Amend	1-1-04
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141-040-0040	1-1-04	Amend	1-1-04	161-015-0030	11-24-03	Amend	1-1-04
141-040-0200	1-1-04	Amend	1-1-04	161-020-0045	11-24-03	Amend	1-1-04
141-040-0211	1-1-04	Amend	1-1-04	161-020-0055	11-24-03	Amend	1-1-04
141-040-0212	1-1-04	Amend	1-1-04	161-020-0140	11-24-03	Amend	1-1-04
141-040-0214	1-1-04	Amend	1-1-04	161-025-0050	11-24-03	Amend	1-1-04
141-040-0220	1-1-04	Amend	1-1-04	161-050-0040	11-24-03	Amend	1-1-04
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141-045-0021	1-1-04	Amend	1-1-04	165-002-0025	12-5-03	Amend	1-1-04
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141-045-0105	1-1-04	Amend	1-1-04	165-012-0005	12-12-03	Amend	1-1-04
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141-045-0121	1-1-04	Amend	1-1-04	165-012-0230	12-5-03	Amend	1-1-04
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165-014-0006	12-5-03	Repeal	1-1-04	340-011-0122	12-12-03	Renumber	1-1-04
165-014-0080	12-5-03	Repeal	1-1-04	340-011-0124	12-12-03	Am. & Ren.	1-1-04
165-014-0085	12-5-03	Repeal	1-1-04	340-011-0131	12-12-03	Am. & Ren.	1-1-04
165-020-0005	12-5-03	Amend	1-1-04	340-011-0132	12-12-03	Am. & Ren.	1-1-04
166-001-0000	11-24-03	Amend	1-1-04	340-011-0136	12-12-03	Am. & Ren.	1-1-04
166-101-0010	11-24-03	Amend	1-1-04	340-011-0520	12-12-03	Adopt	1-1-04
166-200-0130	11-24-03	Amend	1-1-04	340-011-0535	12-12-03	Adopt	1-1-04
166-500-0000	11-20-03	Amend	1-1-04	340-011-0545	12-12-03	Adopt	1-1-04
166-500-0015	11-20-03	Amend	1-1-04	340-011-0550	12-12-03	Adopt	1-1-04
166-500-0040	11-20-03	Amend	1-1-04	340-011-0555	12-12-03	Adopt	1-1-04
166-500-0045	11-20-03	Amend	1-1-04	340-011-0580	12-12-03	Adopt	1-1-04
166-500-0050	11-20-03	Amend	1-1-04	340-011-0585	12-12-03	Adopt	1-1-04
166-500-0055	11-20-03	Amend	1-1-04	340-041-0001	12-9-03	Amend	1-1-04
291-001-0020	12-12-03	Amend	1-1-04	340-041-0002	12-9-03	Adopt	1-1-04
291-001-0025	12-12-03	Amend	1-1-04	340-041-0004	12-9-03	Adopt	1-1-04
291-001-0070	12-12-03	Repeal	1-1-04	340-041-0006	12-9-03	Repeal	1-1-04
291-064-0060	12-2-03	Amend	1-1-04	340-041-0007	12-9-03	Adopt	1-1-04
309-044-0100	12-11-03	Amend(T)	1-1-04	340-041-0009	12-9-03	Adopt	1-1-04
309-044-0110	12-11-03	Amend(T)	1-1-04	340-041-0016	12-9-03	Adopt	1-1-04
309-044-0120	12-11-03	Amend(T)	1-1-04	340-041-0021	12-9-03	Adopt	1-1-04
309-044-0130	12-11-03	Amend(T)	1-1-04	340-041-0026	12-9-03	Repeal	1-1-04
309-044-0140	12-11-03	Amend(T)	1-1-04	340-041-0027	12-9-03	Am. & Ren.	1-1-04
309-044-0150	12-11-03	Amend(T)	1-1-04	340-041-0028	12-9-03	Adopt	1-1-04
309-044-0160	12-11-03	Amend(T)	1-1-04	340-041-0031	12-9-03	Adopt	1-1-04
309-044-0170	12-11-03	Amend(T)	1-1-04	340-041-0032	12-9-03	Adopt	1-1-04
309-044-0180	12-11-03	Amend(T)	1-1-04	340-041-0033	12-9-03	Adopt	1-1-04
309-044-0190	12-11-03	Amend(T)	1-1-04	340-041-0034	12-9-03	Repeal	1-1-04
309-044-0200	12-11-03	Amend(T)	1-1-04	340-041-0036	12-9-03	Adopt	1-1-04
309-044-0210	12-11-03	Amend(T)	1-1-04	340-041-0046	12-9-03	Adopt	1-1-04
333-064-0005	12-8-03	Amend	1-1-04	340-041-0053	12-9-03	Adopt	1-1-04
333-064-0005(T)	12-8-03	Repeal	1-1-04	340-041-0057	12-9-03	Adopt	1-1-04
333-064-0010	12-8-03	Amend	1-1-04	340-041-0061	12-9-03	Adopt	1-1-04
333-064-0010(T)	12-8-03	Repeal	1-1-04	340-041-0101	12-9-03	Adopt	1-1-04
333-064-0015	12-8-03	Amend	1-1-04	340-041-0103	12-9-03	Adopt	1-1-04
333-064-0015(T)	12-8-03	Repeal	1-1-04	340-041-0104	12-9-03	Adopt	1-1-04
333-064-0025	12-8-03	Amend	1-1-04	340-041-0120	12-9-03	Repeal	1-1-04
333-064-0025(T)	12-8-03	Repeal	1-1-04	340-041-0121	12-9-03	Adopt	1-1-04
333-064-0030	12-8-03	Amend	1-1-04	340-041-0122	12-9-03	Adopt	1-1-04
333-064-0030(T)	12-8-03	Repeal	1-1-04	340-041-0124	12-9-03	Adopt	1-1-04
333-064-0035	12-8-03	Amend	1-1-04	340-041-0130	12-9-03	Adopt	1-1-04
333-064-0035(T)	12-8-03	Repeal	1-1-04	340-041-0133	12-9-03	Adopt	1-1-04
333-064-0040	12-8-03	Amend	1-1-04	340-041-0135	12-9-03	Adopt	1-1-04
333-064-0040(T)	12-8-03	Repeal	1-1-04	340-041-0140	12-9-03	Adopt	1-1-04
333-064-0060	12-8-03	Amend	1-1-04	340-041-0143	12-9-03	Adopt	1-1-04
333-064-0060(T)	12-8-03	Repeal	1-1-04	340-041-0145	12-9-03	Adopt	1-1-04
333-064-0065	12-8-03	Amend	1-1-04	340-041-0150	12-9-03	Am. & Ren.	1-1-04
333-064-0065(T)	12-8-03	Repeal	1-1-04	340-041-0151	12-9-03	Adopt	1-1-04
333-064-0070	12-8-03	Adopt	1-1-04	340-041-0154	12-9-03	Adopt	1-1-04
333-064-0070(T)	12-8-03	Repeal	1-1-04	340-041-0156	12-9-03	Adopt	1-1-04
340-011-0005	12-12-03	Amend	1-1-04	340-041-0160	12-9-03	Adopt	1-1-04
340-011-0035	12-12-03	Am. & Ren.	1-1-04	340-041-0164	12-9-03	Adopt	1-1-04
340-011-0097	12-12-03	Am. & Ren.	1-1-04	340-041-0165	12-9-03	Adopt	1-1-04
340-011-0098	12-12-03	Am. & Ren.	1-1-04	340-041-0170	12-9-03	Adopt	1-1-04
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340-041-0180	12-9-03	Adopt	1-1-04	340-041-0362	12-9-03	Repeal	1-1-04
340-041-0184	12-9-03	Adopt	1-1-04	340-041-0365	12-9-03	Repeal	1-1-04
340-041-0185	12-9-03	Adopt	1-1-04	340-041-0375	12-9-03	Repeal	1-1-04
340-041-0190	12-9-03	Adopt	1-1-04	340-041-0385	12-9-03	Repeal	1-1-04
340-041-0194	12-9-03	Adopt	1-1-04	340-041-0442	12-9-03	Repeal	1-1-04
340-041-0195	12-9-03	Adopt	1-1-04	340-041-0445	12-9-03	Repeal	1-1-04
340-041-0201	12-9-03	Adopt	1-1-04	340-041-0455	12-9-03	Repeal	1-1-04
340-041-0202	12-9-03	Repeal	1-1-04	340-041-0470	12-9-03	Repeal	1-1-04
340-041-0204	12-9-03	Adopt	1-1-04	340-041-0482	12-9-03	Repeal	1-1-04
340-041-0205	12-9-03	Repeal	1-1-04	340-041-0485	12-9-03	Repeal	1-1-04
340-041-0207	12-9-03	Adopt	1-1-04	340-041-0495	12-9-03	Repeal	1-1-04
340-041-0215	12-9-03	Repeal	1-1-04	340-041-0522	12-9-03	Repeal	1-1-04
340-041-0220	12-9-03	Adopt	1-1-04	340-041-0525	12-9-03	Repeal	1-1-04
340-041-0224	12-9-03	Adopt	1-1-04	340-041-0535	12-9-03	Repeal	1-1-04
340-041-0225	12-9-03	Adopt	1-1-04	340-041-0562	12-9-03	Repeal	1-1-04
340-041-0230	12-9-03	Adopt	1-1-04	340-041-0565	12-9-03	Repeal	1-1-04
340-041-0234	12-9-03	Adopt	1-1-04	340-041-0575	12-9-03	Repeal	1-1-04
340-041-0235	12-9-03	Adopt	1-1-04	340-041-0580	12-9-03	Repeal	1-1-04
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340-041-0250	12-9-03	Adopt	1-1-04	340-041-0615	12-9-03	Repeal	1-1-04
340-041-0254	12-9-03	Adopt	1-1-04	340-041-0642	12-9-03	Repeal	1-1-04
340-041-0255	12-9-03	Repeal	1-1-04	340-041-0645	12-9-03	Repeal	1-1-04
340-041-0256	12-9-03	Adopt	1-1-04	340-041-0655	12-9-03	Repeal	1-1-04
340-041-0260	12-9-03	Adopt	1-1-04	340-041-0682	12-9-03	Repeal	1-1-04
340-041-0264	12-9-03	Adopt	1-1-04	340-041-0765	12-9-03	Repeal	1-1-04
340-041-0265	12-9-03	Adopt	1-1-04	340-041-0775	12-9-03	Repeal	1-1-04
340-041-0270	12-9-03	Repeal	1-1-04	340-041-0802	12-9-03	Repeal	1-1-04
340-041-0271	12-9-03	Adopt	1-1-04	340-041-0805	12-9-03	Repeal	1-1-04
340-041-0274	12-9-03	Adopt	1-1-04	340-041-0815	12-9-03	Repeal	1-1-04
340-041-0275	12-9-03	Adopt	1-1-04	340-041-0842	12-9-03	Repeal	1-1-04
340-041-0282	12-9-03	Repeal	1-1-04	340-041-0845	12-9-03	Repeal	1-1-04
340-041-0285	12-9-03	Repeal	1-1-04	340-041-0855	12-9-03	Repeal	1-1-04
340-041-0286	12-9-03	Adopt	1-1-04	340-041-0882	12-9-03	Repeal	1-1-04
340-041-0289	12-9-03	Adopt	1-1-04	340-041-0885	12-9-03	Repeal	1-1-04
340-041-0290	12-9-03	Adopt	1-1-04	340-041-0895	12-9-03	Repeal	1-1-04
340-041-0295	12-9-03	Repeal	1-1-04	340-041-0922	12-9-03	Repeal	1-1-04
340-041-0300	12-9-03	Adopt	1-1-04	340-041-0925	12-9-03	Repeal	1-1-04
340-041-0304	12-9-03	Adopt	1-1-04	340-041-0935	12-9-03	Repeal	1-1-04
340-041-0305	12-9-03	Adopt	1-1-04	340-041-0962	12-9-03	Repeal	1-1-04
340-041-0310	12-9-03	Adopt	1-1-04	340-041-0965	12-9-03	Repeal	1-1-04
340-041-0314	12-9-03	Adopt	1-1-04	340-041-0975	12-9-03	Repeal	1-1-04
340-041-0315	12-9-03	Adopt	1-1-04	340-200-0040	12-12-03	Amend	1-1-04
340-041-0320	12-9-03	Adopt	1-1-04	340-214-0400	12-12-03	Adopt	1-1-04
340-041-0322	12-9-03	Repeal	1-1-04	340-214-0410	12-12-03	Adopt	1-1-04
340-041-0324	12-9-03	Adopt	1-1-04	340-214-0420	12-12-03	Adopt	1-1-04
340-041-0325	12-9-03	Repeal	1-1-04	340-214-0430	12-12-03	Adopt	1-1-04
340-041-0326	12-9-03	Adopt	1-1-04	340-228-0400	12-12-03	Adopt	1-1-04
340-041-0330	12-9-03	Adopt	1-1-04	340-228-0410	12-12-03	Adopt	1-1-04
340-041-0334	12-9-03	Adopt	1-1-04	340-228-0420	12-12-03	Adopt	1-1-04
340-041-0335	12-9-03	Repeal	1-1-04	340-228-0430	12-12-03	Adopt	1-1-04
340-041-0336	12-9-03	Adopt	1-1-04	340-228-0440	12-12-03	Adopt	1-1-04
340-041-0340	12-9-03	Adopt	1-1-04	340-228-0450	12-12-03	Adopt	1-1-04
340-041-0344	12-9-03	Adopt	1-1-04	340-228-0460	12-12-03	Adopt	1-1-04
340-041-0345	12-9-03	Adopt	1-1-04	340-228-0470	12-12-03	Adopt	1-1-04

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340-228-0490	12-12-03	Adopt	1-1-04	414-600-0100	12-7-03	Suspend	1-1-04
340-228-0500	12-12-03	Adopt	1-1-04	414-700-0000	12-7-03	Adopt	1-1-04
340-228-0510	12-12-03	Adopt	1-1-04	414-700-0010	12-7-03	Adopt	1-1-04
340-228-0520	12-12-03	Adopt	1-1-04	414-700-0020	12-7-03	Adopt	1-1-04
340-228-0530	12-12-03	Adopt	1-1-04	414-700-0030	12-7-03	Adopt	1-1-04
410-121-0021	12-1-03	Adopt	1-1-04	414-700-0040	12-7-03	Adopt	1-1-04
410-121-0040	12-1-03	Amend	1-1-04	414-700-0050	12-7-03	Adopt	1-1-04
410-121-0040	12-15-03	Amend(T)	1-1-04	414-700-0060	12-7-03	Adopt	1-1-04
410-121-0140	12-1-03	Amend	1-1-04	414-700-0070	12-7-03	Adopt	1-1-04
410-121-0300	12-1-03	Amend(T)	1-1-04	414-700-0080	12-7-03	Adopt	1-1-04
410-129-0080	12-1-03	Amend	1-1-04	414-700-0090	12-7-03	Adopt	1-1-04
410-133-0090	12-15-03	Amend(T)	1-1-04	436-001-0265	1-1-04	Amend(T)	1-1-04
410-142-0300	12-1-03	Amend	1-1-04	436-009-0008	1-1-04	Amend(T)	1-1-04
411-030-0020	12-11-03	Amend(T)	1-1-04	436-009-0015	1-1-04	Amend(T)	1-1-04
411-030-0033	12-11-03	Amend(T)	1-1-04	436-009-0060	1-1-04	Amend(T)	1-1-04
411-030-0040	12-11-03	Amend(T)	1-1-04	436-009-0070	1-1-04	Amend(T)	1-1-04
411-030-0060	12-11-03	Amend(T)	1-1-04	436-009-0080	1-1-04	Amend(T)	1-1-04
411-030-0065	12-11-03	Amend(T)	1-1-04	436-010-0005	1-1-04	Amend(T)	1-1-04
411-300-0110	12-11-03	Amend(T)	1-1-04	436-010-0008	1-1-04	Amend(T)	1-1-04
413-050-0200	12-12-03	Amend	1-1-04	436-010-0210	1-1-04	Amend(T)	1-1-04
413-050-0210	12-12-03	Amend	1-1-04	436-010-0220	1-1-04	Amend(T)	1-1-04
413-050-0220	12-12-03	Amend	1-1-04	436-010-0230	1-1-04	Amend(T)	1-1-04
413-050-0230	12-12-03	Amend	1-1-04	436-010-0240	1-1-04	Amend(T)	1-1-04
413-050-0240	12-12-03	Amend	1-1-04	436-010-0250	1-1-04	Amend(T)	1-1-04
413-050-0250	12-12-03	Amend	1-1-04	436-010-0265	1-1-04	Amend(T)	1-1-04
413-050-0260	12-12-03	Amend	1-1-04	436-010-0270	1-1-04	Amend(T)	1-1-04
413-050-0270	12-12-03	Amend	1-1-04	436-010-0275	1-1-04	Amend(T)	1-1-04
413-050-0280	12-12-03	Amend	1-1-04	436-010-0280	1-1-04	Amend(T)	1-1-04
413-050-0290	12-12-03	Amend	1-1-04	436-010-0340	1-1-04	Amend(T)	1-1-04
413-050-0300	12-12-03	Amend	1-1-04	436-015-0008	1-1-04	Amend(T)	1-1-04
413-120-0115	11-25-03	Amend(T)	1-1-04	436-015-0030	1-1-04	Amend(T)	1-1-04
413-120-0175	11-25-03	Amend(T)	1-1-04	436-015-0050	1-1-04	Amend(T)	1-1-04
413-130-0125	11-19-03	Amend(T)	1-1-04	436-015-0060	1-1-04	Amend(T)	1-1-04
414-061-0000	12-7-03	Amend	1-1-04	436-015-0070	1-1-04	Amend(T)	1-1-04
414-061-0010	12-7-03	Amend	1-1-04	436-015-0090	1-1-04	Amend(T)	1-1-04
414-061-0020	12-7-03	Amend	1-1-04	436-030-0003	1-1-04	Amend(T)	1-1-04
414-061-0030	12-7-03	Amend	1-1-04	436-030-0005	1-1-04	Amend(T)	1-1-04
414-061-0040	12-7-03	Amend	1-1-04	436-030-0007	1-1-04	Amend(T)	1-1-04
414-061-0050	12-7-03	Amend	1-1-04	436-030-0009	1-1-04	Amend(T)	1-1-04
414-061-0060	12-7-03	Amend	1-1-04	436-030-0010	1-1-04	Amend(T)	1-1-04
414-061-0070	12-7-03	Amend	1-1-04	436-030-0034	1-1-04	Amend(T)	1-1-04
414-061-0080	12-7-03	Amend	1-1-04	436-030-0035	1-1-04	Amend(T)	1-1-04
414-061-0090	12-7-03	Amend	1-1-04	436-030-0115	1-1-04	Amend(T)	1-1-04
414-061-0100	12-7-03	Amend	1-1-04	436-030-0125	1-1-04	Amend(T)	1-1-04
414-061-0110	12-7-03	Amend	1-1-04	436-030-0135	1-1-04	Amend(T)	1-1-04
414-061-0120	12-7-03	Amend	1-1-04	436-030-0145	1-1-04	Amend(T)	1-1-04
414-600-0000	12-7-03	Suspend	1-1-04	436-030-0165	1-1-04	Amend(T)	1-1-04
414-600-0010	12-7-03	Suspend	1-1-04	436-030-0185	1-1-04	Amend(T)	1-1-04
414-600-0020	12-7-03	Suspend	1-1-04	436-045-0008	1-1-04	Amend	1-1-04
414-600-0030	12-7-03	Suspend	1-1-04	436-050-0003	1-1-04	Amend	1-1-04
414-600-0040	12-7-03	Suspend	1-1-04	436-050-0005	1-1-04	Amend	1-1-04
414-600-0050	12-7-03	Suspend	1-1-04	436-050-0006	1-1-04	Amend	1-1-04
414-600-0060	12-7-03	Suspend	1-1-04	436-050-0008	1-1-04	Amend	1-1-04
414-600-0070	12-7-03	Suspend	1-1-04	436-050-0020	1-1-04	Repeal	1-1-04
414-600-0080	12-7-03	Suspend	1-1-04	436-050-0040	1-1-04	Amend	1-1-04

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436-050-0055	1-1-04	Amend	1-1-04	436-080-0060	1-1-04	Amend	1-1-04
436-050-0060	1-1-04	Amend	1-1-04	436-080-0065	1-1-04	Amend	1-1-04
436-050-0080	1-1-04	Amend	1-1-04	436-080-0070	1-1-04	Amend	1-1-04
436-050-0090	1-1-04	Amend	1-1-04	436-080-0080	1-1-04	Amend	1-1-04
436-050-0100	1-1-04	Amend	1-1-04	436-085-0008	1-1-04	Amend	1-1-04
436-050-0110	1-1-04	Amend	1-1-04	436-120-0008	1-1-04	Amend(T)	1-1-04
436-050-0120	1-1-04	Amend	1-1-04	436-150-0008	1-1-04	Amend	1-1-04
436-050-0150	1-1-04	Amend	1-1-04	436-160-0003	1-1-04	Amend	1-1-04
436-050-0150(T)	1-1-04	Repeal	1-1-04	436-160-0310	1-1-04	Amend	1-1-04
436-050-0160	1-1-04	Amend	1-1-04	436-160-0320	1-1-04	Amend	1-1-04
436-050-0160(T)	1-1-04	Repeal	1-1-04	436-160-0340	1-1-04	Amend	1-1-04
436-050-0165	1-1-04	Adopt	1-1-04	436-160-0350	1-1-04	Amend	1-1-04
436-050-0165(T)	1-1-04	Repeal	1-1-04	436-160-0360	1-1-04	Amend	1-1-04
436-050-0170	1-1-04	Amend	1-1-04	437-001-0015	11-26-03	Amend	1-1-04
436-050-0175	1-1-04	Amend	1-1-04	437-001-0096	11-26-03	Amend	1-1-04
436-050-0180	1-1-04	Amend	1-1-04	437-001-0171	11-26-03	Amend	1-1-04
436-050-0185	1-1-04	Amend	1-1-04	437-001-0203	11-26-03	Amend	1-1-04
436-050-0190	1-1-04	Amend	1-1-04	437-001-0265	11-26-03	Amend	1-1-04
436-050-0195	1-1-04	Amend	1-1-04	437-001-0270	11-26-03	Amend	1-1-04
436-050-0200	1-1-04	Amend	1-1-04	437-001-0430	11-26-03	Amend	1-1-04
436-050-0210	1-1-04	Amend	1-1-04	437-001-0700	11-26-03	Amend	1-1-04
436-050-0220	1-1-04	Amend	1-1-04	437-001-0765	11-26-03	Amend	1-1-04
436-050-0260	1-1-04	Amend	1-1-04	437-002-0220	12-5-03	Amend	1-1-04
436-050-0270	1-1-04	Amend	1-1-04	437-003-0001	12-5-03	Amend	1-1-04
436-050-0280	1-1-04	Amend	1-1-04	438-006-0064	1-1-04	Adopt	1-1-04
436-050-0290	1-1-04	Amend	1-1-04	438-015-0110	1-1-04	Adopt	1-1-04
436-050-0400	1-1-04	Amend	1-1-04	441-035-0045	11-26-03	Amend(T)	1-1-04
436-050-0440	1-1-04	Amend	1-1-04	441-049-1001	11-26-03	Adopt(T)	1-1-04
436-050-0480	1-1-04	Adopt	1-1-04	441-049-1021	11-26-03	Amend(T)	1-1-04
436-055-0008	1-1-04	Amend	1-1-04	441-049-1031	11-26-03	Amend(T)	1-1-04
436-060-0005	1-1-04	Amend(T)	1-1-04	441-049-1041	11-26-03	Amend(T)	1-1-04
436-060-0008	1-1-04	Amend	1-1-04	441-049-1051	11-26-03	Amend(T)	1-1-04
436-060-0010	1-1-04	Amend(T)	1-1-04	441-065-0001	11-26-03	Adopt(T)	1-1-04
436-060-0010(T)	1-1-04	Suspend	1-1-04	441-065-0015	11-26-03	Amend(T)	1-1-04
436-060-0019	1-1-04	Amend(T)	1-1-04	441-065-0020	11-26-03	Amend(T)	1-1-04
436-060-0019(T)	1-1-04	Suspend	1-1-04	441-065-0035	11-26-03	Amend(T)	1-1-04
436-060-0020	1-1-04	Amend(T)	1-1-04	441-065-0170	11-26-03	Amend(T)	1-1-04
436-060-0030	1-1-04	Amend(T)	1-1-04	441-065-0180	11-26-03	Amend(T)	1-1-04
436-060-0035	1-1-04	Amend(T)	1-1-04	441-065-0270	11-26-03	Amend(T)	1-1-04
436-060-0035(T)	1-1-04	Suspend	1-1-04	441-075-0020	11-26-03	Amend(T)	1-1-04
436-060-0095	1-1-04	Amend(T)	1-1-04	441-095-0030	11-26-03	Amend(T)	1-1-04
436-060-0105	1-1-04	Amend(T)	1-1-04	441-175-0002	11-26-03	Adopt(T)	1-1-04
436-060-0140	1-1-04	Amend(T)	1-1-04	441-175-0015	11-26-03	Amend(T)	1-1-04
436-060-0150	1-1-04	Amend(T)	1-1-04	441-175-0060	11-26-03	Amend(T)	1-1-04
436-070-0008	1-1-04	Amend	1-1-04	441-175-0080	11-26-03	Amend(T)	1-1-04
436-075-0008	1-1-04	Amend	1-1-04	441-175-0085	11-26-03	Amend(T)	1-1-04
436-080-0001	1-1-04	Amend	1-1-04	441-175-0100	11-26-03	Amend(T)	1-1-04
436-080-0002	1-1-04	Amend	1-1-04	441-175-0120	11-26-03	Amend(T)	1-1-04
436-080-0003	1-1-04	Amend	1-1-04	441-175-0130	11-26-03	Amend(T)	1-1-04
436-080-0005	1-1-04	Amend	1-1-04	441-175-0160	11-26-03	Amend(T)	1-1-04
436-080-0006	1-1-04	Amend	1-1-04	441-175-0165	11-26-03	Amend(T)	1-1-04
436-080-0010	1-1-04	Amend	1-1-04	441-175-0171	11-26-03	Amend(T)	1-1-04
436-080-0020	1-1-04	Amend	1-1-04	459-005-0001	11-20-03	Amend	1-1-04
436-080-0030	1-1-04	Amend	1-1-04	459-005-0001	12-15-03	Amend	1-1-04
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459-007-0001	12-15-03	Amend	1-1-04	580-010-0030	12-3-03	Amend	1-1-04
459-007-0001(T)	12-15-03	Repeal	1-1-04	580-010-0031	12-3-03	Amend	1-1-04
459-007-0003	12-15-03	Adopt	1-1-04	580-010-0033	12-3-03	Amend	1-1-04
459-007-0040	12-15-03	Amend	1-1-04	580-010-0035	12-3-03	Amend	1-1-04
459-007-0040(T)	12-15-03	Repeal	1-1-04	580-010-0037	12-3-03	Amend	1-1-04
459-007-0050	12-15-03	Amend	1-1-04	580-010-0040	12-3-03	Amend	1-1-04
459-007-0050(T)	12-15-03	Repeal	1-1-04	580-010-0041	12-3-03	Amend	1-1-04
459-007-0060	12-15-03	Amend	1-1-04	580-010-0045	12-3-03	Amend	1-1-04
459-007-0060(T)	12-15-03	Repeal	1-1-04	580-020-0006	12-1-03	Adopt(T)	1-1-04
459-007-0070	4-1-04	Amend	1-1-04	580-021-0044	12-1-03	Adopt(T)	1-1-04
459-007-0080	4-1-04	Amend	1-1-04	589-020-0220	11-20-03	Adopt(T)	1-1-04
459-007-0090	4-1-04	Amend	1-1-04	604-030-0010	11-21-03	Adopt	1-1-04
459-007-0095	12-15-03	Adopt	1-1-04	604-030-0020	11-21-03	Adopt	1-1-04
459-007-0100	12-15-03	Repeal	1-1-04	604-030-0030	11-21-03	Adopt	1-1-04
459-013-0300	12-15-03	Adopt	1-1-04	604-030-0040	11-21-03	Adopt	1-1-04
459-017-0060	12-15-03	Amend(T)	1-1-04	607-030-0010	11-26-03	Adopt	1-1-04
459-035-0050	1-1-04	Amend	1-1-04	607-030-0020	11-26-03	Adopt	1-1-04
459-045-0001	11-20-03	Amend	1-1-04	607-030-0030	11-26-03	Adopt	1-1-04
459-045-0001(T)	11-20-03	Repeal	1-1-04	607-030-0040	11-26-03	Adopt	1-1-04
459-060-0001	12-15-03	Amend	1-1-04	623-030-0010	12-8-03	Adopt	1-1-04
459-060-0010	12-15-03	Amend	1-1-04	623-030-0020	12-8-03	Adopt	1-1-04
459-060-0020	12-15-03	Amend	1-1-04	623-030-0030	12-8-03	Adopt	1-1-04
459-080-0010	1-1-04	Adopt	1-1-04	635-001-0105	1-1-04	Amend	1-1-04
459-080-0200	1-1-04	Adopt(T)	1-1-04	635-004-0005	1-1-04	Amend	1-1-04
459-080-0500	1-1-04	Adopt	1-1-04	635-004-0018	1-1-04	Amend	1-1-04
461-135-0301	12-1-03	Amend(T)	1-1-04	635-004-0027	1-1-04	Amend(T)	1-1-04
461-135-1130	12-1-03	Amend(T)	1-1-04	635-004-0036	1-1-04	Amend	1-1-04
461-135-1130(T)	12-1-03	Suspend	1-1-04	635-005-0045	12-1-03	Amend(T)	1-1-04
461-180-0105	12-1-03	Amend(T)	1-1-04	635-005-0048	12-1-03	Adopt(T)	1-1-04
471-012-0010	12-14-03	Amend	1-1-04	635-005-0205	11-21-03	Amend(T)	1-1-04
471-012-0015	12-14-03	Amend	1-1-04	635-006-0140	1-1-04	Amend	1-1-04
471-012-0020	12-14-03	Amend	1-1-04	635-006-0150	1-1-04	Amend	1-1-04
471-015-0005	12-14-03	Amend	1-1-04	635-006-0210	12-1-03	Amend(T)	1-1-04
471-015-0010	12-14-03	Amend	1-1-04	635-006-0850	1-1-04	Amend	1-1-04
471-015-0015	12-14-03	Amend	1-1-04	635-011-0100	1-1-04	Amend	1-1-04
471-015-0020	12-14-03	Amend	1-1-04	635-011-0101	1-1-04	Amend	1-1-04
471-030-0040	12-14-03	Amend	1-1-04	635-013-0003	1-1-04	Amend	1-1-04
471-030-0045	12-14-03	Amend	1-1-04	635-013-0004	1-1-04	Amend	1-1-04
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635-039-0090	1-1-04	Amend	1-1-04	635-500-6010	12-15-03	Adopt	1-1-04
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635-060-0000	1-1-04	Amend	1-1-04	635-500-6060	12-15-03	Adopt	1-1-04
635-060-0005	1-1-04	Amend	1-1-04	641-030-0010	1-15-04	Adopt	1-1-04
635-060-0008	1-1-04	Amend	1-1-04	641-030-0020	1-15-04	Adopt	1-1-04
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635-060-0055	4-1-04	Amend	1-1-04	642-030-0010	1-15-04	Adopt	1-1-04
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812-002-0200	12-5-03	Amend	1-1-04	860-024-0021	11-28-03	Amend	1-1-04
812-002-0240	12-5-03	Repeal	1-1-04	860-027-0048	12-11-03	Adopt	1-1-04
812-002-0240(T)	12-5-03	Repeal	1-1-04	860-028-0895	11-28-03	Adopt(T)	1-1-04
812-002-0420	12-5-03	Amend	1-1-04	860-036-0010	12-10-03	Amend(T)	1-1-04
812-002-0420(T)	12-5-03	Repeal	1-1-04	860-036-0330	12-10-03	Suspend	1-1-04
812-002-0440	12-5-03	Amend	1-1-04	860-036-0370	12-10-03	Adopt(T)	1-1-04
812-002-0540	12-5-03	Amend	1-1-04	860-036-0380	12-10-03	Adopt(T)	1-1-04
812-002-0540(T)	12-5-03	Repeal	1-1-04	860-036-0412	12-10-03	Adopt(T)	1-1-04
812-003-0000	12-5-03	Amend	1-1-04	860-036-0420	12-10-03	Adopt(T)	1-1-04

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<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>	<b>OAR Number</b>	<b>Effective</b>	<b>Action</b>	<b>Bulletin</b>
860-036-0757	12-10-03	Adopt(T)	1-1-04	860-037-0570	12-10-03	Adopt(T)	1-1-04
860-036-0900	12-10-03	Amend(T)	1-1-04	860-038-0580	12-11-03	Amend	1-1-04
860-036-0905	12-10-03	Amend(T)	1-1-04	877-020-0020	12-1-03	Amend	1-1-04
860-036-0910	12-10-03	Amend(T)	1-1-04	918-440-0015	1-1-04	Amend	1-1-04
860-036-0915	12-10-03	Amend(T)	1-1-04	918-440-0040	1-1-04	Amend	1-1-04
860-037-0308	12-10-03	Adopt(T)	1-1-04	918-440-0050	1-1-04	Amend	1-1-04
860-037-0309	12-10-03	Adopt(T)	1-1-04	918-674-0025	1-1-04	Amend	1-1-04
860-037-0407	12-10-03	Adopt(T)	1-1-04	918-674-0033	1-1-04	Amend	1-1-04
860-037-0547	12-10-03	Adopt(T)	1-1-04				