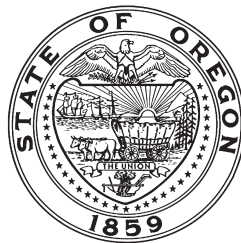


OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

Volume 44, No. 6
June 1, 2005

For April 18, 2005–May 13, 2005



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Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

The *Oregon Attorney General's Administrative Law Manual* defines "rule" to include "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency" ORS 183.310(9). 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

2004-2005 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, 2004	January 1, 2005
January 14, 2005	February 1, 2005
February 15, 2005	March 1, 2005
March 15, 2005	April 1, 2005
April 15, 2005	May 1, 2005
May 13, 2005	June 1, 2005
June 15, 2005	July 1, 2005
July 15, 2005	August 1, 2005
August 15, 2005	September 1, 2005
September 15, 2005	October 1, 2005
October 14, 2005	November 1, 2005
November 15, 2005	December 1, 2005

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 910-2003, 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 915-2005. 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 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, or are downloadable from the Oregon State Archives Website.

Publication Authority

The *Oregon Bulletin* is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Secretary of State, Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701. The Archives Division charges for such copies.

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TABLE OF CONTENTS

	Page
Information and Publication Schedule	2
Table of Contents	3
Other Notices	4-6
Notices of Proposed Rulemaking Hearings/Notices	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Appraiser Certification and Licensure Board, Chapter 161	7
Board of Massage Therapists, Chapter 334	7
Board of Medical Examiners, Chapter 847	7, 8
Department of Consumer and Business Services, Building Codes Division, Chapter 918	8, 9
Insurance Division, Chapter 836	9
Workers' Compensation Board, Chapter 438	9
Department of Fish and Wildlife, Chapter 635	9
Department of Human Services, Departmental Administration and Medical Assistance Programs, Chapter 410	10
Seniors and People with Disabilities, Chapter 411	10, 11
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	11
Motor Carrier Transportation Division, Chapter 740	12
Land Conservation and Development Department, Chapter 660	12
Oregon State Marine Board, Chapter 250	12
Oregon University System, Eastern Oregon University, Chapter 579	12, 13
Oregon Youth Authority, Chapter 416	13
Administrative Rules	
The citations and statements required by ORS 183.335(2)(b)(A) - (D) have been filed with and are available from the Secretary of State.	
Board of Architect Examiners, Chapter 806	14, 15
Board of Medical Examiners, Chapter 847	15-17
Board of Nursing, Chapter 851	17, 18
Board of Parole and Post-Prison Supervision, Chapter 255	18-20
Bureau of Labor and Industries, Chapter 839	20, 21
Department of Administrative Services, Chapter 125	21-23
Department of Agriculture, Oregon Bartlett Pear Commission, Chapter 606	23, 24
Oregon Processed Vegetable Commission, Chapter 647	24
Department of Consumer and Business Services, Building Codes Division, Chapter 918	24-27
Insurance Division, Chapter 836	27
Workers' Compensation Division, Chapter 436	27, 28
Department of Environmental Quality, Chapter 340	28-43
Department of Fish and Wildlife, Chapter 635	43-56
Department of Human Services, Departmental Administration and Medical Assistance Programs, Chapter 410	56-81
Public Health, Chapter 333	81-86
Self-Sufficiency Programs, Chapter 461	86, 87
Seniors and People with Disabilities, Chapter 411	87-93
Vocational Rehabilitation Services, Chapter 582	94-97
Department of Public Safety Standards and Training, Chapter 259	97-100
Department of Transportation, Driver and Motor Vehicle Services Division, Chapter 735	100-109
Highway Division, Chapter 734	109
Department of Veterans' Affairs, Chapter 274	109-120
Economic and Community Development Department, Chapter 123	120-126
Employment Department, Chapter 471	126-130
Employment Department, Child Care Division, Chapter 414	130
Oregon Liquor Control Commission, Chapter 845	130-137
Oregon State Lottery, Chapter 177	137, 138
Oregon State Treasury, Chapter 170	138
Oregon Youth Authority, Chapter 416	138-142
Parks and Recreation Department, Chapter 736	142-151
Real Estate Agency, Chapter 863	151-160
Secretary of State, Archives Division, Chapter 166	160-168
Teacher Standards and Practices Commission, Chapter 584	168-170
OAR Revision Cumulative Index	171-209

OTHER NOTICES

A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR A PROSPECTIVE PURCHASER AGREEMENT GOVERNING THE REYNOLDS METALS SUPERFUND SITE, MULTNOMAH COUNTY, OREGON

COMMENTS DUE: July 1, 2005

PROJECT LOCATION: 5100 NE Sun Dial Road, Troutdale, Oregon.

PROPOSAL: The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment for a Prospective Purchaser Agreement (PPA) with the Port of Portland for the property located at 5100 NE Sun Dial Road, Troutdale, Oregon (Reynolds Property).

HIGHLIGHTS: The Reynolds Property was formerly operated as an aluminum smelter and is being remediated under the supervision of the United States Environmental Protection Agency (USEPA) and DEQ under the Superfund Program. Plant operations, including past waste disposal, spills, leaks and other releases, have caused hazardous substance soil and groundwater contamination.

The Prospective Purchaser Agreement will require the Port of Portland to develop the property consistent with selected remedial actions and to implement certain agreed-upon remedial action activities to address certain of the contamination at the Reynolds Property, including operation and maintenance of a groundwater remedial action selected by the USEPA and constructed made operational by Reynolds and maintenance of selected institutional controls.

DEQ's Prospective Purchaser Program was created in 1995 through amendments to the state's Environmental Cleanup Law. The Prospective Purchaser Agreement is a tool that facilitates the beneficial reuse of contaminated property and its cleanup and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing contaminated property. DEQ has approved many Prospective Purchaser Agreements throughout the State since the program began.

The proposed Consent Judgment will provide the Port of Portland with a release from liability for claims by the State of Oregon under ORS Chapter 465, relating to historical releases of hazardous substances at or from the Reynolds Property. The proposed Consent Judgment will also provide the Port of Portland with a covenant not to sue and protection from potential contribution actions by third parties relating to the releases at or from the property. DEQ retains all existing rights it may have as to all other parties potentially liable for the releases.

HOW TO COMMENT: Written comments concerning the proposed Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm July 1, 2005. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Judgment and DEQ file on the Reynolds Property may be reviewed at DEQ's Northwest Region office in Portland by contacting Bob Williams at (503) 229-6802. Upon written request by ten or more persons, or by a group having ten or more members, a public meeting will be held to receive verbal comments on the proposed Consent Judgment.

THE NEXT STEP: DEQ will consider all public comments. A final decision concerning the proposed Consent Judgment will be made after consideration of public comments.

PREFERRED REMEDIAL ACTION KINGSLEY AIR NATIONAL GUARD FORMERLY USED DEFENSE SITES 2, 4, 7 AND 8 KLAMATH FALLS, OREGON

COMMENT DUE: June 30, 2005

PROJECT LOCATION: Three (3) miles south of Klamath Falls, Oregon

PROPOSAL: The Department of Environmental Quality (DEQ) intends to approve selected remedial actions for several Formerly Used Defense Sites (FUDS) located at Kingsley Field in Klamath County, Oregon. Kingsley Field is an airfield approximately three (3) miles south of Klamath Falls, Oregon that is jointly used by the City of Klamath Falls and the Oregon Air National Guard (OANG).

No Action alternatives are recommended for selection at FUDS 2, 4, 7 and 8. A draft Record-of-Decision is available at: <http://www.deq.state.or.us/er/localprojects/kingsleyFUDS> or by request to Mr. Cliff Walkey.

HOW TO COMMENT: A public comment period will extend from June 1 until June 30, 2005. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

Cliff Walkey
Department of Environmental Quality
2146 NE 4th Street, Suite 104
Bend, Oregon 97701
(541) 388-6146, ext. 224
walkey.cliff@deq.state.or.us

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

THE NEXT STEP: DEQ will consider all public comments received before making a final decision regarding the selection and implementation of the preferred remedial actions at FUDS Sites 2, 4, 7 and 8.

PROPOSED NO FURTHER ACTION TAGG PIONEER FARM, ECSI # 4186 CLATSOP COUNTY

COMMENTS DUE: July 1, 2005

PROJECT LOCATION: 91146 Pioneer Farm Road, Warrenton, Clatsop County, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a No Further Action determination following investigation and cleanup of petroleum contaminated soil. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: Tagg Pioneer Farm is on the east side of Highway 101 in Warrenton. DEQ received a report documenting investigation and cleanup of petroleum contamination at two locations on the property. One is an aboveground heating oil tank on the north side of a vacant farmhouse and the other is a former shed about 90 feet north-east of the house.

A heating oil aboveground storage tank was decommissioned by removal and testing between December 1, 2003 and March 8, 2004. The tank was pumped out and removed. Contaminated soil was excavated to a depth of about eight feet, and 16.6 tons of this soil was taken to Hillsboro Landfill. Residual diesel in soil was found at concentrations up to 15,700 mg/kg. Further excavation was not done, because the tank was immediately adjacent to the house. Although excavation did not extend below a depth of eight feet, soil samples were also collected at a depth of 10.5 feet, at the soil groundwater interface. Neither diesel nor heavy oil was detected at this depth (reporting limits of 25 and 100 mg/kg respectively). A water sample was collected and analyzed for petroleum by NWTPH-Dx, and for BTEX and PAHs.

Contamination in soil does not extend more than 10 feet north, west and east of the tank. The southern extent of contamination could not be determined because samples were not collected beneath the house. Only one groundwater sample was collected, so extent of groundwater contamination was not determined. However, both soil and groundwater contaminant concentrations at the tank location are below relevant risk-based concentrations.

A small shed on the property was used to store several 55-gallon drums of heavy oil, waste motor oil, motor oil and lubricating oil and

OTHER NOTICES

grease. Although the drums appeared to be in good condition, the wood and soil floor of the shed were stained with oil. About 455 gallons of the various types of petroleum were pumped out and taken to Oil Re-refining in Portland. Wood flooring soaked with oil was taken to Hillsboro Landfill. The owner tore down the rest of the building and burned the wood on site. Over the course of the investigation, a total of about 8 tons of contaminated soil was excavated and disposed of at Hillsboro Landfill.

The excavation covers an area of roughly 15 by 15 feet. Contamination extended to a depth of about 1.5 feet over most of this area, and to a depth of about 2.5 feet on the east side. Confirmation sampling following excavation indicated the residual contamination is below levels of concern.

HOW TO COMMENT: Comments and questions, by phone, fax, mail or email, should be directed to:

Bob Schwarz, Project Manager

Phone: 541-298-7255, ext. 30

Fax: 541-298-7330

Email: Schwarz.bob@deq.state.or.us

Please contact Mr. Schwarz if you would like to schedule an appointment or to obtain a copy of the staff report that documents the reasons for the proposed remedy. Written comments should be received by Friday, July 1, 2005.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the No Further Action determination will be made after consideration of public comments.

DEQ PROPOSES NO FURTHER ACTION AT VALLEY OIL PROPERTY IN SALEM OPPORTUNITY FOR PUBLIC COMMENT DEQ Also Recommending Removal from the Confirmed Release List

COMMENTS DUE: June 30, 2005

PROJECT LOCATION: Valley Oil Company currently know as EPIC Aviation, 1790 16th Street, Salem, Oregon, Tax Lots 2400 and 2800

PROPOSAL: Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for petroleum contamination at the Valley Oil Company in Salem. In addition, DEQ recommends removing the site from the Confirmed Released List. Public notice is required by OAR 340-122-465.

HIGHLIGHTS: Several investigations and cleanup have been performed at the Valley Oil site to address the impact of petroleum and associated chemicals found in soil and groundwater. Petroleum releases occurred at above ground storage tanks (ASTs), underground storage tanks (USTs), the fueling island, and underground piping. About 4,100 cubic yards of contaminated soil were excavated and treated on-site by turning and aerating the soil piles for several months. Confirmation soil samples from the excavated areas indicated that low levels of petroleum (diesel and gasoline) and associated chemicals remaining in the soil are below DEQ's risk-based screening levels.

Groundwater samples collected from four monitoring wells indicate that groundwater also contains low levels of diesel and associated chemicals at concentrations below DEQ's risk-based screening levels

The site was screened for human health and ecological risks from exposure to petroleum-contaminated soil and groundwater. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health or ecological risks associated with petroleum contamination and associated chemicals in soil and groundwater at the site.

DEQ has recommended that no further investigation or remediation is needed at this time for the Valley Oil site. Furthermore, DEQ recommends that site be removed from the Confirm Release List.

HOW TO COMMENT: The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln, Suite 210, and at the Salem Office, 750 Front Street, NE, Suite 120, Salem. This public comment period extends from June 1 through June 30, 2005. Written comments must be received by July 1, 2005. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at camarata.mary@deq.state.or.us. Questions may also be directed to Mary Camarata at the Eugene 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 before taking final actions on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

NO FURTHER ACTION DETERMINATION FOR BLOCKS 25 AND 29 AT US BANK SITE, PORTLAND, OREGON

PROJECT LOCATION: 3500 SW Bond Avenue

Pursuant to Oregon Revised Statute (ORS) 465.320, the Oregon Department of Environmental Quality (DEQ) is issuing this notice regarding the final determination that no further action (NFA) is required on Blocks 25 and 29 of the US Bank site (within the South Waterfront Development District) Portland, Oregon. Redevelopment of the property for mixed urban residential/commercial uses began in 2004.

The larger US Bank site, currently being developed for urban residential and commercial use, had past uses including shipbuilding (1943 to 1945), steel and metal fabricating, and electrical products manufacturing. Blocks 25 and 29 were primarily used for storage of logging equipment and surplus Zidell Marine equipment, and most recently, the site was occupied by a warehouse/office building on the western portion and associated paved parking and loading docks on the eastern portion.

DEQ proposed approval of the soil cleanups performed on Block 30 and the Staff Report for the larger US Bank Site on November 1, 2004. A 30-day public comment period was held. No comments were received by DEQ. Other Blocks within the US Bank site will be issued no further action (NFA) determinations as the excavations are completed in accordance with DEQ-approved *Soil Management Plan, South Waterfront Central District, Portland, Oregon*, dated February 3, 2004 and addendums to the soil management plan.

Excavation at Blocks 25 and 29 for development was conducted between June and August of 2004 to prepare the site for development. Site investigations identified limited areas of petroleum hydrocarbon contaminated soil near Blocks 25 and 29. These areas were removed during both isolated removal actions and excavation activities for property development. The excavation activities were conducted in accordance with the DEQ-approved *Soil Management Plan, South Waterfront Central District, Portland, Oregon*, dated February 3, 2004 and addendums to the soil management plan.

Recent groundwater monitoring events showed contaminant concentrations in groundwater are below risk-based concentrations and thus do not pose a risk to human health or the environment.

Based on this information, DEQ has concluded that Blocks 25 and 29 of the US Bank site does not pose an unacceptable risk to public health or the environment. No further action is required at Blocks 25 and 29 of the US Bank site by current or future owners under Oregon Environmental Cleanup Law, ORS 465.200 et seq., unless new or previously undisclosed information becomes available.

OTHER NOTICES

INFORMATION: The Staff Report, ICP Agreement, and the administrative record for the site are available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information, contact DEQ Project Manager, Heidi Blischke at (503) 229-5556 or by email at blischke.heidi@deq.state.or.us

CLEANUP ACTION COMPLETED AND DEQ RECOMMENDS NO FURTHER ACTION AT THE DIXONVILLE MILL SITE IN DIXONVILLE

COMMENTS DUE: June 30, 2005

PROJECT LOCATION: Roseburg Forest Products Dixonville Mill Site, 2320 Buckhorn Road, Dixonville, Oregon.

PROPOSAL: Pursuant to ORS 465.230 and Oregon Administrative Rules (OAR) 340-122-465, the Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action be required at the Roseburg Forest Products Dixonville Mill Site, 2320 Buckhorn Road near Dixonville, Oregon (excluding the landfill and log pond). DEQ invites public comments from June 1, 2005 through June 30, 2005. DEQ will consider all comments before issuing a no further action determination.

HIGHLIGHTS: The former mill site is located in an agricultural area northeast of Dixonville in Douglas County, Oregon. The property was used as a softwood veneer mill and is now generally vacant.

In November 2003, a Phase 1 Environmental Site Assessment (ESA) was conducted at the former mill site. The ESA was subsequently revised in May 2004. Potentially impacted areas were recognized at the site and RPP chose to address these concerns. In August 2004, environmental samples were collected from several areas on the property. The analytical data indicate all parameters were below the DEQ regulatory criteria or established background concentrations, with the exception of arsenic and chromium in soil at the wigwam burner area and chromium in soil beneath the landfill.

In October 2004, RFP excavated approximately 71.5 tons of impacted soil from the wigwam burner area and confirmation samples were collected. Analytical results from the confirmation samples indicated arsenic and chromium were below the DEQ regulatory criteria.

Documentation of the site investigation and cleanup has been reviewed by DEQ. DEQ has concluded that there is no remaining threat to human health and the environment in the areas where an NFA was requested. DEQ recommends no further action at the site.

HOW TO COMMENT: The staff report, project files, investigation reports, administrative record, etc. are available for public review at DEQ's Eugene office. Please call (800) 844-8467 extension 276 to schedule an appointment to view files. Written comments should be sent to Kristy Sewell, 1102 Lincoln Street, Suite 210, Eugene, Oregon 97401 by 5:00 p.m. June 30, 2005. A public meeting will be held to receive verbal comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

CLEANUP ACTION COMPLETED AND DEQ RECOMMENDS NO FURTHER ACTION AT THE MEDCO ROAD SITE IN MEDFORD, OREGON

COMMENTS DUE: June 30, 2005

PROJECT LOCATION: Medco Road Site, Township 37S, Range 1W, Section 6, Tax Lot 2500. Medford, Oregon

PROPOSAL: Oregon Department of Environmental Quality (DEQ) invites public comments from June 1, 2004 through June 30, 2005. DEQ will consider all comments before issuing a no further action determination.

HIGHLIGHTS: The staff report will be available for public review at DEQ's Eugene office from June 1, 2005 and June 30, 2005.

The Medco Road former orchard site is a 49 acre industrial property located immediately northwest of the Medford Airport in Medford, Oregon. The site was used historically a fruit orchard from some time prior to 1939 until the early 1990s. The site is currently a vacant grassy field.

Several soil samples collected at the site contained an historically common herbicide called dieldrin at concentrations that were above levels that DEQ considers safe for residential exposure. Dieldrin concentrations in on site soils do not exceed safe levels for industrial sites.

Dieldrin is very insoluble and if it enters groundwater, does not tend to migrate far. Municipal water supply provides water for the site and the surrounding area. No drinking water wells were identified within 1/4 mile of the subject property. DEQ has determined that it is not reasonably likely that anyone could come into contact with Dieldrin-contaminated drinking water originating at the site.

Levels of Dieldrin in on-site soils do not pose a risk to site workers, but would pose an unacceptable risk to residents, should this type of contact occur. Residential risks at the site may be managed by establishing an Easement and Equitable Servitude (E&ES) with the following general conditions:

1. No installation of wells on the property;
2. No residential use of the property;
3. Soil will be managed in accordance with a soil management plan (which the site owner will need to develop and provide to DEQ).

Once the E&ES is recorded and the soil management plan is complete, DEQ will issue a letter of No Further Action for the site.

HOW TO COMMENT: The staff report, project files, investigation reports, administrative record, etc. are available for public review at DEQ's Eugene office. Please call (800)844-8467 extension 272 to schedule an appointment to view files. Written comments should be sent to Geoff Brown, 1102 Lincoln Street, Suite 210, Eugene, Oregon 97402 by 5:00 p.m. June 30, 2005. A public meeting will be held to receive verbal comments if requested by 10 or more persons or by a group with a membership of 10 or more.

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

NOTICES OF PROPOSED RULEMAKING

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

In Notices of Proposed Rulemaking where no hearing has been set, a hearing may be requested by 10 or more people or by an association with 10 or more members. Agencies must receive requests for a public rulemaking hearing in writing within 21 days following notice publication in the *Oregon Bulletin* or 28 days from the date Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received by an agency, notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

Appraiser Certification and Licensure Board Chapter 161

Date: 7-18-05 **Time:** 9 a.m. **Location:**
West Coast Bank
2nd Flr. Community Conf. Rm.
301 Church St. NE
Salem, OR

Hearing Officer: Craig Zell
Stat. Auth.: ORS 183.355(1)(a), 674.305(8) & 674.310(2)(b); Other Auth.: Title XI of the Federal Financial Reform, Recovery and Enforcement Act of 1989 (12 USC 3310 et seq.)

Stats. Implemented: ORS 674.305(8) & 674.310(2)(b)
Proposed Amendments: 161-006-0160, 161-010-0010, 161-010-0035, 161-010-0045, 161-010-0055, 161-010-0080, 161-020-0110, 161-020-0150

Last Date for Comment: 7-18-05, close of hearing
Summary: Proposed changes to Oregon Administrative Rules 161, Division 6 regarding organization, administration and procedures; Division 10 regarding licensure and certification requirements, and Division 20 regarding educational courses, requirements and providers.

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

Rules Coordinator: Karen Turnbow
Address: Appraiser Certification and Licensure Board, 1860 Hawthorne Ave NE, Suite 200, Salem, OR 97303
Telephone: (503) 485-2555

Board of Massage Therapists Chapter 334

Date: 6-23-05 **Time:** 9 a.m. **Location:**
Board Office
748 Hawthorne Ave. NE
Salem, OR

Hearing Officer: Patty Glenn
Stat. Auth.: ORS 182.466, 183 & 687.121
Stats. Implemented:
Proposed Amendments: 334-001-0012, 334-001-0045
Last Date for Comment: 6-22-05

Summary: Amend the 2003–2005 Biennium Budget. Adopt the 2005–2007 Biennium Budget. Adopt the Board's own personnel policy.

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

Rules Coordinator: Michelle Sherman
Address: Board of Massage Therapists, 748 Hawthorne Ave. NE, Salem, OR 97301
Telephone: (503) 365-8657, ext. 2

Board of Medical Examiners Chapter 847

Date: 7-12-05 **Time:** 9:30 a.m. **Location:**
Board Office
1500 SW 1st Ave., Ste. 620,
Portland, OR

Hearing Officer: Kathleen Haley
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Proposed Adoptions: 847-017-0000, 847-017-0005, 847-017-0010, 847-017-0015, 847-017-0020, 847-017-0025, 847-017-0030, 847-017-0035, 847-017-0040, 847-017-0045, 847-017-0050, 847-017-0055, 847-017-0060

Last Date for Comment: 7-12-05
Summary: The proposed administrative rules set forth the following as part of the rules on office-based anesthesia: definitions of terms used in the rules, accreditation of facilities that perform office-based surgeries, which facilities require accreditation and which facilities do not, credentialing of health care personnel using the facility to perform procedures requiring sedation or anesthesia, patient records, reporting requirements, discharge evaluation, and facility administration and equipment.

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

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

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.759
Proposed Adoptions: 847-070-0019
Proposed Amendments: 847-070-0016, 847-070-0045
Last Date for Comment: 6-27-05

Summary: The proposed administrative rules update the language on the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM) examinations and certification, which have recently changed. A new section is being added that describes the steps the Board may take to ensure that applicants, if they have been out of practice for 12 months or longer, remain competent to practice. This same language is being added to the section on the reactivation of a licensee from an inactive to active status.

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

Stat. Auth.: ORS 677.265 & Ch. 987 OL 2001
Stats. Implemented: ORS 677.228 & 677.510
Proposed Adoptions: 847-010-0100
Last Date for Comment: 6-27-05

Summary: The proposed new rules, per Chapter 987 Oregon Laws 2001, state the requirement for licensees of the Board to obtain six hours of continuing medical education in the subjects of pain management and/or treatment of terminally ill and dying patients, and a one hour pain management course specific to Oregon provided by the Pain Management Program of the Department of Human Services. The required CME must be obtained prior to January 2, 2009.

NOTICES OF PROPOSED RULEMAKING

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223
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Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.820, 677.825 & 677.830
Proposed Amendments: 847-080-0010, 847-080-0018
Last Date for Comment: 6-27-05

Summary: The proposed administrative rules change adds the requirement that a podiatric applicant must have graduated from an accredited school or college of podiatric medicine, and states the number of years within which all three parts of the National Board of Podiatric Medical Examiners (NBPME) examination must be pass, and describes a possible waiver if the applicant has passed all three parts in more than seven years. The proposed rules change also requires the applicant to pass Part III of the NBPME examination within three attempts, and if not, complete a year of Board approved postgraduate training before attempting to pass Part III for the fourth and final time.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223
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Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Proposed Amendments: 847-035-0030
Last Date for Comment: 6-27-05

Summary: The proposed administrative rules change the airway language in the First Responder and EMT-Basic scope of practice, allows EMT-Basics to obtain a capillary blood specimen for blood glucose monitoring, and changes needle cricothyrotomy to percutaneous cricothyrotomy in the EMT-P scope of practice.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223
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Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.265
Proposed Amendments: 847-005-0005
Last Date for Comment: 6-27-05

Summary: The proposed amendment updates the Active licensure statuses for physician (MD/DO) licensure in Oregon, and deletes the meaning of Active status as being the physical location of the physician as in-state and Inactive status as being the physical location of the physician as out-of-state.

Rules Coordinator: Diana M. Dolstra
Address: Board of Medical Examiners, 1500 SW 1st Ave., Suite #620, Portland, OR 97201-5826
Telephone: (503) 229-5873, ext. 223
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Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100 & 677.110
Proposed Amendments: 847-020-0130, 847-020-0160, 847-020-0170
Last Date for Comment: 6-28-05

Summary: The proposed rules make a few corrections to the rules, add requirement for licensure of foreign medical graduates (FMGs), and require reference letters for physicians who have been in solo practice.

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

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

Date:	Time:	Location:
6-21-05	10:30 a.m.	1535 NW Edgewater St. Salem, OR 97309

Hearing Officer: Richard Y. Blackwell
Stat. Auth.: ORS 455.060, 455.100, 455.110, 455.144, 455.148, 455.150, 455.610 & 455.740

Stats. Implemented: ORS 455.060, 455.100, 455.110, 455.144, 455.148, 455.150, 455.610 & 455.740

Proposed Adoptions: 918-008-0075, 918-008-0080, 918-008-0085, 918-008-0090, 918-008-0095, 918-008-0105, 918-008-0110, 918-008-0115

Proposed Repeals: 918-225-0440, 918-251-0030, 918-308-0110, 918-400-0230, 918-690-0340

Last Date for Comment: 6-21-05, 5 p.m.

Summary: The purpose of this rulemaking is to establish clear, consistent and uniform processes for statewide code interpretations, alternate method rulings and site-specific interpretations amongst all specialty codes adopted by the division.

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

Rules Coordinator: Heather L. Gravelle
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97310
Telephone: (503) 373-7438
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Date:	Time:	Location:
6-21-05	11 a.m.	1535 NW Edgewater St. Salem, OR 97310

Hearing Officer: Richard Y. Blackwell
Stat. Auth.: ORS 455.030, 455.144, 460.085 & 480.545
Stats. Implemented: ORS 455.144, 455.475 & 479.853

Proposed Adoptions: 918-008-0120

Proposed Repeals: 918-251-0040, 918-690-0350

Last Date for Comment: 6-21-05, 5 p.m.

Summary: These proposed rules establish a consistent specialty code appeal process, set a single timeline for filing an appeal and a single set of criteria that an aggrieved party must meet in order to request an appeal. In addition, these rules will set timelines for the disposition of the appeal.

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

Rules Coordinator: Heather L. Gravelle
Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310
Telephone: (503) 373-7438
.....

Date:	Time:	Location:
6-21-05	11:30 a.m.	1535 NW Edgewater St. Salem, OR 97310

Hearing Officer: Casey T. Hoyer
Stat. Auth.: ORS 455.030, 455.457 & 455.461
Stats. Implemented: ORS 455.455, 455.457, 455.459, 455.461 & 455.463

Proposed Amendments: 918-090-0000, 918-090-0010, 918-090-0210

Last Date for Comment: 6-21-05, 5 p.m.

Summary: This rulemaking moves the current experience requirements for licensed specialty code inspectors into the application process creating one location for all license requirements.

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

Rules Coordinator: Heather L. Gravelle
Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310
Telephone: (503) 373-7438

NOTICES OF PROPOSED RULEMAKING

Date: 6-21-05
Time: 9 a.m.
Location: 1535 NW Edgewater St.
Salem, OR 97309

Hearing Officer: Richard J. Baumann

Stat. Auth.: ORS 446.176

Stats. Implemented: ORS 446.176

Proposed Amendments: 918-500-0100

Last Date for Comment: 6-21-05, 5 p.m.

Summary: This rulemaking eliminates an unnecessary step in collecting a specific fee for a service no longer provided. The division collects the manufactured dwelling industry-training fee for the purpose of providing training, but the division no longer provides the training.

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

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310

Telephone: (503) 373-7438

Date: 6-21-05
Time: 9:30 a.m.
Location: 1535 NW Edgewater St.
Salem, OR 97309

Hearing Officer: Shane R. Sumption

Stat. Auth.: ORS 447.231, 447.247, 455.030, 455.110 & 455.112

Stats. Implemented: ORS 447.247, 455.110 & 455.112

Proposed Amendments: 918-460-0015

Last Date for Comment: 6-21-05, 5 p.m.

Summary: This rulemaking amends Chapter 11 and 13 of the 2004 Oregon Structural Specialty Code to adjust building code provisions that are in conflict with federal standards. Additionally, this rulemaking adds a new section to adjust lighting needs of projects that are unique in type or scope.

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

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97310

Telephone: (503) 373-7438

Department of Consumer and Business Services, Insurance Division Chapter 836

Date: 6-29-05
Time: 1:30 p.m.
Location: 350 Winter St. NE
Conference Rm. F
Salem, OR

Hearing Officer: Lewis Littlehales

Stat. Auth.: ORS 731.244, 743.010, 743.013, 743.680 - 743.689 & 746.240

Stats. Implemented: ORS 743.010, 743.683, 743.684, 743.685 & 743.686

Proposed Amendments: 836-052-0114, 836-052-0119, 836-052-0124, 836-052-0129, 836-052-0133, 836-052-0134, 836-052-0136, 836-052-0138, 836-052-0139, 836-052-0142, 836-052-0145, 836-052-0151, 836-052-0160, 836-052-0165, 836-052-0180

Last Date for Comment: 7-14-05

Summary: This rulemaking is proposed for the Insurance Division's rules governing Medicare supplement insurance in order to conform the rules to federal standards most recently adopted under the federal Medicare Prescription Drug, Improvement, and Modernization Act of 2003. The changes are needed in order to enable this state to retain federal certification of its Medicare supplement regulatory program.

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

Rules Coordinator: Sue Munson

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

Telephone: (503) 947-7272

Department of Consumer and Business Services, Workers' Compensation Board Chapter 438

Date: 6-24-05
Time: 9:30 a.m.
Location: WCB Salem Office
2601 25th St. SE, Ste. 150
Salem, OR 97302

Hearing Officer: Roger C. Pearson

Stat. Auth.: ORS 656.726(5)

Stats. Implemented: ORS 183, 656, 656.283(8), 656.724(4) & 656.726(2)(c)

Proposed Amendments: 438-007-0020

Last Date for Comment: 6-24-05

Summary: Amends OAR 438-007-0020 by adding provisions that: (1) require that individually identifiable health information may be obtained through a subpoena provided that the person whose medical records are being sought receives notice of the subpoena and the opportunity to object to the subpoena; and (2) if recipient of the subpoena receives a timely objection, it must comply by mailing the information sought to the Workers' Compensation Board and an expedited pre-hearing conference will be conducted under ORS 656.283 to resolve the matter.

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

Rules Coordinator: Vicky Scott

Address: Department of Consumer and Business Services, Workers' Compensation Board, 2601 25th St. SE, Ste. 150, Salem, OR 97302-1282

Telephone: (503) 378-3298

Department of Fish and Wildlife Chapter 635

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

Hearing Officer: Fish and Wildlife Commission

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

Stats. Implemented: ORS 496.162 & 506.129

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

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

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

Last Date for Comment: 7-8-05

Summary: Amend rules in order to adopt inseason actions that have been implemented by the federal government to clarify the definitions of selective flatfish trawl gear, small footrope trawl gear and chafing gear, all used in commercial fisheries for groundfish. Amend rules to clarify conformance with inseason changes to federal regulations for sport and commercial groundfish fisheries in state waters. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

Rules Coordinator: Katie Thiel

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

Telephone: (503) 947-6033

NOTICES OF PROPOSED RULEMAKING

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

Date: 6-23-05 **Time:** 10 a.m. **Location:** DHS, Rm. 137A
500 Summer St. NE
Salem, OR

Hearing Officer: MaryAnn Evans
Stat. Auth.: ORS 409 & OL 2003, Ch. 736
Stats. Implemented: OL 2003, Ch. 736
Proposed Adoptions: 410-050-0861
Proposed Amendments: 410-050-0860
Last Date for Comment: 6-23-05, 5p.m.

Summary: The tax rate stated in Rule 410-050-0860 does not have an end date. The proposed amendment sets an end date of December 31, 2004. The new rule 410-050-0861 establishes a new rate set by the Department of Human Services Director, for the period beginning January 1, 2005. The new rate is a reduction from 0.95% to 0.68%.

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

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

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Date: 6-17-05 **Time:** 10:30 a.m.–12 p.m. **Location:** 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-120-1295
Proposed Repeals: 410-120-1295(T)
Last Date for Comment: 6-17-05, 12 p.m.

Summary: The General Rules Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. OMAP temporarily amended OAR 410-120-1295 to reference the reimbursement documents: FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2003 through September 30, 2004 and FCHP Non-Contracted DRG Hospital Reimbursement Rates, effective for services rendered October 1, 2004 through October 1, 2005. These documents are necessary to apply the formula established by the reimbursement methodology in ORS 414.743 and are referenced in rule to give correct and appropriate information to hospitals and managed care organizations when applying the formula to claims for reimbursement for services rendered to medical assistance clients. The statute is based upon the budget period that coordinates with the managed care and OMAP contracts. The effective date of the contracts coincides with the effective date of the reimbursement rate documents. This is the Notice of Rulemaking to permanently amend this rule.

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

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

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Date: 6-17-05 **Time:** 10:30 a.m.–12 p.m. **Location:** 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-121-0030
Last Date for Comment: 6-17-05, 12 p.m.

Summary: The Pharmaceutical Services program rules govern Office of Medical Assistance Programs' (OMAP) payments for pharmaceutical products and services provided to clients. OMAP will amend 410-121-0030 Practitioner Managed Prescription Drug Plan (Table 121-0030-1 Plan Drug List) to include the Inhaled Corticosteroid class.

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

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

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Date: 6-17-05 **Time:** 10:30 a.m.–12 p.m. **Location:** 500 Summer St. NE
Rm. 137 B
Salem, OR

Hearing Officer: Darlene Nelson
Stat. Auth.: ORS 409.010 & 409.110
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-125-1070
Last Date for Comment: 6-17-05, 12 p.m.

Summary: The Hospital Services Administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for services rendered to clients. OMAP will amend OAR 410-125-1070 to clarify intent of responsibility of Type A and Type B hospitals to adhere to time lines for requested information and to add guidelines around discretionary sanctions or fines for failure to supply requested information, timely.

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

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

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

Date: 6-17-05 **Time:** 8 a.m. **Location:** 500 Summer St.
Rm. 137d
Salem, OR

Hearing Officer: Lynda Dyer
Stat. Auth.: ORS 409.050, 410.070 & 410.090
Stats. Implemented: ORS 410.010, 410.020 & 410.070
Proposed Amendments: 411-031-0020, 411-031-0040
Last Date for Comment: 6-17-05

Summary: Changes were made to the definitions section of the rule including the addition of "manufacturing and distributing drugs while providing authorized services or while in the client's home" to the definition for "Violation of a drug-free workplace."

Language was removed in OAR 411-031-0040 that indicated that FICA is not taken out for Homecare Workers providing Spousal Pay Program Services. DHS began withholding FICA for these providers beginning 01/01/2005 in order to comply with IRS regulations.

Other changes were made to OAR 411-031-0040 to reflect that each live-in HCW who is the only live-in HCW in the plan will receive 24 hours per month in paid leave. Previously, the rule indicated the provider had to be the only provider, not the only live-in

NOTICES OF PROPOSED RULEMAKING

provider to earn 24 hours of paid leave per month. An additional clarification was made including that paid leave cannot be cashed out.

A sentence was added to OAR 411-031-0040, section 12, indicating that the Department must obtain written consent from the Client-Employer for workers' compensation insurance for their employee.

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

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

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Date:	Time:	Location:
6-17-05	10 a.m.	500 Summer St. Rm. 137d Salem, OR

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Proposed Amendments: Rules in 411-034

Last Date for Comment: 6-17-05

Summary: In 411-034-0020 the term "ensuring adequate fluid intake" was removed from the task of "Toileting, Bowel and Bladder Care." Ensuring adequate fluid intake already exists in the description of the task "Nutrition."

Section 4 was added to 411-034-0020 to specifically indicate services excluded from coverage under this program. Non-covered services include shopping, mileage reimbursement, day care, pet care and transportation.

In OAR 411-034-0030, requirements for eligibility were revised to clarify that an eligible client must require a paid personal care service identified in OAR 411-034-0020 to qualify for the program. Statements were also added to indicate: An individual whose personal care needs are met through their natural support system will not be eligible for the program; and Clients served under the Developmental Disabilities waiver programs, including Children's Intensive In-Home Services, are not eligible for State Plan Personal Care. **Auxiliary aids for persons with disabilities are available upon advance request.*

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

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Date:	Time:	Location:
6-17-05	1 p.m.	500 Summer St. Rm. 137d Salem, OR

Hearing Officer: Lynda Dyer

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 430.610 - 430.670, 427.005 - 427.007 & 417.340 - 417.348

Proposed Amendments: Rules in 411-340

Last Date for Comment: 6-17-05

Summary: Chapter 411, Division 340, Support Services for Adults with Developmental Disabilities is being proposed for permanent amendment effective 07/01/2005 and will allow for the following changes:

411-340-0010 eliminates the section regarding Statutory Authority since this is now identified at the end of every rule that is adopted by state agencies.

411-340-0020 - rule definitions have been updated to conform with current department language and to maintain conformity with the rule changes throughout the document, specifically those changes made in rule 411-340-0130.

411-340-0090 removes an exception to a variance.

411-340-0110 modifies the order of entry to Support Service Brokerage services.

411-340-0130, Temporary rule effective 01/01/05, will be made permanent with the adoption of this amendment. This rule allows for an exception to the Basic Benefit Financial Limits and ensures that individuals served in Support Service Brokerages receive adequate services to meet their support needs based on assessment, as provided within current budgetary planning, limits and authority.

Finally, general housekeeping updates have been made throughout the document to allow for updating rule references and adopting language that conforms to current department standards.

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

Rules Coordinator: Lynda Dyer

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

Telephone: (503) 945-6398

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

Date:	Time:	Location:
6-17-05	9 a.m.	Dept. of Transportation Rm. 122 355 Capitol St. NE Salem, OR 97310

Hearing Officer: Liz Woods

Stat. Auth.: ORS 184.616, 184.619 & 802.010

Stats. Implemented: ORS 825.410 & 825.412

Proposed Amendments: 735-070-0185

Last Date for Comment: 6-21-05

Summary: This rule establishes the documents that must be submitted by a medical review officer to report a positive drug test result of a commercial motor vehicle driver to DMV under ORS 825.410. One of the required documents is Copy 2 of the Federal Drug Testing Custody and Control Form (CCF). DMV has determined that the current rule is too restrictive because it does not allow DMV to accept a document that contains the required information, either because the information is not on Copy 2 of the CCF or it is unclear whether DMV has received Copy 2. For example, on facsimiles the portion that appears on the bottom border of the form showing it is Copy 2 is often cut off or illegible. In other cases the Medical Review Officer is sending the information on something other than Copy 2. DMV is unable to post a valid positive drug test result on a commercial driver's employment driving record when this occurs, which is contrary to the statutory intent of ORS 825.412. The proposed amendments to OAR 735-070-0185 specify that either a completed Copy 2 of the CCF or any other document that contains the specific information required in federal regulations must be included as a report of a positive drug test. This will authorize DMV to post all valid positive drug test results on employment driving records as required under ORS 825.412. On February 17, 2005, DMV temporarily amended this rule to authorize DMV to comply with the requirements of ORS 825.412. DMV now proposes to permanently amend this rule. DMV intends that the requirements of the proposed amendments to this rule apply retroactively to any report received after December 31, 2004. DMV does not intend that the proposed amendments apply to any reports received by DMV prior to this date.

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

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

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

NOTICES OF PROPOSED RULEMAKING

Department of Transportation, Motor Carrier Transportation Division Chapter 740

Stat. Auth.: ORS 823.011 & 825.402

Stats. Implemented: ORS 825.400 & 825.402

Proposed Amendments: 740-035-0200

Last Date for Comment: 6-21-05

Summary: The Motor Carrier Education Program provides motor carriers domiciled in Oregon with basic information required to conduct motor carrier operations in Oregon. This rule change is needed to delete outdated language under OAR 740-035-0200. As proposed, rule language that required a participant in the Motor Carrier Education Program to take a self-assessment exam is being deleted. The requirement for self-assessment exam has been discontinued.

Text of proposed and recently adopted ODOT rules can be found at web site <http://www.oregon.gov/ODOT/CS/RULES/>

Rules Coordinator: Brenda Trump

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

Telephone: (503) 945-5278

Land Conservation and Development Department Chapter 660

Date:	Time:	Location:
8-4-05	9 a.m.	Agriculture Bldg. Basement Hearing Rm. 635 Capitol St. NE Salem, OR

Hearing Officer: DLCD Staff

Stat. Auth.: ORS 197; Other Auth.: 2004 Oregon Ballot Measure 37 (2005 OL Ch. 1)

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Proposed Amendments: 660-002-0005, 660-002-0010, 660-002-0015, 660-002-0020

Last Date for Comment: 8-4-05

Summary: These permanent rules replace the Temporary rules filed on March 18, 2005, to amend OAR chapter 660, division 002, to specify that the Director of the Department of Land Conservation and Development (DLCD) will take action for DLCD on claims filed with DLCD under Measure 37. The rules require the Director to provide non-monetary relief in response to claims that are determined to be valid, unless the Oregon legislature appropriates funds to DLCD for the payment of claims.

The permanent rules contain changes regarding DLCD's responsibility in the procedures for claims processing in order for the time line in Measure 37 to be met.

**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

Oregon State Marine Board Chapter 250

Date:	Time:	Location:
6-16-05	7 p.m.	Klamath Ranger Dist. 1936 California Ave. Klamath Falls, OR

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented:

Proposed Amendments: 250-020-0204

Last Date for Comment: 6-30-05

Summary: The Marine Board received a request from the Klamath Ranger District, U.S. Forest Service, to consider a 10 mph speed limit for boats on Fourmile Lake in the Fremont-Winema National For-

est in Klamath County. Because of underwater stumps and numerous floating tree hazards as well as a lack of facilities suitable for large boat launching, the District Ranger requested an official speed limit of 10 mph on this 740 acre lake.

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

Rules Coordinator: Jill E. Andrick

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

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

Date:	Time:	Location:
6-14-05	7 p.m.	Community Center 505 G Ave. Lake Oswego

Hearing Officer: Randy Henry

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented:

Proposed Amendments: 250-020-0032

Last Date for Comment: 6-30-05

Summary: The Marine Board received a petition from property owners seeking a "Low Wake Zone" on the Willamette River between Hog Island at RM 22 and the Union Pacific Railroad bridge at RM 20. The Board considered the request and directed Staff to conduct a public hearing to determine if there is a need for such a rule.

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

Rules Coordinator: Jill E. Andrick

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

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

Oregon University System, Eastern Oregon University Chapter 579

Date:	Time:	Location:
6-23-05	11 a.m.	Hoke Union Bldg. Main Lounge, 2nd Flr. La Grande, OR

Hearing Officer: Dr. Sheldon C. Nord

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 351.088

Proposed Adoptions: 579-040-0007, 579-040-0013

Proposed Amendments: 579-040-0005 – 579-040-0035, 579-060-0140 – 579-060-0190

Proposed Repeals: 579-040-0025, 579-040-0040

Last Date for Comment: 6-23-05

Summary: The proposed amendments to the proposed rules of the Student Code of Conduct are to accommodate institutional changes over the last decade. The proposed changes reflect current verbiage within the field of Student Services and will streamline the disciplinary processes at Eastern Oregon University. The proposed amendments to the Residence Halls and Eocene Court Policies for Eastern Oregon University required updating to accommodate institutional changes over the last decade. The changes reflected in the OAR include the renaming of the University and redefining eligibility requirements to better serve a more diverse student population. New housing policy changes initiated by the University also necessitate changes to the OAR.

Rules Coordinator: Lara Moore

Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 114, La Grande, OR 97850

Telephone: (541) 962-3368

NOTICES OF PROPOSED RULEMAKING

Date: 6-23-05
Time: 11:30 a.m.
Location: Hoke Union Bldg.
Main Lounge, 2nd Flr.
La Grande, OR

Hearing Officer: Dr. Sheldon C. Nord
Stat. Auth.: ORS 183.341 & 351
Stats. Implemented: ORS 183.341 & 351.070
Proposed Amendments: 579-012-0000, 579-012-0010
Last Date for Comment: 6-23-05

Summary: The proposed amendments to the proposed rules of the Student Code of Conduct are to accommodate institutional changes over the last decade. The proposed changes reflect current verbiage within the field of Student Services and will streamline the disciplinary processes at Eastern Oregon University. The proposed changes reflected in the Student Code of Conduct OAR necessitate changing the Contested Case Procedures OAR.

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

Rules Coordinator: Lara Moore
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Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Proposed Amendments: 579-075-0000
Last Date for Comment: 6-23-05

Summary: Amend Use of Vehicles for College Business OAR to reflect updated fees and regulations.

Rules Coordinator: Lara Moore
Address: Oregon University System, Eastern Oregon University, One University Blvd., Inlow Hall 114, La Grande, OR 97850
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Oregon Youth Authority Chapter 416

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420A.025, 419C.478, 420A.015, 420.011, 420.014 & 420A.105
Proposed Adoptions: 416-440-0005, 416-440-0015, 416-440-0035
Proposed Amendments: 416-440-0020
Last Date for Comment: 6-23-05

Summary: OAR 416-440-0005 will be added to clarify Purpose, OAR 416-440-0015 will be added for Definitions, and OAR 416-440-0035 will be added to highlight prohibited mail. OAR 416-440-0020 will be revised for clarity. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker

Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 378-3864

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 420.045, 420A.105, 420A.115, 420A.120, 420.905 & 420.910
Proposed Amendments: 416-300-0000, 416-300-0010, 416-300-0020, 416-300-0030, 416-300-0040, 416-300-0050, 416-300-0060, 416-300-0070, 416-300-0080, 416-300-0090
Proposed Repeals: 416-300-0100, 416-300-0110, 416-300-0120
Last Date for Comment: 6-23-05

Summary: OAR 416-300-0000 will be changed to Purpose and new language added. OAR 416-300-0010 Definitions will be revised. OAR 416-300-0020 will be changed to Parole Status and language revised. OAR 416-300-0030 will be changed to Recommendation after Revocation. OAR 416-300-0040 will be changed to Arrest and Detention. OAR 416-300-0050 will be changed to Preliminary Revocation Hearing. OAR 416-300-0060 will be changed to Formal Revocation Hearing. OAR 416-300-0070 will be changed to Attorney Fees. OAR 416-300-0080 will be changed to Placement after Revocation. OAR 416-300-0090 will be changed to Exceptions. OAR 416-300-0100, OAR 416-300-0110 and OAR 416-300-0120 are being repealed. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 378-3864

Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020
Proposed Amendments: 416-800-0010, 416-800-0050
Last Date for Comment: 6-23-05

Summary: 416-800-0010 Detailed definition of contracted service provider removed and language concerning trade professions added. 416-800-0050 Criminal History Review Process Language added to the various applicants outlined in the rule that allows the OYA to request additional criminal history checks when deemed appropriate by the agency. Contracted residential provider employees are subject to criminal history checks prior to the execution of a contract rather than referring to CAF licensing standards. Balance of the rule has been reorganized and reordered for clarity. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 378-3864

ADMINISTRATIVE RULES

Board of Architect Examiners Chapter 806

Adm. Order No.: BAE 2-2005

Filed with Sec. of State: 5-12-2005

Certified to be Effective: 5-12-05

Notice Publication Date: 4-1-05

Rules Amended: 806-010-0020

Subject: To allow passing grades for the Architectural Registration Examination (ARE) to remain in effect for a five-year period of time; outlines how that five-year period rolls; and allows for a transition period.

Rules Coordinator: Carol Halford—(503) 763-0662

806-010-0020

Registration Examination

(1) The Board finds the content of the Architectural Registration Examination (A.R.E.) prepared by the National Council of Architectural Registration Boards (NCARB) as the most practicable to test the applicant's qualifications for registration and adopts it for use in determining the minimum competency needed for registration.

(2) The intent of the examination is to evaluate an applicant's competence in the protection of public health, safety and welfare to provide the architectural services of Pre-Design, Site Design, Building Design, Building Systems (Structural, Mechanical, Electrical, Methods and Materials and Life Safety) and Construction Documents and Services as these relate to the Social/Cultural, Natural and Physical Forces, Design Process, Building Systems/Materials and Methods, and other related external constraints.

(3) The subject of life safety is the basic purpose of the registration examination and this subject permeates the entire examination; the subject of energy conservation is an economic and welfare issue and as a subject is considered through the synthetical process of developing architecture. The content of the ARE is based on the knowledge and skills required of a newly registered architect, practicing independently, to provide architectural services. The ARE evaluates an applicant's competence in the provision of architectural services to protect the public health, safety, and welfare.

(4) **Requirements for Admittance to the Architectural Registration Examination:** A candidate shall have a first professional degree in architecture from an NAAB accredited program of architecture and a minimum of 700 Training Units of training requirements evaluated as per the NCARB table on Training Requirements for the Intern Development Program (IDP). (Handbook for Interns and Architects)

(a) Application and Fee for Examination:

(A) An application for examination must be received by the Board and approved prior to a candidate scheduling any division of the examination.

(B) The application shall be on forms provided by the Board and must be accompanied by an NCARB council record (Green Cover) verifying the completion of the Intern Development Program.

(C) An application fee must accompany all applications. (See Schedule of Actual Fees, OAR 806-010-0105)

(D) Notice of Board action on applications will be mailed to all applicants with copy to the Test Administrator.

(E) No examination fee will be refunded because of withdrawal from the examination. (Attorney General Opinion No. 6474)

(b) Form of Examination:

(A) The Architectural Registration Examination (A.R.E.) is divided into nine divisions which will be administered by a test administrator approved by the Board. Test administration will be in the form and content approved by the Board. Examinees are tested on their ability to exercise value judgments in actual architectural practice situations. The examination covers the following descriptive areas:

- (i) Division PD — Pre-Design;
- (ii) Division GS — General Structures;
- (iii) Division SP — Site Planning;
- (iv) Division BP — Building Planning;
- (v) Division BT — Building Technology;
- (vi) Division LF — Lateral Forces;
- (vii) Division ME — Mechanical & Electrical;
- (viii) Division MM — Materials & Methods;
- (ix) Division CD — Construction Documents & Services.

(c) Grades:

(A) The Board adopts the grading procedures established by the National Council of Architectural Registration Boards (NCARB). The Site

Planning, Building Planning, and Building Technology solutions will be evaluated in accordance with the evaluation criteria provided for each division vignette established by NCARB. NCARB's test result findings are binding. Candidates will have no opportunity to review or challenge test results.

(B) For applicants who have taken divisions of the ARE prior to January 1, 2006, and have received passing grades on those divisions, those passing grades will hold and not have to be retaken.

(d) Five-Year Rolling Clock:

(A) All divisions of the ARE passed prior to January 1, 2006, will not have to be retaken.

(B) All divisions of the ARE that have not been passed prior to January 1, 2006, must be passed within a five-year period of time. The five-year "rolling clock" period shall commence on the date when the first division, passed after January 1, 2006, is administered.

(C) Listed below is the transitional phase-in of the five-year rolling clock:

(i) For applicants who have passed all divisions of the ARE by January 1, 2006, regardless of the length of time taken from start to finish, such applicants will have passed the ARE.

(ii) For applicants who have passed one or more, but not all, divisions of the ARE by January 1, 2006, such applicants will have five years to pass all remaining divisions. The five-year "rolling clock" period shall commence on the date when the first division, passed after January 1, 2006, is administered. Passing grades for each division shall be valid for five years, after which time the division must be retaken if the remaining divisions have not been passed within the five-year period.

(iii) For applicants who have passed no division of the ARE by January 1, 2006, such applicants must pass all parts of the ARE within a five-year period. The five-year "rolling clock" period shall commence on the date when the first division, passed after January 1, 2006, is administered. Passing grades for each division shall be valid for five years, after which time the division must be retaken if the remaining divisions have not been passed within the five year period.

(D) To protect an examinee's right to control the distribution of his or her scores, the Board will not divulge test results except at the specific written request of the examinee.

(e) Retakes:

(A) Examinees may schedule the examination divisions in any order of administration and on a time schedule of the examinees choice by appointment with the test centers. Examinees have unlimited opportunities to re-take divisions, except that a failed division cannot be rescheduled within the six month period following the date that the failed division was administered;

(B) Examinees have a five-year window to pass all divisions of the ARE, according to the schedule listed in Section (4)(d) of this rule.

(C) Once a division expires and is considered invalid, examinees may re-take the invalid division as long as all divisions of the ARE are passed within the schedule outlined in Section (4)(d) of this rule. This will be known as the "five-year rolling clock."

(f) **Fee schedule:** An examination application fee must accompany the initial application. (See Schedule of Actual Fees, OAR 806-010-0105.) The administration fee for each division shall be according to the published schedule of fees charged by the approved test administrator.

(5) **Jurisprudence Examination:** After the candidate has successfully completed the Architectural Registration Examination (A.R.E.), the candidate shall sit for and pass the Oregon Board of Architect Examiners examination based on the Oregon statutes and rules governing the practice of architecture prior to appearing before the Board for the oral interview.

(a) The examination shall be administered in the same city and on the same day as the Board meeting, successful candidates will appear before the Board for their oral interview that same day.

(b) Unsuccessful candidates will not be allowed any opportunity to review or challenge test results and will be required to reschedule the examination no sooner than the next regularly scheduled board meeting.

(c) The examination will be scheduled for 60 minutes in length, a passing score of 84 percent is minimum acceptable and candidates are allowed to have copies of the statutes and rules during the examination.

(6) **Oral Interview:** Prior to registration each applicant for registration by examination shall appear before the Board for an oral interview. The oral interview will be held after the applicant has successfully completed the Architectural Registration Examination (A.R.E.) and the jurisprudence examination.

ADMINISTRATIVE RULES

(7) **Registration:** Upon successful completion of the requirements of this section and upon payment of the registration fee, the Board may grant a certificate of registration.

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

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.050 & 671.060

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 11, f. 2-15-74, ef. 3-11-74; AE 1-1978, f. & ef. 1-23-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 1-1980, f. & ef. 2-14-80; AE 2-1980, f. & ef. 10-3-80; AE 2-1981(Temp), f. & ef. 7-28-81; AE 2-1983, f. & ef. 1-12-83; AE 2-1984, f. & ef. 10-23-84; AE 1-1986, f. 11-12-86, ef. 11-13-86; AE 2-1992, f. & cert. ef. 3-30-92; AE 5-1992(Temp), f. & cert. ef. 10-21-92; AE 1-1993, f. & cert. ef. 7-1-93; AE 1-1996, f. 1-23-96, f. 2-1-96; AE 2-1997, f. & cert. ef. 9-24-97; BAE 2-1998, f. & cert. ef. 6-22-98; Administrative correction, 6-17-99; BAE 3-2000, f. & cert. ef. 7-24-00; BAE 5-2001, f. & cert. ef. 10-24-01; BAE 5-2002, f. 8-14-02 cert. ef. 8-15-02; BAE 4-2003, f. 8-13-03, cert. ef. 8-14-03; BAE 2-2005, f. & cert. ef. 5-12-05

Adm. Order No.: BAE 3-2005

Filed with Sec. of State: 5-12-2005

Certified to be Effective: 5-12-05

Notice Publication Date: 3-1-05

Rules Amended: 806-010-0050

Subject: This rule is housekeeping only and makes no changes to the requirements; simply clarifies existing language.

Rules Coordinator: Carol Halford—(503) 763-0662

806-010-0050

Supervision

(1) Supervision as mentioned in ORS 671.010(6), and as related to the practice of architecture shall mean the administration of the construction contract which includes:

(a) General administration of contracts and interpretation of construction documents during the construction phase;

(b) Observation of construction and evaluation of the work;

(c) Review of contractor's submittals; and

(d) Determination of substantial completion, and such other services as may be required in accordance with the accepted practice of architecture in Oregon.

(2) Architects must supervise all projects they stamp, with the exception of single-family residences. If the architect of record will not be providing the required supervision, he or she will forthwith advise in writing all involved permit issuing agencies of this fact as well as the Oregon Board of Architect Examiners.

(3) In accordance with ORS 671.010(6), supervision of the erection of non-exempt structures constitutes the practice of architecture and therefore must be provided by an Oregon registered architect or engineer who is capable of rendering independent judgment on matters relating to construction.

Stat. Auth.: ORS 671.125

Stats. Implemented: ORS 671.010

Hist.: AE 5, f. 12-22-64; AE 6, f. 6-5-69; AE 2-1978, f. & ef. 3-6-78; AE 1-1979, f. 5-31-79, ef. 6-1-79; AE 1-1981, f. & ef. 3-5-81; AE 1-1996, f. 1-23-96, cert. ef. 2-1-96; BAE 1-1999, f. & cert. ef. 3-25-99; BAE 3-2005, f. & cert. ef. 5-12-05

Board of Medical Examiners

Chapter 847

Adm. Order No.: BME 4-2005

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 4-21-05

Notice Publication Date: 3-1-05

Rules Amended: 847-050-0037

Subject: The adopted administrative rule allows a PA to practice at locations other than the primary or secondary practice location without listing those sites in the practice description if the duties are the same as those listed in the practice description, and require medical records for patients seen at these additional practice locations to be maintained at the additional practice site or at the supervising physician's primary practice location.

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

847-050-0037

Supervision

(1) The supervising physician is responsible for the direction and regular review of the medical services provided by the physician assistant.

(2) The type of supervision and maintenance of supervision provided for each physician assistant shall be described in the practice description and approved by the Board. The supervising physician shall provide for

maintenance of verbal communication with the physician assistant at all times, whether the supervising physician and physician assistant practice in the same practice location or a practice location separate from each other, as described in the following:

(a) The practice is listed in the practice description of the physician assistant and is pre-approved by the Board.

(b) Practice locations, other than primary or secondary practice locations, such as schools, sporting events, health fairs and long term care facilities, are not required to be listed in the practice description of the physician assistant if the duties are the same as those listed in the practice description. The medical records for the patients seen at these additional practice locations will be held either at the supervising physician's primary practice location or the additional practice locations. The supervision of the physician assistant at locations other than the primary or secondary practice location shall be the same as for the primary or secondary practice location.

(c) In any instance where the supervising physician or designated agent is not providing direct or personal supervision of the physician assistant as defined in OAR 847-050-0010(8)(a) and (c), the supervising physician or designated agent shall provide for the maintenance of direct, verbal communication by telephone, radio, radio telephone, television or similar means but is not required to be physically present at the practice site.

(d) The supervising physician or designated agent will provide a minimum of four hours of on-site supervision every two weeks.

(e) The supervising physician or designated agent will provide chart review of a number or a percentage of the patients the physician assistant has seen during each month as stated in the practice description as approved by the Board.

(3) The degree of independent judgment that the physician assistant may exercise shall be in accordance with the Board approved practice description and supervision. The supervising physician may limit the degree of independent judgment that the physician assistant uses but may not extend it beyond the limits of the practice description.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.510

Hist.: ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; BME 1-1998, f. & cert. ef. 1-30-98; BME 9-1999, f. & cert. ef. 4-22-99; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2005, f. & cert. ef. 4-21-05

Adm. Order No.: BME 5-2005

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 4-21-05

Notice Publication Date: 3-1-05

Rules Amended: 847-035-0030

Subject: The adopted administrative rules update the EMT-Intermediate scope of practice to correspond to the new EMT-Intermediate curriculum developed for the Department of Human Services-EMS by several interest groups, which were composed of EMT instructors and EMT supervising physicians. The "dual lumen airway" in the EMT-Basic scope of practice has been changed to a "cuffed pharyngeal airway."

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

847-035-0030

Scope of Practice

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

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

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

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

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

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

ADMINISTRATIVE RULES

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

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

- (a) Conduct primary and secondary patient examinations;
- (b) Take and record vital signs;
- (c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;
- (d) Open and maintain an airway by positioning the patient's head;
- (e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (f) Provide care for soft tissue injuries;
- (g) Provide care for suspected fractures;
- (h) Assist with prehospital childbirth; and
- (i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.

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

- (a) Administration of medical oxygen;
- (b) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;
- (c) Operate a bag mask ventilation device with reservoir;
- (d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and
- (e) Administer epinephrine by automatic injection device for anaphylaxis;
- (f) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator, only when the First Responder:

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

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

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

- (a) Perform all procedures that an Oregon-certified First Responder can perform;
- (b) Ventilate with a non-invasive positive pressure delivery device;
- (c) Insert a cuffed pharyngeal airway device in the practice of airway maintenance;
- (d) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
- (e) Provide care for suspected shock, including the use of the pneumatic anti-shock garment;
- (f) Provide care for suspected medical emergencies, including:
 - (A) Obtaining a peripheral blood specimen for blood glucose monitoring, obtained via fingerstick, heelstick, or earlobe puncture;
 - (B) Administer epinephrine by subcutaneous or automatic injection device for anaphylaxis;
 - (C) Administer activated charcoal for poisonings, following local written standing orders; and
 - (D) Administer aspirin for suspected myocardial infarction.
- (g) Perform cardiac defibrillation with an automatic or semi-automatic defibrillator;
- (h) Transport stable patients with saline locks, heparin locks, foley catheters, or in-dwelling vascular devices;
- (i) Perform other emergency tasks as requested if under the direct visual supervision of a physician and then only under the order of that physician;
- (j) Complete a clear and accurate prehospital emergency care report form on all patient contacts;

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

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

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

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

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

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

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

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

(c) Initiate and maintain an intraosseous infusion;

(d) Initiate saline or similar locks;

(e) Draw peripheral blood specimens;

(f) Administer the following medications under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician:

(A) Physiologic isotonic crystalloid solution.

(B) Vasoconstrictors:

(i) Epinephrine 1:10,000;

(ii) Vasopressin;

(C) Antiarrhythmics:

(i) Atropine sulfate;

(ii) Lidocaine;

(iii) Amiodarone;

(D) Antidotes: Naloxone hydrochloride;

(E) Antihypoglycemics:

(i) Hypertonic glucose;

(ii) Glucagon;

(F) Vasodilators: Nitroglycerine;

(G) Nebulized bronchodilators:

(i) Albuterol;

(ii) Ipratropium bromide;

(H) Analgesics:

(i) Morphine;

(ii) Nalbuphine Hydrochloride;

(iii) Ketorolac tromethamine;

(I) Antihistamine: Diphenhydramine;

(J) Diuretic: Furosemide;

(g) Insert an orogastric tube;

(h) Maintain during transport any intravenous medication infusions or other procedures which were initiated in a medical facility, and if clear and understandable written and verbal instructions for such maintenance have been provided by the physician, nurse practitioner or physician assistant at the sending medical facility;

(i) Perform cardiac defibrillation with a manual defibrillator.

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

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

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Needle cricothyrotomy; and

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

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

ADMINISTRATIVE RULES

- (e) Provide advanced life support in the resuscitation of patients in cardiac arrest;
- (f) Perform emergency cardioversion in the compromised patient;
- (g) Attempt external transcutaneous pacing of bradycardia that is causing hemodynamic compromise;
- (h) Initiate needle thoracocentesis for tension pneumothorax in a pre-hospital setting;
- (i) Initiate placement of a femoral intravenous line when a peripheral line cannot be placed;
- (j) Initiate placement of a urinary catheter for trauma patients in a pre-hospital setting who have received diuretics and where the transport time is greater than thirty minutes; and
- (k) Initiate or administer any medications or blood products under specific written protocols authorized by the supervising physician, or direct orders from a licensed physician.

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

- (a) Designing the supervising physician and agent application;
 - (b) Approving a supervising physician or agent; and
 - (c) Investigating and disciplining any EMT or First Responder who violates their scope of practice.
- (d) The Section shall provide copies of any supervising physician or agent applications and any EMT or First Responder disciplinary action reports to the Board upon their request.

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

Stat. Auth.: ORS 682.245
Stats. Implemented: ORS 682.245
Hist.: ME 2-1983, f. & ef. 7-21-83; ME 3-1984, f. & ef. 1-20-84; ME 12-1984, f. & ef. 8-2-84; ME 7-1985, f. & ef. 8-5-85; ME 12-1987, f. & ef. 4-28-87; ME 27-1987(Temp), f. & ef. 11-5-87; ME 5-1988, f. & cert. ef. 1-29-88; ME 12-1988, f. & cert. ef. 8-5-88; ME 15-1988, f. & cert. ef. 10-20-88; ME 2-1989, f. & cert. ef. 1-25-89; ME 15-1989, f. & cert. ef. 9-5-89, & corrected 9-22-89; ME 6-1991, f. & cert. ef. 7-24-91; ME 10-1993, f. & cert. ef. 7-27-93; ME 3-1995, f. & cert. ef. 2-1-95; ME 1-1996, f. & cert. ef. 2-15-96; ME 3-1996, f. & cert. ef. 7-25-96; BME 6-1998, f. & cert. ef. 4-27-98; BME 13-1998(Temp), f. & cert. ef. 8-6-98 thru 2-2-99; BME 14-1998, f. & cert. ef. 10-26-98; BME 16-1998, f. & cert. ef. 11-24-98; BME 13-1999, f. & cert. ef. 7-23-99; BME 14-2000, f. & cert. ef. 10-30-00; BME 11-2001, f. & cert. ef. 10-30-01; BME 9-2002, f. & cert. ef. 7-17-02; BME 10-2002, f. & cert. ef. 7-22-02; BME 1-2003, f. & cert. ef. 1-27-03; BME 12-2003, f. & cert. ef. 7-15-03; BME 4-2004, f. & cert. ef. 1-27-04; BME 11-2004(Temp), f. & cert. ef. 4-22-04 thru 10-15-04; BME 12-2004(Temp), f. & cert. ef. 6-11-04 thru 12-8-04; BME 21-2004(Temp), f. & cert. ef. 11-15-04 thru 4-15-05; BME 2-2005, f. & cert. ef. 1-27-05; BME 5-2005, f. & cert. ef. 4-21-05

Board of Nursing
Chapter 851

Adm. Order No.: BN 3-2005

Filed with Sec. of State: 4-26-2005

Certified to be Effective: 4-26-05

Notice Publication Date: 3-1-05

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 February and March 2005 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 March 2005 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 March 2005:

- (a) Nutrients and Nutritional Agents — all drugs except Flavocoxid (Limbrel).
- (b) Hematological Agents — all drugs except Drotrecogin Alfa (Xigris); and Treprostinil Sodium (Romodulin).
- (c) Endocrine and Metabolic Agents — all drugs except:
 - (A) I 131;
 - (B) Gallium Nitrate; and
 - (C) Mifepristone (Mifeprex); and
 - (D) Abarelix (Plenaxis).
- (d) Cardiovasculars — all drugs except:
 - (A) Cardioplegic Solution;
 - (B) Fenoldopam Mesylate (Corlopam);
 - (C) Dofetilide (Tikosyn); and
 - (D) Bosentan (Tracleer).
- (e) Renal and Genitourinary Agents — all drugs;
- (f) Respiratory Agents — all drugs;
- (g) Central Nervous System Agents:
 - (A) Class II Controlled Substances — Only the following drugs:
 - (i) Tincture of opium;
 - (ii) Codeine;
 - (iii) Hydromorphone;
 - (iv) Morphine;
 - (v) Oxycodone, Oxymorphone;
 - (vi) Topical Cocaine Extracts and Compounds;
 - (vii) Fentanyl;
 - (viii) Meperidine;
 - (ix) Amphetamines;
 - (x) Methylphenidates;
 - (xi) Pentobarbital;
 - (xii) Secobarbital;
 - (xiii) Methadone Hydrochloride (in accordance with OAR 851-045-0015(2)(n) and 851-050-0170); and
 - (xiv) Levorphanol.
 - (B) General Anesthetic Agents — no drugs which are general anesthetic barbiturates, volatile liquids or gases, with the exception of nitrous oxide; and
 - (C) Chymopapain is excluded.
 - (h) Gastrointestinal Agents — all drugs except: Monoocctanoin;
 - (i) Anti-infectives, Systemic — all drugs;
 - (j) Biological and Immunologic Agents — all drugs except Basiliximab (Simulect);
 - (k) Dermatological Agents — all drugs except Psoralens;
 - (l) Ophthalmic and Otic Agents — all drugs except:
 - (A) Punctal plugs;
 - (B) Collagen Implants;
 - (C) Indocyanine Green;
 - (D) Hydroxypropal (Methyl) Cellulose;
 - (E) Polydimethylsiloxane;
 - (F) Fomivirsen Sodium (Vitravene);
 - (G) Verteporfin;
 - (H) Levobetaxolol HCL (Betaxon);
 - (I) Travoprost (Travatan);

ADMINISTRATIVE RULES

- (J) Bimatoprost (Lumigan);
- (K) Unoprostone Isopropyl (Rescula); and
- (L) Pegaptanib Sodium (Macugen).
- (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);
 - (H) Sclerosol; and
 - (I) Clofarabine (Clolar).
- (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).

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. 7-1-97; 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; BN 4-1998, f. & cert. ef. 3-13-98; BN 5-1998, f. & cert. ef. 5-11-98; BN 8-1998, f. & cert. ef. 7-16-98; BN 12-1998, f. & cert. ef. 9-22-98; BN 13-1998, f. & cert. ef. 12-1-98; BN 1-1999, f. & cert. ef. 3-4-99; BN 3-1999, f. & cert. ef. 5-4-99; BN 5-1999, f. & cert. ef. 7-1-99; BN 9-1999, f. & cert. ef. 10-20-99; BN 13-1999, f. & cert. ef. 12-1-99; BN 3-2000, f. & cert. ef. 2-25-00; BN 5-2000, f. & cert. ef. 4-24-00; BN 8-2000, f. & cert. ef. 7-3-00; BN 9-2000, f. & cert. ef. 9-18-00; BN 10-2000, f. & cert. ef. 12-15-00; BN 2-2001, f. & cert. ef. 2-21-01; BN 6-2001, f. & cert. ef. 4-24-01; BN 9-2001, f. & cert. ef. 7-9-01; BN 13-2001, f. & cert. ef. 10-16-01; BN 4-2002, f. & cert. ef. 3-5-02; BN 11-2002, f. & cert. ef. 4-25-02; BN 14-2002, f. & cert. ef. 7-17-02; BN 19-2002, f. & cert. ef. 10-18-02; BN 21-2002, f. & cert. ef. 12-17-02; BN 2-2003, f. & cert. ef. 3-6-03; BN 4-2003, f. & cert. ef. 4-23-03; BN 8-2003, f. & cert. ef. 7-7-03; BN 10-2003, f. & cert. ef. 10-2-03; BN 13-2003, f. & cert. ef. 12-9-03; BN 6-2004, f. & cert. ef. 2-26-04; BN 10-2004, f. & cert. ef. 5-4-04; BN 12-2004, f. & cert. ef. 7-13-04; BN 15-2004, f. & cert. ef. 10-26-04; BN 16-2004, f. & cert. ef. 11-30-04; BN 2-2005, f. & cert. ef. 2-17-05; BN 3-2005, f. & cert. ef. 4-26-05

Board of Parole and Post-Prison Supervision Chapter 255

Adm. Order No.: PAR 1-2005

Filed with Sec. of State: 4-25-2005

Certified to be Effective: 4-25-05

Notice Publication Date: 3-1-05

Rules Amended: 255-005-0005

Subject: The amendment of this rule is necessary to bring it into conformity with federal law and other administrative rules regarding Interstate Compact.

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

255-005-0005

Definitions

(1) “Abscond”: Unauthorized absence from parole or post-prison supervision.

(2) “Active Community Supervision”: A period of supervision in the community, requiring the supervising officer’s regular contact and monitoring to assure that the supervisee complies with the conditions of parole or post-prison supervision, has committed no new crimes and has paid restitution, attorney fees, and compensatory fines, if required.

(3) “Active Supervision”: Supervision requiring the supervising officer’s regular contact and monitoring to assure continued compliance with the general and special conditions of parole or post-prison supervision. “Active Supervision” shall not include:

(a) The period of confinement in a local, state, or federal correctional facility while serving on parole or post-prison supervision;

(b) The period of time between the suspension of parole or post-prison supervision and the date parole or post-prison supervision is continued;

(c) Inactive parole or inactive post-prison supervision;

(d) Involuntary commitment to a state or federal psychiatric facility.

(4) “Administrative Sanction”: Local, structured, or intermediate sanctions as those terms used in OAR 291-058-0010 etal, and may include

periods of local confinement in jails, restitution centers, treatment facilities, or similar facilities.

(5) “Aggravation”: The factors or elements surrounding the crime which appear to increase the seriousness of the criminal episode or reflect on the character of the offender pursuant to Exhibit E-1 and E-3.

(6) “BAF”: A Board order after a decision called a “Board Action Form”.

(7) “Base Range”: The range for each crime category reflected in Exhibit C under the “excellent” column.

(8) “Board”: Board of Parole and Post-Prison Supervision.

(9) “Board Review Packet”: The information the Board shall consider at the inmate’s hearing. Each of the Divisions which establishes a hearing shall list the contents of the packet.

(10) “Compensatory Fines”: A court-imposed penalty for the commission of a crime resulting in injury for which the person injured has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction). The court may award compensatory fines in addition to restitution.

(11) “Correctional Facility”: Any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order. Correctional Facility includes a juvenile facility, if the juvenile is confined for a felony charge or conviction, and applies to a state hospital only as to persons detained therein after acquittal of a crime by reason of mental disease or defect or after a finding of guilty except for insanity.

(12) “Crime Severity Rating”: A classification for crimes committed prior to November 1, 1989, from a low of one (1) to a high of seven (7) assigned to each crime, based on the seriousness of the crime pursuant to Exhibits A-I, A-II, and A-III.

(13) “Crime Spree”: A set of criminal activities congruent in time or actually overlapping that are so joined by place and circumstances as to be the product of a continuous disposition or intent.

(14) “Date of Return”: The date another in-state or out-of-state jurisdiction physically returns the inmate to the Department of Corrections’ custody following a hold.

(15) “De Novo Hearing”: A new initial prison term hearing, required when a court orders additional consecutive sentences for crimes which occurred prior to the first prison term hearing.

(16) “Escape”:

(a) The unlawful or unauthorized departure from custody, a correctional facility or any form of temporary release or transitional leave;

(b) Includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board;

(c) Does not include failure to comply with provisions of a conditional or security release as in ORS 135.245.

(17) “Future Disposition Hearing”: A hearing the Board may set at its discretion for purposes of deciding whether to deny or grant re-release for a violation of parole or post-prison supervision when authorized by law.

(18) “Gang Member”: A person who associates with a group which identifies itself through the use of a name, unique appearance, language (including hand signs), the claiming of geographical territory, or the espousing of a distinctive belief system and one of the purposes of the group is criminal activity.

(19) “Gang-Related Activity”: Crime committed by a gang member:

(a) With other known gang members;

(b) Against other known gang members; or

(c) Against a person who is not a gang member; in order to further the purposes of the gang or impress other gang members.

(20) “History/Risk Score”: A rating from a high of eleven (11) to a low of zero (0) points, reflecting the prisoner’s prior record and other factors which predict the likelihood of success on parole pursuant to Exhibit B, Part I and Part II.

(21) “Inactive Parole and “Inactive Post-Prison Supervision”: The offender remains under supervision however;

(a) There is no direct supervision by a supervising officer and no requirement of regular reporting;

(b) There are no additional supervision fees; and

(c) The offender remains subject to arrest by a supervising officer for violation of conditions of supervision and return to active supervision at any time until expiration of the sentence or post-prison supervision term as outlined in Division 94; and

(d) (b) and (c) do not apply to those offenders being supervised in another state via Interstate Compact. Those offenders remain on active parole or post-prison supervision.

ADMINISTRATIVE RULES

(22) "In Camera Hearing": The inspection of a document by the Hearings Officer in private before the document may be introduced as evidence.

(23) "Initial Parole Release Date": The date, by month, day and year, assigned to a prisoner for parole release based on the prisoner's matrix range, aggravation, mitigation, and judicially imposed minimum sentence(s).

(24) "Inmate": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not on parole, post-prison supervision or probation status (also referred to as prisoner).

(25) "Inoperative Time": Time spent on abscond, escape, or unauthorized departure from custody, leave, parole or post-prison supervision, which does not count toward service of the sentence.

(26) "Intensive Supervision": means enhanced level of supervision exceeding a county's high risk level supervision standards. Intensive supervision may include, but not be limited to, electronic monitoring, house arrest, curfew, day reporting, supervised housing, multiple supervising officers, adjunct surveillance by law enforcement or other specialists, increased face-to-face offender contacts in the community, increased collateral contacts (such as with family, therapist and employer), community notification, geographic restrictions, offender mileage logs, medication monitoring (such as depo provera, psychotropics, antabuse), intensive outpatient or residential treatment programming, urinalysis, and polygraph.

(27) "Less Than the Sum of the Terms": An action by the Board whereby one or more of the consecutive ranges are treated as if they are concurrent.

(28) "Mail Date" or "Mailed on Date": Is the date from which the Board calculates the timelines of receipt of Administrative Review Requests and other time sensitive responses. The date is computer generated and scheduled to insure actual mailing occurred on or before the listed date.

(29) "Matrix Ranges": Ranges of months within which the Board has the discretion to set a prison term. The ranges are based on crime severity ratings and history/risk scores.

(30) "The Matrix": A table which displays the matrix ranges by showing the intersection of the crime severity rating and the history/risk score pursuant to Exhibit C.

(31) "Mitigation": The factors or elements surrounding the crime which appear to decrease the seriousness of the criminal episode or reflect on the character of the prisoner pursuant to Exhibit E-2 and E-3.

(32) "Offender": Any person under the supervision of the Department of Corrections or a local supervisory authority who is not presently in the custody of a correctional facility, including persons on probation, parole or post-prison supervision.

(33) "Parole": Applies to offenders whose crime(s) were committed before November 1, 1989. A Board authorized conditional release from a state correctional facility into the community or to a detainer.

(34) "Particularly Violent or Otherwise Dangerous Criminal Conduct": Conduct which is not merely unpleasant or offensive, but which is indifferent to the value of human safety or property.

(35) "Parole Board Record": The file the Board maintains for each inmate/offender containing the information listed in ORS 144.185.

(36) "Period Under Review": Under Division 40, the time already served on the prison term, normally the three (3) or (5) year period prior to the personal review hearing.

(37) "Post-Prison Supervision": Applies to crimes committed on or after November 1, 1989. A term, as set by statute or the court under the supervision of the Department of Corrections or a correctional agency designated by the Department or a local supervisory authority.

(38) "Principal Range": The range of months for the crime holding the highest crime severity rating. When the ranges are the same, the Board shall designate one range as the principal range.

(39) "Preponderance": Evidence which is of greater weight or more convincing than the evidence offered in opposition to it.

(40) "Probable Cause": A substantial objective basis for believing that more likely than not an offense or violation has been committed and the person to be arrested has committed it.

(41) "Prison Term": The Board established time the inmate must serve before the initial parole release date, in accordance with applicable laws and the Board's Administrative Rules.

(42) "Prison Term Hearing": The hearing at which the Board establishes an inmate's prison term and initial parole release date.

(43) "Revocation": An action by a Sanction Authority to terminate an offender's parole or post-prison supervision. Sanction Authority may

resume an offender's parole or post-prison supervision following the act of revocation.

(44) "Revocation Hearing": A hearing to determine whether a violation of conditions of parole or post-prison supervision occurred and whether the Hearings Officer should recommend that the parolee or offender return to custody or continue on parole or post-prison supervision with additional conditions. (Commonly known as a Morrissey Hearing)

(45) "Sanction Authority": Means the Board for felony offenders sentenced by the court for crimes occurring before November 1, 1989, or sentenced to more than 12 months in the custody of the Department of Corrections or sentenced to 12 months or less and have additional sentences of greater than 12 months; and the Local Supervisory Authority for felony offenders sentenced by the court to 12 months or less.

(46) "Sexually Violent Dangerous Offender": means an inmate/offender who has psychopathic personality features, sexually deviant arousal patterns or interests and a history of sexual assault, and who the Board or Local Supervisory Authority finds presents a substantial probability of committing an offense listed in OAR 255-060-0008(6). "History of sexual assault" means that an inmate/offender has engaged in unlawful sexual conduct that is not revealed to the crime for which the inmate/offender is currently on parole or post-prison supervision and seriously endangered the life or safety of another person or involved a victim under twelve (12) years of age.

(47) "Serious Physical Injury": Any physical injury which creates a substantial risk of death, or which causes serious and protracted disfigurement, or impairment of health or protracted loss or impairment of the function of any bodily organ.

(48) "Stranger": A person who is either unknown to a victim or with whom the victim has a superficial acquaintance or acquaintance of short duration or infrequent contact.

(49) "Subcategory": The criteria for rating criminal conduct within the crime categories based on the seriousness of the offense (Exhibit A).

(50) "Subordinate Range": Any range less than or equal to the principal range.

(51) "Subpoena Duces Tecum": A subpoena requiring the party to appear at a hearing with a document or piece of evidence to be examined at the hearing.

(52) "Summing the Ranges": Adding ranges of consecutive sentences to produce a unified range pursuant to OAR 255-035-0021.

(53) "Supervising Officer": Parole and post-prison supervision officer.

(54) "Supervisory Authority": The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or County Court to operate correction supervision services, custodial facilities, or both (per ORS 144.087(1)).

(55) "Unauthorized Absence": Time spent outside a state correctional facility without Department of Corrections' or local supervisory authority's authorization, whether it is an escape or an unauthorized departure.

(56) "Unified Range": The total range computed under OAR 255-035-0021 for consecutive sentences.

(57) "Unsum the Ranges": To establish a matrix range at less than the unified range. The effect of unsumming is treatment of one or more ranges as if concurrent.

(58) "Variations": The time periods which the Board may use to set a prison term above or below the matrix range pursuant to Exhibit D.

(59) "Victim": The actual victim, a representative selected by the victim, the victim's next of kin or, in the case of abuse or corpse in any degree, an appropriate member of the immediate family of the decedent (Per ORS 144.120(7)). The person or persons who have suffered financial, social, psychological or physical harm as a result of a crime and includes, in the case of a homicide or abuse or corpse in any degree, a member of the immediate family of the decedent and, in the case of a minor victim, the legal guardian of the minor (Per ORS 131.007).

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

Stat. Auth.: ORS 144.050 & 144.140

Hist.: 2PB 2-1986(Temp), f. & ef. 11-13-86; 2PB 3-1986(Temp), f. & ef. 12-2-86; PAR 6-1988, f. & ef. 5-19-88; PAR 7-1988, f. & ef. 7-1-88; PAR 8-1988, f. & ef. 7-1-88; PAR 9-1988(Temp), f. & ef. 7-14-88; PAR 12-1988(Temp), f. & ef. 7-20-88; PAR 13-1988(Temp), f. & ef. 8-5-88; PAR 14-1988(Temp), f. & ef. 9-20-88; PAR 18-1988, f. & ef. 12-6-88; PAR 4-1989, f. & ef. 11-1-89; PAR 5-1990, f. & cert. ef. 10-5-90; PAR 5-1991, f. & cert. ef. 10-15-91; PAR 8-1992, f. & cert. ef. 10-9-92; PAR 1-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 11-1997(Temp), f. & cert. ef. 11-14-97; PAR 1-1998, f. & cert. ef. 5-1-98; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 1-2005, f. & cert. ef. 4-25-05

Adm. Order No.: PAR 2-2005

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ADMINISTRATIVE RULES

Notice Publication Date: 3-1-05

Rules Amended: 255-094-0000, 255-094-0010

Subject: The amendment of these rules is necessary for purposes of clarification and to bring one of the rules into conformity with federal law and other administrative rules regarding Interstate Compact.

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

255-094-0000

Period of Active Parole or Post-Prison Supervision

(1) The minimum periods of active parole and post-prison supervision shall be:

(a) Six (6) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 1, 2 and 3;

(b) Twelve (12) months for offenders whose crimes were committed on or after November 1, 1989, and whose crimes fall within sentencing guidelines crime categories 4, 5, 6, 7, 8, 9 and 10;

(c) For offenders whose crimes were committed after December 4, 1986, but prior to November 1, 1989, the period of active supervision shall be set by determining the equivalent sentencing guidelines crime category and applying sub-section (a) and (b) above, subject to the exceptions in section (2) below;

(d) For offenders whose crimes were committed prior to December 4, 1986, the Board shall apply the rules in effect at the time the crime was committed.

(2) The following minimum periods of active parole and post-prison supervision are exceptions to section (1) of this rule:

(a) Three (3) years for offenders sentenced as dangerous offenders under ORS 161.725 to 161.737;

(b) Three (3) years for offenders sentenced for murder under ORS 163.115;

(c) Three (3) years for offenders sentenced for aggravated murder under ORS 163.105;

(d) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, Sex Abuse 2, and Attempts of these which occurred on or after September 29, 1991, shall serve active supervision to the expiration of the indeterminate sentence;

(e) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I for crimes occurring on or after November 4, 1993, shall serve active supervision to the expiration of the indeterminate sentence;

(f) Offenders sentenced for Sodomy II or Rape II for crimes occurring on or after October 23, 1999, shall serve active supervision to the expiration of the indeterminate sentence.

(g) Offenders sentenced for Sex Abuse I or Attempted Sex Abuse I, for crimes which occurred on or after November 1, 1989, and prior to November 4, 1993, will serve active supervision in accordance with the period of post-prison supervision set by the sentencing court and the sentencing guidelines grid;

(h) Offenders sentenced for Rape I, Sodomy I, Sexual Penetration I, Sexual Penetration 2, or Sexual Abuse I, which occurred on or after December 4, 1986, and prior to November 1, 1989, shall serve a minimum of 36 months active supervision or to expiration of the sentence which ever comes first;

(i) Offenders sentenced for Robbery in the First Degree under ORS 164.415 which occurred on or after June 30, 1995, shall serve a minimum period of 36 months active supervision; and

(j) Offenders sentenced for Arson in the First Degree under ORS 164.325 which occurred on or after June 30, 1995, shall serve minimum period of 36 months active supervision; and

(k) Offenders sentenced as sexually violent dangerous offenders pursuant to Chapter 163 (1999 OR Laws) for crimes committed on or after October 23, 1999, shall serve active supervision for life.

(3) Upon completion of the specified period of active parole or post-prison supervision, the supervisory authority shall place the offender on inactive supervision status subject to the exceptions in OAR 255-094-0010, and notify the Board of the status change.

(4) Upon revocation of supervision and rerelease to the community, the period of active supervision shall be as provided in OAR 255-094-0000(1) & (2) provided that the period of active supervision does not exceed the sentence expiration date.

(5) After a rereleased offender has completed the minimum active supervision period as provided in OAR 255-094-0000(1)(2) and has substantially fulfilled the conditions of supervision, the supervising officer may place the offender on inactive supervision.

(6) Inmate/offenders found to be sexually violent dangerous offenders pursuant to OAR 255-060-0008(6) shall be subject to intensive supervision for the full period of parole or post-prison supervision as defined in OAR 255-005.

Stat. Auth.: ORS 144.085, SB 1145 (passed in 1995 Legislative session), Ch. 163 & 924 (1999 OL)

Stats. Implemented: ORS 144.085, SB 1145, OL 1995 & Ch. 163 & 924, 1999 OL

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 3-2000, f. & cert. ef. 1-25-00; PAR 4-2000, f. & cert. ef. 2-15-00; PAR 2-2001, f. & cert. ef. 1-12-01; PAR 2-2005, f. & cert. ef. 4-25-05

255-094-0010

Exceptions to Inactive Supervision and Return to Active Supervision

(1) No sooner than thirty days prior to the expiration of the offender's active period of supervised parole or post-prison supervision or during a period of inactive supervision, the supervising officer or designee may send to the Board a report on offenders who have not substantially fulfilled the supervision conditions, or who have failed to complete payment of restitution. The supervising officer or designee may request continuation on active supervision, or return to active supervision if it is in the community's or the offender's best interest. This report shall include:

(a) An evaluation of the offender's compliance with supervision conditions;

(b) The status of the offender's court ordered monetary obligations, including fines and restitution, if any;

(c) The offender's employment status;

(d) The offender's address;

(e) Treatment program outcome;

(f) Any new criminal activity;

(g) Other relevant information;

(h) A recommendation that the Board extend the active supervision period or return the offender to active supervision.

(2) After reviewing the report, if the Board or its designated representative finds the offender has not substantially fulfilled the supervision conditions, or it is in the offender's or the community's best interest, the Board may order that the offender remain on active supervision or return to active supervision for the remainder of the supervision period set by the sentencing court or set by law. The Board shall send the offender notice of the continuation or return to active supervision.

(3) Once extended or returned to active supervision, the supervising officer may place the offender on inactive supervision when the offender has substantially fulfilled the conditions of supervision and completed restitution payments, or active supervision is no longer in the best interest of the offender and the community.

(4) When an offender is on inactive supervision or is being supervised via Interstate Compact the general and special conditions of supervision shall remain in effect with the following exceptions for those offenders being supervised in the State of Oregon:

(a) General condition #1: Pay supervision fees (fines, restitution or other fees previously ordered by the Board remain in effect);

(b) Special Conditions specifically deleted by the Board.

Stat. Auth.: ORS 144.085 & SB1145 (passed during 1995 Legislative session)

Stats. Implemented: ORS 144.085 & SB 1145, OL 1995

Hist.: PAR 8-1997, f. 3-11-97, cert. ef. 3-14-97; PAR 2-2005, f. & cert. ef. 4-25-05

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 10-2005

Filed with Sec. of State: 5-2-2005

Certified to be Effective: 5-2-05

Notice Publication Date:

Rules Amended: 839-025-0750

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

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

839-025-0750

Residential Prevailing Wage Rate Determinations

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in the following residential rate determinations are the prevailing rates of wage for workers upon said public works projects for the periods of time specified:

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

ADMINISTRATIVE RULES

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

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

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

(e) *Special Prevailing Wage Rate Determination for Residential Project, Headwaters Apartments, Project #2004-06*, dated October 14, 2004 for the period of October 15, 2004 through June 30, 2005.

(f) *Special Prevailing Wage Rate Determination for Residential Project, Student Housing, Phase Four, Project #2005-01*, dated April 14, 2005, for the period of April 18, 2005 through September 30, 2005.

(g) *Special Prevailing Wage Rate Determination for Residential Project, "2801 N. Oak," Project #2005-02*, dated April 29, 2005, for the period of May 2, 2005 through June 30, 2005.

(2) Copies of the rates referenced in section (1) of this rule are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and listed in the blue pages of the phone book. Copies may also be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (503) 731-4709.

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

Hist.: BLI 5-1999, f. 6-30-99, cert. ef. 7-1-99; BLI 7-1999, f. 8-26-99, cert. ef. 9-15-99; BLI 8-1999, f. & cert. ef. 9-8-99; BLI 10-1999, f. 9-14-99, cert. ef. 9-17-99; BLI 11-1999, f. 9-22-99, cert. ef. 9-27-99; BLI 6-2000, f. 2-14-00, cert. ef. 2-15-00; BLI 12-2000, f. 5-24-00, cert. ef. 7-1-00; BLI 18-2000, f. & cert. ef. 9-1-00; BLI 21-2000, f. 9-15-00, cert. ef. 9-22-00; BLI 23-2000, f. & cert. ef. 9-25-00; BLI 24-2000, f. 10-30-00, cert. ef. 11-1-00; BLI 2-2001, f. & cert. ef. 1-24-01; BLI 6-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 7-2001, f. 7-20-01, cert. ef. 7-24-01; BLI 9-2001, f. 7-31-01, cert. ef. 8-1-01; BLI 10-2001, f. 8-14-01, cert. ef. 8-15-01; BLI 11-2001, f. & cert. ef. 8-22-01; BLI 13-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 6-2002, f. 3-14-02, cert. ef. 3-15-02; BLI 7-2002, f. 3-22-02, cert. ef. 3-25-02; BLI 11-2002, f. & cert. ef. 5-23-02; BLI 13-2002, f. 6-26-02, cert. ef. 7-1-02; BLI 14-2002, f. 8-23-02, cert. ef. 10-1-02; BLI 2-2003, f. & cert. ef. 3-28-03; BLI 2-2004, f. 4-23-04, cert. ef. 5-1-04; BLI 3-2004, f. 5-18-04, cert. ef. 5-19-04; BLI 4-2004, f. & cert. ef. 5-24-04; BLI 5-2004, f. 6-23-04, cert. ef. 6-24-04; BLI 7-2004, f. 7-14-04, cert. ef. 7-15-04; BLI 13-2004, f. & cert. ef. 10-19-04; BLI 14-2004, f. 10-29-04, cert. ef. 11-1-04; BLI 16-2004, f. 11-8-04, cert. ef. 11-10-04; Renumbered from 839-016-0750, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 9-2005, f. 4-15-05, cert. ef. 4-18-05; BLI 10-2005, f. & cert. ef. 5-2-05

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Department of Administrative Services Chapter 125

Adm. Order No.: DAS 5-2005(Temp)

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 4-20-05 thru 10-17-05

Notice Publication Date:

Rules Amended: 125-055-0100, 125-055-0105, 125-055-0115, 125-055-0120, 125-055-0125, 125-055-0130

Rules Suspended: 125-055-0110

Subject: The Health Insurance Portability and Accountability Act (HIPAA) Security Rules, 45 CFR 164.302 - 164.318, become effective on April 20, 2005. OAR 125-055-0100 through 125-055-0130 implement contract requirements for agencies that are "covered entities" that contract with a business associate, as defined under HIPAA. OAR 125-055-0100 through 125-055-0130 must be amended in order to incorporate the requirements imposed by the HIPAA Security Rules.

Rules Coordinator: Kristin Keith—(503) 378-2349, ext. 325

125-055-0100

Purpose — HIPAA Privacy and Security Rule Implementation

The purpose of these rules is to set forth the contract requirements to comply with the Business Associate provisions of HIPAA and the implementing Privacy Rule and Security Rule. The Privacy Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may disclose, use, or create Protected Health Information. The Security Rule requires a Covered Entity to obtain certain written assurances from a Business Associate before the Business Associate may create, receive, maintain, or transmit Protected Health Information transmitted by or maintained in Electronic Media on behalf of the Covered Entity. This Rule contains the written assurances that an Agency must include in its Contract with a Business Associate. Before

applying this Rule, Agencies must determine if a Business Associate relationship exists between the Contractor and the Agency as defined in HIPAA and the Privacy Rule or Security Rule. The requirements contained in this Rule apply both to Contracts for trade services personal services, as defined in OAR 125-246-0110.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0105

Definitions

For purposes of rules 125-055-0100 through 125-055-0130 the following terms shall have the meanings set forth below. Capitalized terms not defined herein shall have the same meaning as those terms in the Privacy Rule and the Security Rule.

(1) "Agency" means an agency of the State of Oregon subject to the procurement authority of DAS pursuant to ORS 279A.140 and that is a Covered Entity.

(2) "Business Associate" has the meaning defined in 45 CFR 160.103. A Business Associate performs or assists a Covered Entity in performing a function or activity that involves the use, disclosure, or creation of Protected Health Information The Workforce, as defined in 45 CFR 160.103, of the Covered Entity is not considered to be a Business Associate nor do their activities create a Business Associate relationship with their employer.

(3) "Contract" means the written agreement between an Agency and a Contractor setting forth the rights and obligations of the parties.

(4) "Covered Entity" means:

(a) A governmental or private Health Plan;

(b) A Health Care Provider that transmits any Health Information in electronic form to carry out financial or administrative activities in connection with a Transaction;

(c) A Health Care Clearinghouse; or

(d) A prescription drug card sponsor under Medicare Part D.

(5) "Electronic Media" means:

(a) Electronic storage media; and

(b) Transmission media used to exchange information already in electronic storage media.

(6) "Electronic Protected Health Information" means Protected Health Information that is transmitted by Electronic Media or maintained in Electronic Media.

(7) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d-1320d-8, Public Law 104-191, sec. 262 and sec. 264.

(8) "Health Care Provider" means the persons or entities that furnish, bill for or are paid for Health Care in the normal course of business, as more fully defined in ORS 192.519.

(9) "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

(10) "Protected Health Information" means Individually Identifiable Health Information that is maintained or transmitted in any Electronic Media or other form or medium by a Covered Entity.

(11) "Required by Law" has the meaning defined in 45 CFR section 164.103.

(12) "Rule" means this Oregon Administrative rule 125-055-0100 through 125-055-0130.

(13) "Security Rule" means the security standards for Electronic Protected Health Information found at 45 CFR Parts 160, 162, and 164.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 192.519, 279A.140 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0110

References to Privacy Rule

For purposes of this Rule, references to the Privacy Rule mean the final rule published on December 28, 2000 in 65 Fed. Reg. 82,462-82,829, as amended on May 31, 2002 in 67 Fed. Reg. 38,009-38,020 (Part 160) and as amended on August 14, 2002 in 67 Fed. Reg. 53,182-53,273 (Part 160 and 164).

Stat. Auth.: ORS 184.305, 184.340 & 279.712

Stats. Implemented: ORS 279.712 & The Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

ADMINISTRATIVE RULES

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; Suspended by DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0115

Business Associate Contract Provisions

(1) A Contract that is subject to the Business Associate requirements of the Privacy Rule shall contain the following provisions, effective on or after April 14, 2003:

(a) Obligations and Activities of Business Associate: Business Associate agrees to:

(A) Not use or disclose Protected Health Information other than as permitted or required by this Rule and the Contract, or as Required By Law.

(B) Use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Rule and the Contract.

(C) Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Rule and the Contract.

(D) Report to Agency, as promptly as possible, any use or disclosure of the Protected Health Information not provided for by this Rule and the Contract of which it becomes aware.

(E) Ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Agency agrees to the same restrictions and conditions that apply through this Rule and the Contract to Business Associate with respect to such information.

(F) Provide access, at the request of Agency, and in the time and manner designated by Agency, to Protected Health Information in a Designated Record Set, to Agency or, as directed by Agency, to an Individual in order to meet the requirements under 45 CFR 164.524.

(G) Make any amendment(s) to Protected Health Information in a Designated Record Set that the Agency directs or agrees to pursuant to 45 CFR 164.526 at the request of Agency or an Individual, and in the time and manner designated by Agency.

(H) Make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Agency available to Agency and to the Secretary, in a time and manner designated by Agency or the Secretary, for purposes of the Secretary determining Agency's compliance with the Privacy Rule.

(I) Document such disclosures of Protected Health Information and information related to such disclosures as would be required for Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(J) Provide to Agency or an Individual, in a time and manner to be designated by Agency, information collected in accordance with subparagraph (I) of this section (a), to permit Agency to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(b) Permitted Uses and Disclosures by Business Associate:

(A) General Use and Disclosure Provision. Except as otherwise limited in this Rule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Agency as specified in the Contract and this Rule, provided that such use or disclosure would not violate the Privacy Rule if done by Agency or the minimum necessary policies and procedures of the Agency.

(B) Specific Use and Disclosure Provision.

(i) Except as otherwise limited in this Rule, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(ii) Except as otherwise limited in this Rule, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) Business Associate may use Protected Health Information to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

(iv) Business Associate may not aggregate or compile Agency's Protected Health Information with the Protected Health Information of other Covered Entities unless the Contract permits Business Associate to perform Data Aggregation services. If the Contract permits Business Associate to provide Data Aggregation services, Business Associate may use Protected Health Information to provide Data Aggregation services requested by Agency as permitted by 45 CFR 164.504(e)(2)(i)(B) and subject to any limitations contained in this Rule. If Data Aggregation services are requested by Agency, Business Associate is authorized to aggregate Agency's Protected Health Information with Protected Health Information of other Covered Entities that the Business Associate has in its possession through its capacity as a business associate to such other Covered Entities provided that the purpose of such aggregation is to provide Agency with data analysis relating to the Health Care Operations of Agency. Under no circumstances may Business Associate disclose Protected Health Information of Agency to another Covered Entity absent the express authorization of Agency.

(c) Obligations of Agency:

(A) Agency shall notify Business Associate of any limitation(s) in its notice of privacy practices of Agency in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Agency may satisfy this obligation by providing Business Associate with Agency's most current Notice of Privacy Practices.

(B) Agency shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(C) Agency shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Agency has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Permissible Requests by Agency. Agency shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Agency, except as permitted by section (1)(b)(B) above.

(e) Termination of Contract:

(A) Termination for Cause. Upon Agency's knowledge of a material breach by Business Associate of the requirements of this Rule, Agency shall either:

(i) Notify Business Associate of the breach and specify a reasonable opportunity in the notice for Business Associate to cure the breach or end the violation, and terminate the Contract if Business Associate does not cure the breach of the requirements of this Rule or end the violation within the time specified by Agency;

(ii) Immediately terminate the Contract if Business Associate has breached a material term of this Rule and cure is not possible in Agency's reasonable judgment; or

(iii) If neither termination nor cure is feasible, Agency shall report the violation to the Secretary.

(iv) The rights and remedies provided herein are in addition to the rights and remedies provided in the Contract.

(B) Effect of Termination.

(i) Except as provided in paragraph (B) of this subsection (b), upon termination of the Contract, for any reason, Business Associate shall return or destroy all Protected Health Information received from Agency, or created or received by Business Associate on behalf of Agency. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Agency notification of the conditions that make return or destruction infeasible. Upon Agency's written acknowledgement that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Rule to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(2)(a) Security Requirements: Effective April 20, 2005, a Contract that is subject to the Security Rule's Business Associate requirements for Electronic Protected Health Information must comply with both the Privacy Rule and the Security Rule requirements applicable to a Business

ADMINISTRATIVE RULES

Associate. In addition to the Privacy Rule requirements set forth in subsection (1) of this rule, the Contract shall contain the following provisions:

(b) Obligations of Business Associate: Business Associate agrees to:

(A) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Agency;

(B) Ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(C) Report to the Agency any security incident of which it becomes aware.

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

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability

Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0120

Order of Precedence

In the event of a conflict between this Rule and the provisions of the Contract, this Rule shall control. In the event of a conflict between this Rule and the Privacy Rule or the Security Rule, or the provisions of the Contract and the Privacy Rule or the Security Rule, the Privacy Rule and the Security Rule shall control. The requirements set forth in this Rule are in addition to any other provisions of law applicable to the Contract. Provided, however, this Rule shall not supercede any other federal or state law or regulation governing the legal relationship of the parties, or the confidentiality of records or information, except to the extent that HIPAA preempts those laws or regulations. Any ambiguity in the Contract shall be resolved to permit Agency and Business Associate to comply with the Privacy Rule and the Security Rule.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability

Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0125

Methods of Compliance

In addition to incorporating the Business Associate requirements contained in this Rule in its Contracts with Business Associates, Agency may comply with this Rule in either of the following ways:

(1) Memorandum of Understanding. If Agency and Business Associate are government entities, the parties may comply with the requirements of this Rule by entering into a memorandum of understanding that accomplishes the objectives of this Rule and meets the Business Associate requirements of the Privacy Rule and the Security Rule.

(2) Amendment. Agency may comply with the requirements of this Rule by executing an amendment or rider that amends Agency's Contract and that contains the contract provisions required by this Rule.

(3) Required by Law. If a Business Associate is Required by Law to perform a function or activity on behalf of an Agency or to provide a service described in the definition of Business Associate to an Agency, such Agency may disclose Protected Health Information to the Business Associate to the extent necessary to comply with the legal mandate without meeting the requirements of this Rule, provided that the Agency attempts in good faith to obtain satisfactory assurances required by OAR 125-055-0115, and, if such attempt fails, documents the attempt and the reasons that such assurances cannot be obtained.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability

Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

125-055-0130

Standards in Individual Contracts

(1) Agency and Business Associate may enter into a Contract that contains more stringent standards than those set forth in this Rule as long as such standards do not violate the requirements of the Privacy Rule or the Security Rule.

(2) Agencies shall use the form contract provided by the State Procurement Office of the State Services Division of the Department of Administrative Services when entering into personal services contracts as defined in OAR 125-246-0110. An Agency may request the Division to approve a revised form Contract for a one time use or repeated use for a specific class or classes of transactions.

Stat. Auth.: ORS 184.305, 184.340 & 279A.140

Stats. Implemented: ORS 279A.140 & The Health Insurance Portability and Accountability

Act of 1996, 42 USC 1320d - 1320d-8, PL 104-191, sec. 262 & sec. 264

Hist.: DAS 9-2002(Temp), f. & cert. ef. 12-31-02 thru 6-28-03; DAS 3-2003, f. & cert. ef. 6-27-03; DAS 5-2005(Temp), f. & cert. ef. 4-20-05 thru 10-17-05

Department of Agriculture, Oregon Bartlett Pear Commission Chapter 606

Adm. Order No.: OBPC 1-2005

Filed with Sec. of State: 4-25-2005

Certified to be Effective: 4-25-05

Notice Publication Date: 8-1-04

Rules Adopted: 606-040-0010

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

Rules Coordinator: Linda Bailey —(503) 652-9720

606-040-0010

Solely 100% Organic Exemption for Oregon Bartlett Pears

(1) Any handler that produces and markets solely 100 percent organic products, and does not produce or market any conventional or non-organic products, shall be eligible to be exempt from the portion of the assessment applicable to marketing promotion, including paid advertising. Any handler so exempted shall be obligated to pay the portion of the assessment for other authorized activities.

(2) To be exempt from paying assessments for marketing promotion and paid advertising, the handler shall submit an application to the Oregon Bartlett Pear Commission prior to or during the assessment period. This application shall include the handler's name and address, the name and address of the company, telephone and fax numbers, a copy of the organic farm or organic handling operation certificate(s) provided by a USDA-accredited certifying agent under the Organic Foods Production Act of 1990 (7 U.S.C. 6502), and the handler's certification that the handler meets all of the applicable requirements for an assessment exemption as provided in this section. The handler shall file the application with the commission, prior to or during the applicable assessment period, and annually thereafter as long as the handler continues to be eligible for the exemption. If the handler complies with these requirements and is eligible for an assessment exemption, the commission will approve the exemption and notify the handler within 30 days of receiving the handler's application. If the application does not qualify, the commission will notify the handler of the reason(s) for disqualification. The Director of Agriculture may review any decisions made by the commission at his/her discretion.

(3) The applicable assessment rate for any handler approved for an exemption shall be computed by the total assessment, less the promotion allocation. (Example: The adjusted assessment rate for processing pears would be the processing assessment of \$5.50 cited in 606-010-0015, less the promotion allocation of \$5.00 per ton for an adjusted rate of \$.50 per ton net paid weight. The fresh Bartlett assessment rate of \$.0275 cited in 606-010-0015 would not have an adjusted rate as no portion of the fresh assessment is for marketing promotion or paid advertising.)

(4) When the requirements of this section for exemption no longer apply to a handler, the handler shall inform the Oregon Bartlett Pear Commission immediately and pay the full assessment on all remaining assessable product from the date the handler no longer is eligible to the end of the assessment period.

(5) For the purposes of this section, the definition of "Marketing Promotion and Paid Advertising" means any action taken to present a favorable image of pears to the general public or to the food and agriculture industry for the purpose of improving the competitive position of pears and stimulating the sale of pears. Marketing promotion and paid advertising

ADMINISTRATIVE RULES

includes providing information to consumers that is designed to enhance the image or sale of pears. Marketing promotion and paid advertising does not include the act of carrying out or conducting research, but may include the communication of research if the purpose of that communication is to enhance the image or sale of pears.

Stat. Auth.: ORS 576.327 & 576.304
Stats. Implemented: ORS 576.327
Hist.: OBPC 1-2005, f. & cert. ef. 4-25-05

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**Department of Agriculture,
Oregon Processed Vegetable Commission
Chapter 647**

Adm. Order No.: OPVC 1-2005
Filed with Sec. of State: 5-13-2005
Certified to be Effective: 6-1-05
Notice Publication Date: 4-1-05
Rules Amended: 647-010-0010
Subject: These rules establish the assessment rates necessary to fund Commission research projects.
Rules Coordinator: John McCulley—(503) 370-7019

**647-010-0010
Assessments**

- (1) Any first purchaser shall deduct and withhold an assessment of the following amounts from each of the above named vegetable crops:
- (a) Beans — \$.921 per ton based on the net weight of the beans delivered.
 - (b) Sweet Corn — \$.439 per ton based on the gross weight of the sweet corn delivered.
 - (c) Table Beets — \$.368 per ton based on the net weight of the table beets delivered.
 - (d) Carrots — \$.019 per ton based on the net weight of the carrots delivered.
 - (e) Broccoli — \$1.938 per ton based on the net weight of the broccoli delivered.
 - (f) Cauliflower — \$.427 per ton based on the net weight of the cauliflower delivered.
- (2) From the price paid to the producer thereof, after June 1, 2005 for all of the above named vegetables for processing and grown in Oregon.

Stat. Auth.: 576.051 - 576.595
Stats. Implemented: ORS 576.051 - 576.595
Hist.: PVC 2-1985, f. 7-17-85, ef. 7-22-85; PVC 1-1986, f. 5-30-86, ef. 6-1-86; PVC 2-1987, f. & ef. 6-16-87; PVC 1-1988, f. 4-22-88, cert. ef. 6-1-88; PVC 1-1989, f. 5-4-89, cert. ef. 6-1-89; PVC 1-1990, f. 4-24-90, cert. ef. 6-1-90; PVC 1-1991, f. 5-7-91, cert. ef. 6-1-91; PVC 1-1992, f. 4-15-92, cert. ef. 6-1-92; PVC 1-1993, f. 4-28-93, cert. ef. 6-21-93; PVC 1-1994, f. 4-22-94, cert. ef. 6-21-94; PVC 2-1995, f. 5-24-95, cert. ef. 6-1-95; PVC 1-1996, f. 5-14-96, cert. ef. 1-1-96; PVC 1-1997, f. 5-6-97, cert. ef. 6-1-97; OPVC 1-1998, f. 5-28-98, cert. ef. 6-1-98; OPVC 2-1999 f. 4-26-99, cert. ef. 6-1-99; OPVC 1-2000, f. 5-2-00, cert. ef. 6-1-00; OPVC 2-2001, f. 5-15-01, cert. ef. 6-1-01; OPVC 1-2002, f. 4-26-02, cert. ef. 6-1-02; OPVC 1-2003, f. 5-8-03, cert. ef. 6-1-03; OPVC 2-2004, f. 5-11-04, cert. ef. 6-1-04; OPVC 1-2005, f. 5-13-05, cert. ef. 6-1-05

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

Adm. Order No.: BCD 10-2005
Filed with Sec. of State: 4-29-2005
Certified to be Effective: 5-1-05
Notice Publication Date: 3-1-05
Rules Adopted: 918-030-0400, 918-030-0420, 918-030-0430, 918-030-0490, 918-550-0000, 918-550-0010, 918-550-0100, 918-550-0120, 918-550-0140, 918-550-0160, 918-550-0180, 918-550-0200, 918-550-0600
Rules Amended: 918-001-0036, 918-030-0030, 918-500-0010
Subject: This rulemaking is necessary to implement Senate Bill (SB) 468, which passed the 2003 Legislature, and codified in ORS 446.561 through 446.995. SB 468 transferred the duties, functions and powers relating to titling, and trip permits for manufactured structures, and regulation of manufactured dwelling dealers and dealerships from the Department of Transportation (ODOT) to the Department of Consumer & Business Services, Building Codes Division. This transfer becomes effective on May 1, 2005.
Rules Coordinator: Heather L. Gravelle—(503) 373-7438

**918-001-0036
Guidelines for Civil Penalties**

(1) Scope and Authority. This rule sets guidelines for assessing a civil penalty under ORS 446.995 & 455.895.

(2) Definitions. For the purposes of this rule:

(a) "Continuing offense" or "continuing violation" means violation of a code, rule or law on one or more additional days after having been notified that the act in question, or failure to act, is a violation. An additional day is any day, other than the first day, an offense takes place.

(b) "Pattern of violation" means two or more prior violations during any three-year period of any provision of ORS Chapter 446, 447, 455, 460, 479, 480 or 693, or the state building code as defined in ORS 455.010, whether or not a penalty was assessed.

(c) "Egregious Act," for purposes other than plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Directly employing, allowing or permitting an unlicensed individual to perform work; or

(D) Performing or engaging in work that requires a license.

(d) "Egregious Act," for the purposes of plumbing violations found by the State Plumbing Board, means:

(A) An act resulting in an unsafe installation and/or imminent health and safety hazard, structural or financial damage;

(B) A violation of a previous order;

(C) Allowing or permitting an unlicensed individual to perform work;

or

(D) Performing or engaging in work that requires a license.

(e) A licensed person or contractor who has committed an egregious act may have their license, registration or certificate suspended or revoked. For the purposes of civil penalty assessments, there is no time limit on egregious acts.

(3) A board or the administrator may take into account any appropriate factors in determining the penalty amount or conditions within an order.

(4) Civil penalties may be assessed in addition to, or in lieu of, the suspension or revocation of a license, certificate of competency or similar authority issued by the division.

(5) Procedures:

(a) Civil penalties shall be assessed by a board, the administrator or a board's designee acting as agent for a board.

(b) The division shall, subject to approval of a board, adopt a penalty matrix to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

(c) If a dispute concerning the application of the state building code as defined in ORS 455.010 is appealed to a local appeals board, to a board under ORS 455.690 or to the program chief under ORS 455.475:

(A) No civil penalty shall be sought or assessed for violation of the code provision that was appealed, until after the appeal or interpretation is resolved, and if corrections are necessary, they are made within 30 calendar days or the time frame established in the appeal or in the interpretation process.

(B) Notwithstanding an administrative appeal, civil penalties can be brought or assessed for failure to obtain a permit if the issues on appeal do not involve the question of whether a permit was necessary.

(C) The obligation is on the person charged, or about to be charged, with a violation to advise of an appeal under this subsection.

(D) The division shall adopt and review the division's operating procedures with a board to promote equity and uniformity in proposing the amount and terms of civil penalties and conditions under which the penalties may be modified based on the circumstances in individual cases.

(6) Violations of ORS Chapters 446, 447 and 479 and ORS 455.020(2) and 455.610, wherein defects are noted by an inspector in an element of assembly or construction, shall not be considered a violation of this section if the violation is corrected and an inspection request made in 20 calendar days unless extended in writing by the building official.

(7) The Building Codes Division shall forward a copy of final orders to the Construction Contractors Board.

Stat. Auth.: ORS 446.995 & 455.895

Stats. Implemented: ORS 446.995 & 455.895

Hist.: BCD 35-2002, f. 12-31-02, cert. ef. 1-1-03; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

ADMINISTRATIVE RULES

918-030-0030

Definitions

(1) Unless the context requires otherwise, the term "person", as used in ORS 479.510 to 479.995, includes individuals, corporations, associations, firms, partnerships, limited liability companies, joint stock companies, and public agencies. "Person" also means the owner or holder of a direct or indirect interest in a corporation, association, firm, partnership, limited liability company or joint stock company if:

(a) The interest allows the owner or holder to participate in the management of the business; and

(b) The owner or holder of the interest has either had a license revoked by the director or the Oregon Electrical and Elevator Board or been the recipient of a notice of proposed civil penalty that was issued by the director or the Oregon Electrical and Elevator Board.

(2) As used in OAR 918-030-0400 through 0490 and ORS Chapter 446, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Corrected license" means a manufactured structures dealer license or a limited manufactured structures dealers license that has been modified from the information supplied in the original application, i.e. name change, or address change.

(b) "Dealer" means a person who is required to be licensed pursuant to ORS 446.691, 446.696, 446.701 or 446.706.

(c) "Dealership," "place of business," or "business location," means a location within the State of Oregon, where a dealer engages in the business of selling manufactured structures.

(d) "Location," "main business location," or "main dealership," means a location identified and listed as the dealer's main business location on the original business license application.

Stat. Auth.: ORS 446.666, 446.716 & 479.730

Stats. Implemented: ORS 446.666, 446.716, 479.520 & 479.730

Hist.: BCD 19-2004, f. 9-30-04, cert. ef. 10-1-04; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-500-0010

Objective

(1) The provisions of OAR chapter 918, divisions 500, 515 and 520 shall apply to the design, manufacture, installation, alteration, licensing, handling and storage of equipment or manufactured dwellings rented, leased, sold, installed or offered for rent, lease or sale in Oregon as authorized by ORS 446.155. OAR chapter 918, division 500 shall be applicable to OAR chapter 918, divisions 505 and 520.

(2) A dealer subject to the requirements of OAR chapter 918, division 500, must also comply with OAR chapter 918, division 550 and OAR 918-030-0400 through 0490.

Stat. Auth.: ORS 183.325-410, 446.230, 446.240, 446.666, 455.010-130 & 455.610

Stats. Implemented: ORS 446.240 & 446.666

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-030-0400

Purpose and Scope

OAR 918-030-0400 through 918-030-0490 contains the definitions, rules and requirements pertaining to businesses that engage in the business of selling manufactured structures. With the implementation of these rules, the division intends to repeal the administrative rules adopted by the Department of Motor Vehicles to the extent that they regulate dealers of manufactured structures.

Stat. Auth.: Ch. 655, 2003 OL, Sec. 147 & ORS 446.666

Stats. Implemented: ORS 446.666

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-030-0420

Dealer Licensing

(1) To apply for a dealer license, supplemental license, temporary license, or limited license, a person must submit a completed division approved application form and a division approved surety bond.

(2) For the purposes of this section, a supplemental or corrected license shall have the same expiration as the limited or dealer license.

Stat. Auth.: ORS 446.666

Stats. Implemented: ORS 446.666 & 446.716

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-030-0430

Dealer Requirements

(1) A dealer shall file all required applications for ownership documents and trip permits, or ensure required applications are completed and filed, in a manner prescribed by the division.

(2) A manufactured structure dealer selling manufactured homes for installation in Oregon, shall present each potential buyer of a new manu-

factured home with a division standard disclosure statement to read and sign prior to the completion of the sales contract of any new manufactured home. A dealer shall give one copy of the disclosure, signed by the buyer and the dealer, to the buyer and retain one copy in the dealer's files for not less than five years from the date of sale. Copies of signed disclosures shall be made available to the division upon request.

(3) Dealers are required to maintain accurate records for a period of five years. Records required to be maintained include but are not limited to:

(a) A legible copy of any disclosure statement provided to a purchaser;

(b) A legible copy of any trip permit issued by the dealer;

(c) A record of the names and addresses of all contractors retained or hired by the dealer to engage in any aspect of manufactured structure installation or service work and a record identifying the manufactured structures on which each contractor performed work;

(d) Records of any correction notices the dealer has sent to a manufacturer for repairs arranged by the dealer;

(e) A record of any alterations a dealer made to a manufactured structure prior to sale or as a part of a sales agreement;

(f) A legible copy of all records relating to a sale, including but not limited to confirmation orders, diagrams, purchase options, written agreements, financing applications, financing agreements, change orders, price changes, ownership documents, and applications to record a structure in deed records; and

(g) Records associated with consignment sales.

(4) In addition to the bond or letter of credit requirements in ORS 446.726, a dealer shall authorize their bond or letter of credit company to notify the division upon any change to or cancellation of the insurance required for their dealer license, and notify the division of any change to or cancellation of the bond or letter of credit required for their dealer license.

(5) A dealer shall within 10 business days, notify the division of any name, ownership, address changes or additions, through a division approved form including any change of registration status with the Secretary of State, and obtain all required licenses.

(6) Dealers shall exercise due care and diligence that is consistent with industry practice in all transactions involving a manufactured structure and shall not, by act or omission, endanger the economic welfare or the health or safety of the public through such transactions.

(7) A dealer shall not engage in conduct which demonstrates habitual disregard for the law.

Stat. Auth.: ORS 446.666

Stats. Implemented: ORS 446.225, 446.260, 446.666, 446.691, 446.696, 446.701, 446.706, 446.716, 446.726, 446.736, 446.741 & 446.751

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-030-0490

Violations

Additional grounds for manufactured structure dealer license, denial, suspension, revocation or placement on probation, may include:

(1) Failure to maintain records or any other requirements under OAR 918-030-0430;

(2) Conduct which constitutes a Class A misdemeanor or any felony arising out of actions related to the selling, brokering, trading or exchanging of manufactured structures or conviction of such Class A misdemeanor or felony; or

(3) Conduct which constitutes an unlawful practice under ORS 646.608;

(4) Failure to maintain the required bond insurance or letter of credit; and

(5) A pattern of violations of any provisions of ORS 446.003 to 446.200, 446.225 to 446.285, 446.395 to 446.420, and 446.561 to 446.756 or any rules adopted thereunder.

Stat. Auth.: ORS 446.741

Stats. Implemented: ORS 446.666, 446.741, 446.746, 446.751 & 446.756

Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0000

Purpose and Scope

(1) OAR 918-550-0000 through 918-550-0600 establish requirements and procedures to obtain an ownership document for manufactured structures and establish the procedures necessary to exempt a manufactured structure from ownership document requirements or to obtain an ownership document for a manufactured structure that has been previously exempted pursuant to ORS 820.510 or 446.626 after May 1, 2005.

(2) These rules also describe the requirements for issuing a manufactured structure trip permit for the movement of a manufactured structure from one site to another.

ADMINISTRATIVE RULES

(3) Nothing in these rules shall change any rights and liabilities of the various parties governed by the Uniform Commercial Code, ORS Chapter 79, and any applicable Oregon tax laws.

(4) These rules are intended to repeal all Department of Motor Vehicle rules, located in OAR chapter 735, to the extent that they apply to the titling and registration of manufactured structures and manufactured structure trip permits.

Stat. Auth.: Ch. 655, 2003 OL, Sec. 147, ORS 446.571, 446.631 & 446.646
Stats. Implemented: ORS 446.566, 446.571, 446.576, 446.621, 446.631 & 446.636
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0010

Definitions

For the purposes of this division of rules, the following definitions apply, unless the context requires otherwise:

(1) "Division" means the appropriate division within the Department of Consumer and Business Services, Building Codes Division, or the county who is acting on behalf of the department.

(2) "Land leaseholder" means the holder of a recorded leasehold estate of 20 years or more, if the lease specifically permits the owner of the manufactured structure to obtain an exemption under ORS 820.510(b).

(3) "Legal description of the manufactured structure" means the model year, make, width, length and vehicle identification number (VIN).

(4) "Lessor" means a person who transfers the right to possession and use of property under a lease as shown in the record of the county in which it is recordable by law.

(5) "Lien holder" means a person who holds a claim, encumbrance or charge on property for payment of a debt or obligation as shown in the record of the county in which it is recordable by law.

(6) "Mortgagee" means a person who takes, holds or receives a mortgage (such as a bank or lending institution.).

(7) "Owner" when referring to the owner of a manufactured structure is defined in ORS 801.375, but does not include a security interest holder or lessee, unless the owner of the manufactured structure is a land leaseholder.

(8) "Release" means the written or electronic relinquishment, concession, or giving up of right, claim or interest in a manufactured structure.

(9) "Security interest holder" means a person who holds an interest in property that secures payment or performance of an obligation pursuant to a security agreement.

(10) "Trust deed beneficiary" means the person designated in a trust deed as the person for whose benefits a trust deed is given. A trust deed conveys an interest in real property to a trustee in trust, to cure performance of an obligation owed to the beneficiary.

Stat. Auth.: ORS 446.646
Stats. Implemented: ORS 446.646
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0100

Ownership Document Requirements

(1) Unless exempted under ORS 446.626 and OAR 918-550-0160, all owned manufactured structures in the State of Oregon must be registered or titled with DMV, or be issued an ownership document by the division after May 1, 2005.

(2) A manufactured structure dealer, manufactured structure owner, or lender who applies for an ownership document shall submit a completed division approved application form to the division along with an appropriate fee. Dealers and lenders may apply on line using the division's LOIS electronic record system. Failure to complete the ownership application, or provide clear and accurate information, may result in delays in the issuance of the ownership document.

(3) If the owner is not in possession of the Department of Transportation's Certificate of Title or division's ownership document, or is unable to obtain a security interest holder's signature and is applying for an ownership document through the division, the owner must provide proof sufficient to the division concerning any questions about ownership of the structure, including security interests in the structure. The proof required may include but is not limited to:

(a) A division approved affidavit which establishes reasonable evidence of ownership, including security lienholder interests or releases;

(b) A copy of a bill of sale or other contract showing proof of ownership; or

(c) A division approved inheritance affidavit or other evidence from a probate estate.

Stat. Auth.: ORS 446.571, 446.621 & 446.646
Stats. Implemented: ORS 446.571 & 446.621
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0120

Sale of a Used Manufactured Structure

If a purchaser submits a division approved notice of sale under ORS 446.641(8), the purchaser must include one or more of the following as acceptable proof of sale:

(1) A bill of sale from the current owner of record on the division's ownership document;

(2) A division ownership document or a Department of Transportation certificate of title to the structure that has a release of ownership signed by the owner; or

(3) Any other documents the division, in its discretion, finds as sufficient proof of sale.

Stat. Auth.: ORS 446.641 & 446.646
Stats. Implemented: ORS 446.641
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0140

Notice of Transfer of Interest in Manufactured Structure

A person who releases, terminates, assigns or otherwise transfers an interest in a manufactured structure, shall within 30 days of the transfer, submit a completed division approved form to record the release, terminate, assign or otherwise transfer the interest in the manufactured structure.

Stat. Auth.: ORS 446.616 & 446.646
Stats. Implemented: ORS 446.616
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0160

Recording of Manufactured Structure in County Deed Records

The owner of a manufactured structure, or a licensed manufactured structure dealer selling the structure, may file a division approved application to record the structure in county deed records, if the owner of the structure is also the owner or leaseholder of the land on which the structure is sited. To have the structure recorded in county records, the owner or dealer must submit a complete division approved form to the county assessor in the county where the structure will be located that includes but is not limited to:

(1) The name and address of each owner of the manufactured structure and each record owner of the land upon which the manufactured structure is located. If the names are not identical to the applicant, the applicant shall submit a statement explaining any discrepancy and that the applicant is in fact the same person as the structure owner; and

(2) The name and address of each lessor, mortgagee, trust deed beneficiary, or lien holder of record who holds an interest in the land and the name and address of each security interest holder or lien holder of record who holds an interest in the manufactured structure, including documentation that the security interest holder or lien holder has been notified of the intent to record the manufactured structure in the county deeds.

Stat. Auth.: ORS 446.626 & 446.646
Stats. Implemented: ORS 446.611 & 446.626
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0180

Demonstration of Ownership for Lost or Misplaced Ownership Documents

(1) If a manufactured structure to be moved or sold is not recorded in the county deed records, an ownership document has not been issued for the structure, or the owner has misplaced the certificate of title, the owner shall submit a division approved affidavit with supporting documents which may include sales contracts and security interest agreements and releases, to the division which contain:

(a) A statement that the person making the affidavit is either the sole owner of the structure, or that the person who owns the structure with other persons, including the names of all the owners of the structure;

(b) A statement naming all of the persons who have had a security interest or lien in the manufactured structure identified in the affidavit; and

(c) A statement verifying that the information in the affidavit is true and accurate.

(2) If more than one person owns the manufactured structure, each owner must verify and sign the division approved affidavit.

(3) If the information on the division approved affidavit and any attached documents is reliable, consistent and supports the claim of ownership, the division may, in its discretion, issue an ownership document.

Stat. Auth.: ORS 446.616, 446.621, 446.631 & 446.646
Stats. Implemented: ORS 446.616, 446.621 & 446.631
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

ADMINISTRATIVE RULES

918-550-0200

Abandoned Manufactured Structures

(1) If a landlord complies with the notice requirements of ORS 90.425 or 90.675 such that a manufactured structure is presumed abandoned, the landlord may apply for an ownership document by submitting a completed division approved application form and a division approved certification affirming the landlord has complied with ORS 446.581.

(2) If the holder of a possessory lien on a manufactured structure forecloses the lien, the holder may apply for an ownership document by submitting a completed division approved application form and division approved certification of the possessory lien foreclosure.

Stat. Auth.: ORS 446.581 & 446.646
Stats. Implemented: ORS 446.571 & 446.581
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

918-550-0600

Trip Permit Requirements

(1) A trip permit is required to move a manufactured structure from one location to another unless exempted under ORS 446.631 & 446.646. A person desiring a trip permit to move a manufactured structure shall submit a completed division approved form to the division.

(2) In the case of a multiple-unit-manufactured structure, a trip permit is required for each unit. The manufactured structure trip permit fee, as provided in ORS 446.631 & 446.646 is required for each permit issued.

(3) An issued trip permit is valid for a single move from one situs to another as indicated on the permit. Trip permits expire 30 days after the date of issuance.

(4) A trip permit is valid for the owner of the structure and transporter listed on the permit.

(5) A permit may not be transferred to any person or a different manufactured structure.

(6) A trip permit issued by the division is not required to move a new manufactured structure to a destination outside of Oregon. However, a trip permit is required if a manufactured structure is being moved out of state, if the structure currently has an ownership document, or is exempt under ORS 446.626 and OAR 918-550-0160.

(7) Vehicle transporters who transport a manufactured structure for which a trip permit has been issued shall either forward a signed copy of the trip permit to the division within 10 days of the movement of the manufactured structure or electronically submit notice of the completion of the move within 10 days using the division's online LOIS system.

Stat. Auth.: ORS 446.631
Stats. Implemented: ORS 446.631, 446.636 & 446.646
Hist.: BCD 10-2005, f. 4-29-05, cert. ef. 5-1-05

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

Adm. Order No.: ID 7-2005

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 4-21-05

Notice Publication Date: 1-1-05

Rules Amended: 836-031-0410

Subject: This rulemaking establishes a reserving requirement for title insurance for the year 2008 and each year thereafter, replacing a scheme that would have required an increasingly greater percentage over a longer period, arriving at ten percent in 2011 and years thereafter.

Rules Coordinator: Sue Munson—(503) 947-7272

836-031-0410

Title Insurance Unearned Premium Reserve

(1) For the purpose of implementing ORS 733.090(2), the amount of the unearned premium reserve shall be determined as follows for each foreign or alien title insurer relating to policies insuring titles to real property in this state and for each domestic title insurer relating to all of its policies insuring titles to real property:

(a) Three percent of all gross premiums on title insurance policies issued by it during the preceding 15 years and prior to January 1, 2002; plus

(b) A percentage of all gross premiums on title insurance policies issued by it during the current calendar year as determined from section (2) of this rule; less

(c) Percentage portions of reserve additions for each calendar year following January 1, 2002 and preceding the current calendar year, as specified by the Director.

(2) The percentage of premium for reserve additions in subsection (b) of section (1) of this rule shall be as follows:

(a) Three percent for calendar year 2002.

(b) Four percent for calendar year 2003.

(c) Five percent for calendar year 2004.

(d) Six percent for calendar year 2005.

(e) Six and one-half percent for calendar year 2006.

(f) Seven percent for calendar year 2007 and for each calendar year thereafter.

(3) The portion of the unearned premium reserve of a foreign insurer relating to its policies insuring real property located elsewhere shall be not less than the amounts prescribed or permitted by the laws of the insurer's domicile.

(4) This rule applies to all reporting periods beginning on and after January 1, 2002.

Stat. Auth.: ORS 731.244 & 733.090
Stats. Implemented: ORS 733.090
Hist.: ID 13-2002, f. & cert. ef. 5-14-02; ID 7-2005, f. & cert. ef. 4-21-05

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

Adm. Order No.: WCD 3-2005(Temp)

Filed with Sec. of State: 5-13-2005

Certified to be Effective: 5-13-05 thru 11-8-05

Notice Publication Date:

Rules Amended: 436-035-0500

Subject: Promulgation of temporary disability standards to address the impairment of an individual injured worker in

WCD files CAG-0633, CAJ-3451 and FAE-4316.

Rules Coordinator: Fred Bruyns—(503) 947-7717

436-035-0500

Temporary Rule Promulgation for Individual Claims

(1) This rule applies to the rating of permanent disability under Chapter 656 in individual cases under ORS 656.726(4)(f)(D) which requires the director to stay the reconsideration proceeding and adopt temporary rules in cases where the director finds that the worker's impairment is not addressed in the disability standards.

(2) Temporary rules promulgated under ORS 656.726(4)(f)(D) will be incorporated by reference to the Workers' Compensation Division claim file number and will be applicable solely to the rating of that claim. The temporary rule will be effective upon filing with the Secretary of State and elapse 180 days thereafter under ORS 183.335(6)(a).

(3) Notice of adoption of temporary rules will be given by mailing a copy of the temporary rule to the affected parties and to others as provided in OAR 436-001-0000(3).

(a) CAG-0633 As a result of the accepted laceration and fracture of the left ring finger with resulting neurologic dysfunction the worker experiences a loss of function due to cold intolerance. The former standards do not address cold intolerance due to neurologic dysfunction. The Director finds this loss of function similar to the loss experienced with Class 3 vascular dysfunction and assigns an impairment value of 35% of the left ring finger. See OAR 436-035-0110(7). This value shall be combined with any other applicable impairment values for the involved left ring finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. CAG-0633.

(b) CAJ-3451 As a result of the accepted crush injury of the right little finger with resulting neurologic dysfunction the worker experiences a loss of function due to cold intolerance. The former standards do not address cold intolerance due to neurologic dysfunction. The Director finds this loss of function similar to the loss experienced with Class 1 vascular dysfunction and assigns an impairment value of 3% of the right little finger. See OAR 436-035-0110(7). This value shall be combined with any other applicable impairment values for the involved right little finger. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. CAJ-3451.

(c) FAE-4316 As a result of the accepted cystocele/vaginal prolapse the worker experiences a loss of function due to permanent damage to the vaginal wall and work restrictions which necessitate a reduction in the strength/lifting category of the job at the time of injury. The standards do not address this loss of function in the vaginal wall. The Director finds this loss of function similar to the loss experienced with permanent damage to the abdominal wall and resulting work restrictions which necessitate a

ADMINISTRATIVE RULES

reduction in the strength/lifting category of the job at the time of injury and assigns an impairment value of 5% of the genitourinary system. See OAR 436-035-0375. This value shall be combined with any other applicable impairment values. Notwithstanding OAR 436-035-0003, this rule applies only to WCD file no. FAE-4316.

Stat. Auth.: ORS 656.726(4)
Stats. Implemented: ORS 656.268(6) & 656.726(4)(f)(C)
Hist.: WCD 16-1992(Temp), Case #A58-7576 & Case #D60-5352, f. & cert. ef. 12-31-92 - 6-29-93; WCD 2-1993(Temp), Case #A58-2159, B59-4533, E61-4228, & 159-2031, f. & cert. ef. 4-28-93 - 10-25-93; WCD 4-1993, f. & cert. ef. 6-29-93; WCD 5-1993(Temp), Case #I64-3064, f. & cert. ef. 9-2-93 - 3-2-94; WCD 6-1993(Temp), Case #I64-3064, f. & cert. ef. 10-22-93 - 4-19-94; WCD 4-1994(Temp), f. & cert. ef. 5-26-94; WCD 6-1994(Temp), f. & cert. ef. 7-15-94; WCD 8-1994(Temp), f. & cert. ef. 8-31-94; WCD 11-1994(Temp), f. & cert. ef. 11-10-94; WCD 1-1995(Temp), f. & cert. ef. 1-26-95; WCD 2-1995(Temp), f. & cert. ef. 3-2-95; WCD 3-1995(Temp), f. & cert. ef. 4-13-95; WCD 4-1995(Temp), f. & cert. ef. 5-31-95; WCD 5-1995(Temp), f. & cert. ef. 7-11-95; WCD 14-1995(Temp), f. & cert. ef. 10-5-95; WCD 16-1995(Temp), f. & cert. ef. 11-2-95; WCD 19-1995(Temp), f. & cert. ef. 12-7-95; WCD 4-1996(Temp), f. & cert. ef. 2-1-96; WCD 11-1996(Temp), f. & cert. ef. 3-20-96; WCD 15-1996(Temp), f. & cert. ef. 7-3-96; WCD 18-1996, f. 8-6-96, cert. ef. 8-7-96; WCD 22-1996(Temp), f. & cert. ef. 10-31-96; WCD 1-1997, f. 1-9-97, cert. ef. 2-15-97; WCD 2-1997(Temp), f. & cert. ef. 1-15-97; WCD 3-1997(Temp), f. 3-12-97, cert. ef. 3-13-97; WCD 6-1997(Temp), f. & cert. ef. 5-14-97; WCD 12-1997(Temp), f. & cert. ef. 9-9-97; WCD 4-1998(Temp), f. & cert. ef. 3-31-98 thru 9-26-98; WCD 7-1998(Temp), f. 7-13-98, cert. ef. 7-15-98 thru 1-11-99; WCD 9-1998(Temp), f. & cert. ef. 10-15-98 thru 4-12-99; WCD 1-1999(Temp), f. 1-12-99, cert. ef. 1-15-99 thru 7-13-99; WCD 5-1999(Temp), f. & cert. ef. 4-15-99 thru 10-12-99; WCD 10-1999(Temp), f. & cert. ef. 7-15-99 thru 1-10-2000; WCD 12-1999(Temp), f. 10-14-99, cert. ef. 10-15-99 thru 4-12-00; WCD 1-2000(Temp), f. 1-12-00, cert. ef. 1-14-00 thru 7-12-00; WCD 5-2000(Temp), f. 4-13-00, cert. ef. 4-14-00 thru 10-10-00; WCD 7-2000(Temp), f. 7-14-00, cert. ef. 7-14-00 thru 1-9-01; WCD 8-2000(Temp), f. & cert. ef. 10-13-00 thru 4-10-01; WCD 1-2001(Temp), f. & cert. ef. 1-12-01 thru 7-10-01; WCD 3-2001(Temp), f. & cert. ef. 4-13-01 thru 10-9-01; WCD 6-2001(Temp), f. & cert. ef. 7-13-01 thru 1-8-02; WCD 9-2001(Temp), f. & cert. ef. 10-12-01 thru 4-9-02; WCD 1-2002(Temp), f. & cert. ef. 1-15-02 thru 7-13-02; WCD 5-2002(Temp), f. 4-12-02, cert. ef. 4-15-02 thru 10-11-02; WCD 8-2002(Temp), f. 7-12-02, cert. ef. 7-15-02 thru 1-10-03; WCD 11-2002(Temp), f. 10-11-02, cert. ef. 10-15-02 thru 4-12-03; WCD 1-2003(Temp), f. & cert. ef. 1-15-03 thru 7-13-03; WCD 2-2003, f. 1-15-03, cert. ef. 2-1-03; WCD 4-2003(Temp), f. 4-14-03, cert. ef. 4-15-03 thru 10-11-03; WCD 7-2003(Temp), f. & cert. ef. 7-15-03 thru 1-10-04; WCD 1-2004(Temp), f. & cert. ef. 1-21-04 thru 7-18-04; WCD 5-2004(Temp), f. & cert. ef. 4-19-04 thru 10-15-04; WCD 7-2004(Temp), f. & cert. ef. 7-15-04 thru 1-10-05; WCD 9-2004, f. 10-26-04, cert. ef. 1-1-05; WCD 3-2005(Temp), f. & cert. ef. 5-13-05 thru 11-8-05

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Department of Environmental Quality
Chapter 340

Adm. Order No.: DEQ 4-2005

Filed with Sec. of State: 5-13-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 8-1-04

Rules Adopted: 340-012-0027, 340-012-0053, 340-012-0074, 340-012-0079, 340-012-0097, 340-012-0130, 340-012-0145, 340-012-0150, 340-012-0160, 340-012-0162

Rules Amended: 340-012-0026, 340-012-0028, 340-012-0030, 340-012-0041, 340-012-0045, 340-012-0055, 340-012-0065, 340-012-0066, 340-012-0067, 340-012-0068, 340-012-0071, 340-012-0072, 340-012-0073, 340-012-0081, 340-012-0082, 340-012-0083, 340-200-0040

Rules Repealed: 340-012-0046, 340-012-0052

Rules Ren. & Amended: 340-012-0040 to 340-012-0038, 340-012-0050 to 340-012-0054, 340-012-0090 to 340-012-0135, 340-012-0042 to 340-012-0140, 340-012-0049 to 340-012-0155, 340-012-0048 to 340-012-0165, 304-012-0047 to 340-012-0170

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

The rules adopted apply to individuals, businesses, and federal, state and local government agencies against whom the Department

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

- Clarifying the differences between informal and formal enforcement processes.
- Listing more sub-program violations separately rather than combining them, to improve ease of use.
- Modifying the penalty matrices, including increasing the values of the \$10,000 penalty matrix, adding a new intermediate penalty matrix to start at \$6,000, increasing the values for the \$2,500 matrix, decreasing the values for the \$1,000 matrix and eliminating the \$500 penalty matrix. The matrices have also been modified so that small business and other smaller permitted sources, in most cases, fall into a lower penalty matrix.
- Modifying the notice of noncompliance process to allow for a two-tiered notification (e.g., Warning Letters and Pre-Enforcement Notices).

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

Rules Coordinator: Larry McAllister—(503) 229-6412

340-012-0026
Policy

- (1) The goals of enforcement are to:
 - (a) Protect the public health and the environment;
 - (b) Obtain and maintain compliance with applicable environmental statutes and the department's rules, permits and orders;
 - (c) Deter future violators and violations; and
 - (d) Ensure an appropriate and consistent statewide enforcement program.
- (2) The department shall endeavor by conference, conciliation and persuasion to solicit compliance.
- (3) The department endeavors to address all alleged violations in order of priority, based on the actual or potential impact to human health or the environment, using increasing levels of enforcement as necessary to achieve the goals set forth in section (1) of this rule.
- (4) The department subjects violators who do not comply with an initial enforcement action to increasing levels of enforcement until they come into compliance.
- (5) The department assesses civil penalties based on the class of violation, the magnitude of violation, the application of the penalty matrices and aggravating and mitigating factors, and the economic benefit realized by the respondent.
 - (a) Classification of Violation. Each violation is classified as Class I, Class II or Class III. Class I violations have the greatest likelihood of actual or potential impact to human health or the environment or are of the greatest significance to the regulatory structure of the given environmental program. Class II violations are less likely than Class I violations to have actual or potential impact to human health or the environment. Class III violations have the least likelihood of actual or potential impact to human health and the environment. (See OAR 340-012-0053 to 340-012-0097.)
 - (b) Magnitude of Violation. For Class I and Class II violations, the department uses a selected magnitude or determines the magnitude based on the impact to human health and the environment resulting from that particular violation. A magnitude is not determined for Class III violations. (See OAR 340-012-0130 and 340-012-0135.)
 - (c) Base Penalty Matrices. The department uses the base penalty matrices to determine an appropriate penalty based on the classification and magnitude of the violation. (See OAR 340-012-0140.)
 - (d) Aggravating and Mitigating Factors. The department uses the aggravating and mitigating factors to adjust the base penalty to reflect the particular circumstances surrounding the violation. These factors include the duration of the violation, the respondent's past compliance history, the mental state of the respondent, and the respondent's cooperativeness in achieving compliance or remedying the situation. (See OAR 340-012-0145.)
 - (e) Economic Benefit. The department adds the economic benefit gained by the respondent to the civil penalty to achieve deterrence and cre-

ADMINISTRATIVE RULES

ate equity between the respondent and those regulated persons who have borne the expense of maintaining compliance. (See OAR 340-012-0150.)

(6) The department endeavors to issue a formal enforcement action within six months from completion of the investigation of the violation.

Stat. Auth.: ORS 459.995, 466, 467, 468.020, 468.996, 468A & 468B
Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0027

Rule Effective Date

The following effective dates apply to these rules:

- (1) OAR 340-012-0060 will become effective March 1, 2005.
- (2) All remaining changes will become effective on June 1, 2005.

Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 183.355, 454, 459, 465, 466, 468, 468A, 468B.
Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0028

Scope of Applicability

Amendments to OAR 340-012-0026 to 340-012-0170 shall only apply to formal enforcement actions issued by the Department on or after the effective date of such amendments and not to any contested cases pending or formal enforcement actions issued prior to the effective date of such amendments.

Stat. Auth.: ORS 454, 459.995, 466, 467, 468.020 & 468.996
Stats. Implemented: ORS 183.090, 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450
Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0080; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0030

Definitions

All terms used in this division have the meaning given to the term in the appropriate substantive statute or rule or, in the absence of such definition, their common and ordinary meaning unless otherwise required by context or defined below:

(1) "Alleged Violation" means any violation cited in a Notice of Noncompliance, Warning Letter or Pre-Enforcement Notice that the department or other government agency records after observation, investigation or data collection, or for which the department receives independent evidence sufficient to issue a Notice of Noncompliance, Warning Letter or Pre-Enforcement Notice.

(2) "Class I Equivalent," which is used to determine the value of the "P" factor in the civil penalty formula, means two Class II violations, one Class II and two Class III violations, or three Class III violations.

(3) "Commission" means the Environmental Quality Commission.

(4) "Compliance" means meeting the requirements of the applicable statutes, and commission or department rules, permits or orders.

(5) "Conduct" means an act or omission.

(6) "Director" means the director of the department or the director's authorized deputies or officers.

(7) "Department" means the Department of Environmental Quality.

(8) "Flagrant" or "flagrantly" means the respondent had actual knowledge that the conduct was unlawful and consciously set out to commit the violation.

(9) "Formal Enforcement Action" (FEA) means a proceeding initiated by the department that entitles a person to a contested case hearing or that settles such entitlement, including, but not limited to, Notices of Violation, Notices of Civil Penalty, Penalty Demand Notices, department orders, commission orders, Mutual Agreement and Orders, and other consent orders.

(10) "Intentional" means the respondent acted with a conscious objective to cause the result of the conduct.

(11) "Magnitude of the Violation" means the extent and effects of a respondent's deviation from statutory requirements, rules, standards, permits or orders.

(12) "Negligence" or "Negligent" means the respondent failed to take reasonable care to avoid a foreseeable risk of conduct constituting or resulting in a violation.

(13) "Penalty Demand Notice" (PDN) means a written notice issued to a respondent by the department demanding payment of a stipulated penalty pursuant to the terms of an agreement entered into between the respondent and the department.

(14) "Pre-Enforcement Notice" (PEN) means a written notice of an alleged violation that the department is considering for formal enforcement.

(15) "Person" includes, but is not limited to, individuals, corporations, associations, firms, partnerships, trusts, joint stock companies, public and municipal corporations, political subdivisions, states and their agencies, and the federal government and its agencies.

(16) "Prior Significant Action" (PSA) means any violation cited in an FEA, with or without admission of a violation, that becomes final by payment of a civil penalty, by a final order of the commission or the department, or by judgment of a court.

(17) "Reckless" or "Recklessly" means the respondent consciously disregarded a substantial and unjustifiable risk that the result would occur or that the circumstance existed. The risk must be of such a nature and degree that disregarding that risk constituted a gross deviation from the standard of care a reasonable person would observe in that situation.

(18) "Residential Owner-Occupant" means the person who owns or otherwise possesses a single family dwelling unit, and who occupies that dwelling at the time of the alleged violation. The violation must involve or relate to the normal uses of a dwelling unit.

(19) "Respondent" means the person to whom an FEA is issued.

(20) "Systematic" means any violation that occurred or occurs on a regular basis.

(21) "Violation" means a transgression of any statute, rule, order, license, permit, or any part thereof and includes both acts and omissions.

(22) "Warning Letter" (WL) means a written notice of an alleged violation for which formal enforcement is not anticipated.

(23) "Willful" means the respondent had a conscious objective to cause the result of the conduct and the respondent knew or had reason to know that the result was not lawful.

Stat. Auth.: ORS 468.020 & 468.130
Stats. Implemented: ORS 459.376, 459.995, 465.900, 468.090-140, 466.880-895, 468.996-997, 468A.990-992 & 468B.220
Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0038

Warning Letters, Pre-Enforcement Notices and Notices of Permit Violation

(1) A Warning Letter (WL) is a written notice of an alleged violation for which formal enforcement is not anticipated. WLs may contain an opportunity to correct noncompliance as a means of avoiding formal enforcement. A WL generally will identify the alleged violation(s) found, what needs to be done to comply, and the consequences of further non-compliance. WLs will be issued under the direction of a manager or authorized representative. A person receiving a WL may provide information to the department to clarify the facts surrounding the alleged violation(s). If the department determines that the conduct identified in the WL did not occur, the department will withdraw or amend the WL, as appropriate, within 30 days. A WL is not an FEA and does not afford any person a right to a contested case hearing.

(2) A Pre-Enforcement Notice (PEN) is a written notice of an alleged violation that the department is considering for formal enforcement. A PEN generally will identify the alleged violations found, what needs to be done to comply, the consequences of further noncompliance, and the formal enforcement process that may occur. PENs will be issued under the direction of a manager or authorized representative. A person receiving a PEN may provide information to the department to clarify the facts surrounding the alleged violations. If the department determines that the conduct identified in the PEN did not occur, the department will withdraw or amend the PEN, as appropriate, within 30 days. Failure to send a PEN does not preclude the department from issuing an FEA. A PEN is not a formal enforcement action and does not afford any person a right to a contested case hearing.

(3) Notice of Permit Violation (NPV):

(a) Except as provided in subsection (3)(e) below, an NPV will be issued for the first occurrence of an alleged Class I violation of an air, water or solid waste permit issued by the department, and for repeated or continuing alleged Class II or Class III violations of an air, water, or solid waste permit issued by the department when a Notice of Noncompliance or WL has failed to achieve compliance or satisfactory progress toward compliance.

(b) An NPV is in writing, specifies the violation and states that a civil penalty will be imposed for the permit violation unless the permittee submits one of the following to the department within five working days of receipt of the NPV:

(A) A written response from the permittee certifying that the permittee is complying with all terms and conditions of the permit from which the

ADMINISTRATIVE RULES

violation is cited. The response must include a description of the information on which the permittee's certification relies sufficient to enable the department to determine that compliance has been achieved. The certification must be signed by a Responsible Official based on information and belief after making reasonable inquiry. For purposes of this rule, "Responsible Official" means one of the following:

(i) For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation; or the manager of one or more manufacturing, production, or operating facilities if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

(ii) For a partnership or sole proprietorship: a general partner or the proprietor, respectively.

(iii) For a municipality, state, federal, or other public agency: either a principal executive officer or appropriate elected official.

(B) A written proposal, acceptable to the department, describing how the permittee will bring the facility into compliance with the permit. At a minimum, an acceptable proposal must include the following:

(i) A detailed plan and time schedule for achieving compliance in the shortest practicable time;

(ii) A description of the interim steps that will be taken to reduce the impact of the permit violation until the permittee is in compliance with the permit; and

(iii) A statement that the permittee has reviewed all other conditions and limitations of the permit and no other violations of the permit were discovered; or

(C) For a water quality permit violation, a written request to the department that the department follow procedures described in ORS 468B.032. Notwithstanding the requirement for a response to the department within five working days, the permittee may file a request under this paragraph within 20 days from the date of service of the NPV.

(c) If a compliance schedule approved by the department under paragraph (3)(b)(B) provides for a compliance period of more than six months, the compliance schedule must be incorporated into a final order that provides for stipulated penalties in the event of any failure to comply with the approved schedule. The stipulated penalties may be set at amounts equivalent to the base penalty amount appropriate for the underlying violation as set forth in OAR 340-012-0140;

(d) If the NPV is issued by a regional authority, the regional authority may require that the permittee submit information in addition to that described in subsection (3)(b).

(e) The department may assess a penalty without first issuing an NPV if:

(A) The violation is intentional;

(B) The water or air violation would not normally occur for five consecutive days;

(C) The permittee has received an NPV or an FEA with respect to any violation of the permit within the 36 months immediately preceding the alleged violation;

(D) The permittee is subject to the Oregon Title V operating permit program and violates any rule or standard adopted under ORS chapter 468A or any permit or order issued under ORS chapter 468A; or

(E) The requirement to provide an NPV would disqualify a state program from federal approval or delegation. The permits and permit conditions to which this NPV exception applies include:

(i) Air Contaminant Discharge Permit (ACDP) conditions that implement the State Implementation Plan under the federal Clean Air Act;

(ii) Water Pollution Control Facility (WPCF) permit conditions that implement the Underground Injection Control program under the federal Safe Drinking Water Act;

(iii) National Pollutant Discharge Elimination System (NPDES) Permit conditions; and

(iv) Municipal Landfill Solid Waste Disposal Permit conditions that implement Subtitle D of the federal Solid Waste Disposal Act.

(f) For purposes of section (3), a "permit" includes permit renewals and modifications. No such renewal or modification will result in the requirement that the department provide the permittee with an additional advance notice before formal enforcement if the permittee has received an NPV, or other FEA, with respect to the permit, within the 36 months immediately preceding the alleged violation.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 459.376, 468.090-468.140, 468A.990 & 468B.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 25-1979, f. & ef. 7-5-79; DEQ 22-1984, f. & ef. 11-8-84; DEQ 16-1985, f. & ef. 12-3-85; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-

92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0040, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0041

Formal Enforcement Actions

(1) FEAs may require that the respondent take action within a specified timeframe or may assess civil penalties. The department may issue an NPV or FEA whether or not it has previously issued a Notice of Noncompliance, WL or PEN related to the issue or violation. Unless specifically prohibited by statute or rule, the department may issue an FEA without first issuing an NPV.

(2) A Notice of Civil Penalty Assessment (CPA) may be issued for the occurrence of any class of violation that is not limited by the NPV requirement of OAR 340-012-0038(3).

(3) An Order may be in the form of a commission or department order, including any written order that has been consented to in writing by the parties thereto, including but not limited to, a Mutual Agreement and Order (MAO).

(4) A Penalty Demand Notice (PDN) may be issued according to the terms of any written final order that has been consented to in writing by the parties thereto, including, but not limited to, a MAO.

(5) The enforcement actions described in sections (2) through (4) of this rule in no way limit the department or commission from seeking any other legal or equitable remedies, including revocation of any department-issued license or permit, provided by ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, and 468B.

Stat. Auth.: ORS 454.625, 459.376, 465.400-410, 466.625, 467.030, 468.020, 468A.025, 468A.045 & 468B.035

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468A.990, 468.992, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0045

Civil Penalty Determination Procedure

Except as provided in OAR 340-012-0038(3), in addition to any other liability, duty, or other penalty provided by law, the department may assess a civil penalty for any violation. Except for civil penalties assessed under OAR 340-012-0155(2), the department determines the amount of the civil penalty using the following procedures:

(1) The classification of each violation is determined by consulting OAR 340-012-0053 to 340-012-0097;

(2) The magnitude of the violation is determined as follows:

(a) The selected magnitude categories in OAR 340-012-0135 are used.

(b) If a selected magnitude is not specified in OAR 340-012-0135, or if information is not reasonably available to determine which selected magnitude applies, OAR 340-012-0130 is used to determine the magnitude of the violation.

(c) The appropriate base penalty (BP) for each violation is determined by applying the classification and magnitude of each violation to the matrices in OAR 340-012-0140.

(d) The base penalty is adjusted by the application of aggravating or mitigating factors (P = prior significant actions, H = history in correcting prior significant actions, O = repeated or ongoing violation, M = mental state of the violator and C = efforts to correct) as set forth in OAR 340-012-0145.

(e) The appropriate economic benefit (EB) is determined as set forth in OAR 340-012-0150.(2) The results of the determinations made in section (1) are applied in the following formula to calculate the penalty: $BP + [(0.1 \times BP) \times (P + H + O + M + C)] + EB$.

(3) In addition to the factors listed in section (1) of this rule, the director may consider any other relevant rule of the commission in assessing a civil penalty and will state the effect that rule had on the penalty amount.

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 466.210, 466.880-895, 468.090-140, 468.992, 468A.990, 468B.025, 468B.220 & 468B.450

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0053

Violations that Apply to all Programs

(1) Class I:

(a) Violation of a requirement or condition of a commission or department order, consent order, agreement or consent judgment (formerly called judicial consent decree).

ADMINISTRATIVE RULES

(b) Submitting false, inaccurate or incomplete information to the department where the submittal masked another separate violation, caused environmental harm, or caused the department to misinterpret any substantive fact.

(c) Failure to provide access to premises or records as required by statute, permit, order, consent order, agreement or consent judgment (formerly called judicial consent decree).

(d) Any otherwise unclassified violation that causes a significant adverse impact on human health or the environment, or poses a significant threat to human health or the environment.

(2) Class II:

(a) Any otherwise unclassified violation.

(3) Class III:

(a) Any otherwise unclassified violation that had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or the environment.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 – ORS 466.994, 468.090 – 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0054

Air Quality Classification of Violations

(1) Class I:

(a) Constructing or operating a source required to have a permit other than a Basic Air Contaminant Discharge Permit (ACDP) without first obtaining the appropriate permit;

(b) Modifying a source with an air permit without first notifying and receiving approval from the department;

(c) Failure to install control equipment or meet performance standards as required by New Source Performance Standards under OAR 340 division 238 or National Emission Standards for Hazardous Air Pollutant Standards under OAR 340 division 244;

(d) Violation of a compliance schedule in a permit;

(e) Exceeding a hazardous air pollutant emission limitation;

(f) Exceeding an opacity or criteria pollutant emission limitation in a permit, rule or order by a factor of greater than or equal to two times the limitation;

(g) Exceeding the yearly emission limitations of a permit, rule or order;

(h) Failure to perform testing, or monitoring, required by a permit, rule or order that results in failure to show compliance with an emission limitation or a performance standard;

(i) Systematic failure to keep records required by a permit, rule or order;

(j) Failure to submit semi-annual Compliance Certification or Oregon Title V Annual Operating Report;

(k) Failure to file a timely application for an Oregon Title V Operating Permit pursuant to OAR 340 division 218;

(l) Submitting a report, semi-annual Compliance Certification or Oregon Title V Annual Operating Report, or any part thereof, that does not accurately reflect the monitoring, record keeping or other documentation held or performed by the permittee;

(m) Causing emissions that are a hazard to public safety;

(n) Failure to comply with Emergency Action Plans or allowing excessive emissions during emergency episodes;

(o) Violation of a work practice requirement for asbestos abatement projects which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(p) Storage or accumulation of friable asbestos material or asbestos-containing waste material from an asbestos abatement project which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(q) Visible emissions of asbestos during an asbestos abatement project or during collection, processing, packaging, transportation, or disposal of asbestos-containing waste material;

(r) Conduct of an asbestos abatement project by a person not licensed as an asbestos abatement contractor;

(s) Violation of a disposal requirement for asbestos-containing waste material which causes a potential for public exposure to asbestos or release of asbestos into the environment;

(t) Failing to hire a licensed contractor to conduct an asbestos abatement project which results in the potential for public exposure to asbestos or release of asbestos into the environment;

(u) Advertising to sell, offering to sell or selling a non-certified woodstove;

(v) Open burning of materials which are prohibited from being open burned anywhere in the state by OAR 340-264-0060(3);

(w) Failure to install vapor recovery piping in accordance with standards set forth in OAR chapter 340, division 150;

(x) Installing vapor recovery piping without first obtaining a service provider license in accordance with requirements set forth in OAR chapter 340, division 160; or

(y) Submitting falsified actual or calculated emission fee data.

(2) Class II:

(a) Unless otherwise classified, exceeding an emission limitation, other than an annual emission limitation, or exceeding an opacity limitation by more than five percent opacity in permits, rules or order;

(b) Violating standards in permits or rules for fugitive emissions, particulate deposition, or odors;

(c) Failure to submit a complete ACDP application 60 days prior to permit expiration or prior to modifying a source;

(d) Failure to maintain on site records when required by a permit to be maintained on site;

(e) Exceedances of operating limitations that limit the potential to emit that do not result in emissions above the Oregon Title V Operating Permit permitting thresholds pursuant to OAR 340 division 218;

(f) Failure to perform testing or monitoring required by a permit, rule or order unless otherwise classified.

(g) Illegal open burning of agricultural, commercial, construction, demolition, and/or industrial waste except for open burning in violation of OAR 340-264-0060(3);

(h) Failing to comply with notification and reporting requirements in a permit;

(i) Failure to comply with asbestos abatement licensing, certification, or accreditation requirements;

(j) Failure to provide notification of an asbestos abatement project;

(k) Violation of a work practice requirement for asbestos abatement projects that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(l) Violation of a disposal requirement for asbestos-containing waste material that does not cause a potential for public exposure to asbestos and does not release asbestos into the environment;

(m) Failure to perform a final air clearance test or submit an asbestos abatement project air clearance report for an asbestos abatement project;

(n) Failure to display permanent labels on a certified woodstove;

(o) Alteration of a permanent label for a certified woodstove;

(p) Failure to use department-approved vapor control equipment when transferring fuel;

(q) Operating a vapor recovery system without first obtaining a piping test performed by a licensed service provider as required by OAR chapter 340, division 160;

(r) Failure to obtain department approval prior to installing a Stage II vapor recovery system not already registered with the department as specified in department rules;

(s) Installing, servicing, repairing, disposing of or otherwise treating automobile air conditioners without recovering and recycling chlorofluorocarbons using approved recovery and recycling equipment;

(t) Selling, or offering to sell, or giving as a sales inducement any aerosol spray product which contains as a propellant any compound prohibited under ORS 468A.655;

(u) Selling any chlorofluorocarbon or halon containing product prohibited under ORS 468A.635;

(v) Failure to pay an emission fee;

(w) Submitting inaccurate emission fee data;

(x) Violation of OAR 340-242-0620 by a person who has performed motor vehicle refinishing on 10 or more on-road motor vehicles in the previous 12 months;

(y) Constructing or operating a source required to have a Basic ACDP; or

(z) Any violation of the Employee Commute Option rules contained in OAR 340-242-0010 to 0290.

(3) Class III:

(a) Failure to perform testing, or monitoring required by a permit, rule or order where missing data can be reconstructed to show compliance with standards, emission limitations or underlying requirements;

(b) Illegal residential open burning;

(c) Improper notification of an asbestos abatement project;

ADMINISTRATIVE RULES

(d) Failure to submit a completed renewal application for an asbestos abatement license in a timely manner;

(e) Failure to display a temporary label on a certified woodstove;

(f) Exceeding opacity limitation in permits or rules by five percent opacity or less.

(g) Violation of OAR 340-242-0620 by a person who has performed motor vehicle refinishing on fewer than 10 on-road motor vehicles in the previous 12 months.

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

Stat. Auth.: ORS 468.020, 468A.025 & 468A.045

Stats. Implemented: ORS 468.020 & 468A.025

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 5-1980, f. & ef. 1-28-80; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 31-1990, f. & cert. ef. 8-15-90; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 22-1996, f. & cert. ef. 10-22-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0050, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0055

Water Quality Classification of Violations

(1) Class I:

(a) Causing pollution of waters of the state.

(b) Reducing the water quality of waters of the state below water quality standards.

(c) Any discharge of waste that enters waters of the state, either without a waste discharge permit or from a discharge point not authorized by a waste discharge permit.

(d) Failure to comply with statute, rule, or permit requirements regarding notification of a spill or upset condition which results in a non-permitted discharge to public waters.

(e) Violation of a permit compliance schedule.

(f) Any violation of any pretreatment standard or requirement by a user of a municipal treatment works which impairs or damages the treatment works, or causes a major harm or poses a major risk of harm to public health or the environment.

(g) Operation of a disposal system without first obtaining a Water Pollution Control Facility (WPCF) Permit.

(h) Failure of any ship carrying oil to have financial assurance as required in ORS 468B.300–468B.335 or rules adopted there under.

(i) Unauthorized changes, modifications, or alterations to a facility operating under a WPCF or NPDES permit.

(j) Operating or supervising a wastewater treatment system without proper certification.

(2) Class II:

(a) Failure to submit a report or plan as required by rule, permit, or license, except for a report required by permit compliance schedule.

(b) Any violation of OAR chapter 340, division 49 regulations pertaining to certification of wastewater system operator personnel unless otherwise classified.

(c) Placing wastes such that the wastes are likely to enter public waters by any means.

(d) Failure by any ship carrying oil to keep documentation of financial assurance on board or on file with the department as required by ORS 468B.300–468B.335 or rules adopted there under.

(e) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a department-approved system unless otherwise classified in OAR 340-012-0055 or 340-012-0060.

(f) Any violation of a management, monitoring, or operational plan established pursuant to a waste discharge permit that is not otherwise classified in these rules.

(3) Class III:

(a) Failure to submit a discharge monitoring report on time.

(b) Failure to submit a complete discharge monitoring report.

(c) Exceeding a waste discharge permit biochemical oxygen demand (BOD), carbonaceous biochemical oxygen demand (CBOD), or total suspended solids (TSS) limitation by a concentration of 20 percent or less, or exceeding a mass loading limitation by ten percent or less.

(d) Violation of a removal efficiency requirement by a factor of less than or equal to 0.2 times the number value of the difference between 100 and the applicable removal efficiency requirement (e.g., if the requirement is 65 percent removal, $0.2 (100-65) = 0.2(35) = 7$ percent; then 7 percent would be the maximum percentage that would qualify under this rule for a permit with a 65 percent removal efficiency requirement).

(e) Violation of a pH requirement by less than 0.5 pH.

Stat. Auth.: ORS 468.020 & 468B.015

Stats. Implemented: ORS 468.090 - 140, 468B.025, 468B.220 & 468B.305

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0065

Solid Waste Management Classification of Violations

(1) Class I:

(a) Establishing, expanding, maintaining or operating a disposal site without first obtaining a registration or permit;

(b) Accepting solid waste for disposal in a permitted solid waste unit or facility that has been expanded in area or capacity without first submitting plans to the department and obtaining department approval;

(c) Disposing of or authorizing the disposal of a solid waste at a location not permitted by the department to receive that solid waste;

(d) Violation of the freeboard limit which results in the actual overflow of a sewage sludge or leachate lagoon;

(e) Violation of the landfill methane gas concentration standards;

(f) Violation of any federal or state drinking water standard in an aquifer beyond the solid waste boundary of the landfill, or an alternative boundary specified by the department;

(g) Violation of a permit-specific groundwater concentration limit, as defined in OAR 340-040-0030(3) at the permit-specific groundwater concentration compliance point, as defined in OAR 340-040-0030(2)(e);

(h) Failure to perform the groundwater monitoring action requirements specified in OAR 340-040-0030(5), when a significant increase (for pH, increase or decrease) in the value of a groundwater monitoring parameter is detected;

(i) Impairment of the beneficial use(s) of an aquifer beyond the solid waste boundary or an alternative boundary specified by the department;

(j) Deviation from the department approved facility plans which results in an safety hazard, public health hazard or damage to the environment;

(k) Failure to properly construct and maintain groundwater, surface water, gas or leachate collection, treatment, disposal and monitoring facilities in accordance with the facility permit, the facility environmental monitoring plan, or department rules;

(l) Failure to collect, analyze and report groundwater, surface water or leachate quality data in accordance with the facility permit, the facility environmental monitoring plan, or department rules;

(m) Violation of a compliance schedule contained in a solid waste disposal or closure permit;

(n) Knowingly disposing, or accepting for disposal, materials prohibited from disposal at a solid waste disposal site by statute, rule, permit or order;

(o) Accepting, handling, treating or disposing of clean-up materials contaminated by hazardous substances by a landfill in violation of the facility permit and plans as approved by the department or the provisions of OAR 340-093-0170(3);

(p) Accepting for disposal infectious waste not treated in accordance with laws and department rules;

(q) Accepting for treatment, storage or disposal wastes defined as hazardous under ORS 466.005, et seq., or wastes from another state which are hazardous under the laws of that state without specific approval from the department;

(r) Mixing for disposal or disposing of principal recyclable material that has been properly prepared and source separated for recycling;

(s) Receiving special waste in violation of or without a department approved Special Waste Management Plan;

(t) Failure to follow a department approved Construction Quality Assurance (CQA) plan when constructing a waste cell;

(u) Failure to comply with a department approved Remedial Investigation Workplan developed in accordance with OAR 340-040-0040;

(v) Failure to establish and maintain financial assurance as required by statute, rule, permit or order;

(w) Open burning in violation of OAR 340-264-0060(3); or

(x) Failure to abide by the terms of a permit automatically terminated due to a failure to submit a timely application for renewal as set forth in OAR 340-093-0115(1)(c).

(2) Class II:

(a) Violation of a condition or term of a Letter of Authorization;

(b) Failure of a permitted landfill, solid waste incinerator or a municipal solid waste compost facility operator or a metropolitan service district to

ADMINISTRATIVE RULES

report amount of solid waste disposed in accordance with the laws and rules of the department;

(c) Failure to accurately report weight and type of material recovered or processed from the solid waste stream in accordance with the laws and rules of the department;

(d) Failure of a disposal site to obtain certification for recycling programs in accordance with the laws and rules of the department prior to accepting solid waste for disposal;

(e) Acceptance of solid waste by a permitted disposal site from a person that does not have an approved solid waste reduction program in accordance with the laws and rules of the department;

(f) Failure to comply with any solid waste permit requirement pertaining to permanent household hazardous waste collection facility operations;

(g) Failure to comply with landfill cover requirements, including but not limited to daily, intermediate, and final covers, and limitation of working face size;

(h) Failure to submit a permit renewal application 180 days prior to the expiration date of the existing permit; or

(i) Failure to establish and maintain a facility operating record for a municipal solid waste landfill.

(3) Class III:

(a) Failure to post required signs;

(b) Failure to control litter;

(c) Unless otherwise classified, failure to notify the department of any name or address change of the owner or operator of the facility within ten days of the change.

Stat. Auth.: ORS 459.045 & 468.020

Stats. Implemented: ORS 459.205, 459.376, 459.995 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 26-1994, f. & cert. ef. 11-2-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0066

Solid Waste Tire Management Classification of Violations

(1) Class I:

(a) Establishing, expanding, or operating a waste tire storage site without first obtaining a permit;

(b) Systematic failure to maintain written records of waste tire generation and disposal as required;

(c) Disposing of waste tires or tire-derived products at an unauthorized site;

(d) Violation of the compliance schedule or fire safety requirements of a waste tire storage site permit;

(e) Hauling waste tires or advertising or representing one's self as being in the business of a waste tire carrier without first obtaining a waste tire carrier permit as required by laws and rules of the department;

(f) Hiring or otherwise using an unpermitted waste tire carrier to transport waste tires; or

(g) Failure to establish and maintain financial assurance as required by statute, rule, permit or order.

(2) Class II:

(a) Failure to submit a permit renewal application prior to the expiration date of the existing permit within the time required by statute, rule, or permit;

(b) Hauling waste tires in a vehicle not identified in a waste tire carrier permit or failing to display required decals as described in a permittee's waste tire carrier permit; or

(c) Violation of a condition or term of a Letter Authorization.

(3) Class III:

(a) Failure to submit required annual reports in a timely manner;

(b) Failure to keep required records on use of vehicles;

(c) Failure to post required signs;

(d) Failure to submit a permit renewal application in a timely manner;

(e) Failure to submit permit fees in a timely manner;

(f) Failure to maintain written records of waste tire disposal and generation.

Stat. Auth.: ORS 459.785 & 468.020

Stats. Implemented: ORS 459.705 - 459.790, 459.992 & 468.090 - 468.140

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0067

Underground Storage Tank (UST) Classification of Violations

(1) Class I:

(a) Failure to investigate or confirm a suspected release;

(b) Failure to establish or maintain the required financial responsibility mechanism;

(c) Failure to obtain the appropriate general permit registration certificate before installing or operating an UST;

(d) Failure to install spill and overflow protection equipment that will prevent a release, or failure to demonstrate to the department that the equipment is properly functioning;

(e) Failure to install, operate or maintain a method or combination of methods for release detection such that the method can detect a release from any portion of the UST system;

(f) Failure to protect from corrosion any part of an UST system that routinely contains a regulated substance;

(g) Failure to permanently decommission an UST system;

(h) Failure to obtain approval from the department before installing or operating vapor or groundwater monitoring wells as part of a release detection method;

(i) Installing, repairing, replacing or modifying an UST system in violation of any rule adopted by the department;

(j) Systematic failure to conduct testing or monitoring, or to keep records;

(k) Providing or offering tank services without the appropriate UST service provider license;

(l) Supervising tank services without the appropriate supervisor license;

(m) Using fraud or deceit to obtain a UST services provider or supervisor license;

(n) Demonstrating negligence or incompetence in performing tank services; or

(o) Failure to assess the excavation zone of a decommissioned or abandoned UST when directed to do so by the department.

(2) Class II:

(a) Continuing to use a method or methods of release detection after period allowed by rule has expired;

(b) Failure to have a trained UST system operator for an UST facility after March 1, 2004;

(c) Failure to apply for a modified general permit registration certificate;

(d) Failure to have an operation certificate for each compartment of a multi-chambered or multi-compartment UST when at least one compartment or chamber has an operation certificate.

(e) Installing, repairing, replacing or modifying an UST or UST equipment without providing the required notifications;

(f) Failure to decommission an UST in compliance with the statutes and rules adopted by the department, including, but not limited to, performance standards, procedures, notification, general permit registration and site assessment requirements;

(g) Providing tank services at an UST facility that does not have the appropriate general permit registration certificate;

(h) Failure by a distributor to obtain the identification number and operation certificate number before depositing a regulated substance into an UST;

(i) Failure by a distributor to maintain a record of all USTs into which it deposited a regulated substance;

(j) Allowing tank services to be performed by a person not licensed by the department;

(k) Failure to submit checklists or reports for UST installation, modification or suspected release confirmation activities;

(l) Failure to complete an integrity assessment before adding corrosion protection;

(m) Failure by an owner or permittee to pass the appropriate national examination before performing tank services; or

(n) Failure to provide the identification number or operation certificate number to persons depositing a regulated substance into an UST.

(3) Class III:

(a) Failure by a person who sells an UST to notify the new owner or permittee of the department's general permit registration requirements.

Stat. Auth.: ORS 466.720, 466.746, 466.882, 466.994 & 468.020

Stats. Implemented: ORS 466.706-466.835, 466.994, 468.090-468.140

Hist.: DEQ 2-1988, f. 1-27-88, cert. ef. 2-1-88; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 15-1991, f. & cert. ef. 8-14-91; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2003, f. & cert. ef. 2-14-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

ADMINISTRATIVE RULES

340-012-0068

Hazardous Waste Management and Disposal Classification of Violations

- (1) Class I:
 - (a) Failure to make a complete and accurate hazardous waste determination of a residue as required by OAR 340-102-0011;
 - (b) Failure to have a waste analysis plan as required by **40 CFR 265.13**;
 - (c) Operation of a hazardous waste treatment, storage or disposal facility (TSD) without first obtaining a permit or without having interim status pursuant to OAR 340-105-0010(2)(a);
 - (d) Accumulation of hazardous waste on site for longer than twice the applicable generator allowable on-site accumulation period;
 - (e) Transporting or offering for transport hazardous waste for off-site shipment without first preparing a manifest;
 - (f) Accepting for transport hazardous waste which is not accompanied by a manifest;
 - (g) Systematic failure of a hazardous waste generator to comply with the manifest system requirements;
 - (h) Failure to submit a manifest discrepancy report or exception report;
 - (i) Failure to prevent the unknown entry or prevent the possibility of the unauthorized entry of person or livestock into the waste management area of a TSD facility;
 - (j) Failure to manage ignitable, reactive, or incompatible hazardous wastes as required under **40 CFR Part 264** and **265.17(b)(1), (2), (3), (4) and (5)**;
 - (k) Illegal disposal of hazardous waste;
 - (l) Disposal of hazardous waste in violation of the land disposal restrictions;
 - (m) Failure to contain waste pesticide or date containers of waste pesticide as required by OAR 340-109-0010(2);
 - (n) Treating or diluting universal wastes in violation of **40 CFR 273.11, 273.31** or OAR 340-113-0030(5);
 - (o) Use of empty non-rigid or decontaminated rigid pesticide containers for storage of food, fiber or water intended for human or animal consumption;
 - (p) Mixing, solidifying, or otherwise diluting hazardous waste to circumvent land disposal restrictions;
 - (q) Incorrectly certifying a hazardous waste for disposal/treatment in violation of the land disposal restrictions;
 - (r) Failure to submit a Land Disposal notification, demonstration or certification with a shipment of hazardous waste;
 - (s) Shipping universal waste to a site other than an off-site collection site, destination facility or foreign destination in violation of **40 CFR 273.18** or **273.38**;
 - (t) Failure to comply with the hazardous waste tank integrity assessments and certification requirements;
 - (u) Failure of an owner/operator of a TSD facility to have a closure and/or post closure plan and/or cost estimates;
 - (v) Failure of an owner/operator of a TSD facility to retain an independent registered professional engineer to oversee closure activities and certify conformity with an approved closure plan;
 - (w) Failure of an owner/operator of a TSD facility to establish or maintain financial assurance for closure and/or post closure care;
 - (x) Systematic failure of an owner/operator of a TSD facility or a generator of hazardous waste to conduct inspections;
 - (y) Failure of an owner/operator of a TSD facility or generator to promptly correct any hazardous condition discovered during an inspection;
 - (z) Failing to prepare a Contingency Plan;
 - (aa) Failure to follow an emergency procedure contained in a Contingency Plan or other emergency response plan when failure could result in serious harm;
 - (bb) Storage of hazardous waste in a container which is leaking or presenting a threat of release;
 - (cc) Storing more than 100 containers of hazardous waste without complying with the secondary containment requirements at **40 CFR 264.175**;
 - (dd) Systematic failure to follow hazardous waste container labeling requirements or lack of knowledge of container contents;
 - (ee) Failure to label a hazardous waste container where such failure could cause an inappropriate response to a spill or leak and substantial harm to public health or the environment;
 - (ff) Failure to date a hazardous waste container with a required accumulation date or failure to document length of time hazardous waste was accumulated;
 - (gg) Failure to comply with the export requirements for hazardous wastes;
 - (hh) Violation of a TSD facility permit condition related to the handling, management, treatment, storage or disposal of hazardous waste unless otherwise classified;
 - (ii) Systematic failure to comply with hazardous waste generator annual reporting requirements, Treatment, Storage, Disposal and Recycling facility annual reporting requirements and annual registration information;
 - (jj) Failure to properly install groundwater monitoring wells such that detection of hazardous waste or hazardous constituents that migrate from the waste management area cannot be immediately be detected;
 - (kk) Failure to install any groundwater monitoring wells;
 - (ll) Failure to develop and follow a groundwater sampling and analysis plan using proper techniques and procedures;
 - (mm) Generating and treating, storing, disposing of, transporting, and/or offering for transportation, hazardous waste without first obtaining an EPA Identification Number; or
 - (nn) Systematic failure of a large-quantity hazardous waste generator or TSD facility to properly control volatile organic hazardous waste emissions.
- (2) Class II:
 - (a) Failure to keep a copy of the documentation used to determine whether a residue is a hazardous waste;
 - (b) Failure to label a tank or container of hazardous wastes with the words "Hazardous Waste," "Pesticide Waste," "Universal Waste" or with other words as required that identify the contents;
 - (c) Failure to comply with hazardous waste generator annual reporting requirements, Treatment, Storage, Disposal and Recycling facility annual reporting requirements and annual registration information, unless otherwise classified;
 - (d) Failing to keep a container of hazardous waste closed except when necessary to add or remove waste;
 - (e) Failing to inspect areas where containers of hazardous waste are stored, at least weekly;
 - (f) Failure of a hazardous waste generator to maintain aisle space adequate to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination;
 - (g) Accumulating hazardous waste on-site, without fully complying with the Personnel Training requirements;
 - (h) Failure to manage universal waste in a manner that prevents releases into the environment; or
 - (i) Failure to comply with the empty pesticide container management requirements unless otherwise classified;
 - (3) Class III:
 - (a) Accumulation of hazardous waste on site by a large-quantity generator for less than ten days over the allowable on-site accumulation period;
 - (b) Accumulation of hazardous waste on site by a small-quantity generator for less than twenty days over the allowable on-site accumulation period;
 - (c) Failure of a large-quantity generator of hazardous waste to retain signed copies of manifests for at least three years when less than 5% of the reviewed manifests are missing and the facility is able to obtain copies during the inspection;
 - (d) Failure of a small-quantity generator of hazardous waste to retain signed copies of manifests for at least three years when only 3 of the reviewed manifests are missing and the facility is able to obtain copies and submit them to the department within 10 days of the inspection;
 - (e) Failure to label only one container or tank which is less than 60 gallons in volume and in which hazardous waste was accumulated on site, with the required words "Hazardous Waste," "Pesticide Waste," "Universal Waste" or with other words as required that identify the contents;
 - (f) Failure of a large-quantity generator to retain copies of land disposal restriction notifications, demonstrations, or certifications when less than 5% of the reviewed land disposal restriction notices are missing and the facility is able to obtain copies during the inspection;
 - (g) Failure of a small-quantity generator to retain copies of land disposal restriction notifications, demonstrations, or certifications when 3 or fewer of the reviewed land disposal restriction notices are missing and the facility is able to obtain copies and submit them to the department within 10 days of the inspection;

ADMINISTRATIVE RULES

(h) Failure to keep a container of hazardous waste located in a "satellite accumulation area" closed except when necessary to add or remove waste, when only one container is open; or

(i) Failure to properly label a container of pesticide-containing material for use or reuse as required by OAR 340-109-0010(1).

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

Stat. Auth.: ORS 459.995, 466.070 - 466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635-466.680, 466.880-466.992, 468.090-468.140

Hist.: DEQ 1-1982, f. & ef. 1-28-82; DEQ 22-1984, f. & ef. 11-8-84; DEQ 9-1986, f. & ef. 5-1-86; DEQ 17-1986, f. & ef. 9-18-86; DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 13-2002, f. & cert. ef. 10-9-02; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0071

Polychlorinated Biphenyl (PCB) Classification of Violations

(1) Class I:

(a) Treating or disposing of PCBs anywhere other than at a permitted PCB disposal facility; or

(b) Establishing, constructing or operating a PCB disposal facility without first obtaining a permit.

(2) Class II: Violating a condition of a PCB disposal facility permit.

Stat. Auth.: ORS 459.995, 466.625, 467.030, 468.020 & 468.996

Stats. Implemented: ORS 466.255, 466.265-466.270, 466.530, 466.990- 466.994

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0072

Used Oil Management Classification of Violations

(1) Class I:

(a) Using used oil as a dust suppressant or pesticide, or otherwise spreading used oil directly in the environment;

(b) Collecting, processing, storing, disposing of, and/or transporting, used oil without first obtaining an EPA Identification number;

(c) Burning used oil with less than 5,000 Btu/pound for the purpose of energy recovery in violation of OAR 340-111-0110(3)(b);

(d) Offering for sale used oil as specification used oil-fuel when the used oil does not meet used oil-fuel specifications;

(e) Offering to sell off-specification used oil fuel to facility not meeting the definition of an industrial boiler or furnace, or failing to obtain proper certification under **40 CFR 179.75**;

(f) Burning off-specification used oil in a device not specifically exempted under **40 CFR 279.60(a)** that does not meet the definition of an industrial boiler or furnace;

(g) Storing or managing used oil in a surface impoundment;

(h) Storing used oil in containers which are leaking or present a threat of release;

(i) Failure by a used oil transporter or processor to determine whether the halogen content of used oil exceeds that permissible for used oil;

(j) Failure to develop and follow a written waste analysis plan when required by law; or

(k) Failure by a used-oil processor or transporter to manage used-oil residues as required under 40 CFR 279(10)(e).

(2) Class II:

(a) Failure to close or cover used oil tanks or containers as required by OAR 340-111-0032(2);

(b) Failing to submit annual used oil handling reports;

(c) Failure by a used-oil transfer facility, processors, or off-specification used-oil burners to store used oil within secondary containment;

(d) Failure to label each container or tank in which used oil was accumulated on site with the words "used oil";

(e) Failure of a used-oil processor to keep a written operating record at the facility in violation of **40 CFR 279.57**;

(f) Failure by a used-oil processor to prepare and maintain a preparedness and prevention plan; or

(g) Failure by a used-oil processor to close out used-oil tanks or containers when required by **40 CFR 279.54(h)**.

(3) Class III:

(a) Failure to label one container or tank in which used oil was accumulated on site, when there are five or more present, with the required words "used oil."

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

Stat. Auth.: ORS 459.995, 468.020, 468.869, 468.870 & 468.996

Stats. Implemented: ORS 459A.580 - .585, 459A.590 & 468.090 - 140

Hist.: DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0073

Environmental Cleanup Classification of Violations

(1) Class I:

(a) All environmental cleanup-related Class I violations are addressed under OAR 340-012-0053(1).

(2) Class II:

(a) Failure to provide information under ORS 465.250.

Stat. Auth.: ORS 465.280, 465.400-465.410, 465.435 & 468.020

Stats. Implemented: ORS 465.210 & 468.090 - 468.140

Hist.: DEQ 22-1988, f. & cert. ef. 9-14-88; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0074

Underground Storage Tank (UST) Cleanup Classification of Violations

(1) Class I:

(a) Failure to report a confirmed release from an UST;

(b) Failure to initiate or complete the investigation or cleanup, or to perform required monitoring, of a release from an UST;

(c) Failure to conduct free product removal;

(d) Failure to properly manage petroleum contaminated soil;

(e) Failure to mitigate fire, explosion or vapor hazards;

(f) Using fraud or deceit to obtain a soil matrix cleanup service provider or supervisor license;

(g) Demonstrating negligence or incompetence in performing soil matrix cleanup services;

(h) Providing soil matrix cleanup services without obtaining the appropriate service provider license; or

(i) Supervising soil matrix cleanup services without obtaining the appropriate supervisor license.

(2) Class II:

(a) Failure to report a suspected release from an UST;

(b) Failure to submit reports or other documentation from the investigation or cleanup of a release from an UST; or

(c) Failure to submit a corrective action plan or submitting an incomplete corrective action plan.

Stat. Auth.: ORS 466.746, 466.994 & 468.020

Stats. Implemented: ORS 466.706-ORS 466.835 & 466.994

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0079

Heating Oil Tank (HOT) Classification of Violations

(1) Class I:

(a) Failure to report a release from an HOT when the failure is discovered by the department;

(b) Failure to initiate and complete the investigation or cleanup of a release from an HOT;

(c) Failure to submit reports from the investigation or cleanup of a release from an HOT;

(d) Failure to initiate and complete free product removal;

(e) Failure by a service provider to certify that heating oil tank services were conducted in compliance with all applicable regulations;

(f) Failure of a responsible party or service provider to conduct corrective action after the department rejects a certified report;

(g) Using fraud or deceit to obtain an HOT services provider or supervisor license;

(h) Demonstrating negligence or incompetence in performing HOT services;

(i) Providing HOT services without first obtaining the appropriate service provider license; or

(j) Supervising HOT services without first obtaining the appropriate supervisor's license.

(2) Class II:

(a) Failure to submit a corrective action plan (CAP);

(b) Failing to properly decommission an HOT;

(c) Failure of an HOT service provider to hold and continuously maintain errors and omissions or professional liability insurance;

(d) Failure to have a supervisor present when performing HOT services;

(e) Failure to report a release from an HOT within 72 hours when the failure is reported to the department by the responsible person or the service provider;

ADMINISTRATIVE RULES

(f) Offering to provide heating oil tank services without first obtaining the appropriate service provider license.

Stat. Auth.: ORS 466.746, 466.858–466.994 & 468.020

Stats. Implemented: ORS 466.706, 466.858–466.882, 466.994, 468.090 – 468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0081

Oil and Hazardous Material Spill and Release Classification of Violations

(1) Class I:

(a) Failure by any person having ownership or control over oil or hazardous materials to immediately clean up spills or releases or threatened spills or releases;

(b) Failure to immediately notify the Oregon Emergency Response System (OERS) of the type, quantity and location of a spill of oil or hazardous material, and corrective and cleanup actions taken and proposed to be taken if the amount of oil or hazardous material released exceeds the reportable quantity, or will exceed the reportable quantity within 24 hours;

(c) Failure to immediately stop any spill that has entered or may enter waters of the state;

(d) Any spill or release of oil or hazardous materials which enters waters of the state;

(e) Failure to identify the existence, source, nature and extent of a hazardous materials spill or release, or threatened spill or release;

(f) Failure to activate alarms, warn people in the immediate area, contain the oil or hazardous material or notify appropriate local emergency personnel;

(g) Failure to immediately implement a required plan;

(h) Failure to immediately correct the cause of the spill or release;

(i) Use of chemicals to disperse, coagulate or otherwise treat a spill or release of oil or hazardous material spills without prior department approval;

(j) Failure to obtain department approval before conducting any major aspect of the spill response contrary to a department approved plan for the site or spiller;

(k) Intentional dilution of wastes during a spill response;

(l) Failure to take immediate preventative, repair, corrective or containment action in the event of a threatened spill or release;

(m) Improper characterization of drug lab waste during disposal or recycling; or

(n) Disposal of spilled oils and oil contaminated materials resulting from control, treatment and cleanup in a manner not approved by the department.

(2) Class II:

(a) Failure to submit a complete and detailed written report to the department of a spill of oil or hazardous material for which the person is responsible describing all aspects of the spill and steps taken to prevent a recurrence if required by the department to make a report;

(b) Failure to use the required sampling procedures and analytical testing protocols for oil and hazardous materials spills or releases;

(c) Failure of a responsible party to coordinate with the department during the emergency response to a spill after being notified of the department's jurisdiction; or

(d) Failure to immediately report spills or releases within containment areas when reportable quantities are exceeded and exemptions are not met under OAR 340-142-0040.

(3) Class III:

(a) Failure to provide maintenance and inspections records of the storage and transfer facilities to the department upon request; or

(b) Failure of vessel owners or operators to make maintenance and inspection records, and oil transfer procedures available to the department upon request.

Stat. Auth.: ORS 466.625 & 468.020

Stats. Implemented: ORS 466.635 - 466.680, 466.992 & 468.090 - 468.140

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 7-2003, f. & cert. ef. 4-21-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0082

Contingency Planning Classification of Violations

(1) Class I:

(a) Failure to immediately implement the required oil spill prevention and emergency response contingency plan;

(b) Failure to immediately implement the site's applicable contingency plan;

(c) Operation of an onshore or offshore facility without an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(d) Entry into the waters of the state by a covered vessel without an approved or conditionally approved oil spill prevention and emergency response contingency plan or purchased coverage under an umbrella oil spill prevention and emergency response contingency plan;

(e) Entry into the waters of the state by any covered vessel after the department has denied such entry;

(f) Failure to maintain equipment, personnel and training at levels described in an approved or conditionally approved oil spill prevention and emergency response contingency plan;

(g) Failure to establish and maintain financial assurance as required by statute, rule or order; or

(h) Failure by the owner or operator of an oil terminal facility, or covered vessel, to take all appropriate measures to prevent spills or overfilling during transfer of petroleum or hazardous material products.

(2) Class II:

(a) Failure to pay the annual fee for all offshore and onshore facilities required to develop oil spill prevention and emergency response plans;

(b) Failure to pay the per trip fee for all regulated vessels or barges within thirty (30) days of conclusion of each trip;

(c) Failure by any onshore or offshore facility or covered vessel to submit an oil spill prevention and emergency response contingency plan to the department at least 90 calendar days before beginning operations in Oregon;

(d) Failure, in the event of a spill, to have prepared and have available on-site a simplified field document summarizing key notification and action elements of a required vessel or facility contingency plan;

(e) Failure by a plan holder to submit and implement required changes to a required vessel or facility contingency plan that has received conditional approval status from the department within thirty (30) calendar days of conditional approval;

(f) Failure of a covered vessel or facility contingency plan holder to submit the required vessel or facility contingency plan for re-approval at least ninety (90) days before the expiration date of the required vessel or facility contingency plan; or

(g) Failure to obtain department approval of the management or disposal of spilled oil or hazardous materials, or materials contaminated with oil or hazardous material, that are generated during spill response.

(3) Class III:

(a) Failure to provide maintenance and inspections records of the storage and transfer facilities to the department upon request;

(b) Failure of a vessel owner or operator to make maintenance and inspection records and oil transfer procedures available to the department upon request;

(c) Failure to have at least one copy of the required vessel or facility contingency plan in a central location accessible at any time by the incident commander or spill response manager;

(d) Failure to have the covered vessel field document available to all appropriate personnel in a conspicuous and accessible location;

(e) Failure to notify the department within 24 hours of any significant changes that could affect implementation of a required vessel or facility contingency plan; or

(f) Failure to distribute amended page(s) of the plan changes to the department within thirty (30) calendar days of the amendment.

Stat. Auth.: ORS 468B.350

Stats. Implemented: ORS 468B.345

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0083

Ballast Water Management Classification of Violations

(1) Class I: Unauthorized discharging of ballast water.

(2) Class II:

(a) Failure to report ballast water management information to the department at least 24 hours before entering the waters of this state; or

(b) Failure to file an amended ballast water management report after a change in the vessel's ballast water management plan.

Stat. Auth.: ORS 783.600 - 783.992

Stats. Implemented: ORS 783.620

Hist.: DEQ 1-2003, f. & cert. ef. 1-31-03; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0097

Dry Cleaning Classification of Violations

(1) Class I:

(a) Placing or storing hazardous waste generated at a dry cleaning facility at any location other than in an appropriately labeled hazardous waste storage container;

ADMINISTRATIVE RULES

(b) Discharging dry cleaning wastewater to a sanitary sewer, storm sewer, septic system, boiler or into waters of the state;

(c) Failure to have a secondary containment system under and around a dry cleaning machine or stored solvent;

(d) Failure of a person generating hazardous waste at a dry cleaning facility to dispose of hazardous waste within the required time frame from when the waste was placed in a hazardous waste container;

(e) Failure of a person generating hazardous waste at a dry cleaning facility to label a hazardous waste storage container with the date the waste was first placed in the container;

(f) Failure of a dry cleaning owner or operator to store hazardous waste in closed containers;

(g) Failure of a dry cleaning owner or operator to treat hazardous waste dry cleaning wastewater in the required equipment;

(h) Failure of a dry cleaning owner or operator to submit an annual report to the department;

(i) Failure to report a release outside of a containment system of more than one pound of dry cleaning solvent released in a 24-hour period; or

(j) Failure to repair the cause of a release of dry cleaning solvent within a containment system.

(2) Class II:

(a) Failure of a dry cleaning owner or operator to remove dry cleaning solvent or solvent-containing residue from a dry cleaning machine, dry cleaning store or dry store as required;

(b) Failure to disconnect utilities from a dry cleaning machine at a dry cleaning store as required;

(c) Failure of a dry cleaning operator to comply with containment requirements;

(d) Failure of a dry cleaning operator to prominently post the Oregon Emergency Response System telephone number so the number is immediately available to all employees of the dry cleaning facility;

(e) Failure of a person delivering perchloroethylene to a dry cleaning facility to use closed, direct-coupled delivery;

(f) Failure of a dry cleaning operator to have closed, direct-coupled delivery for perchloroethylene;

(g) Failure of a dry cleaner owner or operator to label a hazardous waste storage container with the words "hazardous waste;" or

(h) Failure to immediately clean up a release of dry cleaning solvent within a containment system.

(3) Class III: Failure to notify the department of change or closure at a dry cleaning business or dry store.

Stat. Auth.: ORS 466.070-466.080, 466.625 & 468.020

Stats. Implemented: ORS 466.635-466.680, 466.990, 466.994, 468.090-468.140

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0130

Determination of Violation Magnitude

(1) For each civil penalty assessed, the magnitude will be moderate unless:

(a) A selected magnitude is specified in 340-012-0135 and information is reasonably available to the department to determine the application of that selected magnitude; or

(b) The department determines, using information reasonably available to it, that the magnitude should be major under section (2) or minor under section (3).

(c) If the department determines, using information reasonably available to the department, that a general or selected magnitude applies, the Department's determination is the presumed magnitude of the violation, but the person against whom the violation is alleged has the opportunity and the burden to prove that another magnitude applies and is more probable than the presumed magnitude.

(2) The magnitude of the violation will be major if the department finds that the violation had a significant adverse impact on human health or the environment. In making this finding, the department will consider all reasonably available information, including, but not limited to: the degree of deviation from applicable statutes or commission and department rules, standards, permits or orders; the extent of actual effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the department may consider any single factor to be conclusive.

(3) The magnitude of the violation will be minor if the department finds that the violation had no more than a de minimis adverse impact on human health or the environment, and posed no more than a de minimis threat to human health or other environmental receptors. In making this finding, the department will consider all reasonably available information

including, but not limited to: the degree of deviation from applicable statutes or commission and department rules, standards, permits or orders; the extent of actual or threatened effects of the violation; the concentration, volume, or toxicity of the materials involved; and the duration of the violation. In making this finding, the department may consider any single factor to be conclusive.

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990 - 466.994, 468.090 - 468.140 & 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0135

Selected Magnitude Categories

(1) Magnitudes for select violations pertaining to air quality may be determined as follows:

(a) Opacity limitation violations:

(A) Major — Opacity measurements or readings of more than 40 percent opacity over the applicable limitation;

(B) Moderate — Opacity measurements or readings greater than 10 percent and 40 percent or less opacity over the applicable limitation;

(C) Minor — Opacity measurements or readings of ten percent or less opacity over the applicable limitation.

(b) Steaming rates, performance standards, and fuel usage limitations:

(A) Major — Greater than 1.3 times any applicable limitation;

(B) Moderate — From 1.1 up to and including 1.3 times any applicable limitation;

(C) Minor — Less than 1.1 times any applicable limitation.

(c) Air contaminant emission limitation violations for selected air pollutants: Magnitude determinations under this subsection shall be made based upon significant emission rate amounts listed in OAR 340-200-0020(Tables 2 and 3).

(A) Major:

(i) Exceeding the annual limit as established by permit, rule or order by more than the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by more than ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by more than 0.5 percent of the above amount;

(iv) Exceeding the hourly limit as established by permit, rule or order by more than 0.1 percent of the above amount.

(B) Moderate:

(i) Exceeding the annual limit as established by permit, rule or order by an amount from 50 up to and including 100 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount from five up to and including ten percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount from 0.25 up to and including 0.50 percent of the above amount;

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount from 0.05 up to and including 0.10 percent of the above amount.

(C) Minor:

(i) Exceeding the annual limit as established by permit, rule or order by an amount less than 50 percent of the above amount;

(ii) Exceeding the monthly limit as established by permit, rule or order by an amount less than five percent of the above amount;

(iii) Exceeding the daily limit as established by permit, rule or order by an amount less than 0.25 percent of the above amount;

(iv) Exceeding the hourly limit as established by permit, rule or order by an amount less than 0.05 percent of the above amount.

(d) Asbestos violations:

(A) Major — More than 260 lineal feet or more than 160 square feet or more than 35 cubic feet of asbestos-containing material;

(B) Moderate — From 40 lineal feet up to and including 260 lineal feet or from 80 square feet up to and including 160 square feet or from 17 cubic feet up to and including 35 cubic feet of asbestos-containing material;

(C) Minor — Less than 40 lineal feet or 80 square feet or less than 17 cubic feet of asbestos-containing material;

(D) The magnitude of the asbestos violation may be increased by one level if the material was comprised of more than five percent asbestos.

(e) Open burning violations:

ADMINISTRATIVE RULES

(A) Major — Initiating or allowing the initiation of open burning of material constituting more than five cubic yards in volume;

(B) Moderate — Initiating or allowing the initiation of open burning of material constituting from one up to and including five cubic yards in volume, or if the department lacks sufficient information on which to base a determination;

(C) Minor — Initiating or allowing the initiation of open burning of material constituting less than one cubic yard in volume;

(D) For the purposes of determining the magnitude of a violation only, five tires shall be deemed the equivalent in volume to one cubic yard.

(2) Magnitudes for select violations pertaining to Water Quality may be determined as follows:

(a) Violating wastewater discharge limitations:

(A) Major:

(i) Discharging more than 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging more than 10% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH of more than 1.5 above or below any applicable pH range; or

(iv) Discharging more than 1,000 bacteria per 100 milliliters (bact./100 mls) over the effluent limitation; or

(v) Discharging wastes having more than 10% below any applicable removal rate.

(B) Moderate:

(i) Discharging from 10% to 30% outside any applicable range for flow rate, concentration limitation, or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging from 5% to 10% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH from 0.5 to 1.5 above or below any applicable pH range; or

(iv) Discharging from 500 to 1,000 bact./100 mls over the effluent limitation; or

(v) Discharging wastewater having from 5% to 10% below any applicable removal rate.

(C) Minor:

(i) Discharging less than 10% outside any applicable range for flow rate, concentration limitation or mass limitation, except for toxics, pH, and bacteria; or

(ii) Discharging less than 5% over any applicable concentration limitation or mass load limitations for toxics; or

(iii) Discharging wastewater having a pH of less than 0.5 above or below any applicable pH range; or

(iv) Discharging less than 500 bact./100 mls over the effluent limitation; or

(v) Discharging wastewater having less than 5% below any applicable removal rate.

(b) Causing violation of numeric water-quality standards:

(A) Major:

(i) Reducing or increasing any criteria by 25% or more of the standard except for toxics, pH, and turbidity;

(ii) Increasing toxics by any amount over the acute standard or by 100% or more of the chronic standard;

(iii) Reducing or increasing pH by 1.0 pH unit or more from the standard;

(iv) Increasing turbidity by 50 nephelometric turbidity units (NTU) or more of the standard.

(B) Moderate:

(i) Reducing or increasing any criteria by more than 10% but less than 25% of the standard, except for toxics, pH, and turbidity;

(ii) Increasing toxics by more than 10% but less than 100% of the chronic standard;

(iii) Reducing or increasing pH by more than 0.5 pH unit but less than 1.0 pH unit from the standard;

(iv) Increasing turbidity by more than 20 but less than 50 NTU over the standard.

(C) Minor:

(i) Reducing or increasing any criteria by 10% or less of the standard, except for toxics, pH, and turbidity;

(ii) Increasing toxics by 10% or less of the chronic standard;

(iii) Reducing or increasing pH by 0.5 pH unit or less from the standard;

(iv) Increasing a turbidity standard by 20 NTU or less over the standard.

(D) The magnitude of the violation may be increased one level if the reduction or increase:

(i) Occurred in a stream which is water-quality limited for that criterion; or

(ii) For oxygen or turbidity in a stream where salmonids are rearing or spawning; or

(iii) For bacteria in shell-fish growing waters or during period June 1 through September 30.

(3) Magnitudes for select violations pertaining to Hazardous Waste may be determined as follows:

(a) Failure to make a hazardous waste determination:

(A) Major — Failure to make the determination on five or more waste streams;

(B) Moderate — Failure to make the determination on three or four waste streams;

(C) Minor — Failure to make the determination on one or two waste streams;

(D) The magnitude of the violation may be increased by one level, if more than 1,000 gallons of hazardous waste is involved in the violation;

(E) The magnitude of the violation may be decreased by one level, if less than 250 gallons of hazardous waste is involved in the violation.

(b) Hazardous Waste disposal violations:

(A) Major — Disposal of more than 150 gallons of hazardous waste, or the disposal of more than three gallons of acutely hazardous waste, or the disposal of any amount of hazardous waste or acutely hazardous waste that has a substantial impact on the local environment into which it was placed;

(B) Moderate — Disposal of 50 to 150 gallons of hazardous waste, or the disposal of one to three gallons of acutely hazardous waste;

(C) Minor — Disposal of less than 50 gallons of hazardous waste, or the disposal of less than one gallon of acutely hazardous waste when the violation had no potential for or had no more than de minimis actual adverse impact on the environment, nor posed any threat to public health, or other environmental receptors.

(c) Hazardous waste management violations:

(A) Major — Failure to comply with hazardous waste management requirements when more than 1,000 gallons of hazardous waste, or more than 20 gallons of acutely hazardous waste, are involved in the violation;

(B) Moderate — Failure to comply with hazardous waste management requirements when 250 to 1,000 gallons of hazardous waste, or when 5 to 20 gallons of acutely hazardous waste, are involved in the violation;

(C) Minor — Failure to comply with hazardous waste management requirements when less than 250 gallons of hazardous waste, or 10 gallons of acutely hazardous waste are involved in the violation.

(4) Magnitudes for select violations pertaining to Solid Waste may be determined as follows:

(a) Operating a solid waste disposal facility without a permit:

(A) Major — If the volume of material disposed of exceeds 400 cubic yards;

(B) Moderate — If the volume of material disposed of is between 40 and 400 cubic yards;

(C) Minor — If the volume of materials disposed of is less than 40 cubic yards;

(D) The magnitude of the violation may be raised by one magnitude if the material disposed of was either in the floodplain of waters of the state or within 100 feet of waters of the state.

(b) Failing to accurately report the amount of solid waste received.

(A) Major — If the amount of solid waste is underreported by more than 15% of the amount received;

(B) Moderate — If the amount of solid waste is underreported by from 5% to 15% of the amount received;

(C) Minor — If the amount of solid waste is underreported by less than 5% of the amount received.

(5) Magnitudes for select violations pertaining to spills of oil or hazardous materials may be adjusted when a violation listed in subsection (a) or (b) has been determined. Further, any overdue notification violation under subsection (b) is raised in significance as indicated in subsection (c) if the amount of the material involved equals or exceeds the reportable quantity (RQ) set by OAR chapter 340, division 142:

(a) Failure to clean up spills involving the following quantities spilled to land and not threatening waters of the state:

(A) Major — Greater than 10 times the RQ.

(B) Moderate — From the RQ to 10 times the RQ.

ADMINISTRATIVE RULES

- (C) Minor — Less than the RQ.
- (b) Overdue notification violations.
- (A) Major — Notifying more than one week after the spill or release.
- (B) Moderate — Notifying from 48 hours to one week after the spill or release.

(C) Minor — Notifying between 24 and 48 hours after the spill or release.

- (c) Overdue notification violations are raised in relation to RQ:

(A) A spill or release of greater than 10 times the RQ increases minor or moderate magnitude violations in section (5)(b) to major magnitude violations.

(B) A spill or release equal to twice the RQ, or to 10 times the RQ, increases a minor magnitude violation in section (5)(b) to a moderate magnitude violation.

[ED. NOTE: Tables & Publications referenced are available from the agency.]

Stat. Auth.: ORS 468.065 & 468A.045

Stats. Implemented: ORS 468.090 - 468.140 & 468A.060

Hist.: DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0090, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0140

Determination of Base Penalty

(1) Except for Class III violations and for penalties assessed under OAR 340-012-0155, the base penalty (BP) is determined by applying the type, class and magnitude of the violation to the matrices set forth in this section. For Class III violations, no magnitude determination is required.

- (2) \$8,000 Penalty Matrix:

- (a) The \$8,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have a Title V permit or an Air Contaminant Discharge Permit (ACDP) issued pursuant to New Source Review (NSR) regulations or Prevention of Significant Deterioration (PSD) regulations, or section 112(g) of the federal Clean Air Act.

- (B) Open burning violations as follows:

(i) Any violation of an open burning statute, rule, permit or related order committed by a permitted industrial facility.

(ii) Any violation of OAR 340-264-0060(3) in which 25 or more cubic yards of prohibited materials are burned, except when committed by a residential owner-occupant.

(iii) Any violation of OAR 340-264-0080 through 0180 in which ten or more cubic yards of commercial, construction, demolition, or industrial wastes are burned.

(iv) Any violation involving open burning of more than 15 tires except when committed by a residential owner-occupant.

(C) Any violation of 468B.025(1)(a) or (1)(b), or of ORS 468B.050(1)(a) by a person without an National Pollutant Discharge Elimination System (NPDES) permit.

(D) Any violation of a water quality statute, rule, permit or related order by:

(i) A person that has an NPDES permit, or that has or should have a Water Pollution Control Facility (WPCF) permit, for a municipal or private utility sewage treatment facility with a permitted flow of five million or more gallons per day.

- (ii) A person that has a major industrial source NPDES permit.

(iii) A person that has a population of 100,000 or more, as determined by the most recent national census, and either has or should have a WPCF Municipal Stormwater Underground Injection Control (UIC) System Permit, or has an NPDES Municipal Separated Storm Sewer Systems (MS4) Stormwater Discharge Permit.

(iv) A person that has or should have a WPCF permit for a major vegetable or fruit processing facility, for a major mining operation involving over 500,000 cubic yards per year, or for any mining operation using chemical leaching or froth flotation.

(v) A person that installs or operates a prohibited Class I, II, III, IV or V UIC system, except for a cesspool.

(E) Any violation of an underground storage tanks statute, rule, permit or related order committed by the owner, operator or permittee of 10 or more UST facilities or a person who is licensed or should be licensed by the department to perform tank services.

(F) Any violation of a heating oil tank statute, rule, permit, license or related order committed by a person who is licensed or should be licensed by the department to perform heating oil tank services.

(G) Any violation of ORS 468B.485, or related rules or orders regarding financial assurance for ships transporting hazardous materials or oil.

(H) Any violation of a used oil statute, rule, permit or related order committed by a person who is a used oil transporter, transfer facility, processor or re-refiner, off-specification used oil burner or used oil marketer.

(I) Any violation of a hazardous waste statute, rule, permit or related order by:

(i) A person that is a large quantity generator or hazardous waste transporter.

(ii) A person that has or should have a treatment, storage or disposal facility permit.

(J) Any violation of an oil and hazardous material spill and release statute, rule, or related order.

(K) Any violation of a polychlorinated biphenyls (PCBs) management and disposal statute, rule, permit or related order.

(L) Any violation of ORS Chapter 465, UST or environmental cleanup statute, rule, related order or related agreement.

(M) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or any violation of a solid waste statute, rule, permit, or related order committed by:

- (i) A person that has or should have a solid waste disposal permit.

(ii) A person with a population of 25,000 or more, as determined by the most recent national census.

(b) The base penalty values for the \$8,000 penalty matrix are as follows:

- (A) Class I:

(i) Major — \$8000;

(ii) Moderate — \$4000;

(iii) Minor — \$2000.

- (B) Class II:

(i) Major — \$4000;

(ii) Moderate — \$2000;

(iii) Minor — \$1000.

- (C) Class III: \$750

- (3) \$6,000 Penalty Matrix

- (a) The \$6,000 penalty matrix applies to the following:

(A) Any violation of an air quality statute, rule, permit or related order committed by a person that has or should have an ACDP permit, except for NSR, PSD and Basic ACDP permits.

(B) Any violation of an asbestos statute, rule, permit or related order except those violations listed in section (5) of this rule.

(C) Any violation of a vehicle inspection program statute, rule, permit or related order committed by an auto repair facility.

(D) Any violation of a water quality statute, rule, permit or related order committed by:

(i) A person that has an NPDES Permit, or that has or should have a WPCF Permit, for a municipal or private utility sewage treatment facility with a permitted flow of two million or more, but less than five million, gallons per day.

(ii) A person that has a minor industrial source NPDES Permit, or has or should have a WPCF Permit, for an industrial source.

(iii) A person that has or should have applied for coverage under an NPDES or a WPCF General Permit, except an NPDES Stormwater Discharge 1200-C General Permit for a construction site of one acre or more, but less than five acres in size.

(iv) A person that has a population of less than 100,000 but more than 10,000, as determined by the most recent national census, and has or should have a WPCF Municipal Stormwater UIC System Permit or has an NPDES MS4 Stormwater Discharge Permit.

(v) A person that has or should have a WPCF permit for a mining operation involving from 100,000 up to 500,000 cubic yards other than those operations using chemical leachate or froth flotation.

(vi) A person that owns, and that has or should have registered, a UIC system that disposes of wastewater other than stormwater or sewage.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of five to nine UST facilities.

(F) Unless specifically listed under another penalty matrix, any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by:

- (i) A person that has or should have a waste tire permit or

(ii) A person with a population of more than 5,000 but less than or equal to 25,000, as determined by the most recent national census.

ADMINISTRATIVE RULES

(G) Any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a small quantity generator.

(b) The base penalty values for the \$6,000 penalty matrix are as follows:

(A) Class I:

- (i) Major — \$6,000.
- (ii) Moderate — \$3,000.
- (iii) Minor — \$1,500.

(B) Class II:

- (i) Major — \$3,000.
- (ii) Moderate — \$1,500.
- (iii) Minor — \$750.

(C) Class III: \$500.

(4) \$2,500 Penalty Matrix:

(a) The \$2,500 penalty matrix applies to the following:

(A) Any violation of any statute, rule, permit, license, or order committed by a person not listed under another penalty matrix.

(B) Any violation of an air quality statute, rule, permit or related order committed by a person not listed under another penalty matrix.

(C) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant, involving more than 25 cubic yards of any material listed in OAR 340-264-0060(3) or more than 15 tires, and not listed under another penalty matrix.

(D) Any violation of a vehicle inspection program statute, rule, permit or related order committed by a natural person, except for those violations listed in section (5) of this rule.

(E) Any violation of a water quality statute, rule, permit, license or related order not listed under another penalty matrix and committed by:

(i) A person that has an NPDES permit, or has or should have a WPCF permit, for a municipal or private utility wastewater treatment facility with a permitted flow of less than two million gallons per day.

(ii) A person that has or should have applied for coverage under a NPDES Stormwater Discharge 1200-C General Permit for a construction site that is more than one, but less than five acres.

(iii) A person that has a population of 10,000 or less, as determined by the most recent national census, and either has an NPDES MS4 Stormwater Discharge Permit or has or should have a WPCF Municipal Stormwater UIC System Permit.

(iv) A person who is licensed to perform onsite sewage disposal services or who has performed sewage disposal services.

(v) A person, except for a residential owner-occupant, that owns and either has or should have registered a UIC system that disposes of stormwater or sewage.

(vi) A person that has or should have a WPCF individual stormwater UIC system permit.

(F) Any violation of an onsite sewage disposal statute, rule, permit or related order, except for a violation committed by the residential owner-occupant.

(G) Any violation of an UST statute, rule, permit or related order if the person is the owner, operator or permittee of two to four UST facilities.

(H) Any violation, except a violation related to a spill or release, of a used oil statute, rule, permit or related order committed by a person that is a used oil generator.

(I) Unless listed under another penalty matrix, any violation of a hazardous waste management statute, rule, permit or related order committed by a person that is a conditionally exempt generator if the violation does not impact the person's generator status.

(J) Any violation of ORS Chapter 459 or other solid waste statute, rule, permit, or related order committed by a person with a population less than 5,000, as determined by the most recent national census.

(K) Any violation of the labeling requirements of ORS 459A.675 through 459A.685.

(L) Any violation of rigid pesticide container disposal requirements by a conditionally exempt generator of hazardous waste.

(b) The base penalty values for the \$2,500 penalty matrix are as follows:

(A) Class I:

- (i) Major — \$2500;
- (ii) Moderate — \$1250;
- (iii) Minor — \$625.

(B) Class II:

- (i) Major — \$1250;
- (ii) Moderate — \$625;

(iii) Minor — \$300.

(C) Class III: \$200

(5) \$1,000 Penalty Matrix:

(a) The \$1,000 penalty matrix applies to the following:

(A) Any violation of an open burning statute, rule, permit or related order committed by a residential owner-occupant at the residence, not listed under another penalty matrix.

(B) Any violation of visible emissions standards by operation of a vehicle.

(C) Any violation of an asbestos statute, rule, permit or related order committed by a residential owner-occupant.

(D) Any violation of an onsite sewage disposal statute, rule, permit or related order of OAR chapter 340, division 44 committed by a residential owner-occupant.

(E) Any violation of an UST statute, rule, permit or related order committed by a person who is the owner, operator or permittee of one UST facility.

(F) Any violation of an HOT statute, rule, permit or related order not listed under another penalty matrix.

(G) Any violation of a dry cleaning facility statute, rule, permit or related order.

(H) Any violation of a statute, rule, permit or order relating to rigid plastic containers, except for violation of the labeling requirements under OAR 459A.675 through 459A.685.

(I) Any violation of a statute, rule or order relating to the opportunity to recycle.

(J) Any violation of a statute, rule, permit or order relating to woodstoves, except a violation related to the sale of new or used woodstoves.

(K) Any violation of an UIC system statute, rule, permit or related order by a residential owner-occupant, when the UIC disposes of stormwater or sewage.

(b) The base penalty values for the \$1,000 penalty matrix are as follows:

(A) Class I:

- (i) Major — \$1000;
- (ii) Moderate — \$500;
- (iii) Minor — \$250.

(B) Class II:

- (i) Major — \$500;
- (ii) Moderate — \$250;
- (iii) Minor — \$125.

(C) Class III: \$100

Stat. Auth.: ORS 468.020 & 468.090 - 468.140

Stats. Implemented: ORS 459.995, 459A.655, 459A.660, 459A.685 & 468.035

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 33-1990, f. & cert. ef. 8-15-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 4-1994, f. & cert. ef. 3-14-94; DEQ 9-1996, f. & cert. ef. 7-10-96; DEQ 19-1998, f. & cert. ef. 10-12-98; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; Renumbered from 340-012-0042, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0145

Determination of Aggravating or Mitigating Factors

(1) Each of the aggravating or mitigating factors is determined, as described below, and then applied to the civil penalty formula in OAR 340-012-0045(2).

(2) "P" is whether the respondent has any prior significant actions (PSAs). A violation becomes a PSA on the date the first FEA in which it is cited is issued.

(a) Except as otherwise provided in this section, the values for "P" and the finding that supports each are as follows:

(A) 0 if no PSAs or there is insufficient information on which to base a finding under this section.

(B) 1 if the PSA included one Class II violation or two Class III violations.

(C) 2 if the PSA (s) included one Class I violation or Class I equivalent.

(D) For each additional Class I violation or Class I equivalent, the value of "P" is increased by 1.

(b) The value of "P" will not exceed 10.

(c) If any of the PSAs were issued under ORS 468.996, the value of "P" will be 10.

(d) In determining the value of "P," the department will:

(A) Reduce the value of "P" by:

(i) 2 if all the formal enforcement actions in which PSAs were cited were issued more than three years before the date the current violation occurred.

ADMINISTRATIVE RULES

(ii) 4 if all the formal enforcement actions in which PSAs were cited were issued more than five years before the date the current violation occurred.

(B) Include the PSAs:

(i) At all facilities owned or operated by the same violator within the state of Oregon; and

(ii) That involved the same media (air, water or land) as the violations that are the subject of the current FEA.

(e) In applying subsection (2)(d)(A), the value of "P" may not be reduced below zero.

(f) PSAs that are more than ten years old are not included in determining the value of "P."

(3) "H" is the respondent's history of correcting PSAs.

(a) The values for "H" and the finding that supports each are as follows:

(A) -2 if the Respondent corrected all violations cited as PSAs.

(B) -1 if the violations were uncorrectable and the respondent took reasonable efforts to minimize the effects of the violations cited as PSAs; or

(C) 0 if there is no prior history or if there is insufficient information on which to base a finding under paragraphs (3)(a)(A) or (B).

(b) The sum of values for "P" and "H" may not be less than 1 unless the respondent took extraordinary efforts to correct or minimize the effects of all PSAs. In no case may the sum of the values of "P" and "H" be less than zero.

(4) "O" is whether the violation was repeated or ongoing.

(a) The values for "O" and the finding that supports each are as follows:

(A) 0 if the violation existed for one day or less and did not recur on the same day, or if there is insufficient information on which to base a finding under paragraphs (4)(a)(B) through (4)(a)(D).

(B) 2 if the violation recurred on the same day, or existed for or occurred on more than one day up to and including six days, which need not be consecutive days.

(C) 3 if the violation existed for or occurred from seven to 28 days, which need not be consecutive days.

(D) 4 if the violation existed for or occurred on more than 28 days, which need not be consecutive days.

(b) The department may, at its discretion, assess separate penalties for each day that a violation occurs. If the department does so, the O factor for each affected violation will be set at 0.

(5) "M" is the mental state of the respondent. For any violation where the findings support more than one mental state, the mental state with the highest value will apply.

(a) The values for "M" and the finding that supports each are as follows:

(A) 0 if there is insufficient information on which to base a finding under paragraphs (5)(a)(B) through (5)(a)(D).

(B) 2 if the respondent's conduct was negligent or the respondent had constructive knowledge (reasonably should have known) that the conduct would be a violation. Holding a permit that prohibits or requires conduct is presumed to constitute at least constructive knowledge and may be actual knowledge depending on the specific facts of the case.

(C) 6 if the respondent's conduct was reckless, or the respondent had actual knowledge that its conduct would be a violation and respondent's conduct was intentional. A respondent that previously received a Notice of Noncompliance, WL, PEN or any FEA for the same violation is presumed to have actual knowledge. Holding a permit that prohibits or requires conduct may be actual knowledge depending on the specific facts of the case.

(D) 10 if respondent acted flagrantly.

(6) "C" is the respondent's efforts to correct the violation.

(a) The values for "C" and the finding that supports each are as follows:

(A) -3 if the respondent made extraordinary efforts to correct the violation, or took extraordinary efforts to minimize the effects of the violation.

(B) -2 if the respondent made reasonable efforts to correct the violation, reasonable affirmative efforts to minimize the effects of the violation, or extraordinary efforts to ensure the violation would not be repeated.

(C) -1 if the respondent eventually made efforts to correct the violation, or took affirmative efforts to minimize the effects of the violation.

(D) 0 if there is insufficient information to make a finding under paragraphs (6)(a)(A) through (6)(a)(C), or (6)(a)(E), or if the violation or the effects of the violation could not be corrected or minimized.

(E) 2 if the respondent did not address the violation as described in paragraphs (6)(a)(A) through (6)(a)(C) and the facts do not support a finding under paragraph (6)(a)(D).

Stat. Auth.: ORS 468.020 & 468.130

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.990-466.994, 468.090-468.140, 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0150

Determination of Economic Benefit

(1) The Economic Benefit (EB) is the approximate dollar value of the benefit gained and the costs avoided or delayed (without duplication) as a result of the respondent's noncompliance. The EB may be determined using the U.S. Environmental Protection Agency's BEN computer model. Upon request of the respondent, the department will provide the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model. The model's standard values for income tax rates, inflation rate and discount rate are presumed to apply to all respondents unless a specific respondent can demonstrate that the standard value does not reflect that respondent's actual circumstance. Upon request of the Respondent, the department will use the model in determining the economic benefit component of a civil penalty.

(2) The department may make, for use in the applicable model, a reasonable estimate of the benefits gained and the costs avoided or delayed by the respondent. Economic benefit will be calculated without duplicating or double-counting the advantages realized by respondent as a result of its noncompliance.

(3) The department need not calculate EB if the department makes a reasonable determination that the EB is de minimis or if there is insufficient information reasonably available to the department on which to make an estimate under section (2) of this rule.

(4) The department may assess EB whether or not it assesses any other portion of the civil penalty using the formula in OAR 340-012-0045.

(5) The department's calculation of EB may not result in a civil penalty for a violation that exceeds the maximum civil penalty allowed by rule or statute. However, when a violation has occurred or been repeated for more than one day, the department may treat the violation as extending over at least as many days as necessary to recover the economic benefit of the violation. When the purpose of treating a violation as extending over more than one day is to recover the economic benefit, the department has the discretion not to impose the base penalty portion of the civil penalty. Nothing in this section precludes the department from assessing a penalty of up to the maximum allowed for the violation by statute.

Stat. Auth.: ORS 468.020, 468.090-468.140

Stats. Implemented: ORS 459.376, 459.995, 465.900, 465.992, 466.210, 466.990, 466.994, 467.050, 467.990, 468.090-468.140, 468.996

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0155

Additional or Alternate Civil Penalties

(1) The following violations and violators may be subject to additional civil penalties as specified below:

(a) In addition to any other penalty prescribed by these rules, any person who intentionally or recklessly violates any provisions of ORS 164.785, 459.205-459.426, 459.705-459.790, ORS chapters 465, 466, 467, 468, or 468A or 468B or any rule or standard or order of the commission adopted or issued pursuant to ORS 459.205-459.426, 459.705-459.790, ORS chapters 465, 466, 467, 468, 468A, or 468B, that results in or creates the imminent likelihood for an extreme hazard to the public health or that causes extensive damage to the environment, may incur a civil penalty of up to \$100,000. When determining the civil penalty to be assessed under this subsection, the director will apply the following procedures:

(A) Select one of the following base penalties after evaluating the cause of the violation:

(i) \$50,000 if the violation was caused intentionally;

(ii) \$75,000 if the violation was caused recklessly;

(iii) \$100,000 if the violation was caused flagrantly.

(B) Then determine the civil penalty through application of the following formula: $BP + [(1 \times BP) (P + H + O + C)] + EB$.

(b) In addition to any other penalty prescribed by these rules, any person who intentionally or negligently causes or permits the discharge of oil to waters of the state will incur a civil penalty not to exceed \$20,000 dollars for each violation. The amount of the penalty is determined by doubling the penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045.

ADMINISTRATIVE RULES

(c) In addition to any other penalty prescribed by these rules, any person who willfully or negligently causes or permits the discharge of oil to state waters will incur, in addition to any other penalty derived from application of the \$8,000 penalty matrix in 340-012-0140(2) and the civil penalty formula contained in OAR 340-012-0045, a civil penalty commensurate with the amount of damage incurred. The amount of the penalty will be determined by the director with the advice of the director of the Oregon Department of Fish and Wildlife. In determining the amount of the penalty, the director may consider the gravity of the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) In addition to any other penalty prescribed by these rules, any person who has care, custody or control of a hazardous waste or a substance that would be a hazardous waste except for the fact that it is not discarded, useless or unwanted will incur a civil penalty according to the schedule set forth in this subsection for the destruction, due to contamination of food or water supply by such waste or substance, of any of the following wildlife that are property of the state:

(A) Each game mammal other than mountain sheep, mountain goat, elk or silver gray squirrel, \$400.

(B) Each mountain sheep or mountain goat, \$3,500.

(C) Each elk, \$750.

(D) Each silver gray squirrel, \$10.

(E) Each game bird other than wild turkey, \$10.

(F) Each wild turkey, \$50.

(G) Each game fish other than salmon or steelhead trout, \$5.

(H) Each salmon or steelhead trout, \$125.

(I) Each fur-bearing mammal other than bobcat or fisher, \$50.

(J) Each bobcat or fisher, \$350.

(K) Each specimen of any wildlife species whose survival is specified by the wildlife laws or the laws of the United States as threatened or endangered, \$500.

(L) Each specimen of any wildlife species otherwise protected by the wildlife laws or the laws of the United States, but not otherwise referred to in this section, \$25.

(2) The following violations are subject to the civil penalties specified below, in lieu of civil penalties calculated pursuant to OAR 340-012-0045:

(a) Until December 31, 2005, whenever an underground storage tank fee is due and owing under ORS 466.785 or 466.795, the director may issue a civil penalty of up to \$100 for each day the fee is due and owing.

(b) Until December 31, 2005, the department will assess a field penalty as specified under OAR 340-150-0250 for Class I, Class II or Class III violations under OAR 340-012-0067 unless the department determines that an owner, operator or permittee is not eligible for the field penalty. In such cases of ineligibility, the penalty will be calculated according to the procedures in OAR chapter 340, division 12.

(c) Any owner or operator of a vessel discharging ballast water in violation of ORS 783.635 may incur a civil penalty not to exceed \$5,000 for each violation. In determining the amount of the penalty, the director will consider whether the violation was intentional, negligent or without any fault and will consider the quality and nature of risks created by the violation, the previous record of the violator in complying with the provisions of ORS 468B.450 to 468B.460, and such other considerations the director deems appropriate.

(d) Any owner or operator of a vessel violating the ballast water reporting requirements in ORS 783.640 will incur a civil penalty not to exceed \$500 per violation.

(e) Air emission sources operating under the Western Backstop SO2 Trading Program will be assessed a civil penalty of at least \$5,000 for each ton and each day of violation in excess of the applicable allowance limitation as determined by OAR chapter 340 division 228.

(f) Any owner or operator of a confined animal feeding operation that has not applied for or does not have a permit required by ORS 468B.050 will be assessed a civil penalty of \$500.

Stat. Auth.: ORS 459.995, 466, 467, 468.020 & 468.996

Stats. Implemented: ORS 466.210, 466.880-895, 468.996, 468A.990, 468A.992, 468B.220 & 468B.450

Hist.: DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 9-2000, f. & cert. ef. 7-21-00; DEQ 1-2003, f. & cert. ef. 1-31-03; Renumbered from 340-012-0049, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0160

Department Discretion Regarding Penalty Assessment

(1) In addition to that described in section (3) below, the department has the discretion to increase a base penalty determined under OAR 340-

012-0140 to that derived using the next highest penalty matrix. Factors that may be taken into consideration in increasing a base penalty include the respondent's compliance history, the likelihood of future violations, the degree of environmental or human health impact, the deterrence impact and other similar factors.

(2) In determining a civil penalty, the director may reduce any penalty by any amount the director deems appropriate if the respondent has voluntarily disclosed the violation to the department. In deciding whether a violation has been voluntarily disclosed, the director may take into account any considerations the director deems appropriate, including whether the violation was:

(a) Discovered through an environmental auditing program or a systematic compliance program;

(b) Voluntarily discovered;

(c) Promptly disclosed;

(d) Discovered and disclosed independent of the government or a third party;

(e) Corrected and remedied;

(f) Prevented from recurring;

(g) Not repeated;

(h) Not the cause of significant harm to human health or the environment; and

(i) Disclosed and corrected in a cooperative manner.

(3) Regardless of any other penalty amount listed in this division, the director has the discretion to increase the penalty to \$10,000 per violation per day of violation based upon the facts and circumstances of the individual case.

(4) For violations of a department-issued permit with more than one permittee, the department may issue separate civil penalties to each permittee, given compliance objectives, including the level of deterrence needed.

Stat. Auth.: ORS 468.020, 468.130

Stats. Implemented: ORS 183.745, 459.376, 459.995, 465.900, 465.992, 466.990, 466.994, 468.090-468.140, 468.996, 468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0162

Inability to Pay the Penalty

(1) After a penalty is assessed, the department may reduce a penalty based on the respondent's inability to pay the full penalty amount. In order to do so, the department must receive information regarding the respondent's financial condition on a form required by the department along with any additional documentation requested by the department.

(2) If the respondent is currently unable to pay the full penalty amount, the first option is to place the respondent on a payment schedule with interest. The department may reduce the penalty only after determining that the respondent is unable to meet a payment schedule of a length the department determines is reasonable.

(3) In considering the respondent's ability to pay a civil penalty, the department may use the U.S. Environmental Protection Agency's ABEL, INDIPAY or MUNIPAY computer models to evaluate a respondent's financial condition or ability to pay the full civil penalty amount. Upon request of the respondent, the department will provide the respondent the name of the version of the model used and respond to any reasonable request for information about the content or operation of the model;

(4) The department, at its discretion, may refuse to reduce an assessed civil penalty. In exercising this discretion, the department may take into consideration any factor related to the violations or the respondent, including but not limited to the respondent's mental state, whether the respondent has corrected the violation or taken efforts to ensure the violation will not be repeated, whether the respondent's financial condition poses a serious concern regarding the respondent's ability to remain in compliance, the respondent's future ability to pay, and the respondent's real property or other assets.

Stat. Auth.: ORS 468.020, 468.130

Stats. Implemented: ORS 454.635, 454.645, 459.376, 459.995, 465.900, 465.992, 466.990-466.994, 468.090-468.140, 468B.220-468B.450

Hist.: DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0165

Stipulated Penalties

Nothing in OAR chapter 340, division 12 affects the ability of the commission or department to include stipulated penalties in a Mutual Agreement and Order, Consent Order, Consent Judgment or any other order or agreement issued under ORS Chapters 183, 454, 459, 465, 466, 467, 468, 468A, or 468B.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 454.625, 459.995, 468.020 & 468.996

Stats. Implemented: ORS 183.090 & 183.415

Hist.: DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; DEQ 19-1998, f. & cert. ef. 10-12-98; Renumbered from 340-012-0048, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

340-012-0170

Compromise or Settlement of Civil Penalty by Department

(1) Any time after service of the formal enforcement action, the department may compromise or settle a civil penalty at any amount that the department deems appropriate.

(2) In determining whether a penalty should be compromised or settled, the department may take into account the following:

(a) New information obtained through further investigation or provided by the respondent that relates to the penalty determination factors contained in OAR 340-012-0045;

(b) The effect of compromise or settlement on deterrence;

(c) Whether the respondent has or is willing to employ extraordinary means to correct the violation or maintain compliance;

(d) Whether the respondent has had any previous penalties which have been compromised or settled;

(e) Whether the respondent has the ability to pay the civil penalty as determined by OAR 340-012-0160;

(f) Whether the compromise or settlement would be consistent with the department's goal of protecting human health and the environment; and

(g) The relative strength or weakness of the department's evidence.

Stat. Auth.: ORS 459.995, 466, 467, 468.020 & 468.996

Stats. Implemented: ORS 183.090 & 183.415

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 22-1984, f. & ef. 11-8-84; DEQ 22-1988, f. & cert. ef. 9-14-88; Renumbered from 340-12-075; DEQ 4-1989, f. & cert. ef. 3-14-89; DEQ 15-1990, f. & cert. ef. 3-30-90; DEQ 21-1992, f. & cert. ef. 8-11-92; Renumbered from 340-012-0047, DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

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. 6-1-01; DEQ 6-2000, f. & cert. ef. 5-22-00; DEQ 8-2000, f. & cert. ef. 6-6-00; DEQ 13-2000, f. & cert. ef. 7-28-00; DEQ 16-2000, f. & cert. ef. 10-25-00; DEQ 17-2000, f. & cert. ef. 10-25-00; DEQ 20-2000 f. & cert. ef. 12-15-00; DEQ 21-2000, f. & cert. ef. 12-15-00; DEQ 2-2001, f. & cert. ef. 2-5-01; DEQ 4-2001, f. & cert. ef. 3-27-01; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 16-2001, f. & cert. ef. 12-26-01; DEQ 17-2001, f. & cert. ef. 12-28-01; DEQ 4-2002, f. & cert. ef. 3-14-02; DEQ 5-2002, f. & cert. ef. 5-3-02; DEQ 11-2002, f. & cert. ef. 10-8-02; DEQ 5-2003, f. & cert. ef. 2-6-03; DEQ 14-2003, f. & cert. ef. 10-24-03; DEQ 19-2003, f. & cert. ef. 12-12-03; DEQ 1-2004, f. & cert. ef. 4-14-04; DEQ 10-2004, f. & cert. ef. 12-15-04; DEQ 1-2005, f. & cert. ef. 1-4-05; DEQ 2-2005, f. & cert. ef. 2-10-05; DEQ 4-2005, f. 5-13-05, cert. ef. 6-1-05

Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 26-2005

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 4-20-05

Notice Publication Date: 3-1-05

Rules Amended: 635-060-0046

Subject: Rules were amended to accommodate military personnel who have lost preference points because of being called to active service.

Rules Coordinator: Katie Thiel—(503) 947-6033

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), or (g).

(7) The Commission shall accommodate Oregon residents who have lost preference points because of being called to active military service after June 1, 2002.

(a) The Commission shall accommodate the following individuals called to service at any location: Oregon National Guard.

(b) The Commission shall accommodate the following Oregon residents with military operational commitments: 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.

(c) The Commission authorizes the Director to make such accommodations by:

(A) Reinstating preference points existing for a series, plus an additional point for participating in the draw.

(B) Reinstating preference points lost after two consecutive years of not applying for a controlled hunt in that series.

ADMINISTRATIVE RULES

(d) 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 Salem headquarters office. Each request must include a letter from a supervising officer on official unit letterhead verifying operational commitments.

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. & ef. 6-3-77; 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 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 48-1989, f. & cert. ef. 7-25-89; FWC 18-1991, f. & cert. ef. 3-12-91; FWC 55-1992(Temp), f. 7-22-92, cert. ef. 7-24-92; FWC 36-1993, f. & cert. ef. 6-14-93; FWC 46-1993, f. & cert. ef. 8-4-93; FWC 6-1994, f. & cert. ef. 1-26-94; FWC 94-1994, f. & cert. ef. 12-22-94; FWC 63-1995, f. & cert. ef. 8-3-95; FWC 9-1997, f. & cert. ef. 2-27-97; DFW 1-1999, f. & cert. ef. 1-14-99; DFW 47-1999, f. & cert. ef. 6-16-99; DFW 92-1999, f. 12-8-99, cert. ef. 1-1-00; DFW 52-2001(Temp), f. & cert. ef. 6-27-01 thru 12-24-01; DFW 13-2002, f. & cert. ef. 2-12-02; DFW 34-2002, f. & cert. ef. 4-18-02; DFW 36-2002(Temp), f. & cert. ef. 4-22-02 thru 10-19-02; DFW 50-2002(Temp), f. & cert. ef. 5-16-02 thru 11-12-02; DFW 29-2003(Temp), f. & cert. ef. 4-9-03 thru 10-1-03; DFW 118-2003, f. 12-4-03, cert. ef. 1-1-04; DFW 105-2004(Temp), f. & cert. ef. 10-13-04 thru 11-15-04; DFW 107-2004(Temp), f. & cert. ef. 10-18-04 thru 11-27-04; DFW 122-2004, f. 12-21-04, cert. ef. 1-1-05; DFW 26-2005, f. & cert. ef. 4-20-05

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Adm. Order No.: DFW 27-2005(Temp)

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 4-20-05 thru 6-15-05

Notice Publication Date:

Rules Amended: 635-023-0125, 635-042-0145, 635-042-0160, 635-042-0180

Subject: Amend rules to close harvest opportunities, both commercial and sport, in Select Areas, and amend rules to close mainstem Columbia River sport fisheries. Fisheries were closed consistent with Compact Action and Oregon State jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The 2005 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 2005 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from January 1, 2005 through May 15, 2005 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2005 through May 15, 2005 from the I-5 Bridge upstream to the Rooster Rock boundary line (defined as a line running north from Rooster Rock to the Washington shoreline perpendicular to the thread of the Columbia River) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River is open from March 16, 2005 through May 15, 2005, on Sundays, Mondays and Tuesdays, from the Rooster Rock boundary line upstream to the Bonneville Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limit of one adult salmon or steelhead and five jacks per day are in effect.

(4) The Columbia River is open from March 16, 2005 through May 15, 2005, from the Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(5) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for salmon, steelhead, and shad effective

at 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(6) Effective February 15, 2005 through May 15, 2005, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(7) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(8) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are closed to the harvest of salmon, steelhead, and shad effective 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(9) All other specifications and restrictions as outlined in the current 2005 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05

635-042-0145

Youngs Bay Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(a) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

(A) Winter Season:

6:00 p.m. February 16, 2005 – 6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005 – 12 Noon February 20, 2005;
6:00 p.m. February 23, 2005 – 6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005 – 12 Noon February 27, 2005;
6:00 p.m. March 2, 2005 – 6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005 – 12 Noon March 6, 2005;
6:00 p.m. March 9, 2005 – 6:00 a.m. March 10, 2005;
6:00 p.m. March 12, 2005 – 12 Noon March 13, 2005;
6:00 p.m. March 16, 2005 – 6:00 a.m. March 17, 2005.

(B) Spring Season:

6:00 p.m. April 28, 2005 – 6:00 a.m. April 29, 2005;
6:00 p.m. May 2, 2005 – 12 Noon May 3, 2005;
6:00 p.m. May 5, 2005 – 12 Noon May 6, 2005;
12 Noon May 9, 2005 – 12 Noon May 13, 2005;
12 Noon May 16, 2005 – 12 Noon May 20, 2005;
12 Noon May 23, 2005 – 12 Noon May 27, 2005;
12 Noon May 30, 2005 – 12 Noon June 3, 2005;
12 Noon June 6, 2005 – 12 Noon June 10, 2005;
12 Noon June 14, 2005 – 12 Noon June 17, 2005.

(C) Summer Season:

12 Noon June 22, 2005 – 12 Noon June 24, 2005;
12 Noon June 29, 2005 – 12 Noon July 1, 2005;
12 Noon July 6, 2005 – 6:00 p.m. July 7, 2005;
12 Noon July 13, 2005 – 6:00 p.m. July 14, 2005;
12 Noon July 20, 2005 – 6:00 p.m. July 21, 2005;
12 Noon July 27, 2005 – 6:00 p.m. July 28, 2005;

(b) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is unlawful to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

(c) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-51-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992 (Temp), f. 8-10-92,

ADMINISTRATIVE RULES

cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

February 16 – February 17, 2005;
February 19 – February 20, 2005;
February 23 – February 24, 2005;
February 26 – February 27, 2005;
March 2 – March 3, 2005;
March 5 – March 6, 2005; and
March 9 – March 10, 2005;
March 12 – March 13, 2005; and
March 16 – March 17, 2005.

(B) Blind and Knappa Sloughs:

April 28 – April 29, 2005;
May 2 – May 3, 2005;
May 5 – May 6, 2005;
May 9 – May 10, 2005;
May 12 – May 13, 2005;
May 16 – May 17, 2005;
May 19 – May 20, 2005;
May 23 – May 24, 2005;
May 26 – May 27, 2005;
May 30 – May 31, 2005;
June 2 – June 3, 2005;
June 6 – June 7, 2005;
June 9 – June 10, 2005;
June 13 – June 14, 2005; and
June 16 – June 17, 2005.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7- inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The

attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

April 28 – April 29, 2005;
May 2 – May 3, 2005;
May 5 – May 6, 2005;
May 9 – May 10, 2005;
May 26 – May 27, 2005;
May 30 – May 31, 2005;
June 2 – June 3, 2005;
June 6 – June 7, 2005;
June 9 – June 10, 2005;
June 13 – June 14, 2005; and
June 16 – June 17, 2005.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 506.109, 506.109, 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05

Adm. Order No.: DFW 28-2005(Temp)

Filed with Sec. of State: 4-28-2005

Certified to be Effective: 4-28-05 thru 6-16-05

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0180

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0180(T)

Subject: Amend rules to close commercial harvest opportunities in Select Areas, Youngs Bay, Blind/Knappa Slough and Deep River. Fisheries were closed consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005–12 Noon February 20, 2005;
6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005–12 Noon February 27, 2005;
6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005–12 Noon March 6, 2005;
6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;
6:00 p.m. March 12, 2005–12 Noon March 13, 2005;
6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(b) Spring Season:

6:00 p.m. May 5, 2005–12 Noon May 6, 2005;
12 Noon May 9, 2005–12 Noon May 13, 2005;
12 Noon May 16, 2005–12 Noon May 20, 2005;
12 Noon May 23, 2005–12 Noon May 27, 2005;
12 Noon May 30, 2005–12 Noon June 3, 2005;
12 Noon June 6, 2005–12 Noon June 10, 2005;
12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;
12 Noon June 29, 2005–12 Noon July 1, 2005;
12 Noon July 6, 2005–6:00 p.m. July 7, 2005;
12 Noon July 13, 2005–6:00 p.m. July 14, 2005;
12 Noon July 20, 2005–6:00 p.m. July 21, 2005;
12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(2) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

(3) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

(A) Blind Slough Only:

February 16–February 17, 2005;
February 19–February 20, 2005;
February 23–February 24, 2005;
February 26–February 27, 2005;
March 2–March 3, 2005;
March 5–March 6, 2005; and
March 9–March 10, 2005;
March 12–March 13, 2005; and
March 16–March 17, 2005.

(B) Blind and Knappa Sloughs:

May 5–May 6, 2005;
May 9–May 10, 2005;
May 12–May 13, 2005;
May 16–May 17, 2005;
May 19–May 20, 2005;
May 23–May 24, 2005;
May 26–May 27, 2005;
May 30–May 31, 2005;
June 2–June 3, 2005;
June 6–June 7, 2005;
June 9–June 10, 2005;
June 13–June 14, 2005; and
June 16–June 17, 2005.

(b) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

(c) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05

ADMINISTRATIVE RULES

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows:

April 28–April 29, 2005;
May 2–May 3, 2005;
May 5–May 6, 2005;
May 9–May 10, 2005;
May 26–May 27, 2005;
May 30–May 31, 2005;
June 2–June 3, 2005;
June 6–June 7, 2005;
June 9–June 10, 2005;
June 13–June 14, 2005; and
June 16–June 17, 2005.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

(4) A maximum of three white sturgeon may be possessed or sold by each participating vessel during each open period.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05

Adm. Order No.: DFW 29-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-004-0005

Subject: Amend rule in order to adopt actions that have been implemented by the federal government and International Pacific Halibut Commission for 2005 commercial fisheries for Pacific halibut in Oregon.

Rules Coordinator: Katie Thiel—(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 by Federal Regulations, Vol. 70, No. 74, dated April 19, 2005.** Therefore, persons must consult the **Federal Regulations** and the annual **Pacific Halibut Fishery Regulations** 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; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 29-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 30-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-004-0019

Rules Suspended: 635-004-0019(T)

Subject: Amend rule in order to adopt inseason actions that have been implemented by the federal government for commercial fisheries for groundfish.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0019

Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries.**

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G,** provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-01, announced inseason management changes, effective April 1, 2005, to commercial fisheries including limited entry fixed-gear sablefish tier limits, minor corrections to Rockfish Conservation Area (RCA) coordinates, and clarification of requirements when multiple gear types are on board limited entry trawl vessels.

(4) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-02, announced inseason management changes, effective May 1, 2005, to commercial fisheries including limited entry trawl trip limits and trawl gear definitions.

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

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & 506.129
Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 31-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-004-0033

Subject: Amend rules to reduce the two month commercial limited entry trip limit for nearshore rockfish other than black rockfish or blue rockfish from 450 lbs to 325 lbs, and to decrease the two month nearshore commercial limited entry trip limit for greenling from 350 lbs to 225 lbs, with an effective date of May 1, 2005.

Rules Coordinator: Katie Thiel—(503) 947-6033

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) Blue Rockfish;
- (f) Cabezon;
- (g) Canary Rockfish;
- (h) Greenling;
- (i) Tiger Rockfish;
- (j) Vermilion Rockfish;
- (k) Widow Rockfish;
- (l) Yelloweye Rockfish;
- (m) Yellowtail Rockfish;
- (n) Darkblotched Rockfish;
- (o) Pacific Ocean Perch;
- (p) Longspine Thornyhead;

ADMINISTRATIVE RULES

- (q) Shortspine Thornyhead;
- (r) Arrowtooth Flounder;
- (s) Dover Sole;
- (t) Petrale Sole;
- (u) Rex Sole;
- (v) Other Flatfish;
- (w) Lingcod;
- (x) Sablefish;
- (y) Pacific Whiting.

(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 2005, the commercial harvest caps are:

(a) Black rockfish and blue rockfish combined of 108.7 metric tons, of which no more than 104.8 metric tons may be black rockfish.

(b) Other nearshore rockfish, 12.0 metric tons.

(c) Cabezon, 31.3 metric tons.

(d) Greenling, 23.4 metric tons.

(3) For Oregon the following commercial limits apply for 2005:

(a) No vessel may land more than 2,000 pounds of cabezon or 225 pounds of greenling during any cumulative catch period described in subsection 635-004-0033(4);

(b) No vessel may land more than 325 pounds of nearshore rockfish species other than black rockfish or blue rockfish during any cumulative catch period described in subsection 635-004-0033(4);

(c) No vessel may land more than 1,000 pounds of nearshore rockfish for commercial purposes during cumulative catch periods January 1 – February 28 or March 1 – April 30;

(d) No vessel may land more than 1,500 pounds of nearshore rockfish for commercial purposes during cumulative catch periods May 1 – June 30 or July 1 – August 31;

(e) No vessel may land more than 800 pounds of nearshore rockfish for commercial purposes during cumulative catch period September 1 – October 31; and

(f) No vessel may land more than 500 pounds of nearshore rockfish for commercial purposes during cumulative catch period November 1 – December 31.

(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 & 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; DFW 76-2004(Temp), f. 7-23-04, cert. ef. 7-28-04 thru 12-31-04; DFW 100-2004(Temp), f. & cert. ef. 9-28-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 31-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 32-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-004-0020, 635-004-0040

Subject: Amend rule in order to adopt inseason actions that have been implemented by the federal government to clarify the definitions of selective flatfish trawl gear, small footrope trawl gear, and chafing gear, all used in commercial fisheries for groundfish.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0020

Definitions

As used in these regulations, unless the context requires otherwise:

(1) "At-sea processing" means processing that takes place on a vessel or other platform that floats and is capable of being moved from one location to another whether shoreside or on the water.

(2) "DTS complex" includes Dover sole (*Microstomus pacificus*), thornyhead (*Sebastolobus spp.*), and trawl-caught sablefish (blackcod, *Anoplopoma fimbria*).

(3) "Exclusive economic zone" means the zone between 3-200 nautical miles offshore of the United States.

(4) "Fishing gear" includes:

(a) "Beam trawl" means a trawl which is held open by a fixed beam frame;

(b) "Bobbin trawl" means the same as roller trawl, and is a type of bottom trawl;

(c) "Bottom trawl" means a trawl in which the otter boards or the footrope of the net contact the seabed, and includes Danish and Scottish seine gear. It also includes pair trawls fished on the bottom. Any trawl not meeting the requirements for pelagic trawls described in OAR 635-004-0040(5) is a bottom trawl;

(d) "Chafing gear" means webbing or other material attached to the codend of a trawl net to protect the codend from wear;

(e) "Codend" shall be defined as the last 50 mesh length constituting the terminal, closed end of a trawl. The meshes shall be counted forward of the pursing tackle which terminates the codend;

(f) "Double-ply mesh" or "Double-bar mesh" means two lengths of twine tied into a single knot;

(g) "Double-walled codend" means a codend constructed of two walls of webbing;

(h) "Fixed gear" means longline, trap or pot, setnet, and stationary hook-and-line gears;

(i) "Gill net" has the meaning as set forth in OAR 635-042-0010;

(j) "Hook-and-line" means one or more hooks attached to one or more lines;

(k) "Large footrope trawl gear" is a bottom trawl net with a footrope diameter larger than 8 inches (20 cm) (including rollers, bobbins or other material encircling or tied along the length of the footrope).

(l) "Longline" means a stationary buoyed, and anchored groundline with hooks attached;

(m) "Mesh size" means the opening between opposing knots. Minimum mesh size means the smallest distance allowed between the inside of one knot to the inside of the opposing knot regardless of twine size;

(n) "Nontrawl gear" means all legal commercial groundfish gear other than trawl gear;

(o) "Pelagic trawl" (midwater or off-bottom) means a trawl in which the otter boards may be in contact with the seabed but the footrope of the net remains above the seabed. It includes pair trawls if fished in midwater. A pelagic trawl has no rollers or bobbins on the net;

(p) "Pot or trap" means a portable, enclosed device with one or more gates or entrances and one or more lines attached to surface floats;

(q) "Roller trawl" or "bobbin trawl" are identical, and mean a trawl net with footropes equipped with rollers or bobbins made of wood, steel, rubber, plastic, or other hard material which protects the net and footrope during fishing on the seabed. A roller trawl is a type of bottom trawl;

(r) "Seine" means any nonfixed net other than a trawl net or gill net;

(s) "Selective flatfish trawl gear" is a type of small footrope trawl gear. The selective flatfish trawl net must be a two-seamed net with no more than two riblines, excluding the codend. The breastline may not be longer than 3 ft (0.92 m) in length. There may be no floats along the center third of the headrope or attached to the top panel except on the riblines. The footrope must be shorter than 105 ft (32.26 m) in length. The headrope must be at least 30% longer in length than the footrope. An explanatory diagram of a selective flatfish trawl net is provided as Figure 1 of Part 660, Subpart G in Title 50 Code of Federal Regulations.

(t) "Set net" means a stationary, buoyed and anchored gill net or trammel net;

(u) "Single-walled codend" means a codend constructed of a single wall of webbing knitted with single or double-ply mesh;

(v) "Small footrope trawl gear" is a bottom trawl net with a footrope diameter of 8 inches (20 cm) or smaller (including rollers, bobbins or other material encircling or tied along the length of the footrope). Other lines or ropes that run parallel to the footrope must not be augmented with material encircling or tied along their length such that they have a diameter larg-

ADMINISTRATIVE RULES

er than 8 inches (20 cm). For enforcement purposes, the footrope will be measured in a straight line from the outside edge to the opposite outside edge at the widest part on any individual part, including any individual disk, roller, bobbin, or any other device.

(w) "Trammel net" means a gill net made with two or more walls joined to a common float line;

(x) "Trawl net" means a cone or funnel-shaped net which is towed or drawn through the water by one or two vessels. Trawl nets are used both on bottom and off bottom. They may be fished with or without trawl doors. They may employ warps or cables to herd fish. Trawl nets are restricted to beam trawl, bobbin or roller trawl, bottom trawl and pelagic trawl;

(y) "Trawl riblines" means heavy rope or lines that run down the sides, top, or underside of a trawl net from the mouth of the net to the terminal end of the codend to strengthen the net during fishing;

(z) "Troll" has the meaning as set forth in OAR 635-003-0010;

(aa) "Vertical hook and line (Portuguese longline)" means a line attached to the vessel or to a surface buoy vertically suspended to the bottom by a weight or anchor, with hooks attached between its surface and bottom end.

(5) "Groundfish" means all species of ocean food fish defined as groundfish in the Pacific Coast Groundfish Fishery Management Plan and in the **Federal Groundfish Regulations, Title 50, Parts 660 and 663**.

(6) "Inland waters" means all waters of the state except the Pacific Ocean.

(7) "Land, landed, or landing" means to begin transfer of fish from a fishing vessel. Once transfer begins, all fish aboard the vessel are counted as part of the landing.

(8) "Length, total" is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length.

(9) Management lines include:

(a) "Cape Arago" means a line extending due west at 43 degrees 20 minutes 50 seconds north latitude;

(b) "Cape Blanco" means a line extending due west at 42 degrees 50 minutes 00 seconds north latitude;

(c) "Cape Falcon" means a line extending due west at 45 degrees 46 minutes 00 seconds north latitude;

(d) "Cape Lookout" means a line extending due west at 45 degrees 20 minutes 15 seconds north latitude;

(e) "Cascade Head" means a line extending due west at 45 degrees 03 minutes 50 seconds north latitude;

(f) "Heceta Head" means a line extending due west at 44 degrees 08 minutes 18 seconds north latitude;

(g) "Humbug Mountain" means a line extending due west at 42 degrees 40 minutes 30 seconds north latitude;

(h) "Mack Arch" means a line extending due west at 42 degrees 13 minutes 40 seconds north latitude.

(10) "Ocean food fish" includes all saltwater species of food fish except salmon, halibut, and shellfish whether found in fresh or salt water.

(11) "Pacific Ocean" means all water seaward of the end of the jetty or jetties of any river, bay, or tidal area, except in the Columbia River the Pacific Ocean has the definition prescribed in OAR 635-003-0005, or all water seaward of the extension of the shoreline high watermark across the river, bay, or tidal area where no jetties exist.

(12) "Rockfish" includes:

(a) aurora rockfish, *Sebastes aurora*;

(b) bank rockfish, *S. rufus*;

(c) black rockfish, *S. melanops*;

(d) black and yellow rockfish, *S. chrysomelas*;

(e) blackgill rockfish, *S. melanostomus*;

(f) Blue rockfish, *S. mystinus*;

(g) bocaccio, *S. paucispinus*;

(h) bronzespotted rockfish, *S. gilli*;

(i) brown rockfish, *S. auriculatus*;

(j) calico rockfish, *S. dalli*;

(k) California scorpionfish, *Scorpaena quttata*;

(l) canary rockfish, *Sebastes pinniger*;

(m) chilipepper, *S. goodei*;

(n) China rockfish, *S. nebulosus*;

(o) copper rockfish, *S. caurinus*;

(p) cowcod, *S. levis*;

(q) darkblotched rockfish, *S. crameri*;

(r) dusty rockfish, *S. ciliatus*;

(s) flag rockfish, *S. rubrivinctus*;

(t) gopher rockfish, *S. carnatus*;

(u) grass rockfish, *S. rastrelliger*;

(v) greenblotched rockfish, *S. rosenblatti*;

(w) greenspotted rockfish, *S. chlorostictus*;

(x) greenstriped rockfish, *S. elongatus*;

(y) harlequin rockfish, *S. variegatus*;

(z) honeycomb rockfish, *S. umbrosus*;

(aa) kelp rockfish, *S. atrovirens*;

(bb) longspine thornyhead, *Sebastolobus altivelis*;

(cc) Mexican rockfish, *Sebastes macdonaldi*;

(dd) olive rockfish, *S. serranoides*;

(ee) Pacific ocean perch, *S. alutus*;

(ff) pink rockfish, *S. eos*;

(gg) quillback rockfish, *S. maliger*;

(hh) redbanded rockfish, *S. babcocki*;

(ii) redstripe rockfish, *S. proriger*;

(jj) rosethorn rockfish, *S. helvomaculatus*;

(kk) rosy rockfish, *S. rosaceus*;

(ll) rougheye rockfish, *S. aleutianus*;

(mm) sharpchin rockfish, *S. zacentrus*;

(nn) shortbelly rockfish, *S. jordani*;

(oo) shortraker rockfish, *S. borealis*;

(pp) shortspine thornyhead, *Sebastolobus alascanus*;

(qq) silvergray rockfish, *Sebastes brevispinis*;

(rr) speckled rockfish, *S. ovalis*;

(ss) splitnose rockfish, *S. diploproa*;

(tt) squarespot rockfish, *S. hopkinsi*;

(uu) starry rockfish, *S. constellatus*;

(vv) stripetail rockfish, *S. saxicola*;

(ww) tiger rockfish, *S. nigrocinctus*;

(xx) treefish, *S. serriceps*;

(yy) vermilion rockfish, *S. miniatus*;

(zz) widow rockfish, *S. entomelas*;

(aaa) yelloweye rockfish, *S. ruberrimus*;

(bbb) yellowmouth rockfish, *S. reedi*.

(13) "Sebastes complex" means all rockfish managed by the **Pacific Coast Groundfish Fishery Management Plan** except Pacific ocean perch (*Sebastes alutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and thornyhead (*Sebastolobus spp.*). The Sebastes complex includes yellowtail rockfish (*Sebastes flavidus*).

(14) "Shore-based (shoreside) processors" means any facility where fish will be processed which is fixed permanently to land.

(15) "Tender" means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish dealer.

(16) "Trip limit" means the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip. A vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period as long as the fish are not landed until the next period:

(a) "Daily trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period;

(b) "Cumulative trip limit" means the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits apply to calendar months.

Stat. Auth.: ORS 496.138 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FWC 37, f. & ef. 1-23-76, Renumbered from 625-010-0545; FWC 49-1979, f. & ef. 11-1-79, Renumbered from 635-036-0270; FWC 10-1983, f. & ef. 3-1-83; FWC 1-1985(Temp), f. & ef. 1-4-85; FWC 5-1985, f. & ef. 2-19-85; FWC 17-1987(Temp), f. & ef. 5-7-87; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 28-1989(Temp), f. 4-25-89, cert. ef. 4-26-89; FWC 130-1990, f. 12-31-90, cert. ef. 1-1-91; FWC 67-1991, f. 6-25-91, cert. ef. 7-1-91; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 21-1992(Temp), f. 4-7-92, cert. ef. 5-1-92; FWC 36-1992, f. 5-26-92, cert. ef. 5-27-92; FWC 6-1993, f. 1-28-93, cert. ef. 2-1-93; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 45-1995, f. & cert. ef. 6-1-95; FWC 71-1996, f. 12-31-96, cert. ef. 1-1-97; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

635-004-0040

Trawl Net Restrictions

It is unlawful while trawling for ocean food fish to use gear not meeting the following specifications:

(1) Mesh size. Trawl nets may be used if they meet the minimum mesh sizes set forth below. The minimum sizes apply throughout the net. Minimum trawl mesh size requirements are met if a 20-gauge stainless steel

ADMINISTRATIVE RULES

wedge, 3.0 or 4.5 inches (7.62 or 11.43 cm) (depending on the gear being measured) less one thickness of the metal at the widest part, can be passed with thumb pressure only through 16 of 20 sets of two meshes each of wet mesh. [Table not included. See ED. NOTE.]

(2) Chafing gear. Chafing gear may encircle no more than 50 percent of the net's circumference, except as provided in section (5) of this rule. No section of chafing gear may be longer than 50 meshes of the net to which it is attached. Chafing gear may be used only on the last 50 meshes of a small footrope trawl, measured from the terminal (closed) end of the codend. Except at the corners, the terminal end of each section of chafing gear on all trawl gear must not be connected to the net. (The terminal end is the end farthest from the mouth of the net.) Chafing gear must be attached outside any riblines and restraining straps. There is no limit on the number of sections of chafing gear on a net.

(3) Codends. Only single-walled codends may be used in any trawl. Double-walled codends are prohibited.

(4) Bottom, roller or bobbin trawls. A net used in a bottom, roller or bobbin trawl must have at least two continuous riblines sewn to the net and extending from the mouth of the trawl net to the terminal end of the codend, if the fishing vessel is simultaneously carrying aboard a net of less than 4.5 inch (11.43 cm) mesh size.

(5) Pelagic trawls. Pelagic trawl nets must have unprotected footropes at the trawl mouth, and must not have rollers, bobbins, tires, wheels, rubber discs, or any similar device anywhere in the net. Sweeplines, including the bottom leg of the bridle, must be bare. For at least 20 ft. (6.15m) immediately behind the footrope or headrope, bare ropes or mesh of 16-inch (40.6-cm) minimum mesh size must completely encircle the net. A band of mesh (a "skirt") may encircle the net under transfer cables, lifting or splitting straps (chokers), but must be: over riblines and restraining straps; the same mesh size and coincide knot-to-knot with the net to which it is attached; and no wider than 16 meshes.

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

Stat. Auth.: ORS 506.119 & 506.129

Stats. Implemented: ORS 506.119 & 506.129

Hist.: FC 246, f. 5-5-72, ef. 5-15-72, Renumbered from 625-010-0560, Renumbered from 635-036-0285; FWC 10-1983, f. & ef. 3-1-83; FWC 54-1985(Temp), f. & ef. 8-30-85; FWC 82-1985, f. 12-16-85, ef. 1-1-86; FWC 103-1988, f. 12-29-88, cert. ef. 1-1-89; FWC 112-1990, f. 10-3-90, cert. ef. 10-5-90; FWC 141-1991, f. 12-31-91, cert. ef. 1-1-92; FWC 49-1995, f. 6-7-95, cert. ef. 9-8-95; DFW 32-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 33-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-039-0080

Subject: Amend rule in order to adopt annual regulations that have been implemented by the federal government and the International Pacific Halibut Commission for the 2005 recreational fishery for Pacific halibut in Oregon.

Rules Coordinator: Katie Thiel—(503) 947-6033

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) The sport fishing regulations of the State, included in the document entitled **2005 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2005 Oregon Sport Fishing Regulations** in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

(b) The Pacific Council Decisions document dated November 2004 (copy available from agency); and to the extent consistent with that document, Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); Federal Regulations, Vol. 70, No. 74, dated April 19, 2005; and the annual Pacific Halibut Fishery Regulations to determine regulations applicable to this fishery.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; 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; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 34-2005(Temp)

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-039-0090

Subject: Amend rule to adopt inseason actions that have been implemented by the National Marine Fisheries Service for groundfish harvest in the recreational fishery for Pacific halibut.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-039-0090

Inclusions and Modifications

(1) The **2005 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 **2005 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "harvest target" is defined as the Oregon share of the regional recreational harvest guideline for yelloweye rockfish, canary rockfish or lingcod that may be harvested by the Oregon sport fishery in a single calendar year.

(a) The regional recreational harvest guidelines for these species in 2005 are specified in the Pacific Council News, and to the extent they are consistent with these rules, in 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).

(b) Harvest targets for yelloweye rockfish, canary rockfish and lingcod effective at the start of the Oregon sport fishery in 2005 are:

(A) Yelloweye rockfish, 3.2 metric tons.

(B) Canary rockfish, 6.8 metric tons.

(C) Lingcod, 151 metric tons.

(c) Harvest targets for yelloweye rockfish, canary rockfish and lingcod may be revised inseason following consultation with Washington Department of Fish and Wildlife provided that:

(A) Regional recreational harvest guidelines for these species are not projected to be exceeded as a result of any inseason revisions to a harvest target or targets; and

(B) Inseason revisions to the harvest target or targets benefit the Oregon sport fishery.

(3) For the purposes of this rule, the Oregon recreational harvest guideline for widow rockfish is 1.4 metric tons.

(4) 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 2005 the sport harvest caps are:

(a) Black rockfish and blue rockfish combined of 372.5 metric tons, of which no more than 332 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.

(5) In addition to the regulations for Marine Fish in the 2005 Oregon Sport Fishing Regulations, the following apply for the sport fishery in the Marine Zone in 2005:

(a) Lingcod (including green colored lingcod): 2 fish daily catch limit.

(b) Rockfish ("sea bass," "snapper"), greenling ("sea trout"), flounder (excluding Pacific halibut), sole, cabezon and other marine fish species not listed in the 2005 Sport Fishing Regulations in the Marine Zone, located under the category of Species Name, Marine Fish: 8 fish daily catch limit in aggregate (total sum or number). Retention of yelloweye rockfish and canary rockfish is prohibited.

(c) When allowed by federal groundfish regulations, retention of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut in the central coast fishery between Cape Falcon and Humbug Mountain. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

ADMINISTRATIVE RULES

(d) When allowed by federal groundfish regulations, landing of all marine fish, except sablefish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species, is prohibited when Pacific halibut is retained on the vessel during open days for the Columbia River sport fishery for Pacific halibut north of Cape Falcon. Persons must also consult the Pacific Council Decisions; Title 50 of the Code of Federal Regulations, Part 300, Subpart E (61FR35550, July 5, 1996); and the annual Pacific Halibut Fishery Regulations as published by IPHC to determine all rules applicable to the taking of halibut.

(e) Harvest methods and other specifications for marine fish in subsections (5)(a) and (b) including the following:

(A) Minimum length for lingcod, 24 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (5)(a) and (b) are open January 1 through December 31, 24 hours per day, except that ocean waters are closed for these species during June 1 through September 30, outside of the 40-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 391 subsection (h).

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; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05

Adm. Order No.: DFW 35-2005(Temp)

Filed with Sec. of State: 5-4-2005

Certified to be Effective: 5-5-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: Adoption of this rule will re-open recreational fishing opportunity for hatchery spring chinook in the Select Areas of Youngs Bay, Blind Slough/Knappa Slough, and Deep River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The **2005 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 **2005 Oregon Sport Fishing Regulations**.

(2) The Columbia River is open from January 1, 2005 through May 15, 2005 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2005 through May 15, 2005 from the I-5 Bridge upstream to the Rooster Rock boundary line (defined as a line running north from Rooster Rock to the Washington shoreline perpendicular to the thread of the Columbia River) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River is open from March 16, 2005 through May 15, 2005, on Sundays, Mondays and Tuesdays, from the Rooster Rock

boundary line upstream to the Bonneville Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limit of one adult salmon or steelhead and five jacks per day are in effect.

(4) The Columbia River is open from March 16, 2005 through May 15, 2005, from the Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(5) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for salmon, steelhead, and shad effective at 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(6) Effective February 15, 2005 through May 15, 2005, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(7) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(8) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knappa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are closed to the harvest of salmon, steelhead, and shad effective 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(9) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knappa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are open to the harvest of salmon, steelhead, and shad effective 12:01 AM, May 5, 2005.

(10) All other specifications and restrictions as outlined in the current **2005 Oregon Sport Fishing Regulations** apply.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05

Adm. Order No.: DFW 36-2005(Temp)

Filed with Sec. of State: 5-4-2005

Certified to be Effective: 5-4-05 thru 10-27-05

Notice Publication Date:

Rules Amended: 635-003-0077

Subject: This rule requires that vessels fishing in the area north of Cape Falcon, OR must land in the area or in Garibaldi, OR and must notify ODFW for the purposes of accurate quota tracking. The regulation was developed in the 2005 PFMC process.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-003-0077

US-Canada Border to Cape Falcon

Vessels must land their fish within 24 hours of any closure. Vessels fishing north of Leadbetter Point, WA must land their fish within the area north of Leadbetter Point. Vessels fishing south of Leadbetter Point must land their fish within the area south Leadbetter Point except that Oregon permitted vessels may also land their fish in Garibaldi, Oregon. All vessels landing salmon into Oregon from any fishery between Leadbetter Point, WA and Cape Falcon, Oregon, must notify ODFW within one hour of delivery or prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number,

ADMINISTRATIVE RULES

number of salmon by species, port of landing and location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: DFW 6-2005, f. & cert. ef. 2-14-05; DFW 36-2005(Temp), f. & cert. ef. 5-4-05 thru 10-27-05

Adm. Order No.: DFW 37-2005(Temp)

Filed with Sec. of State: 5-5-2005

Certified to be Effective: 5-5-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0180

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0180(T)

Subject: Amend rules to rescind and modify commercial harvest opportunities in Select Areas: Youngs Bay, Blind/Knappa Slough and Deep River. Fisheries are modified consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) In the fishing period of May 5, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Youngs Bay bridge (alternate Highway 101) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(2) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (A), the spring fishery, paragraph (B), and summer fishery, paragraph (C), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005 – 6:00 a.m. February 17, 2005;
6:00 p.m. February 19, 2005 – 12 Noon February 20, 2005;
6:00 p.m. February 23, 2005 – 6:00 a.m. February 24, 2005;
6:00 p.m. February 26, 2005 – 12 Noon February 27, 2005;
6:00 p.m. March 2, 2005 – 6:00 a.m. March 3, 2005;
6:00 p.m. March 5, 2005 – 12 Noon March 6, 2005;
6:00 p.m. March 9, 2005 – 6:00 a.m. March 10, 2005;
6:00 p.m. March 12, 2005 – 12 Noon March 13, 2005;
6:00 p.m. March 16, 2005 – 6:00 a.m. March 17, 2005.

(b) Spring Season:

4:00 p.m. May 5, 2005 – 8:00 p.m. May 5, 2005;
12 Noon May 16, 2005 – 12 Noon May 20, 2005;
12 Noon May 23, 2005 – 12 Noon May 27, 2005;
12 Noon May 30, 2005 – 12 Noon June 3, 2005;
12 Noon June 6, 2005 – 12 Noon June 10, 2005;
12 Noon June 14, 2005 – 12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005 – 12 Noon June 24, 2005;
12 Noon June 29, 2005 – 12 Noon July 1, 2005;
12 Noon July 6, 2005 – 6:00 p.m. July 7, 2005;
12 Noon July 13, 2005 – 6:00 p.m. July 14, 2005;
12 Noon July 20, 2005 – 6:00 p.m. July 21, 2005;
12 Noon July 27, 2005 – 6:00 p.m. July 28, 2005;

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & cert. ef. 8-22-79; FWC 28-1980, f. & cert. ef. 6-23-80; FWC 42-1980(Temp), f. & cert. ef. 8-22-80; FWC 30-1981, f. & cert. ef. 8-14-81; FWC 42-1981(Temp), f. & cert. ef. 11-5-81; FWC 54-1982, f. & cert. ef. 8-17-82; FWC 37-1983, f. & cert. ef. 8-18-83; FWC 61-1983(Temp), f. & cert. ef. 10-19-83; FWC 42-1984, f. & cert. ef. 8-20-84; FWC 39-1985, f. & cert. ef. 8-15-85; FWC 37-1986, f. & cert. ef. 8-11-86; FWC 72-1986(Temp), f. & cert. ef. 10-31-86; FWC 64-1987, f. & cert. ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. & cert. ef. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. & cert. ef. 8-19-90; FWC 86-1991, f. & cert. ef. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. & cert. ef. 5-25-92; FWC 74-1992 (Temp), f. & cert. ef. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. & cert. ef. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. & cert. ef. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. & cert. ef. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. & cert. ef. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. & cert. ef. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. & cert. ef. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. & cert. ef. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. & cert. ef. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. & cert. ef. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. & cert. ef. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97;

FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. & cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. & cert. ef. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. & cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. & cert. ef. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. & cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. & cert. ef. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05

635-042-0160

Blind Slough and Knappa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knappa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knappa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows except that for the fishing period of May 5, the season is open for six hours from 6:00 p.m. to midnight:

(A) Blind Slough Only:

February 16 – February 17, 2005;
February 19 – February 20, 2005;
February 23 – February 24, 2005;
February 26 – February 27, 2005;
March 2 – March 3, 2005;
March 12 – March 13, 2005; and
March 16 – March 17, 2005;
May 5, 2005.

(B) Blind and Knappa Sloughs:

May 12 – May 13, 2005;
May 16 – May 17, 2005;
May 19 – May 20, 2005;
May 23 – May 24, 2005;
May 26 – May 27, 2005;
May 30 – May 31, 2005;
June 2 – June 3, 2005;
June 6 – June 7, 2005;
June 9 – June 10, 2005;
June 13 – June 14, 2005 and
June 16 – June 17, 2005.

(b) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is less than 7-inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp),

ADMINISTRATIVE RULES

f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp) f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04 cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows except that for the fishing period of May 5, the season is open for six hours from 6:00 p.m. to midnight:

May 5, 2005 May 12-May 13, 2005;
May 16-May 17, 2005;
May 19-May 20, 2005;
May 23-May 24, 2005;
May 26 – May 27, 2005;
May 30 – May 31, 2005;
June 2 – June 3, 2005;
June 6 – June 7, 2005;
June 9 – June 10, 2005;
June 13 – June 14, 2005; and
June 16 – June 17, 2005.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is unlawful to use a gill net having a mesh size that is more than 8-inches. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05

Adm. Order No.: DFW 38-2005(Temp)

Filed with Sec. of State: 5-10-2005

Certified to be Effective: 5-10-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-023-0125

Rules Suspended: 635-023-0125(T)

Subject: Amend rules to rescind sport shad and steelhead season on the Columbia River. Fisheries were rescinded consistent with Compact Action.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-023-0125

Spring Sport Fishery

(1) The 2005 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 2005 Oregon Sport Fishing Regulations.

(2) The Columbia River is open from January 1, 2005 through May 15, 2005 from the mouth at Buoy 10 upstream to the I-5 Bridge and from March 16, 2005 through May 15, 2005 from the I-5 Bridge upstream to the

Rooster Rock boundary line (defined as a line running north from Rooster Rock to the Washington shoreline perpendicular to the thread of the Columbia River) with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(3) The Columbia River is open from March 16, 2005 through May 15, 2005, on Sundays, Mondays and Tuesdays, from the Rooster Rock boundary line upstream to the Bonneville Dam with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limit of one adult salmon or steelhead and five jacks per day are in effect.

(4) The Columbia River is open from March 16, 2005 through May 15, 2005, from the Tower Island power lines upstream to McNary Dam plus the Oregon bank between Bonneville Dam and the Tower Island power lines with the following restrictions:

(a) Adipose fin-clipped chinook salmon, adipose fin-clipped steelhead and shad may be retained.

(b) All non-adipose fin-clipped chinook salmon and non-adipose fin-clipped steelhead must be released immediately unharmed.

(c) Catch limits of two adult salmon or steelhead and five jacks per day are in effect as per permanent regulations.

(5) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for salmon, steelhead, and shad effective at 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(6) The Columbia River from the mouth at Buoy 10 upstream to McNary Dam is closed to angling for shad in addition to closure described in section (5) above.

(7) The Columbia River from the mouth at Buoy 10 upstream to the I-5 Bridge is closed to angling for steelhead in addition to closure described in section (5) above.

(8) Effective February 15, 2005 through May 15, 2005, in the mainstem Columbia River upstream of the Rocky Point/Tongue Point line it is unlawful when fishing from vessels which are less than 30 feet in length, substantiated by Coast Guard documentation or Marine Board Registration, to totally remove from the water any salmon or steelhead required to be released.

(9) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(10) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knapapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are closed to the harvest of salmon, steelhead, and shad effective 11:59 PM, April 20, 2005 and reverts to permanent angling regulations effective 12:01 AM, May 16, 2005.

(11) The Youngs Bay Select Area, the Deep River Select Area, and the Blind Slough/Knapapa Slough Select Area including Gnat Creek from the Railroad Bridge up to Aldrich Pt. Road Bridge, are open to the harvest of salmon, steelhead, and shad effective 12:01AM, May 5, 2005.

(12) All other specifications and restrictions as outlined in the current 2005 Oregon Sport Fishing Regulations apply.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05

Adm. Order No.: DFW 39-2005(Temp)

Filed with Sec. of State: 5-10-2005

Certified to be Effective: 5-10-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-042-0110

ADMINISTRATIVE RULES

Subject: Amend rules to rescind commercial harvest opportunities in Gary Island to Bonneville Dam Shad Season. Fisheries were rescinded consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0110

Gary Island to Bonneville Dam Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 3:00 p.m. to 10:00 p.m. during the following open fishing periods:

(2) The area of the Columbia River open to fishing is from a downstream boundary of a true north/south line through the flashing red 4-second Light "50" near the Oregon bank to an upstream boundary of a straight line from a deadline marker on the Oregon bank to a deadline marker on the Washington bank, both such deadline markers located approximately five miles downstream from Bonneville Dam.

(3) It is *unlawful* to use a gill net having a mesh size less than 5-3/8 inches or more than 6-1/4 inches with a breaking strength greater than a 10-pound pull, or to use a gill net other than a single wall floater net, or to use a gill net having slackers, or to use a gill net of more than 150 fathoms in length or 40 meshes in depth. Rip lines are authorized spaced not closer than 20 corks apart.

(4) All salmon, steelhead, walleye and sturgeon taken in shad nets must be immediately returned unharmed to the water.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 116(Temp), f. & ef. 6-1-77 thru 6-3-77; FWC 124(Temp), f. & ef. 6-17-77 thru 10-14-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0275; FWC 6-1980, f. & ef. 1-28-80; FWC 25-1980(Temp), f. & ef. 6-13-80; FWC 1-1981, f. & ef. 1-19-81; FWC 18-1981(Temp), f. & ef. 6-10-81; FWC 6-1982, f. & ef. 1-28-82; FWC 36-1982(Temp), f. & ef. 6-11-82; FWC 2-1983, f. & ef. 1-21-83, ef. 2-1-83; FWC 21-1983(Temp), f. & ef. 6-10-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 19-1985, f. & ef. 5-1-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 16-1986(Temp), f. & ef. 5-23-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 23-1987(Temp), f. & ef. 5-20-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 10-1991, f. 2-7-91, cert. ef. 2-8-91; FWC 8-1992, f. & cert. ef. 2-11-92; FWC 34-1992(Temp), f. 5-19-92, cert. ef. 5-20-92; FWC 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 36-2000(Temp), f. 6-28-00, cert. ef. 6-28-00 thru 7-1-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 39-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05

Adm. Order No.: DFW 40-2005(Temp)

Filed with Sec. of State: 5-10-2005

Certified to be Effective: 5-10-05 thru 10-16-05

Notice Publication Date:

Rules Amended: 635-042-0145, 635-042-0160, 635-042-0180

Rules Suspended: 635-042-0145(T), 635-042-0160(T), 635-042-0180(T)

Subject: Amend rules to rescind and modify commercial harvest opportunities in Select Areas: Youngs Bay, Blind/Knapa Slough and Deep River. Fisheries are modified consistent with Compact Action and Oregon State Jurisdiction.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-042-0145

Youngs Bay Salmon Season

Salmon, sturgeon, and shad may be taken for commercial purposes in those waters of Youngs Bay from the Highway 101 Bridge upstream to the upper boundary markers at the confluence of the Klaskanine and Youngs rivers; except for those waters which are closed southerly of the alternate Highway 101 Bridge (Lewis and Clark River).

(1) In the fishing period of May 5, salmon, sturgeon, and shad may be taken for commercial purposes only in those waters of Youngs Bay extending upstream of the old Youngs Bay bridge (alternate Highway 101) to the upper boundary at the confluence of the Youngs and Klaskanine rivers.

(2) The open fishing periods are established in three segments categorized as the winter fishery, paragraph (a), the spring fishery, paragraph (b), and summer fishery, paragraph (c), as follows:

(a) Winter Season:

6:00 p.m. February 16, 2005–6:00 a.m. February 17, 2005;

6:00 p.m. February 19, 2005–12 Noon February 20, 2005;

6:00 p.m. February 23, 2005–6:00 a.m. February 24, 2005;

6:00 p.m. February 26, 2005–12 Noon February 27, 2005;

6:00 p.m. March 2, 2005–6:00 a.m. March 3, 2005;

6:00 p.m. March 5, 2005–12 Noon March 6, 2005;

6:00 p.m. March 9, 2005–6:00 a.m. March 10, 2005;

6:00 p.m. March 12, 2005–12 Noon March 13, 2005;

6:00 p.m. March 16, 2005–6:00 a.m. March 17, 2005.

(b) Spring Season:

4:00 p.m. May 5, 2005–8:00 p.m. May 5, 2005;

8:00 p.m. May 10, 2005–12 Midnight May 10, 2005;

8:00 p.m. May 12, 2005–2:00 a.m. May 13, 2005;

6:00 p.m. May 16, 2005–6:00 a.m. May 17, 2005;

12 Noon May 23, 2005–12 Noon May 27, 2005;

12 Noon May 30, 2005–12 Noon June 3, 2005;

12 Noon June 6, 2005–12 Noon June 10, 2005;

12 Noon June 14, 2005–12 Noon June 17, 2005.

(c) Summer Season:

12 Noon June 22, 2005–12 Noon June 24, 2005;

12 Noon June 29, 2005–12 Noon July 1, 2005;

12 Noon July 6, 2005–6:00 p.m. July 7, 2005;

12 Noon July 13, 2005–6:00 p.m. July 14, 2005;

12 Noon July 20, 2005–6:00 p.m. July 21, 2005;

12 Noon July 27, 2005–6:00 p.m. July 28, 2005.

(3) Gill nets may not exceed 1,500 feet (250 fathoms) in length and weight may not exceed two pounds per any fathom. Monofilament gillnets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches during the winter season from February 16, 2005 to March 17, 2005. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches during the spring and summer seasons from April 21, 2005 to July 28, 2005.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: FWC 32-1979, f. & ef. 8-22-79; FWC 28-1980, f. & ef. 6-23-80; FWC 42-1980(Temp), f. & ef. 8-22-80; FWC 30-1981, f. & ef. 8-14-81; FWC 42-1981(Temp), f. & ef. 11-5-81; FWC 54-1982, f. & ef. 8-17-82; FWC 37-1983, f. & ef. 8-18-83; FWC 61-1983(Temp), f. & ef. 10-19-83; FWC 42-1984, f. & ef. 8-20-84; FWC 39-1985, f. & ef. 8-15-85; FWC 37-1986, f. & ef. 8-11-86; FWC 72-1986(Temp), f. & ef. 10-31-86; FWC 64-1987, f. & ef. 8-7-87; FWC 73-1988, f. & cert. ef. 8-19-88; FWC 55-1989(Temp), f. 8-7-89, cert. ef. 8-20-89; FWC 82-1990(Temp), f. 8-14-90, cert. ef. 8-19-90; FWC 86-1991, f. 8-7-91, cert. ef. 8-18-91; FWC 123-1991(Temp), f. & cert. ef. 10-21-91; FWC 30-1992(Temp), f. & cert. ef. 4-27-92; FWC 35-1992(Temp), f. 5-22-92, cert. ef. 5-25-92; FWC 74-1992(Temp), f. 8-10-92, cert. ef. 8-16-92; FWC 28-1993(Temp), f. & cert. ef. 4-26-93; FWC 48-1993, f. 8-6-93, cert. ef. 8-9-93; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 51-1994, f. 8-19-94, cert. ef. 8-22-94; FWC 64-1994(Temp), f. 9-14-94, cert. ef. 9-15-94; FWC 66-1994(Temp), f. & cert. ef. 9-20-94; FWC 27-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 48-1995(Temp), f. & cert. ef. 6-5-95; FWC 66-1995, f. 8-22-95, cert. ef. 8-27-95; FWC 69-1995, f. 8-25-95, cert. ef. 8-27-95; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 37-1996(Temp), f. 6-11-96, cert. ef. 6-12-96; FWC 41-1996, f. & cert. ef. 8-12-96; FWC 45-1996(Temp), f. 8-16-96, cert. ef. 8-19-96; FWC 54-1996(Temp), f. & cert. ef. 9-23-96; FWC 4-1997, f. & cert. ef. 1-30-97; FWC 47-1997, f. & cert. ef. 8-15-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 18-1998(Temp), f. 3-9-98, cert. ef. 3-11-98 thru 3-31-98; DFW 60-1998(Temp), f. & cert. ef. 8-7-98 thru 8-21-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 52-1999(Temp), f. & cert. ef. 8-2-99 thru 8-6-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 66-2001(Temp), f. 8-2-01, cert. ef. 8-6-01 thru 8-14-01; DFW 76-2001(Temp), f. & cert. ef. 8-20-01 thru 10-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 82-2002(Temp), f. 8-5-02, cert. ef. 8-7-02 thru 9-1-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 17-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 8-1-03; DFW 32-2003(Temp), f. & cert. ef. 4-23-03 thru 8-1-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 37-2003(Temp), f. & cert. ef. 5-7-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 15-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05

635-042-0160

Blind Slough and Knapa Slough Select Area Salmon Season

(1) Salmon, sturgeon, and shad may be taken for commercial purposes during open fishing periods described as the winter fishery and the spring fishery in paragraphs (1)(a)(A) or (1)(a)(B) of this rule in those waters of Blind Slough. Blind Slough is those waters adjoining the Columbia River which extend from markers at the mouth of Blind Slough upstream to markers at the mouth of Gnat Creek which is located approximately 1/2 mile upstream of the county road bridge. In addition, Knapa Slough is open to fishing for salmon, sturgeon and shad during open fishing periods described as the spring fishery in paragraph (1)(a)(B) of this rule. Knapa Slough is all waters bounded by a line from the northerly most marker at the mouth of Blind Slough westerly to a marker on Karlson Island downstream to a north-south line defined by a marker on the eastern

ADMINISTRATIVE RULES

end of Minaker Island to markers on Karlson Island and the Oregon shore. The following restrictions apply:

(a) The open fishing periods are established in segments categorized as the winter fishery in Blind Slough only in paragraph (A), and the spring fishery in paragraph (B). The seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows except that for the fishing period of May 5, the season is open for six hours from 6:00 p.m. to midnight:

(A) **Blind Slough Only:**
February 16–February 17, 2005;
February 19–February 20, 2005;
February 23–February 24, 2005;
February 26–February 27, 2005;
March 2–March 3, 2005;
March 12–March 13, 2005; and
March 16–March 17, 2005; May 5, 2005.

(B) **Blind and Knappa Sloughs:**
May 10–May 11, 2005;
May 12–May 13, 2005;
May 19–May 20, 2005;
May 23–May 24, 2005;
May 26–May 27, 2005;
May 30–May 31, 2005;
June 2–June 3, 2005;
June 6–June 7, 2005;
June 9–June 10, 2005;
June 13–June 14, 2005; and
June 16–June 17, 2005.

(b) Gear restrictions are as follows:

(A) During the winter fishery, outlined above (1)(a)(A), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is less than 7-inches;

(B) During the spring fishery, outlined above (1)(a)(B), gill nets may not exceed 100 fathoms in length with no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

(2) Oregon licenses are required in the open waters upstream from the railroad bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998(Temp), f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 48-1999(Temp), f. & cert. ef. 6-24-99 thru 7-2-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 65-2000(Temp), f. 9-22-00, cert. ef. 9-25-00 thru 12-31-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 86-2001, f. & cert. ef. 9-4-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 14-2002(Temp), f. 2-13-02, cert. ef. 2-18-02 thru 8-17-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 4-30-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 19-2004(Temp), f. & cert. ef. 3-12-04 thru 3-31-04; DFW 22-2004(Temp), f. & cert. ef. 3-18-04 thru 3-31-04; DFW 28-2004(Temp), f. 4-8-04, cert. ef. 4-12-04 thru 4-15-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 16-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; Administrative correction 4-20-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05

635-042-0180

Deep River Select Area Salmon Season

(1) Salmon, shad, and sturgeon may be taken for commercial purposes from the US Coast Guard navigation marker #16 upstream to the Highway 4 Bridge.

(2) The fishing seasons are open nightly, 7:00 p.m. to 7:00 a.m. the following morning (12 hours), as follows except that for the fishing period of May 5, the season is open for six hours from 6:00 p.m. to midnight:

May 5, 2005;
May 10–May 11, 2005;
May 12–May 13, 2005;
May 19–May 20, 2005;
May 23–May 24, 2005;
May 26–May 27, 2005;
May 30–May 31, 2005;
June 2–June 3, 2005;
June 6–June 7, 2005;
June 9–June 10, 2005;
June 13–June 14, 2005; and
June 16–June 17, 2005.

(3) Gill nets may not exceed 100 fathoms in length and there is no weight limit on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. Monofilament gill nets are allowed. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. Nets may not be tied off to stationary structures and may not fully cross navigation channel.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 19-2003(Temp), f. 3-12-03, cert. ef. 4-17-03 thru 6-13-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. 9-8-03, cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. 5-5-04, cert. ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 79-2004(Temp), f. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 28-2005(Temp), f. & cert. ef. 4-28-05 thru 6-16-05; DFW 37-2005(Temp), f. & cert. ef. 5-5-05 thru 10-16-05; DFW 40-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05

Adm. Order No.: DFW 41-2005(Temp)

Filed with Sec. of State: 5-13-2005

Certified to be Effective: 5-15-05 thru 7-31-05

Notice Publication Date:

Rules Amended: 635-018-0090

Rules Suspended: 635-018-0090(T)

Subject: Amend rule to close the sport harvest of hatchery spring chinook in the Deschutes River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-018-0090

Inclusions and Modifications

(1) The **2005 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 **2005 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls and the Hood River from the mouth to the Powerdale Dam are open to the retention of adipose fin-clipped chinook salmon April 15 to July 31, 2005.

(a) The catch limit is two adult adipose fin-clipped salmon per day and five adipose fin-clipped jack salmon per day.

(b) All nonadipose fin-clipped salmon must be released unharmed.

(c) It is *unlawful* to continue to angle for jack salmon, steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

(3) The Deschutes River is closed to the retention of adipose fin-clipped chinook salmon effective 11:59 p.m. May 15, 2005.

Stat. Auth.: ORS 496.138 & 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; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04. Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05

ADMINISTRATIVE RULES

Adm. Order No.: DFW 42-2005(Temp)

Filed with Sec. of State: 5-13-2005

Certified to be Effective: 5-13-05 thru 9-1-05

Notice Publication Date:

Rules Amended: 635-019-0090

Subject: Amend rules to implement partial closure of the Umatilla River to angling for spring chinook salmon.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-019-0090

Inclusions and Modifications

(1) The **2005 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 **2005 Oregon Sport Fishing Regulations**.

(2) The Umatilla River from Highway 730 Bridge upstream to the reservation boundary located upstream from Highway 11 Bridge at Pendleton is closed to angling for spring chinook salmon effective 11:59 p.m., May 13, 2005.

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp), f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05

Adm. Order No.: DFW 43-2005(Temp)

Filed with Sec. of State: 5-13-2005

Certified to be Effective: 5-13-05 thru 10-17-05

Notice Publication Date:

Rules Amended: 635-004-0019

Rules Suspended: 635-004-0019(T)

Subject: Amend rule in order to adopt inseason actions that have been implemented by the federal government for commercial fisheries for groundfish.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-004-0019

Inclusions and Modifications

(1) OAR Chapter 635, Division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G**, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-01, announced inseason management changes, effective April 1, 2005, to commercial fisheries including limited entry fixed-gear sablefish tier limits, minor corrections to Rockfish Conservation Area (RCA) coordi-

nates, and clarification of requirements when multiple gear types are on board limited entry trawl vessels.

(4) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-02, announced inseason management changes, effective May 1, 2005, to commercial fisheries including limited entry trawl trip limits and trawl gear definitions.

(5) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-03, announced inseason management changes, effective May 3, 2005, to set bycatch limits on directed open access commercial fisheries for groundfish.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), f. & cert. ef. 4-8-05 thru 10-4-05; DFW 30-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 43-2005(Temp), f. & cert. ef. 5-13-05 thru 10-17-05

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

Adm. Order No.: OMAP 26-2005

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 6-1-05

Notice Publication Date: 4-1-05

Rules Adopted: 410-147-0365

Subject: The Federally Qualified Health Centers (FQHC) and Rural Health Clinics (RHC) program rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to clients. OMAP permanently adopted 410-147-0365 to allow OMAP to reimburse qualified RHCs, located in frontier and remote rural counties, at 100% of reasonable costs associated uniquely to obstetrical (OB) care under an OB Prospective Payment System (PPS) rate. This rule was temporarily adopted in March 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-147-0365

Independent Frontier and Remote Rural Health Clinic (RHC) Alternate Payment Methodology (APM) for Obstetrics (OB) Care

(1) Medicare certified independent RHC, as defined below, may be eligible to request an APM payment for professional services for OB care under the Prospective Payment System (PPS) based on December 1, 2004 RHC OB care rates, contingent upon federal approval of the State Plan Amendment. The intent of the APM encounter rate is to maintain access to OB care in frontier and remote rural areas and to compensate eligible clinics for professional costs uniquely associated with OB care equal to PPS rate or higher, not to exceed 100% of reasonable cost.

(2) To be eligible for the APM OB encounter rate, an RHC must be Medicare certified, be independent, must meet all Office of Medical Assistance Programs (OMAP) requirements applicable to an RHC, qualify as either "frontier" or "remote rural" as defined below, and must request to participate in writing pursuant to participation requirements specified in (3) below.

(a) Frontier RHC is defined as:

(A) Located in a frontier county as designated by the Oregon Office of Rural Health; and

(B) Population density of six people per square mile or less; and

(C) The clinic serves Medicaid and uninsured clients.

(b) Remote rural RHC is defined as:

(A) Located in a remote rural service area as designated by the Oregon Office of Rural Health; and

(B) More than 20 miles from a population center of 10,000 or more and is not within a frontier area; and

(C) The location of the clinic is in a community with less than 10,000 residents; and

(D) The community has less than 1 obstetrician per 10,000 population; and

(E) The clinic serves Medicaid and uninsured clients.

(3) If the frontier or remote RHC qualifies under (2) in rule and other requirements outlined by OMAP, the clinic must provide OMAP all

ADMINISTRATIVE RULES

required documentation necessary to qualify for the OB APM encounter rate.

(a) An eligible RHC must submit a written request to OMAP for the OB APM encounter rate. The written request needs to include all documentation required in (5) below.

(b) RHCs that met the requirements in (2) on December 1, 2004 may bill, using the OB APM encounter rate effective December 1, 2004, provided cost documentation required in (5) is provided to OMAP within 30 days of written request for OB APM; if all documentation is not provided within 30 days of the OB APM request, the OB APM effective date will be the date the request and complete supporting documentation is received by OMAP.

(c) RHCs that meet the requirements in (2) after December 1, 2004 may bill, prospectively under the new OB APM encounter rate from the date the written request to participate and the required supporting documentation is received by OMAP, or the date the required documents are received, whichever is later.

(4) Care status changes:

(a) OMAP reserves the right to request periodic review of utilization, cost reporting and to re-evaluate OB care access in a community to determine the continued need to pay an OB APM encounter rate for frontier and remote rural RHCs;

(b) Prior to making any changes in the RHC's status and rates, OMAP will re-evaluate the following:

(A) If OB care access in a community has changed; and

(B) If the RHC no longer meets the requirements for the APM; and

(C) The stability of new providers supplying additional OB care access.

(c) OMAP will give the RHC 90 days notice of change in status and rate;

(d) If OMAP determines that an RHC no longer meets the OB APM requirements, the RHC may request, within 30 days from notification, that OMAP review any additional supporting documentation regarding the determination.

(5) Determining Encounter Rate: The frontier and remote rural RHC requesting an OB APM encounter rate, and meeting the OMAP requirements, shall have its OB care costs carved out from the primary PPS encounter rate as described below. The primary PPS rate for existing clinics would be recalculated subtracting OB direct care costs and placing them in the OB APM calculation. This OB APM encounter rate includes the professional services provided by the RHC associated with pre-natal, delivery (including cesarean section) and post-partum care, up to 60 days post delivery or termination of pregnancy. Qualification for the OB APM encounter rate is not considered a change of scope and the primary PPS encounter rate will only be adjusted by the costs that are moved to the OB APM encounter rate, unless the RHC has never provided OB care prior to enrollment with OMAP. Once the OB APM encounter rate for the RHC is established, the Medicare Economic Index (MEI) adjustment, as required by the PPS, will apply to the OB APM encounter rate.

(a) OMAP will use the information listed below to determine the eligible RHC's initial OB APM encounter rate. First, OMAP will determine the percent of direct care costs associated with OB services provided through the RHC. To determine the percent of direct care costs associated with OB, the clinic must provide the following information for 1999-2000 or the first year OB services were provided with the written request for an OB APM encounter rate:

(A) Total number of clinic encounters;

(B) Total number of OB care encounters including delivery;

(C) Physician salary cost.

(i) Physician cost used in this calculation will be the lesser of the clinic provided physician salary or the national average for family practice with OB care.

(ii) This cost basis is added to the physician payroll taxes (if any) and retirement and benefits.

(D) Nurse salary, payroll taxes, retirement and benefits;

(E) Malpractice premiums for the next two years; and

(F) On-call time.

(b) OMAP will apply the information listed below to determine staff time spent on direct OB care:

(A) Total number of OB care visits divided by the total number of visits;

(B) OB physician cost that is determined by multiplying the OB care percentage of total visits;

(C) OB nursing cost that is determined by multiplying the combined nursing staff salaries, payroll taxes, retirement and benefits by the OB care percentage;

(D) Malpractice premiums that are based on the average costs for the two years after the date the clinic applies for the APM, as projected by the RHC's malpractice carrier;

(E) Clinics providing physician on-call coverage. The cost of on-call time is calculated by:

(i) Reducing total clinic coverage hours per year by the adjusted clinic daily office hours, further reduced by the OB care percentage; and

(ii) Reduced by physician vacation hours (minimum of 80 hours per year); and

(iii) Calculated at 80 percent of all on-call time; and

(iv) Adjusted on-call hours of coverage, that are multiplied by the fixed rate of \$20.00 per hour.

(c) Indirect costs associated with OB care will not be carved out of the primary PPS encounter rate. However, the percent of OB care services associated with physician and nurse costs will be adjusted in the primary PPS encounter rate to reflect the costs being moved to the OB APM rate.

(d) The RHC is responsible for providing all documentation necessary for OMAP to conduct the calculations described in this rule. Failure to provide necessary documentation with the request for eligibility may result in a delay of the availability of the OB APM encounter rate.

(e) After OMAP has calculated the initial OB APM encounter, including any adjustments to the PPS rate based on the costs covered under the OB alternative payment rate, OMAP will provide the rate information to the RHC.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 18-2005(Temp), f. 3-15-05, cert. ef. 3-18-05 thru 9-1-05; OMAP 26-2005, f. 4-20-05, cert. ef. 6-1-05

Adm. Order No.: OMAP 27-2005

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 5-1-05

Notice Publication Date: 4-1-05

Rules Amended: 410-141-0000, 410-141-0060, 410-141-0070, 410-141-0080, 410-141-0110, 410-141-0120, 410-141-0140, 410-141-0160, 410-141-0180, 410-141-0200, 410-141-0220, 410-141-0280, 410-141-0300, 410-141-0320, 410-141-0340, 410-141-0400, 410-141-0405, 410-141-0420, 410-141-0440, 410-141-0480, 410-141-0520

Subject: The Oregon Health Plan (OHP) administrative rules govern Office of Medical Assistance Programs' (OMAP) payments for products and services provided to certain clients. OMAP amended a variety of rules in this program to incorporate and define the term Physician Care Organization (PCO), that references certain contracted managed care entities. OMAP amended 410-141-0120 to explain PCO liability, 410-141-0140 to explain Emergency, Urgent Care and Post Stabilization services and 410-141-0000 to add the definition for Covered Services.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-141-0000

Definitions

(1) Action — In the case of a Prepaid Health Plan (PHP):

(a) The denial or limited authorization of a requested covered service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by OMAP;

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For an OMAP Member in a single FCHP or MHO Service Area, the denial of a request to obtain covered services outside of the FCHP or MHO's Participating Provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(2) Administrative Hearing — A DHS hearing related to an Action, including a denial, reduction, or termination of benefits which is held when requested by the OHP Client or OMAP Member. A hearing may also be held when requested by an OHP Client or OMAP Member who believes a

ADMINISTRATIVE RULES

claim for services was not acted upon with reasonable promptness or believes the payor took an action erroneously.

(3) Advance Directive — A form that allows a person to have another person make health care decisions when he/she cannot make the decision and tells a doctor that the person does not want any life sustaining help if he/she is near death.

(4) Aged — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of age.

(5) Americans with Disabilities Act (ADA) — Federal law promoting the civil rights of persons with disabilities. The ADA requires that reasonable accommodations be made in employment, service delivery, and facility accessibility.

(6) Alternative Care Settings — Sites or groups of practitioners which provide care to OMAP Members under contract with the PHP. Alternative Care Settings include but are not limited to urgent care centers, hospice, birthing centers, out-placed medical teams in community or mobile health care facilities, outpatient surgical centers.

(7) Ancillary Services — Those medical services under the Oregon Health Plan not identified in the definition of a Condition/Treatment Pair under the OHP Benefit Package, but Medically Appropriate to support a service covered under the OHP benefit package. A list of ancillary services and limitations is identified in OAR 410-141-0520, Prioritized List of Health Services, or specified in the Ancillary Services Criteria Guide.

(8) Appeal — A request for review of an “Action” as defined in this section.

(9) Automated Information System (AIS) — A computer system that provides information on the current eligibility status for clients under the Medical Assistance Program.

(10) Blind — Individuals who meet eligibility criteria established by DHS Seniors and People with Disabilities for receipt of medical assistance because of a condition or disease that causes or has caused blindness.

(11) Capitated Services — Those Covered Services that a PHP or Primary Care Manager agrees to provide for a Capitation Payment under an OMAP Oregon Health Plan contract or agreement.

(12) Capitation Payment:

(a) Monthly prepayment to a PHP for the provision of all Capitated Services needed by OHP Clients who are enrolled with the PHP;

(b) Monthly prepayment to a Primary Care Manager to provide Primary Care Management Services for an OHP Client who is enrolled with the PCM. Payment is made on a per OHP Client, per month basis.

(13) Centers for Medicare and Medicaid Services (CMS). The federal agency under the Department of Health and Human Services, responsible for approving the waiver request to operate the Oregon Health Plan Medicaid Demonstration Project.

(14) CFR — Code of Federal Regulations.

(15) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the “Chemical Dependency Placement, Continued Stay, and Discharge Criteria.”

(16) Chemical Dependency Organization (CDO) — a Prepaid Health Plan that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as Capitated Services under the Oregon Health Plan. All chemical dependency services covered under the Oregon Health Plan are covered as Capitated Services by the CDO.

(17) Chemical Dependency Services — Assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol and/or other drug abusing or dependent clients and their family members or significant others, consistent with Level I and/or Level II of the “Chemical Dependency Placement, Continued Stay, and Discharge Criteria.”

(18) Children’s Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services, Office of Medical Assistance Programs (see Medical Assistance).

(19) Children Receiving CAF Child Welfare or OYA Services — Individuals who are receiving medical assistance under ORS 414.025(2)(f), (i), (j), (k) and (o), 418.034, and 418.187 to 418.970. These individuals are generally children in the care and/or custody of Children, Adults and Families Services, Department of Human Services or Oregon Youth Authority who are in placement outside of their homes.

(20) Claim — (1) A bill for services, (2) a line item of a service, or (3) all services for one recipient within a bill.

(21) Clinical Record — The Clinical Record includes the medical, dental, or mental health records of an OHP Client or OMAP Member. These records include the PCP’s record, the inpatient and outpatient hospital records and the ENCC, Complaint and Disenrollment for cause records which may reside in the PHP’s administrative offices.

(22) Cold Call Marketing — Any unsolicited personal contact by a PHP with a Potential Member for the purpose of Marketing as defined in this rule.

(23) Comfort Care — The provision of medical services or items that give comfort and/or pain relief to an individual who has a Terminal Illness. Comfort care includes the combination of medical and related services designed to make it possible for an individual with Terminal Illness to die with dignity and respect and with as much comfort as is possible given the nature of the illness. Comfort Care includes but is not limited to care provided through a hospice program (see Hospice rules), pain medication, and palliative services including those services directed toward ameliorating symptoms of pain or loss of bodily function or to prevent additional pain or disability. Comfort Care includes nutrition, hydration and medication for disabled infants with life-threatening conditions that are not covered under Condition/Treatment Pairs. These guarantees are provided pursuant to 45 CFR, Chapter XIII, 1340.15. Where applicable Comfort Care is provided consistent with Section 4751 OBRA 1990 — Patient Self-Determination Act and ORS 127 relating to health care decisions as amended by the Sixty-Seventh Oregon Legislative Assembly, 1993. Comfort Care does not include diagnostic or curative care for the primary illness or care focused on active treatment of the primary illness and intended to prolong life.

(24) Community Mental Health Program (CMHP) — The organization of all services for persons with mental or emotional disorders and developmental disabilities operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the DHS Office of Mental Health and Addiction Services.

(25) Comorbid Condition — A medical condition/diagnosis (i.e., illness, disease and/or disability) coexisting with one or more other current and existing conditions/diagnoses in the same patient.

(26) Complaint — An OMAP Member’s or OMAP Member’s Representative’s expression of dissatisfaction to a PHP or Participating Provider about any matter other than an Action, as “Action” is defined in this Section.

(27) Community Standard — Typical expectations for access to the health care delivery system in the OMAP Member’s or PCM Member’s community of residence. Except where the Community Standard is less than sufficient to ensure quality of care, OMAP requires that the health care delivery system available to OMAP Members in Prepaid Health Plans and to PCM Members with Primary Care Managers take into consideration the Community Standard and be adequate to meet the needs of OMAP and PCM Members.

(28) Condition/Treatment Pair — Diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9 CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the DHS Office of Mental Health and Addiction Services Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Services Commission, constitute the line items in the Prioritized List of Health Services. Condition/Treatment Pairs may contain many diagnoses and treatments. The Condition/Treatment Pairs are listed in OAR 410-141-0520, Prioritized List of Health Services.

(29) Continuing Treatment Benefit — A benefit for OHP Clients who meet criteria for having services covered that were either in a course of treatment or were scheduled for treatment on the day immediately prior to the date of conversion to the OHP Benefit Package of covered services and that treatment is not covered under the OHP Benefit Package of covered services.

(30) Co-payment — The portion of a covered service that an OMAP Member must pay to a provider or a facility. This is usually a fixed amount that is paid at the time one or more services are rendered.

(31) Contract — The contract between the State of Oregon, acting by and through its Department of Human Services (DHS), Office of Medical Assistance Programs (OMAP) and a Fully Capitated Health Plan (FCHP), Dental Care Organization (DCO), Physician Care Organization (PCO), or a Chemical Dependency Organization (CDO), or between the Office of Mental Health and Addiction Services (OMHAS) and a Mental Health

ADMINISTRATIVE RULES

Organization (MHO) for the provision of covered services to eligible OMAP Members for a Capitation Payment. Also referred to as a Service Agreement.

(32) Covered Services — are Medically Appropriate health services that are funded by the Legislature and described in ORS 414.705 to 414.750; OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System; OAR 410-141-0120, Oregon Health Plan Prepaid Health Plan Provision of Health Care Services; OAR 410-141-0520, Prioritized List of Health Services; and OAR 410-141-0480, Oregon Health Plan Plus Benefit Package of Covered Services; except as excluded or limited under OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients and OAR 410 Division 120.

(33) Dentally Appropriate — Services that are required for prevention, diagnosis or treatment of a dental condition and that are:

(a) Consistent with the symptoms of a dental condition or treatment of a dental condition;

(b) Appropriate with regard to standards of good dental practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Oregon Health Plan Member or a provider of the service;

(d) The most cost effective of the alternative levels of dental services that can be safely provided to an OMAP Member.

(34) Dental Care Organization (DCO) — A Prepaid Health Plan that provides and coordinates capitated dental services. All dental services covered under the Oregon Health Plan are covered as Capitated Services by the DCO; no dental services are paid by OMAP on a fee-for-service basis for Oregon Health Plan Clients enrolled with a DCO provider.

(35) Dental Case Management Services — Services provided to ensure that eligible OMAP Members obtain dental services including a comprehensive, ongoing assessment of the dental and medical needs related to dental care of the Member plus the development and implementation of a plan to ensure that eligible OMAP Members obtain Capitated Services.

(36) Dental Emergency Services — Dental services may include but are not limited to severe tooth pain, unusual swelling of the face or gums, and an avulsed tooth.

(37) Dental Practitioner — A practitioner who provides dental services to OMAP Members under an agreement with a DCO, or is a Fee-For-Service Health Care Practitioner. Dental practitioners are licensed and/or certified by the state in which they practice, as applicable, to provide services within a defined scope of practice.

(38) Department of Human Services (DHS) — DHS is made up of three program areas: Children, Adults and Families; Health Services; and Seniors and People with Disabilities. They are supported by the Director's Office; Administrative Services; and Finance and Policy Analysis. The Office of Medical Assistance Programs and the Office of Mental Health and Addiction Services are part of the Health Services Cluster.

(39) Diagnostic Services — Those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(40) Disabled — Individuals who meet eligibility criteria established by the DHS Seniors and People with Disabilities for receipt of Medical Assistance because of a disability.

(41) Disenrollment — The act of discharging an Oregon Health Plan Client from a Prepaid Health Plan's or Primary Care Manager's responsibility. After the effective date of Disenrollment an Oregon Health Plan Client is no longer required to obtain Capitated Services from the Prepaid Health Plan or Primary Care Manager, nor be referred by the Prepaid Health Plan for Medical Case Managed Services or by the Primary Care Manager for PCM Case Managed Services.

(42) Dual Eligible — OHP Clients who are receiving both Medicaid and Medicare benefits.

(43) Emergency Medical Condition — a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in placing the health of the individual (or with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part. An "Emergency Medical Condition" is determined based on the presenting symptoms (not the final diagnosis) as perceived by a prudent layperson (rather than a Health Care Professional) and includes cases in which the absence of immediate medical attention

would not in fact have had the adverse results described in the previous sentence.

(44) Emergency Services — Covered Services furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an Emergency Medical Condition.

(45) Enrollment — Oregon Health Plan Clients, subject to OAR 410-141-0060 — Oregon Health Plan Managed Care Enrollment Requirements, become OMAP Members of a Prepaid Health Plan or PCM Members of a Primary Care Manager that contracts with OMAP to provide Capitated Services. An OHP Client's Enrollment with a PHP indicates that the OMAP Member must obtain or be referred by the PHP for all Capitated Services and referred by the PHP for all Medical Case Managed Services subsequent to the effective date of Enrollment. An Oregon Health Plan Client's Enrollment with a Primary Care Manager indicates that the PCM Member must obtain or be referred by the Primary Care Manager for preventive and primary care and referred by the Primary Care Manager for all PCM Case Managed Services subsequent to the effective date of Enrollment.

(46) Enrollment Area — Client enrollment is based on the client's residential address and zip code. The address is automatically assigned a county code or Federal Information Processing Standard (FIPS) code by the system, which indicates to the DHS worker that Plan(s) are in the area.

(47) Enrollment Year — A twelve-month period beginning the first day of the month of Enrollment of the Oregon Health Plan Client in a PHP and, for any subsequent year(s) of continuous Enrollment, beginning that same day in each such year(s). The Enrollment Year of Oregon Health Plan Clients who re-enroll within a calendar month of Disenrollment shall be counted as if there were no break in Enrollment.

(48) End Stage Renal Disease (ESRD) — End stage renal disease is defined as that stage of kidney impairment that appears irreversible and requires a regular course of dialysis or kidney transplantation to maintain life. In general, 5% or less of normal kidney function remains. If the person is 36 or more months post-transplant, the individual is no longer considered to have ESRD.

(49) Exceptional Needs Care Coordination (ENCC) — A specialized case management service provided by Fully Capitated Health Plans to OMAP Members who are Aged, Blind or Disabled, consistent with OAR 410-141-0405, Oregon Health Plan Prepaid Health Plan Exceptional Needs Care Coordination (ENCC). ENCC includes:

(a) Early identification of those OMAP Members who are Aged, Blind or Disabled who have disabilities or complex medical needs;

(b) Assistance to ensure timely access to providers and Capitated Services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of Capitated Services and discharge planning; and

(e) Aid with coordinating community support and social service systems linkage with medical care systems, as necessary and appropriate.

(50) Family Health Insurance Assistance Program (FHIAP) — A program in which the State subsidizes premiums in the commercial market for uninsured individuals and families with income below 185% of the FPL. FHIAP is funded with federal and states funds through either Title XIX, XXI or both.

(51) Family Planning Services — Services for clients of childbearing age (including minors who can be considered to be sexually active) who desire such services and which are intended to prevent pregnancy or otherwise limit family size.

(52) Fee-for-Service Health Care Providers — Health care providers who bill for each service provided and are paid by OMAP for services as described in OMAP provider rules. Certain services are covered but are not provided by Prepaid Health Plans or by Primary Care Managers. The client may seek such services from an appropriate Fee-For-Service provider. Primary Care Managers provide primary care services on a fee-for-service basis and might also refer PCM Members to specialists and other providers for fee-for-service care. In some parts of the state, the State may not enter into contracts with any managed care providers. OHP Clients in these areas will receive all services from Fee-For-Service providers.

(53) FPL — Federal Poverty Level.

(54) Free-Standing Mental Health Organization (MHO) — The single MHO in each county that provides only mental health services and is not affiliated with a Fully Capitated Health Plan for that service area. In most cases this "carve-out" MHO is a county Community Mental Health Program or a consortium of Community Mental Health Programs, but may be a private behavioral health care company.

ADMINISTRATIVE RULES

(55) Fully Capitated Health Plan (FCHP) — Prepaid Health Plans that contract with OMAP to provide capitated services under the Oregon Health Plan. The distinguishing characteristic of FCHPs is the coverage of hospital inpatient services.

(56) Grievance System — The overall system that includes Complaints and Appeals handled at the PHP level and access to the state fair hearing process. (Possible subjects for Grievances include, but are not limited to, the quality of care or services provided and aspects of interpersonal relationships such as rudeness of a Provider or employee, or failure to respect the OMAP Member's rights.)

(57) Health Care Professionals — Persons with current and appropriate licensure, certification, or accreditation in a medical, mental health or dental profession, which include but are not limited to: Medical Doctors (including Psychiatrists), Dentists, Osteopathic Physicians, Psychologists, Registered Nurses, Nurse Practitioners, Licensed Practical Nurses, Certified Medical Assistants, Licensed Physicians Assistants, Qualified Mental Health Professionals (QMHPs), and Qualified Mental Health Associates (QMHAAs), Dental Hygienists, Denturists, and Certified Dental Assistants. These professionals may conduct health, mental health or dental assessments of OMAP members and provide Screening Services to OHP Clients within their scope of practice, licensure or certification.

(58) Health Insurance Portability and Accountability Act (HIPAA) of 1996 — HIPAA is a federal law (Public Law 104-191, August 21, 1996) with the legislative objective to assure health insurance portability, reduce health care fraud and abuse, enforce standards for health information and guarantee security and privacy of health information.

(59) Health Maintenance Unit (HMU) — The OMAP unit responsible for adjustments to enrollments, retroactive Disenrollment and enrollment of newborns.

(60) Health Plan New/Noncategorical Client (HPN) — A person who is 19 years of age or older, is not pregnant, is not receiving Medicaid through another program and who must meet eligibility requirements in OAR 461-136-1100(2), in addition to all other OHP eligibility requirements to become an Oregon Health Plan Client.

(61) Health Services Commission — An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be served.

(62) Hospice Services — A public agency or private organization or subdivision of either that is primarily engaged in providing care to terminally ill individuals, is certified for Medicare and/or accredited by the Oregon Hospice Association, is listed in the Hospice Program Registry, and has a valid provider agreement.

(63) Hospital Hold — A hospital hold is a process that allows a hospital to assist an individual who is admitted to the hospital for an inpatient hospital stay to secure a date of request when the individual is unable to apply for the Oregon Health Plan due to inpatient hospitalization. OHP clients shall be exempted from mandatory enrollment with an FCHP, if clients become eligible through a hospital hold process and are placed in the Adults/Couples category.

(64) Line Items — Condition/Treatment Pairs or categories of services included at specific lines in the Prioritized List of Services developed by the Health Services Commission for the Oregon Health Plan Medicaid Demonstration Project.

(65) Local and Regional Allied Agencies include the following: local Mental Health Authority; Community Mental Health Programs; local DHS offices; Commission on Children and Families; Oregon Youth Authority; Department of Corrections; Housing Authorities; local health departments, including WIC Programs; local schools; special education programs; law enforcement agencies; adult and juvenile criminal justices; developmental disability services; chemical dependency providers; residential providers; state hospitals, and other PHPs.

(66) Marketing — Any communication from a PHP to a Medicaid recipient who is not enrolled in that PHP which can reasonably be interpreted as an attempt to influence the recipient:

- (a) To enroll in that particular PHP;
- (b) To either Disenroll or not to enroll with another PHP.

(67) Marketing Materials — Any medium produced by, or on behalf of, a PHP that can reasonably be interpreted as intended for Marketing as defined in this rule.

(68) Medicaid — A federal and state funded portion of the Medical Assistance Program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department of Human Services.

(69) Medical Assistance Program — A program for payment of health care provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Office of Medical Assistance Programs (OMAP), of the Department of Human Services. Coordination of the Medical Assistance Program is the responsibility of the Office of Medical Assistance Programs.

(70) Medical Care Identification — The preferred term for what is commonly called the "medical card." It is a letter-sized document issued monthly to Medical Assistance Program clients to verify their eligibility for services and enrollment in PHPs.

(71) Medical Case Management Services — Services provided to ensure that OMAP Members obtain health care services necessary to maintain physical and emotional development and health. Medical Case Management Services include a comprehensive, ongoing assessment of medical and/or dental needs plus the development and implementation of a plan to obtain needed medical or dental services that are Capitated Services or non-capitated services, and follow-up, as appropriate, to assess the impact of care.

(72) Medically Appropriate — Services and medical supplies that are required for prevention, diagnosis or treatment of a health condition which encompasses physical or mental conditions, or injuries, and which are:

- (a) Consistent with the symptoms of a health condition or treatment of a health condition;
- (b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;
- (c) Not solely for the convenience of an Oregon Health Plan Client or a provider of the service or medical supplies; and
- (d) The most cost effective of the alternative levels of medical services or medical supplies that can be safely provided to an OMAP Member or PCM Member in the PHP's or Primary Care Manager's judgment.

(73) Medicare — The federal health insurance program for the Aged and Disabled administered by the Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act.

(74) Medicare HMO — A capitated health plan that meets specific referral rules and contracts with CMS to provide Medicare benefits to Medicare enrollees.

(75) Mental Health Assessment — The determination of an OMAP Member's need for mental health services. A Qualified Mental Health Professional collects and evaluates data pertinent to a Member's mental status, psychosocial history and current problems through interview, observation and testing.

(76) Mental Health Case Management — Services provided to OMAP Members who require assistance to ensure access to benefits and services from local, regional or state allied agencies or other service providers. Services provided may include: advocating for the OMAP Member's treatment needs; providing assistance in obtaining entitlements based on mental or emotional disability; referring OMAP Members to needed services or supports; accessing housing or residential programs; coordinating services, including educational or vocational activities; and establishing alternatives to inpatient psychiatric services. ENCC Services are separate and distinct from Mental Health Case Management.

(77) Mental Health Organization (MHO) — A Prepaid Health Plan under contract with the Office of Mental Health and Addiction Services that provides mental health services as capitated services under the Oregon Health Plan. MHOs can be Fully Capitated Health Plans, community mental health programs or private behavioral organizations or combinations thereof.

(78) Non-Capitated Services — Those OHP-covered services which are paid for on a fee-for-service basis and for which a capitation payment has not been made to a PHP.

(79) Non-covered services — Services or items for which the Medical Assistance Program is not responsible for payment. Services may be covered under the Oregon Medical Assistance Program, but not covered under the Oregon Health Plan. Non-covered services for the Oregon Health Plan are identified in:

- (a) OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients;
- (b) Exclusions and limitations described in OAR 410-120-1200; and
- (c) The individual provider administrative rules.

(80) Non-Participating Provider — A provider who does not have a contractual relationship with the Prepaid Health Plan, i.e. is not on their panel of providers.

ADMINISTRATIVE RULES

(81) Office of Medical Assistance Programs (OMAP) — The Office of the Department of Human Services responsible for coordinating Medical Assistance Programs, including the OHP Medicaid Demonstration, in Oregon and the Children's Health Insurance Program (CHIP). OMAP writes and administers the state Medicaid rules for medical services, contracts with providers, maintains records of client eligibility and processes and pays OMAP providers.

(82) Office of Mental Health and Addiction Services (OMHAS) — The Department of Human Services office responsible for the administration of the state's policy and programs for mental health, chemical dependency prevention, intervention, and treatment services.

(83) OMAP Member — An Oregon Health Plan Client enrolled with a Prepaid Health Plan.

(84) Ombudsman Services — Services provided by DHS to Aged, Blind and Disabled Oregon Health Plan Clients by DHS Ombudsman Staff who may serve as the Oregon Health Plan Client's advocate whenever the Oregon Health Plan Client, Representative, a physician or other medical personnel, or other personal advocate serving the Oregon Health Plan Client, is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider under the Oregon Health Plan. Ombudsman Services include response to individual complaints about access to care, quality of care or limits to care; and response to complaints about Oregon Health Plan systems.

(85) Oregon Health Plan (OHP) — The Medicaid demonstration project which expands Medicaid eligibility to eligible Oregon Health Plan Clients. The Oregon Health Plan relies substantially upon prioritization of health services and managed care to achieve the public policy objectives of access, cost containment, efficacy, and cost effectiveness in the allocation of health resources.

(86) Oregon Health Plan (OHP) Plus Benefit Package — A benefit package available to eligible Oregon Health Plan clients as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-120-0520, Prioritized List of Health Services.

(87) Oregon Health Plan (OHP) Standard Benefit Package — A benefit package available to eligible Oregon Health Plan clients who are not otherwise eligible for Medicaid (including families, adults and couples) as described in OAR 410-120-1210, Medical Assistance Benefits: Excluded Services and Limitations and in OAR 410-141-0520, Prioritized List of Health Services.

(88) Oregon Health Plan Client — An individual found eligible by DHS to receive services under the Oregon Health Plan. The individual is not yet enrolled with a PHP, but may or may not be enrolled with a Primary Care Manager. The OHP categories eligible to enroll in Prepaid Health Plans are defined as follows:

(a) Temporary Assistance to Needy Families (TANF) are categorically eligible with income under current eligibility rules;

(b) Children's Health Insurance Program (CHIP) — children under one year of age who have income under 170% FPL and do not meet one of the other eligibility classifications;

(c) Poverty Level Medical (PLM) Adults under 100% Federal Poverty Level (FPL) are OHP recipients who are pregnant women with income under 100% of FPL;

(d) PLM Adults over 100% FPL are OHP recipients who are pregnant women with income between 100% and 170% of the FPL;

(e) PLM children under one year of age have family income under 133% FPL or were born to mothers who were eligible as PLM Adults at the time of the child's birth;

(f) PLM or CHIP children one through five years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;

(g) PLM or CHIP children six through eighteen years of age who have family income under 170% FPL and do not meet one of the other eligibility classifications;

(h) OHP Adults and Couples are OHP recipients aged 19 or over and not Medicare eligible, with income below 100% FPL who do not meet one of the other eligibility classifications, and do not have an unborn child or a child under age 19 in the household;

(i) OHP Families are OHP recipients, aged 19 or over and not Medicare eligible, with income below 100% of FPL who do not meet one of the other eligibility classifications, and have an unborn child or a child under the age of 19 in the household;

(j) General Assistance (GA) Recipients are OHP Clients who are eligible by virtue of their eligibility under the Oregon General Assistance program, ORS 411.710 et seq.;

(k) Assistance to Blind and Disabled (AB/AD) with Medicare Eligibles are OHP recipients with concurrent Medicare eligibility with income under current eligibility rules;

(l) AB/AD without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(m) Old Age Assistance (OAA) with Medicare Eligibles are OHP recipients with concurrent Medicare Part A or Medicare Parts A & B eligibility with income under current eligibility rules;

(n) OAA with Medicare Part B only are OAA eligibles with concurrent Medicare Part B only income under current eligibility rules;

(o) OAA without Medicare Eligibles are OHP recipients without Medicare with income under current eligibility rules;

(p) CAF Children are OHP recipients who are children with medical eligibility determined by Children, Adults and Families or the Oregon Youth Authority receiving OHP under ORS 414.025(2)(f), (I), (j), (k) and (o), 418.034 and 418.187 to 418.970. These individuals are generally in the care and/or custody of the Children, Adults and Families or the Oregon Youth Authority who are in placement outside of their homes.

(89) Oregon Youth Authority — The state department charged with the management and administration of youth correction facilities, state parole and probation services and other functions related to state programs for youth corrections.

(90) Participating Provider — An individual, facility, corporate entity, or other organization which supplies medical, dental, chemical dependency services, or mental health services or medical and dental items and that has agreed to provide those services or items to OMAP Members under an agreement or contract with a PHP and to bill in accordance with the signed agreement or contract with a PHP.

(91) PCM Case Managed Services include the following: Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics and Tribal Health Clinics, Community Mental Health Programs, Mental Health Organizations; inpatient hospital services; and outpatient hospital services except laboratory, X-ray, and maternity management services.

(92) PCM Member — An Oregon Health Plan Client enrolled with a Primary Care Manager.

(93) PHP Coordinator — the DHS OMAP employee designated by OMAP as the liaison between OMAP and the PHP.

(94) Physician Care Organization (PCO) — Prepaid Health Plan that contracts with OMAP to provide partially capitated health services under the Oregon Health Plan. The distinguishing characteristic of a PCO is the exclusion of inpatient hospital services.

(95) Post Hospital Extended Care Benefit — A 20 day benefit for non-Medicare OMAP Members enrolled in a FCHP who meet Medicare criteria for a post-hospital skilled nursing placement.

(96) Post Stabilization Services — Covered services, related to an Emergency Medical Condition that are provided after an OMAP Member is stabilized in order to maintain the stabilized condition or to improve or resolve the OMAP Member's condition.

(97) Potential OMAP Member — An OHP client who is subject to mandatory enrollment in managed care, or may voluntarily elect to enroll in a managed care program, but is not yet enrolled with a specific PHP.

(98) Practitioner — A person licensed pursuant to State law to engage in the provision of health care services within the scope of the practitioner's license and/or certification.

(99) Prepaid Health Plan (PHP) — A managed health, dental, chemical dependency, physician care organization, or mental health care organization that contracts with OMAP and/or OMHAS on a case managed, prepaid, capitated basis under the Oregon Health Plan. Prepaid Health Plans may be Dental Care Organizations (DCOs), Fully Capitated Health Plans (FCHPs), Mental Health Organizations (MHOs), Physician Care Organizations (PCOs) or Chemical Dependency Organizations (CDOs).

(100) Preventive Services — Those services as defined under Expanded Definition of Preventive Services for Oregon Health Plan clients in OAR 410-141-0480, The Oregon Health Plan Benefit Package of covered services, and OAR 410-141-0520, Prioritized List of Health Services.

(101) Primary Care Management Services — Primary Care Management Services are services provided to ensure PCM Members obtain health care services necessary to maintain physical and emotional development and health. Primary Care Management Services include a comprehensive, ongoing assessment of medical needs plus the development, and implementation of a plan to obtain needed medical services that

ADMINISTRATIVE RULES

are preventive or primary care services or PCM Case Managed Services and follow-up, as appropriate, to assess the impact of care.

(102) Primary Care Manager (PCM) — A physician (MD or DO), nurse practitioner, physician assistant; or naturopath with physician back-ups, who agrees to provide Primary Care Management Services as defined in rule to PCM Members. Primary Care Managers may also be hospital primary care clinics, Rural Health Clinics, Migrant and Community Health Clinics, Federally Qualified Health Centers, County Health Departments, Indian Health Service Clinics or Tribal Health Clinics. The PCM provides Primary Care Management Services to PCM Members for a Capitation Payment. The PCM provides preventive and primary care services on a fee-for-service basis.

(103) Primary Care Dentist (PCD) — A Dental Practitioner who is responsible for supervising, coordinating initial and primary dental care within their scope of practice for OMAP Members. Primary Care Dentists initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of appropriate dental or medical care.

(104) Primary Care Provider (PCP) — A practitioner who has responsibility for supervising, coordinating initial and primary care within their scope of practice for OMAP Members. Primary care providers initiate referrals for care outside their scope of practice, consultations and specialist care, and assure the continuity of medically or dental appropriate care.

(105) Prioritized List of Health Services — The listing of condition and treatment pairs developed by the Health Services Commission for the purpose of implementing the Oregon Health Plan Demonstration Project. See OAR 410-141-0520, Prioritized List of Health Services, for the listing of condition and treatment pairs.

(106) Proof of Indian Heritage — Proof of Native American and/or Alaska Native descent as evidenced by written identification that shows status as an “Indian” in accordance with the Indian Health Care Improvement Act (P.L. 94-437, as amended). This written proof supports his/her eligibility for services under programs of the Indian Health Service — services provided by Indian Health Service facilities, tribal health clinics/programs or urban clinics. Written proof may be a tribal identification card, a certificate of degree of Indian blood, or a letter from the Indian Health Service verifying eligibility for health care through programs of the Indian Health Service.

(107) Provider — An individual, facility, institution, corporate entity, or other organization which supplies medical, dental or mental health services or medical and dental items.

(108) Quality Improvement — Quality improvement is the effort to improve the level of performance of a key process or processes in health services or health care. A quality improvement program measures the level of current performance of the processes, finds ways to improve the performance and implements new and better methods for the processes. Quality Improvement (as used in these rules) includes the goals of quality assurance, quality control, quality planning and quality management in health care where “quality of care is the degree to which health services for individuals and populations increases the likelihood of desired health outcomes and are consistent with current professional knowledge.”

(109) Representative — A person who can make Oregon Health Plan related decisions for Oregon Health Plan Clients who are not able to make such decisions themselves. A Representative may be, in the following order of priority, a person who is designated as the Oregon Health Plan Client’s health care representative, a court-appointed guardian, a spouse, or other family member as designated by the Oregon Health Plan client, the Individual Service Plan Team (for developmentally disabled clients), a DHS case manager or other DHS designee.

(110) Rural — A geographic area 10 or more map miles from a population center of 30,000 people or less.

(111) Seniors and People with Disabilities (SPD) — The Cluster within DHS responsible for providing services such as:

(a) Assistance with the cost of long-term care through the Medicaid Long Term Care Program and the Oregon Project Independence (OPI) Program;

(b) Cash assistance grants for persons with long-term disabilities through General Assistance and the Oregon Supplemental Income Program (OSIP); and

(c) Administration of the federal Older Americans Act.

(112) Service Area — The geographic area in which the PHP has identified in their Contract or Agreement with DHS to provide services under the Oregon Health Plan.

(113) Stabilize — no material deterioration of the Emergency Medical Condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility.

(114) Urgent Care Services — Covered Services that are Medically Appropriate and immediately required in order to prevent a serious deterioration of an OMAP Member’s health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(115) Terminal Illness — An illness or injury in which death is imminent irrespective of treatment, where the application of life-sustaining procedures or the artificial administration of nutrition and hydration serves only to postpone the moment of death.

(116) Triage — Evaluations conducted to determine whether or not an emergency condition exists, and to direct the OMAP Member to the most appropriate setting for Medically Appropriate care.

(117) Urban — A geographic area less than 10 map miles from a population center of 30,000 people or more.

(118) Urgent Care Services — covered services required in order to prevent a serious deterioration of an OMAP Member’s or PCM Member’s health that results from an unforeseen illness or an injury. Services that can be foreseen by the individual are not considered Urgent Services.

(119) Valid Claim — An invoice received by the PHP for payment of covered health care services rendered to an eligible client which:(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules; and

(c) A Valid Claim means a Claim received by a PHP for payment of Covered Services rendered to an OMAP client which (1) Can be processed without obtaining additional information from the Provider of the service or from a third party; and (2) Has been received within the time limitations prescribed in OHP Rules. A Valid Claim does not include a Claim from a Provider who is under investigation for fraud or abuse, or a Claim under review for Medical Appropriateness. A Valid Claim is synonymous with the federal definition of a Clean Claim as defined in 42 CFR 447.45(b).

(120) Valid Pre-Authorization — A request received by the PHP for approval of the provision of covered health care services rendered to an eligible client which:

(a) Can be processed without obtaining additional information from the provider of the service or from a third party; and

(b) Has been received within the time limitations prescribed in these Rules.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0060

Oregon Health Plan Managed Care Enrollment Requirements

(1) Enrollment of an Oregon Health Plan (OHP) Client, excluding the New/Noncategorical Client (HPN) and Children’s Health Insurance Program (CHIP) clients in Prepaid Health Plans (PHPs) shall be mandatory unless exempted from Enrollment by the Department of Human Services (DHS), or unless the OHP Client resides in a Service Area where there is inadequate capacity to provide access to Capitated Services for all OHP Clients through PHPs or Primary Care Managers (PCMs). PHPs include Fully Capitated Health Plans (FCHPs), Dental Care Organizations (DCOs) and Mental Health Organizations (MHOs), Physician Care Organizations (PCOs), and Chemical Dependency Organizations (CDOs).

(2) Enrollment of the New/Noncategorical Client (HPN) and Children’s Health Insurance Program (CHIP) Client in PHPs shall be mandatory unless exempted from Enrollment by DHS under the term in 410-141-0060(4). Selection of PHPs in accordance with this rule is a condition of eligibility for HPN and CHIP Clients. If, upon reapplication, an HPN and CHIP Clients do not select PHPs in accordance with this rule, PHPs will be selected for the HPN and CHIP Client by DHS. This selection will be made based on the PHPs in which the HPN and CHIP Clients were previously enrolled.

(3) OHP Clients, except the HPN and CHIP Clients shall be enrolled with PHPs or PCMs according to the following criteria:

(a) Areas with sufficient physical health service capacity through a combination of FCHPs, PCOs, and PCMs shall be called mandatory

ADMINISTRATIVE RULES

FCHP/PCO/PCM Service Areas. An OHP Client shall select a FCHP or PCO unless exempted from Enrollment in a FCHP and PCO, in which case they shall choose a PCM in a mandatory FCHP/PCO/PCM Service Area;

(b) Service areas with sufficient physical health service capacity through PCMs alone shall be called mandatory PCM Service Areas. An OHP Client shall select a PCM in a mandatory PCM Service Area;

(c) Service Areas without sufficient physical health service capacity through FCHPs, PCOs and PCMs shall be called voluntary FCHP/PCO/PCM Service Areas. An OHP Client may choose to select a FCHP, PCO or PCM in voluntary FCHP/PCO/PCM Service Areas if the FCHP, PCO or PCM is open for Enrollment, or may choose to remain in the Medicaid Fee-for-Service (FFS) physical health care delivery system;

(d) Service Areas with sufficient dental care service capacity through DCOs shall be called mandatory DCO Service Areas. An OHP Client shall select a DCO in a mandatory DCO Service Area;

(e) Service Areas without sufficient dental care service capacity through DCOs shall be called voluntary DCO Service Areas. An OHP Client may choose to select a DCO in a voluntary DCO Service Area if the DCO is open for Enrollment, or may choose to remain in the Medicaid FFS dental care delivery system;

(f) Service Areas with sufficient mental health service capacity through MHOs shall be called mandatory MHO Service Areas. An OHP Client shall select an MHO in a mandatory MHO Service Area;

(g) Service Areas without sufficient mental health service capacity through MHOs shall be called voluntary MHO Service Areas. An OHP Client may choose to select an MHO in voluntary MHO Service Areas if the MHO is open for Enrollment, or may choose to remain in the Medicaid FFS mental health care delivery system;

(h) When a Service Area changes from mandatory to voluntary, the OMAP Member will remain with their PHP for the remainder of their eligibility period, unless the OMAP Member meets the criteria stated in OAR 410-141-0060(4), or as provided by OAR 410-141-0080.

(4) The following are exemptions to mandatory Enrollment in PHPs which allow OHP Clients, including HPN and CHIP Clients, to enroll with a PCM or remain in the Medicaid FFS delivery systems for physical, dental and/or mental health care:

(a) The OHP Client is covered under a major medical insurance policy, such as a Medicare supplemental policy, Medicare employer group policy or other third party resource (TPR) which covers the cost of services to be provided by a PHP, (excluding dental insurance. An OHP Client shall be enrolled with a DCO even if they have a dental TPR). The OHP Client shall enroll with a PCM if the insurance policy is not a private HMO;

(b) The OHP Client has an established relationship with an OMAP enrolled Practitioner who is not a member of the PHP's Participating Provider panel the OHP Client would be enrolled in, and the PHP cannot negotiate a treatment plan or reimbursement arrangement with the Practitioner that is consistent with the PHP's contracting practices to provide for continuity of care, and it would be detrimental to the health of the OHP Client as determined by DHS to change Practitioners:

(A) When the Practitioner is a Primary Care Practitioner (PCP) enrolled with OMAP as a PCM, the OHP Client shall enroll with this Practitioner as a PCM Member;

(B) Exemptions from mandatory Enrollment in PHPs for this reason may be granted for a period of four months. Extensions may be granted by DHS upon request, subject to review of unique circumstances. A 12 month exemption may be granted if the reason for the exemption is not likely to change or is due to a chronic or permanent condition or disability;

(C) OHP clients shall be exempted from mandatory Enrollment with an FCHP or PCO, if the OHP Client became eligible through a hospital hold process and are placed in the Adults/Couples category. The OHP Client shall remain FFS for the first six (6) months of eligibility unless a change occurs with their eligibility or the category. At which time, the exemption shall be removed and the OHP Client shall be enrolled into an open FCHP or PCO. The exemption shall not effect the mandatory Enrollment requirement into a DCO or MHO.

(c) The OHP Client is a Native American or Alaska Native with Proof of Indian Heritage and chooses to receive services from an Indian Health Service facility or tribal health clinic;

(d) The OHP Client is a child in the legal custody of either the Oregon Youth Authority (OYA) or Children, Adults and Families Services (CAFS) (SOSCF services), and the child is expected to be in a substitute care placement for less than 30 calendar days, unless one of the following conditions exist:

- (A) There is no fee-for-service access; or
- (B) There is continuity of care issues.

(e) The OHP Client is in the third trimester of her pregnancy when first determined eligible for OHP, or at redetermination, and she wishes to continue obtaining maternity services from a Practitioner who is not a Participating Provider with an FCHP or PCO in the Service Area;

(A) In order to qualify for such exemption at the time of redetermination, the OHP Client must not have been enrolled with an FCHP or PCO during the three months preceding redetermination;

(B) If the OMAP Member moves out of the PHP's Service Area during the third trimester, the OMAP Member may be exempted from Enrollment in the new Service Area for continuity of care if the OMAP Member wants to continue Obstetric-care with her previous physician, and that physician is within the travel time or distance indicated in 410-141-0220(1)(a) Oregon Health Plan PHP Accessibility;

(C) If the Practitioner is a PCM, the OMAP Member shall enroll with that Practitioner as a PCM Member;

(D) If the Practitioner is not enrolled with OMAP as a PCM, then the OMAP Member may remain in the Medicaid FFS delivery system until 60 days after the birth of her child. After the 60-day period, the OHP Client must enroll in a FCHP or PCO.

(f) The OHP Client has End Stage Renal Disease (ESRD). The OHP Client shall not enroll in an FCHP or PCO but shall enroll with a PCM unless exempt for some other reason listed in section (4) of this rule;

(g) The OHP Client has been accepted by the Medically Fragile Children's Unit of the Office of Mental Health and Addiction Services (OMHAS);

(h) The OHP Client is a Medicare beneficiary and is in a hospice program shall not enroll in an FCHP or PCO that is also a Medicare Cost HMO. The OHP Client may enroll in either an FCHP or PCO that does not have a Medicare Cost HMO or with a PCM unless exempt for some other reason listed in section (4) of this rule;

(i) The OHP Client is enrolled in Medicare and the only FCHP or PCO in the Service Area is a Medicare HMO. The OHP Client may be exempted from Enrollment in the FCHP or PCO if the OHP Client chooses not to enroll;

(j) If an OMAP Member is enrolled in a program participating in the Intensive Treatment Service Pilot Project, the OMAP Member shall remain enrolled in the MHO he/she was enrolled in prior to the placement;

(k) Other just causes as determined by DHS, at its sole discretion which include the following factors:

(A) The cause is beyond the control of the OHP Client;

(B) The cause is in existence at the time that the OHP Client first becomes eligible for OHP;

(C) Enrollment would pose a serious health risk; and

(D) The lack of reasonable alternatives.

(l) A woman eligible for the Breast and Cervical Cancer Medical (BCCM) Program, (refer to BCCM rules established by Children, Adult and Families Services), shall not enroll in an FCHP, PCO, DCO or MHO. A woman in the BCCM Program shall remain in the Medicaid fee-for-service delivery system.

(5) The primary person in the household group and benefit group as defined in OAR 461-110-0110, 461-110-0210, and 461-110-0720, respectively, shall select PHPs or PCMs on behalf of all OHP Clients in the benefit group. PHP or PCM selection shall occur at the time of application for the OHP in accordance with section (1) of this rule:

(a) All OHP Clients in the benefit group shall enroll in the same PHP for each benefit type (physical, dental or mental health care) unless exempted under the conditions stated above in section (4). If PCM selection is an option, OHP Clients in the benefit group may select different PCMs;

(b) If the OHP Client is not able to choose PHPs or PCMs on his or her own, the Representative of the OHP Client shall make the selection. The hierarchy used for making Enrollment decisions shall be in descending order as defined under Representative:

(A) If the OHP form 7208M, Medicare+Choice election form is signed by someone other than the OHP Client, the OHP Client's Representative must complete and sign an Addendum. The Addendum is incorporated as part of the 7208M and is located on page four (4) of the form:

(i) If the FCHP or PCO does not receive the 7208M within 10 calendar days after the date of Enrollment, the FCHP or PCO shall send a letter to the OMAP Member with a copy sent to the Seniors and People with Disabilities (SPD) branch manager. The letter shall:

(I) Explain the need for the completion of the 7208M;

(II) Notify the OMAP Member, if the 7208M is not received within 30 days, the FCHP or PCO shall request Disenrollment; and

ADMINISTRATIVE RULES

(III) Instruct the OMAP Member to contact their caseworker for other coverage alternatives.

(ii) If the FCHP or PCO has not received the 7208M at the end of 30 days, the FCHP or PCO shall notify OMAP's Health Management Unit (HMU). HMU shall disenroll the OMAP Member effective the end of the month following the notification and notify the OMAP Member of the Disenrollment. HMU shall provide SPD with the OHP Client Disenrollment list.

(B) If the OHP Client is a Medicare beneficiary who is capable of making Enrollment decisions, the Representative shall not have authority to select FCHPs or PCOs which have corresponding Medicare HMO components.

(c) CAF or OYA shall select PHPs or a PCM for a child receiving CAF (SOSCF services) or OYA Services, with the exception of children in subsidized adoptions;

(d) Enrollment in a FCHP or PCO of an OHP Client who is receiving Medicare and who resides in a Service Area served by PHPs or PCMs shall be as follows:

(A) If the OHP Client selects a FCHP or PCO that has a corresponding Medicare HMO, the OHP Client shall also enroll in the Medicare HMO;

(B) If the OHP Client is enrolled as a private member of a Medicare HMO, the OHP Client may choose to remain enrolled as a private member or to enroll in the FCHP or PCO that corresponds to the Medicare HMO:

(i) If the OHP Client chooses to remain as a private member in the Medicare HMO, the OHP Client shall remain in the Medicaid FFS delivery system for physical health care services but shall select a DCO and MHO where available;

(ii) If the OHP Client chooses to discontinue the Medicare HMO enrollment and then, within 60 calendar days of disenrollment from the Medicare HMO, chooses the FCHP or PCO that corresponds to the Medicare HMO that was discontinued, the OHP Client shall be allowed to enroll in the FCHP or PCO even if the FCHP or PCO is not open for Enrollment to other OHP Clients;

(iii) A Dual Eligible (DE) OHP Client who has been exempted from Enrollment in an MHO shall not be enrolled in a FCHP or PCO that has a corresponding Medicare HMO unless the exemption was done for a provider who is on the FCHP's or PCO's panel.

(e) MHO Enrollment options shall be based on the OHP Client's county of residence, the FCHP or PCO selected by the OHP Client, and whether the FCHP or PCO selected serves as a MHO:

(A) If the OHP Client selects a FCHP or PCO that is not a MHO, then the OHP Client shall enroll in the MHO designated as the freestanding MHO for that county;

(B) If the OHP Client selects a FCHP or PCO that is a MHO, then the OHP Client shall receive the OHP mental health benefit through that FCHP or PCO.

(6) If the OHP Client resides in a mandatory Service Area and fails to select a DCO, MHO, PCO and/or FCHP or a PCM at the time of application for the OHP, OMAP may enroll the OHP Client with a DCO, MHO, PCO and/or FCHP or a PCM:

(a) The OHP Client shall be assigned to and enrolled with a DCO, MHO, and FCHP, PCO or PCM which meet the following requirements:

(A) Is open for Enrollment;

(B) Serves the county in which the OHP Client resides;

(C) Has Practitioners located within the Community Standard distance for average travel time for the OHP Client.

(b) Assignment shall be made first to a FCHP or PCO and second to a PCM;

(c) DHS shall send a notice to the OHP Client informing the OHP Client of the assignments and the right to change assignments within 30 calendar days of Enrollment. A change in assignment shall be honored if there is another DCO, MHO, and FCHP, PCO or PCM open for Enrollment in the county in which the OHP Client resides;

(d) Enrollments resulting from assignments shall be effective the first of the month or week after DHS enrolls the OHP Client and notifies the OHP Client of Enrollment and the name of the PHP or PCM: If Enrollment is initiated by a DHS worker on or before Wednesday, the date of Enrollment shall be the following Monday. If Enrollment is initiated by a DHS worker after Wednesday, the date of Enrollment shall be one week from the following Monday. Monthly Enrollment in a mandatory Service Area where there is only one FCHP, PCO, MHO or DCO shall be initiated by an auto- Enrollment program of DHS with effective dates the first of the month following the month-end cutoff. Monthly Enrollment in Service

Areas where there is a choice of PHPs, shall be auto-Enrolled by computer algorithm.

(7) The provision of Capitated Services to an OMAP Member enrolled with a PHP or a PCM shall begin on the first day of Enrollment with the PHP or a PCM except for:

(a) A newborn whose mother was enrolled at the time of birth. The date of Enrollment shall be the newborn's date of birth;

(b) Persons, other than newborns, who are hospitalized on the date enrolled. The date of Enrollment with a FCHP, PCO or MHO shall be the first possible Enrollment date after the date the OHP Client is discharged from inpatient hospital services and the date of Enrollment with a PCM shall be the first of the month for which Capitation Payment is made;

(c) For OMAP Members who are re-enrolled within 30 calendar days of Disenrollment. The date of Enrollment shall be the date specified by DHS that may be retroactive to the date of Disenrollment;

(d) Adopted children or children placed in an adoptive placement. The date of Enrollment shall be the date specified by DHS.

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Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 8-1994(Temp), f. & cert. ef. 2-1-94; DEQ 24-1994, f. 5-31-94, cert. ef. 6-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 29-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 12-2002, f. & cert. ef. 4-1-02; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0070

Oregon Health Plan Fully Capitated Health Plan (FCHP) Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded condition treatment pairs. The FCHPs and PCOs shall pay for prescription drugs except:

(a) As otherwise provided, such as Class 7 & 11 medications (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Those specifically carved out by OMAP; and

(c) Any applicable co-payments.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization. The drug list must:

(a) Include FDA-approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-the-counter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their Participating Providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates the FCHP or PCO makes to their drug list within 30 days of a change which may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 24-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide for the dispensing of at least a 72-hour supply of a drug that requires prior authorization.

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referral Provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The drug listed equivalent has been ineffective in the treatment or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the OMAP Member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less-Than-Effective drugs which have reached the Federal Drug Administration Notice-of-Opportunity-for Hearing stage. The DESI Less-Than-Effective list is available at OMAP's

ADMINISTRATIVE RULES

website address: http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/misc_files/desi1.pdf

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Stats. Implemented: ORS 414.065

Hist.: OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0080

Oregon Health Plan (OHP) Disenrollment from Prepaid Health Plans (PHPs)

(1) OMAP Member Requests for Disenrollment:

(a) All Oregon Health Plan (OHP) OMAP Member-initiated requests for Disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For OMAP Members who are not able to request Disenrollment on their own, the request may be initiated by the OMAP Member's Representative;

(b) Primary person or Representative requests for Disenrollment shall be honored:

(A) Without cause:

(i) After six months of OMAP Member's Enrollment. The effective date of Disenrollment shall be the first of the month following the Department's approval of Disenrollment;

(ii) Whenever an OMAP Member's eligibility is redetermined by the Department of Human Services (DHS) and the primary person requests Disenrollment without cause. The effective date of Disenrollment shall be the first of the month following the date that the OMAP Member's eligibility is redetermined by the Department;

(B) With cause:

(i) At any time;

(ii) OMAP Members who disenroll from a Medicare Health Maintenance Organization (HMO) shall also be Disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of Disenrollment shall be the first of the month that the OMAP Member's Medicare HMO Disenrollment is effective;

(iii) OMAP Members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare HMO/Medicare+Choice (M+C) component may disenroll from the FCHP or PCO at any time if they also request Disenrollment from the Medicare HMO. The effective date of Disenrollment from the FCHP or PCO shall be the first of the month following the date of request for Disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the OMAP Member seeks;

(v) The OMAP Member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the OMAP Members' Primary Care Provider or another Provider determines that receiving the services separately would subject the OMAP Member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the Contract, or lack of access to Participating Providers experienced in dealing with the OMAP Member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The OMAP Member moves out of the PHP's Service Area;

(II) It would be detrimental to the OMAP Member's health to remain enrolled in the PHP;

(III) The OMAP Member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(IV) Continuity of care that is not in conflict with any section of 410-141-0060 or 410-141-0080.

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP Client has just been re-determined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the OMAP Member is enrolled with does not contract with the OMAP Member's current OB Provider and the OMAP Member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the Disenrollment constraints listed in (b), above, OMAP Member Disenrollment requests are subject to the following requirements:

(A) The OMAP Member shall join another PHP, unless the OMAP Member resides in a Service Area where Enrollment is voluntary, or the OMAP Member meets the exemptions to Enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the OMAP Member wishes to disenroll, the OMAP Member may not disenroll without cause;

(C) The effective date of Disenrollment shall be the end of the month in which Disenrollment was requested unless retroactive Disenrollment is approved by OMAP;

(D) If the Department fails to make a Disenrollment determination by the first day of the second month following the month in which the OMAP Member files a request for Disenrollment, the Disenrollment is considered approved.

(2) Prepaid Health Plan requests for Disenrollment:

(a) Causes for Disenrollment:

(A) OMAP may Disenroll OMAP Members for cause when requested by the PHP subject to ADA requirements and approval by the Centers for Medicare and Medicaid Services (CMS), if a Medicare member Disenrolled in a FCHP's or PCO's Medicare HMO/M+C. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the OMAP Member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare HMO/M+C;

(ii) OMAP Member's behavior is disruptive, unruly, or abusive to the point that his/her Enrollment seriously impairs the Provider's ability to furnish services to either the OMAP Member or other members, except as excluded in (b)(B)(vii);

(iii) OMAP Member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff;

(iv) OMAP Member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts committed in any Provider or PHP's premises. The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP Clients who have been exempted from mandatory Enrollment with a FCHP or PCO, due to the OHP Client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(C);

(vi) OMAP Member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230 and/or 410-120-1235.

(B) OMAP Members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the OMAP Member's health;

(iii) Because of the OMAP Member's utilization of services, either excessive or lack thereof;

(iv) Because the OMAP Member requests a hearing;

(v) Because the OMAP Member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the OMAP Member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior resulting from the OMAP Member's special needs (except when continued Enrollment seriously impairs the PHP's ability to furnish services to either this OMAP Member or other members.

(C) Requests by the PHP for Disenrollment of specific OMAP Members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting Disenrollment of an OMAP Member (except in cases of threats or acts of physical violence, and fraudulent or illegal acts). In cases of threats or acts of physical violence, OMAP will consider an oral request for Disenrollment, with written docu-

ADMINISTRATIVE RULES

mentation to follow: In cases of fraudulent or illegal acts, the PHP must submit written documentation for review by the OMAP PHP Coordinators:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the OMAP Member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the OMAP Member either verbally or in writing, depending on the severity of the problem, to develop an agreement regarding the issue(s). If contact is verbal, it shall be documented in the OMAP Member's record. The PHP shall inform the OMAP Member that his/her continued behavior may result in Disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions in a serious effort to resolve the problem;

(iv) The PHP shall contact the OMAP Member's DHS caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of Provider, caseworker, OMAP Member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the OMAP Member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the OMAP Member's record;

(vi) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the OMAP Member as their patient. If needed, the PHP shall obtain an authorization for release of information from the OMAP Member in order to share the information necessary for a new Provider to evaluate if they can treat the OMAP Member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) If the problem persists, the PHP may request Disenrollment of the OMAP Member by submitting a written request to Disenroll the OMAP Member to the PHP's OMAP PHP Coordinator, with a copy to the OMAP Member's caseworker. Documentation with the request shall include the following:

The reason the PHP is requesting Disenrollment; a summary of the PHP's efforts to resolve the problem and other options attempted before requesting Disenrollment;

(i) Documentation should be objective, with as much specific details and direct quotes as possible when problems involve disruptive, unruly, abusive or threatening behaviors;

(ii) Where appropriate, background documentation including a description of the OMAP Member's age, diagnosis, mental status (including their level of understanding of the problem and situation), functional status (their level of independence) and social support system;

(iii) Where appropriate, separate statements from PCPs, caseworker and other agencies, Providers or individuals involved;

(iv) If reason for the request is related to the OMAP Member's substance abuse treatment, the PHP shall notify the OHP Coordinator in the Office of Mental Health and Addiction Services;

(v) If the OMAP Member is disabled, the following documentation shall also be submitted as appropriate:

(I) A written assessment of the relationship of the behavior to the disability including: current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) An interdisciplinary team review that includes a mental health professional and/or behavioral specialists to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment that the behavior will not respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Any additional information or assessments requested by the OMAP PHP Coordinators.

(E) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by a team of PHP Coordinators who may request additional information from Ombudsman, mental health or other agencies as needed;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request;

(iv) If the request is approved, the Disenrollment date is 30 days after the date of approval, except as provided in (F) and (G) below. The PHP must send the OMAP Member a letter within 14 days after the request was approved, with a copy to the OMAP Member's DHS caseworker and OMAP's Health Management Unit (HMU), except in cases where the OMAP Member is also enrolled in a FCHP's or PCO's Medicare HMO/M+C. The letter must give the Disenrollment date, the reason for Disenrollment, and the notice of OMAP Member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing;

(v) In cases where the OMAP Member is also enrolled in a FCHP's or PCO's Medicare HMO/M+C, the letter shall be sent after the approval by CMS and the date of Disenrollment shall be the date of Disenrollment as approved by CMS. If CMS does not approve the Disenrollment, the OMAP Member shall not be disenrolled from the PHP's OHP Plan;

(vi) If the OMAP Member requests a hearing, the OMAP Member will continue to be disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OMAP Member and the PHP;

(vii) The PHP Coordinator will determine when Enrollment in another PHP or with a PCM is appropriate. The PHP Coordinator will contact the OMAP Member's DHS caseworker to arrange Enrollment;

(viii) When the Disenrollment date has been determined, HMU sends a letter to the OMAP Member with a copy to the OMAP Member's DHS caseworker and the PHP. The letter shall inform the OMAP Member of the requirement to be enrolled in another PHP.

(F) If the PHP Coordinator approves a PHP's request for Disenrollment because the OMAP Member threatens or commits an act of physical violence directed at a medical Provider, the Provider's staff, or other patients, the following procedures shall apply:

(i) OMAP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) All OMAP Members in the OMAP Member's benefit group, as defined in OAR 461-110-0720, may be Disenrolled if the PHP requests;

(iv) OMAP may require the OMAP Member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(v) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request.

(G) If the PHP Coordinator approves the PHP's request for Disenrollment because the OMAP Member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following procedures shall apply:

(i) The PHP shall inform the OMAP Member of the Disenrollment decision in writing, including the right to request an Administrative Hearing;

(ii) The OMAP Member shall be Disenrolled as of the date of the PHP's request for Disenrollment;

(iii) At the time of Enrollment into another PHP, OMAP shall notify the new PHP that the OMAP Member and/or benefit group were previously Disenrolled from another PHP at that PHP's request;

(iv) If an OMAP Member who has been Disenrolled for cause is reenrolled in the PHP, the PHP may request a Disenrollment review by the PHP's PHP Coordinator. An OMAP Member may not be Disenrolled from the same PHP for a period of more than 12 months. If the OMAP Member is reenrolled after the 12-month period and is again Disenrolled for cause, the Disenrollment will be reviewed by DHS for further action.

(b) Other reasons for the PHP's requests for Disenrollment include the following:

(A) If the OMAP Member is enrolled in the FCHP or MHO on the same day the OMAP Member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the OMAP Member is enrolled after the first day of the inpatient stay, the OMAP Member shall be Disenrolled, and the date of Enrollment shall be the next available Enrollment date following discharge from inpatient hospital services;

(B) The OMAP Member has surgery scheduled at the time their Enrollment is effective with the PHP, the Provider is not on the PHP's

ADMINISTRATIVE RULES

Provider panel, and the OMAP Member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Cost Plan and was receiving Hospice Services at the time of Enrollment in the PHP;

(D) The OMAP Member had End Stage Renal Disease at the time of Enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the OMAP Member has a third party insurer. If after contacting The Health Insurance Group, the Disenrollment is not effective the following month, PHP may contact HMU to request Disenrollment;

(F) If a PHP has knowledge of an OMAP Member's change of address, PHP shall notify DHS. DHS will verify the address information and Disenroll the OMAP Member from the PHP, if the OMAP Member no longer resides in the PHP's Service Area. OMAP Members shall be Disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(G) The OMAP Member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include OMAP Members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the OMAP Members and providing sufficient proof of incarceration to HMU for review of the Disenrollment request. OMAP will approve requests for Disenrollment from PHPs for OMAP Members who have been incarcerated for at least fourteen (14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time an OMAP Member was an inmate;

(H) The OMAP Member is in a state psychiatric institution.

(3) OMAP Initiated Disenrollments:

(a) OMAP may initiate and Disenroll OMAP Members as follows:

(A) If OMAP determines that the OMAP Member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, OMAP may Disenroll the OMAP Member. The effective date of Disenrollment shall be the end of the month in which OMAP makes such a determination. OMAP may specify a retroactive effective date of Disenrollment if the OMAP Member's third party coverage is through the PHP, or in other situations agreed to by the PHP and OMAP;

(B) If the OMAP Member moves out of the PHP's Service Area(s), the effective date of Disenrollment shall be the date specified by OMAP and OMAP will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the OMAP Member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of Disenrollment shall be the date specified by OMAP;

(D) If the OMAP Member dies, the effective date of Disenrollment shall be the end of the month following the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare HMO/M+C, OMAP Members with Medicare shall be Disenrolled from the existing PHP. The effective date of Disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If OMAP determines that Contractor's OMAP Member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the Disenrollment shall be the OMAP Member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the OMAP notification of Disenrollment to the PHP, all Disenrollments are effective the end of the month after the request for Disenrollment is approved by OMAP;

(c) OMAP shall inform the OMAP Members of the Disenrollment decision in writing, including the right to request an Administrative Hearing. Oregon Health Plan Clients may request an OMAP hearing if they dispute a Disenrollment decision by OMAP;

(d) If the OHP Client requests a hearing, the OHP Client will continue to be Disenrolled until a hearing decision reversing that Disenrollment has been mailed to the OHP Client.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 33-1994, f. & cert. ef. 11-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 21-1996(Temp), f. & cert. ef. 11-1-96; HR 11-1997, f. 3-28-97, cert. ef. 4-1-97; HR 14-1997, f. & cert. ef. 7-1-97; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 49-1998(Temp), f. 12-31-98, cert. ef. 1-1-99 thru 6-30-99; Administrative correction 8-9-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f.

9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0110

Oregon Health Plan Prepaid Health Plan Member Satisfaction Survey

(1) OMAP shall conduct a statistically valid FCHP OMAP Member satisfaction survey each calendar year to survey OMAP Members' satisfaction with respect to:

- (a) Access to care;
- (b) Quality of medical care; and
- (c) General OMAP Member satisfaction.

(2) OMAP may conduct a statistically valid DCO, PCO and CDO OMAP Member satisfaction survey to survey OMAP Member satisfaction.

(3) Results of the survey shall be available not more than six months after the survey is conducted.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0120

Oregon Health Plan Prepaid Health Plan Provision of Health Care Services

CAF: Children, Adults and Families

CMS: Centers for Medicare and Medicaid Services

DHS: Department of Human Services

FCHP: Fully Capitated Health Plans

MHO: Mental Health Organization

OHP: Oregon Health Plan

OMAP: Office of Medical Assistance Programs

OMHAS: Office of Mental Health and Addiction Services

PCO: Physician Care Organization

PCP: Primary Care Provider

PHP: Prepaid Health Plan

(1) PHPs shall have written policies and procedures that ensure the provision of all Medically and Dentally Appropriate covered services, including Urgent Care Services and Emergency Services, Preventive Services and Ancillary Services, in those categories of services included in Contract or agreements with OMAP and/or OMHAS, respectively. PHPs shall communicate these policies and procedures to Providers, regularly monitor Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) PHPs shall ensure that all Participating Providers providing covered services to OMAP Members are credentialed upon initial contract with the PHP and recertified no less frequently than every three years thereafter. The credentialing and recertification process shall include review of any information in the National Practitioners Databank and a determination, based on the requirements of the discipline or profession, that Participating Providers have current licensure in the state in which they practice, appropriate certification, applicable hospital privileges and appropriate malpractice insurance. This process shall include a review and determination based on the activity and results of a professional quality improvement review. PHPs may elect to contract for or to delegate responsibility for this process. PHPs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recertification Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPI) on November 14, 2000, thereby implementing ORS 442.807. PHPs shall retain responsibility for delegated activities, including oversight of processes:

(A) PHPs shall ensure that covered services are provided within the scope of license or certification of the Participating Provider or facility, and within the scope of the Participating Provider's contracted services and that Participating Providers are appropriately supervised according to their scope of practice;

(B) PHPs shall provide training for PHP staff and Participating Providers and their staff regarding the delivery of covered services, OHP Administrative Rules, and the PHP's administrative policies;

(C) PHPs shall maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank;

(D) PHPs shall not refer OMAP Members to or use Providers who have been terminated from the Oregon Medical Assistance Program or excluded as Medicare/Medicaid Providers by CMS and/or by any lawful conviction by a Court for which the Provider could be excluded under 42 CFR 1001.101. PHPs shall not accept billings for services to OMAP Members provided after the date of such Provider's conviction or termination.

ADMINISTRATIVE RULES

(b) FCHPs, PCOs, DCOs and CDOs shall have written procedures that provide newly enrolled OMAP Members with information about which Participating Providers are currently not accepting new patients (except for staff models);

(c) FCHPs, PCOs, DCOs and CDOs shall have written procedures that allow and encourage a choice of a PCP or clinic for physical health, and dental health services by each OMAP Member. These procedures shall enable an OMAP Member to choose a participating PCP or clinic (when a choice is available for PCPs or clinics) to provide services within the scope of practice to that OMAP Member;

(d) If the OMAP Member does not choose a PCP within 30 calendar days from the date of Enrollment, the FCHP or PCO must ensure the OMAP Member has an ongoing source of primary care appropriate to his or her needs by formally designating a Practitioner or entity. FCHPs and PCOs that assign OMAP Members to PCPs or clinics shall document the unsuccessful efforts to elicit the OMAP Member's choice before assigning an OMAP Member to a PCP or clinic. FCHPs and PCOs who assign PCPs before 30 calendar days after Enrollment, must notify the OMAP Member of the assignment and allow the OMAP Member 30 calendar days after assignment to change the assigned PCP or clinic.

(2) In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to ensure access to public health services through contract under ORS Chapter 414-153:

(a) Unless cause can be demonstrated to OMAP's satisfaction why such an agreement is not feasible, FCHPs and PCOs shall execute agreements with publicly funded Providers for payment of point-of-contact services in the following categories:

- (A) Immunizations;
- (B) Sexually transmitted diseases; and
- (C) Other communicable diseases.

(b) OMAP Members may receive the following services from appropriate Non-Participating Medicaid Providers. If the following services are not referred by the FCHP or PCO in accordance with the FCHP's or PCO's referral process (except as provided for under 410-141-0420 Billing and Payment under the Oregon Health Plan), OMAP is responsible for payment of such services:

(A) Family planning services; and

(B) Human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) prevention services.

(c) FCHPs and PCOs are encouraged to execute agreements with publicly funded Providers for authorization of and payment for services in the following categories:

- (A) Maternity case management;
- (B) Well-child care;
- (C) Prenatal care;
- (D) School-based clinic services;
- (E) Health services for children provided through schools and Head Start programs; and

(F) Screening services to provide early detection of health care problems among low income women and children, migrant workers and other special population groups.

(d) Recognizing the social value of partnerships between county health departments, other publicly supported programs, and health Providers, FCHPs and PCOs are encouraged to involve publicly supported health care and service programs in the development and implementation of managed health care programs through inclusion on advisory and/or planning committees;

(e) FCHPs and PCOs shall report to OMAP on their status in executing agreements with publicly funded Providers and on the involvement of publicly supported health care and service programs in the development and implementation of their program on an annual basis.

(3) FCHPs and PCOs shall ensure a newly enrolled OMAP Member receives timely, adequate and appropriate health care services necessary to establish and maintain the health of the OMAP Member. An FCHP's liability covers the period between the OMAP Member's Enrollment and Disenrollment with the FCHP, unless the OMAP Member is hospitalized at the time of Disenrollment. In such an event, an FCHP is responsible for the inpatient hospital services until discharge or until the OMAP Member's PCP or designated Practitioner determines the care is no longer Medically Appropriate.

(4) A PCO's liability covers the period between the OMAP Member's Enrollment and Disenrollment with the PCO, unless the OMAP Member is hospitalized at the time of Disenrollment. In such an event, the PCO is not

responsible for the inpatient hospital services by definition and the inpatient hospital services will be the responsibility of OMAP.

(5) The OMAP Member shall obtain all covered services, either directly or upon referral, from the PHP responsible for the service from the date of Enrollment through the date of Disenrollment.

(6) FCHPs and PCOs with a Medicare HMO component and MHOs have significant and shared responsibility for Capitated Services, and shall coordinate benefits for shared OMAP Members to ensure that the OMAP Member receives all Medically Appropriate services covered under respective Capitation Payments. If the Dual Eligible OMAP Member is enrolled in a FCHP or PCO with a Medicare HMO component the following apply:

(a) Mental health services covered by Medicare shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO;

(b) Mental health services that are not covered by the FCHP or PCO that are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(7) PHPs shall coordinate services for each OMAP Member who requires services from agencies providing health care services not covered under the Capitation Payment. The PCP shall arrange, coordinate, and monitor other medical and mental health, and/or dental care for that OMAP Member on an ongoing basis except as provided for in Section (7)(c) of this rule:

(a) PHPs shall establish and maintain working relationships with Local or Allied Agencies, Community Emergency Service Agencies, and local Providers;

(b) PHPs shall refer OMAP Members to the Offices of the Department of Human Services and Local and Regional Allied Agencies which may offer services not covered under the Capitation Payment;

(c) FCHPs and PCOs shall not require OMAP Members to obtain the approval of a PCP in order to gain access to mental health and alcohol and drug assessment and evaluation services. OMAP Members may refer themselves to MHO services.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065 & 442.807

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0140

Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services

(1) PHPs shall have written policies and procedures and monitoring systems that ensure the provision of appropriate Urgent, Emergency, and Triage services 24-hours a day, 7-days-a-week for all OMAP Members. PHPs shall:

(a) Communicate these policies and procedures to Participating Providers;

(b) Regularly monitor Participating Providers' compliance with these policies and procedures; and

(c) Take any corrective action necessary to ensure Participating Provider's compliance. PHPs shall document all monitoring and corrective action activities.

(2) PHPs shall have written policies and procedures and monitoring processes to ensure that a Practitioner provides a Medically or Dentally Appropriate response as indicated to urgent or emergency calls consisting of the following elements:

(a) Telephone or face-to-face evaluation of the OMAP Member to determine the nature of the situation and the OMAP Member's immediate need for services;

(b) Capacity to conduct the elements of an assessment that is needed to determine the interventions necessary to begin stabilizing the urgent or emergency situation;

(c) Development of a course of action at the conclusion of the assessment;

(d) Provision of services and/or referral needed to address the urgent or emergency situation, begin Post-Stabilization Care or provide outreach services in the case of an MHO;

(e) Provision for notifying a referral emergency room, when applicable concerning the presenting problem of an arriving OMAP Member, and whether or not the Practitioner will meet the OMAP Member at the emergency room; and

(f) Provision for notifying other Providers requesting approval to treat OMAP Members of the determination.

ADMINISTRATIVE RULES

(3) PHPs shall ensure the availability of an after-hours call-in system adequate to Triage urgent care and emergency calls from OMAP Members. Urgent calls shall be returned appropriate to the OMAP Member's condition but in no event more than 30 minutes after receipt. If information is not adequate to determine if the call is urgent, the call shall be returned within 60 minutes in order to fully assess the nature of the call. If information is adequate to determine the call may be emergent in nature, the call shall be returned immediately.

(4) If a screening examination in an Emergency Room leads to a clinical determination by the examining physician that an actual emergency medical condition exists under the prudent layperson standard as defined in Emergency Services, the PHP must pay for all services required to stabilize the patient, except as otherwise provided in (6) of this rule. The PHP may not require prior authorization for Emergency Services:

(a) The PHP may not retroactively deny a claim for an emergency screening examination because the condition, which appeared to be an emergency medical condition under the prudent layperson standard, turned out to be non-emergency in nature;

(b) The PHP may not limit what constitutes an emergency medical condition based on lists of diagnoses or symptoms;

(c) The PHP may not deny a claim for emergency services merely because the Primary Care Physician (PCP) was not notified, or because the PHP was not billed within 10 calendar days of the service.

(5) When an OMAP Member's Primary Care Provider, designated Practitioner or other health plan representative instructs the OMAP Member to seek emergency care, in or out of the network, the PHP is responsible for payment of the screening examination and for other Medically Appropriate services. Except as otherwise provided in (6) of this rule, the PHP is responsible for payment of Post-Stabilization Care that was:

(a) Pre-authorized by the PHP;

(b) Not pre-authorized by the PHP if the PHP (or the on-call Provider) failed to respond to a request for pre-authorization within one hour of the request being made, or the PHP or Provider on call could not be contacted; or

(c) If the PHP and the treating physician cannot reach an agreement concerning the OMAP Member's care and a PHP representative is not available for consultation, the PHP must give the treating physician the opportunity to consult with a PHP physician and the treating physician may continue with care of the patient until a PHP physician is reached or one of the following criteria is met:

(A) The Participating Provider with privileges at the treating hospital assumes responsibilities for the OMAP Member's care;

(B) The Participating Provider assumes responsibility for the OMAP Member's care through transfer;

(C) A Contractor representative and the treating physician reach an agreement concerning the OMAP Member's care; or

(D) The OMAP Member is discharged.

(6) PCO responsibility with regard to Emergency Services, Urgent Care Services, or Post Stabilization Care Services is as follows:

(a) A PCO is not financially responsible for Emergency Services, Urgent Care Services, or Post Stabilization Services, to the extent such Services are Inpatient Hospital Services. The PCO shall not authorize, cause, induce or otherwise furnish any incentive for Emergency Services, Urgent Care Services, or Post Stabilization Services to be rendered as Inpatient Hospital Services except to the extent Medically Appropriate.

(b) A PCO is financially responsible for Post Stabilization Services (other than Inpatient Hospital Services) obtained by OMAP Members within or outside the PCO's network under the following circumstances:

(A) Post Stabilization Services have been authorized by the PCO's authorized representative;

(B) Post Stabilization Services have not been authorized by the PCO's authorized representative, but are administered to maintain the OMAP Member's stabilized condition within 1 hour of a request to the PCO's authorized representative for approval of further Post Stabilization Services;

(C) Post Stabilization Services have not been authorized by the PCOs authorized representative, but are administered to maintain, improve, or resolve the OMAP Member's stabilized condition if:

(i) The PCO's authorized representative does not respond to a request for authorization within 1 hour;

(ii) The PCO's authorized representative cannot be contacted; or

(iii) The PCO's authorized representative and the treating physician cannot reach an agreement concerning the OMAP Member's care and the Participating Provider is not available for consultation. In this situation, the

PCO must give the treating physician the opportunity to consult with the Participating Provider and the treating physician may continue with the care of the OMAP Member until the Participating Provider is reached or one of the criteria in Section (6) of this rule has been met.

(c) The PCO's financial responsibility for non-Inpatient Post Stabilization Services it has not approved ends when:

(A) The Participating Provider with privileges at the treating hospital assumes responsibilities for the OMAP Member's care;

(B) The Participating Provider assumes responsibility for the OMAP Member's care through transfer;

(C) A PCO representative and the treating physician reach an agreement concerning the OMAP Member's care; or

(D) The OMAP Member is discharged.

(7) PHPs shall have methods for tracking inappropriate use of emergency care and shall take Action, including individual OMAP Member counseling, to improve appropriate use of urgent and emergency care settings. DCOs and MHOs shall be responsible for taking action to improve appropriate use of urgent and emergency care settings for dental or mental health related care when inappropriate use of emergency care is made known to them through reporting or other mechanisms.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0160

Oregon Health Plan Prepaid Health Plan (PHP) Coordination and Continuity of Care

(1) PHPs shall have written policies, procedures, and monitoring systems that ensure the provision of Medical Case Management Services, delivery of primary care to and coordination of health care services for all OMAP Members:

(a) PHPs are to coordinate and manage Capitated Services and Non-Capitated Services, and ensure that referrals made by the PHP's Providers to other Providers for covered services are noted in the appropriate OMAP Member's Clinical Record;

(b) PHPs shall ensure OMAP Members receiving Exceptional Needs Care Coordination (ENCC) services for the Aged, Blind, Disabled, and special needs, as described in 410-141-0405, are noted in the appropriate OMAP Member's record. ENCC is a service available through Fully Capitated Health Plans (FCHPs) or Physician Care Organizations (PCOs) that is separate from and in addition to Medical Case Management Services;

(c) These procedures must ensure that each OMAP Member has an ongoing source of primary care appropriate to his or her needs and a Practitioner or entity formally designated as primarily responsible for coordinating the health care services furnished to the OMAP Member in accordance with OAR 410-141-0120;

(d) FCHPs and PCOs shall communicate these policies and procedures to Providers, regularly monitor Providers' compliance with these policies and procedures and take any corrective action necessary to ensure Provider compliance. FCHPs and PCOs shall document all monitoring and corrective action activities;

(A) PHPs shall develop and maintain a formal referral system consisting of a network of consultation and referral Providers, including applicable Alternative Care Settings, for all services covered by Contracts/agreements with OMAP and/or OMHAS. PHPs shall ensure that access to and quality of care provided in all referral settings is monitored. Referral services and services received in Alternative Care Settings shall be reflected in the OMAP Member's Clinical Record. PHPs shall establish and follow written procedures for Participating and Non-Participating Providers in the PHP's referral system. Procedures shall include the maintenance of records within the referral system sufficient to document the flow of referral requests, approvals and denials in the system;

(B) The OMAP Member shall obtain all covered services, either directly or upon referral, from the PHP or PCM responsible for the service from the date of Enrollment through the date of Disenrollment, except when the OMAP Member is enrolled in a Medicare HMO or Medicare+Choice (M+C) FCHP or PCO;

(i) FCHPs or PCOs with a Medicare HMO component or M+C and MHOs have significant and shared responsibility for prepaid services, and shall coordinate benefits for the OMAP Member to ensure that the OMAP Member receives all Medically Appropriate services covered under respective Capitation Payments;

ADMINISTRATIVE RULES

(ii) If the OMAP Member is enrolled in a FCHP or PCO with a Medicare HMO component or M+C, then Medicare covered mental health services shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO, respectively. Mental health services that are not covered by the FCHP or PCO, but are covered by the MHO, shall be obtained from the MHO or upon referral by the MHO.

(C) PHPs shall have written procedures for referrals which ensure adequate prior notice of the referral to referral Providers and adequate documentation of the referral in the OMAP Member's Clinical Record;

(D) PHPs shall designate a staff member who is responsible for the arrangement, coordination and monitoring of the PHP's referral system;

(E) PHPs shall ensure that any staff member responsible for denying or reviewing denials of requests for referral is a Health Care Professional;

(F) PHPs shall have written procedures that ensure that relevant medical, mental health, and/or dental information is obtained from referral Providers, including telephone referrals. These procedures shall include:

(i) Review of information by the referring Provider;

(ii) Entry of information into the OMAP Member's Clinical Record;(iii) Monitoring of referrals to ensure that information, including information pertaining to ongoing referral appointments, is obtained from the referral Providers, reviewed by the referring Practitioner, and entered into the Clinical Record.

(G) PHPs shall have written procedures to orient and train their staff, participating Practitioners and their staff, and the staff in Alternative Care Settings, and urgent and emergency care facilities in the appropriate use of the PHP's referral, alternative care, and urgent and emergency care systems. Procedures and education shall ensure use of appropriate settings of care;

(H) PHPs shall have written procedures which ensure that an appropriate staff person responds to calls from other Providers requesting approval to provide care to OMAP Members who have not been referred to them by the PHP. If the person responding to the call is not a Health Care Professional, the PHP shall have established written protocols that clearly describe when a Health Care Professional needs to respond to the call. These procedures and protocols shall be reviewed by the PHP for appropriateness. The procedures shall address notification of acceptance or denial and entry of information into the PCP's Clinical Record;

(I) FCHPs and PCOs shall have written policies and procedures to ensure information on all emergency department visits is entered into the OMAP Member's appropriate PCP's Clinical Record. FCHPs and PCOs shall communicate this policy and procedure to Providers, monitor Providers' compliance with this policy and procedure, and take corrective action necessary to ensure compliance;

(J) If an OMAP Member is hospitalized in an inpatient or outpatient setting for a covered service, PHPs shall ensure that:

(i) A notation is made in the OMAP Member's appropriate PCP's Clinical Record of the reason, date, and expected duration of the hospitalization;

(ii) Upon discharge, a notation is made in the OMAP Member's appropriate PCP's Clinical Record of the actual duration of the hospitalization and follow-up plans, including appointments for Provider visits; and

(iii) Pertinent reports from the hospitalization are entered in the OMAP Member's appropriate PCP's Clinical Record. Such reports shall include, as applicable, the reports of consulting Practitioners physical history, psycho-social history, list of medications and dosages, progress notes, and discharge summary.

(2) For OMAP Members living in residential facilities or homes providing ongoing care, PHPs shall work with the appropriate staff person identified by the facility to ensure that the OMAP Member has timely and appropriate access to covered services and to ensure coordination of care provided by the PHP and care provided by the facility or home. PHPs shall make provisions for a PCP or the facility's "house doctor or dentist" to provide care to OMAP Members who, due to physical, emotional, or medical limitations, cannot be seen in a PCP office.

(3) For OMAP Members living in residential facilities or homes providing ongoing care, FCHPs and PCOs shall provide medications in a manner that is consistent with the appropriate medication dispensing system of the facility, which meets state dispensing laws. FCHPs and PCOs shall provide emergency prescriptions on a 24-hour basis.

(4) For OMAP Members who are discharged to Post Hospital Extended Care, the FCHP shall notify the appropriate DHS office at the time of admission to the skilled nursing facility (SNF) and begin appropriate discharge planning. The FCHP is not responsible for the Post Hospital Extended Care Benefit unless the OMAP Member was a member of the FCHP during the hospitalization preceding the nursing facility placement.

The FCHP shall notify the nursing facility and the OMAP Member no later than two full working days prior to discharge from Post Hospital Extended Care. For OMAP Members who are discharged to Medicare Skilled Care, the appropriate DHS office shall be notified at the time the FCHP learns of the admission. The FCHP shall initiate appropriate discharge planning at the time of the notification to the DHS office.

(5) PHPs shall coordinate the services the PHP furnishes to OMAP Members with the services the OMAP Member receives from any other PHP (FCHP, PCO, DCO, CDO, or MHO) in accordance with OAR 410-141-0120(6). PHPs shall ensure that in the process of coordinating care, each OMAP Member's privacy is protected in accordance with the privacy requirements of 45 CFR parts 160 and 164 subparts A and E to the extent that they are applicable.

(6) When an OMAP Member's care is being transferred from one PHP to another or for OHP Clients transferring from fee-for-service to a PHP, the PHP shall make every reasonable effort within the laws governing confidentiality to coordinate transfer of the OHP Client into the care of a PHP Participating Provider.

(7) PHPs shall make attempts to contact targeted OMAP population(s) by mail, telephone, in person or through the DHS agency within the first three months of Enrollment to assess medical, mental health or dental needs, appropriate to the PHP. The PHP shall, after reviewing the assessment, refer the OMAP Member to his/her PCP or other resources as indicated by the assessment. Targeted OMAP population(s) shall be determined by the PHP and approved by OMAP.

(8) MHOs shall establish working relationships with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the Service Area for the purposes of maintaining a comprehensive and coordinated mental health delivery system and to help ensure OMAP Member access to mental health services which are not provided under the Capitation Payment.

(9) MHOs shall ensure that OMAP Members receiving services from extended or long term psychiatric care programs (e.g., secure residential facilities, PASSAGES projects, state hospital) will receive follow-up services as Medically Appropriate to ensure discharge within five working days of receiving notification of discharge readiness.

(10) MHOs shall coordinate with Community Emergency Service Agencies (e.g., police, courts and juvenile justice, corrections, and the LMHAs and CMHPs) to promote an appropriate response to OMAP Members experiencing a mental health crisis.

(11) MHOs shall use a multi-disciplinary team service planning and case management approach for OMAP Members requiring services from more than one public agency. This approach shall help avoid service duplication and assure timely access to a range and intensity of service options that provide individualized, Medically Appropriate care in the least restrictive treatment setting (e.g., clinic, home, school, community).

(12) MHOs shall consult with, and provide technical assistance to, FCHPs and PCOs to help assure that mental health conditions of OMAP Members are identified early so that intervention and prevention strategies can begin as soon as possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0180

Oregon Health Plan Prepaid Health Plan Record Keeping

(1) Maintenance and Security: PHPs shall have written policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act (HIPAA), 42 USC § 1320-d et seq., and the federal regulations implementing the Act, and complete Clinical Records that document the care received by OMAP Members from the PHP's primary care and referral providers. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures and take any corrective action necessary to ensure Participating Provider compliance. PHPs shall document all monitoring and corrective action activities. Such policies and procedures shall ensure that records are secured, safeguarded and stored in accordance with applicable Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

(2) Confidentiality and Privacy: PHPs and PHP's Participating Provides shall have written policies and procedures to ensure that Clinical Records related to OMAP Member's Individual Identifiable Health Information and the receiving of services are kept confidential and protect-

ADMINISTRATIVE RULES

ed from unauthorized use and disclosure consistent with the requirements of HIPAA and in accordance with ORS 179.505 through 179.507, 411.320, 433.045 (3), 42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50 If the PHP is a public body within the meaning of the Oregon public records law, such policies and procedures shall ensure that OMAP Member privacy is maintained in accordance with ORS 192.502(2), 192.502(8) (Confidential under Oregon law) and ORS 192.502(9) (Confidential under Federal law) or other relevant exemptions:

(a) PHPs and their Participating Providers shall not release or disclose any information concerning an OMAP Member for any purpose not directly connected with the administration of Title XIX of the Social Security Act except as directed by the OMAP Member;

(b) Except in an emergency, PHPs' Participating Providers shall obtain a written authorization for release of information from the OMAP Member or the legal guardian, or the legal Power of Attorney for Health Care Decisions of the OMAP Member before releasing information. The written authorization for release of information shall specify the type of information to be released and the recipient of the information, and shall be placed in the OMAP Member's record. In an emergency, release of service information shall be limited to the extent necessary to meet the emergency information needs and then only to those persons involved in providing emergency medical services to the OMAP Member;

(c) PHPs may consider an OMAP Member, age 14 or older competent to authorize or prevent disclosure of mental health and alcohol and drug treatment outpatient records until the custodial parent or legal guardian becomes involved in an outpatient treatment plan consistent with the OMAP Member's clinical treatment requirements.

(3) Access to Clinical Records:

(a) Provider Access to Clinical Records:

(A) PHPs shall release health service information requested by a Provider involved in the care of an OMAP Member within ten working days of receiving a signed authorization for release of information;

(B) MHOs shall assure that directly operated and subcontracted service components, as well as other cooperating health service Providers, have access to the applicable contents of an OMAP Member's mental health record when necessary for use in the diagnosis or treatment of the OMAP Member. Such access is permitted under ORS 179.505(6).

(b) OMAP Member Access to Clinical Records: Except as provided in ORS 179.505(9), PHPs' Participating Providers shall upon request, provide the OMAP Member access to his/her own Clinical Record, allow for the record to be amended or corrected and provide copies within ten working days of the request. PHPs' Participating Providers may charge the OMAP Member for reasonable duplication costs;

(c) Third Party Access to Records: Except as otherwise provided in this rule, PHPs' Participating Providers shall upon receipt of a written authorization for release of information for the OMAP Member provide access to OMAP Member's Clinical Record. PHPs' Participating Providers may charge for reasonable duplication costs;

(d) DHS Access to Records: PHPs shall cooperate with OMAP, OMHAS, the Medicaid Fraud Unit, and/or OMHAS representatives for the purposes of audits, inspection and examination of OMAP Members' Clinical and Administrative Records.

(4) Retention of Records: All Clinical Records shall be retained for seven years after the date of services for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, the Clinical Records must be retained until all issues arising out of the action are resolved.

(5) Requirements for Clinical Records: PHPs shall have policies and procedures that ensure maintenance of a Clinical Record keeping system that is consistent with state and federal regulations to which the PHP is subject. The system shall assure accessibility, uniformity and completeness of clinical information that fully documents the OMAP Member's condition, and the covered and non-covered services received from PHPs' Participating or referred Providers. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) A Clinical Record shall be maintained for each OMAP Member receiving services that documents all types of care needed or delivered in all settings whether such services are delivered during or after normal clinic hours;

(b) All entries in the Clinical Record shall be signed and dated;

(c) Errors to the Clinical Record shall be corrected as follows. Incorrect data shall be crossed through with a single line. Correct and legi-

ble data shall be added followed by the date corrected and initials of the person making the correction. Removal or obliteration of errors shall be prohibited;

(d) The Clinical Record shall reflect a signed and dated authorization for treatment for the OMAP Member, his/her legal guardian or the Power of Attorney for Health Care Decisions for any invasive treatments;

(e) The PCP's or clinic's Clinical Record shall include data that forms the basis of the diagnostic impression of the OMAP Member's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The PCP or clinic's Clinical Record of the OMAP Members receiving services shall include the following information as applicable:

(A) OMAP Member's name, date of birth, sex, address, telephone number, and identifying number as applicable;

(B) Name, address and telephone number of next of kin, legal guardian, Power of Attorney for Health Care Decisions, or other responsible party;

(C) Medical, dental or psycho-social history as appropriate;

(D) Dates of service;

(E) Names and titles of persons performing the services;

(F) Physicians' orders;

(G) Pertinent findings on examination and diagnosis;

(H) Description of medical services provided, including medications administered or prescribed; tests ordered or performed and results;

(I) Goods or supplies dispensed or prescribed;

(J) Description of treatment given and progress made;

(K) Recommendations for additional treatments or consultations;

(L) Evidence of referrals and results of referrals;

(M) Copies of the following documents if applicable:

(i) Mental health, psychiatric, psychological, psychosocial or functional screenings, assessments, examinations or evaluations;

(ii) Plans of care including evidence that the OMAP Member was jointly involved in the development of his/her mental health treatment plan;

(iii) For inpatient and outpatient hospitalizations, history and physical, dictated consultations, and discharge summary;

(iv) Emergency department and screening services reports;

(v) Consultation reports;

(vi) Medical education and medical social services provided;

(N) Copies of signed authorizations for release of information forms;

(O) Copies of medical and/or mental health directives.

(f) Based on written policies and procedures, the Clinical Record keeping system developed and maintained by PHPs' Participating Providers shall include sufficient detail and clarity to permit internal and external clinical audit to validate encounter submissions and to assure Medically Appropriate services are provided consistent with the documented needs of the OMAP Member. The system shall conform to accepted professional practice and facilitate an adequate system for follow up treatment;

(g) The PCP or clinic shall have policies and procedures that accommodate OMAP Member's requesting to review and correct or amend their Clinical Record;

(h) Other Records: PHPs' shall maintain other records in either the Clinical Record or within the PHP's administrative offices. Such records shall include the following:

(A) Names and phone numbers of the OMAP Member's prepaid health plans, primary care physician or clinic, primary dentist and mental health Practitioner, if any in the MHO records;

(B) Copies of Client Process Monitoring System (CPMS) enrollment forms in the MHO's records;

(C) Copies of long term psychiatric care determination request forms in the MHO's records;

(D) Evidence that the OMAP Member has received a fee schedule for services not covered under the Capitation Payment in the MHO's records;

(E) Evidence that the OMAP Member has been informed of his or her rights and responsibilities in the MHO records;

(F) ENCC records in the FCHP's or PCO's records;

(G) Complaint and Appeal records;

(H) Disenrollment Requests for Cause and the supporting documentation.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

ADMINISTRATIVE RULES

410-141-0200

Oregon Health Plan Prepaid Health Plan Quality Improvement (QI) System

(1) QI Program:

(a) FCHPs, PCOs, DCOs and CDOs shall maintain an effective process for monitoring, evaluating, and improving the access, quality and appropriateness of services provided to OMAP Members. This process shall include an internal Quality Improvement (QI) program based on written policies, evidenced-based practice guidelines, standards and procedures that are in accordance with relevant law and the community standards for dental care, and/or with accepted medical practice, whichever is applicable, and with accepted professional standards. The QI program shall include policies, standards, and written procedures that adequately address the needs of OMAP Members, including those who are Aged, Blind, Disabled; or children receiving CAF (SOSCF) or OYA services. FCHPs, PCOs, DCOs and CDOs shall establish or adopt written criteria to monitor and evaluate the provision of adequate medical and/or dental care. The QI program must include QI projects that are designed to improve the access, quality and utilization of services;

(b) MHOs shall abide by the Quality Assurance Requirements as stated in the MHO Agreement.

(2) The positions of Medical or Dental Director and the QI Coordinator shall have the qualifications, responsibility, experience, authority, and accountability necessary to assure compliance with this rule. FCHPs, PCOs, DCOs and CDOs shall designate a QI Coordinator who shall develop and coordinate systems to facilitate the work of the QI Committee. The Quality Improvement Coordinator is generally responsible for the operations of the QI program and must have the management authority to implement changes to the QI program as directed by the QI Committee. The QI Coordinator shall be qualified to assess the care of OMAP Members including those who are Aged, Blind, Disabled and children receiving CAF (SOSCF) or OYA services, or shall be able to retain consultation from individuals who are qualified.

(3) FCHPs, PCOs, DCOs and CDOs shall establish a QI Committee that shall meet at least every two months; The Committee shall retain authority and accountability to the Board of Directors for the assurance of quality of care. Committee membership shall include, but is not limited to, the Medical or Dental Director, the QI Coordinator, and other health professionals who are representative of the scope of the services delivered. If any QI functions are delegated, the QI Committee shall maintain oversight and accountability for those delegated functions. The QI Committee shall:

(a) Record and produce dated minutes of Committee deliberations. Document recommendations regarding corrective actions to address issues identified through the QI Committee review process; and review of results, progress, and effectiveness of corrective actions recommended at previous meetings;

(b) Conduct and submit to OMAP an annual written evaluation of the QI Program and of OMAP Member care as measured against the written procedures and protocols of OMAP Member care. The evaluation of the QI program and OMAP Member care is to include a description of completed and ongoing QI activities, OMAP Member education and an evaluation of the overall effectiveness of the QI program. This evaluation shall include:

(A) Prevention programs;

(B) Care of OMAP Members who are Aged, Blind, Disabled or children receiving CAF (SOSCF) or OYA services, and FCHP or PCO review of the Quality of Exceptional Needs Care Coordination program;

(C) Disease management programs;

(D) Adverse outcomes of OMAP Members and OMAP Members who are Aged, Blind, Disabled or children receiving CAF (SOSCF) or OYA services;

(E) Actions taken by the FCHPs, PCOs, DCOs or CDOs to address health care concerns identified by OMAP Members or their Representatives and changes which impact quality or access to care. This may include: Clinical Record keeping; utilization review; referrals; comorbidities; prior authorizations; Emergency Services; out of FCHPs, PCOs, DCOs or CDOs utilization; medication review; FCHPs, PCOs, DCOs or CDOs initiated Disenrollments; encounter data management; and access to care and services.

(c) Conduct a quarterly review and analysis of all Complaints and Appeals received including a focused review of any persistent and significant OMAP Member Complaints and Appeals;

(d) Review written procedures, protocols and criteria for OMAP Member care no less than every two years, or more frequently as needed to maintain currency with clinical guidelines and administrative principles.

(4) FCHPs or PCOs that are NCQA accredited or accredited by other OMAP recognized accreditation organizations shall be deemed for Section (3)(b) of this rule. FCHPs and PCOs deemed by OMAP shall annually submit to OMAP an evaluation of the Exceptional Needs Care Coordination program; and an evaluation of OMAP Member care for OMAP Members who are Aged, Blind, Disabled or children receiving CAF (SOSCF) or OYA services. Copies of accreditation reports shall be submitted to OMAP within 60 days of issuance.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0220

Oregon Health Plan Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all OMAP Members. PHPs shall communicate these policies and procedures to Participating Providers, regularly monitor Participating Providers' compliance with these policies and procedures, and take any corrective action necessary to ensure Participating Provider compliance. PHPs shall document all monitoring and corrective action activities. PHPs shall not discriminate between OMAP Members and non-OMAP members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures which ensure that for 90% of their OMAP Members in each Service Area, routine travel time or distance to the location of the PCP does not exceed the Community Standard for accessing health care Participating Providers. The travel time or distance to PCPs shall not exceed the following, unless otherwise approved by OMAP:

(A) In urban areas — 30 miles, 30 minutes or the Community Standard, whichever is greater;

(B) In rural areas — 60 miles, 60 minutes or the Community Standard, whichever is greater.

(b) PHPs shall maintain and monitor a network of appropriate Participating Providers sufficient to ensure adequate service capacity to provide availability of, and timely access to, Medically Appropriate covered services for OMAP Members:

(A) PHPs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced Participating Provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act;

(B) PHPs shall make the services it provides including: specialists, pharmacy, hospital, vision and ancillary services, as accessible to OMAP Members in terms of timeliness, amount, duration and scope as those services are to non-OMAP persons within the same Service Area. If the PHP is unable to provide those services locally, it must so demonstrate to OMAP and shall provide reasonable alternatives for OMAP Members to access care that must be approved by OMAP. PHPs shall have a monitoring system that will demonstrate to OMAP or OMHAS, as applicable, that the PHP has surveyed and monitored for equal access of OMAP Members to referral Providers pharmacy, hospital, vision and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that OMAP Members who are Aged, Blind, or Disabled or who are children receiving CAF (SOSCF services) or OYA services have access to primary care, dental care, mental health Providers and referral, as applicable. These Providers shall have the expertise to treat, take into account and accommodate the full range of medical, dental or mental health conditions experienced by these OMAP Members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs and Primary Care Managers (PCMs) Enrollment Standards:

(a) PHPs and PCMs shall remain open for Enrollment unless DHS has closed Enrollment because the PHP or PCM has exceeded their Enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by OMAP or OMHAS, as appropriate, and the PHP or PCM;

(b) PHPs Enrollment may also be closed by OMAP or OMHAS, as appropriate due to sanction provisions;

(c) PHPs and PCMs shall accept all OHP Clients, regardless of health status at the time of Enrollment, subject to the stipulations in

ADMINISTRATIVE RULES

Contracts/agreements with DHS to provide covered services or Primary Care management services;

(d) PHPs and PCMs may confirm the Enrollment status of an OHP Client by one of the following:

(A) The individual's name appears on the monthly or weekly Enrollment list produced by OMAP;

(B) The individual presents a valid Medical Care Identification that shows he or she is enrolled with the PHP or PCM;

(C) The Automated Information System (AIS) verifies that the individual is currently eligible and enrolled with the PHP or PCM;

(D) An appropriately authorized staff member of DHS states that the individual is currently eligible and enrolled with the PHP or PCM.

(e) PHPs shall have open Enrollment for 30 continuous calendar days during each twelve month period of October through September, regardless of the PHPs Enrollment limit. The open Enrollment periods for consecutive years may not be more than 14 months apart.

(3) If a PHP is assumed by another PHP, OMAP Members shall be automatically enrolled in the succeeding PHP. The OMAP Member will have 30 calendar days to request Disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare HMO, those OMAP Members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered Enrollment in the succeeding PHP.

(4) If a PHP engages in an activity, such as the termination of a Participating Provider or Participating Provider group which has significant impact on access in that Service Area and necessitates either transferring OMAP Members to other Providers or the PHP withdrawing from part or all of a Service Area, the PHP shall provide DHS at least 90 calendar days written notice prior to the planned effective date of such activity:

(a) A PHP may provide less than the required 90 calendar days notice to DHS upon approval by DHS when the PHP must terminate a Participating Provider or Participating Provider group due to problems that could compromise OMAP Member care, or when such a Participating Provider or Participating Provider group terminates its contract with the PHP and refuses to provide the required 90 calendar days notice;

(b) If DHS must notify OMAP Members of a change in Participating Providers or PHPs, the PHP shall provide DHS with the name, prime number, and address label of the OMAP Members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide OMAP Members with at least 30 calendar-days notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of OMAP Member appointments are appropriate to the reasons for, and urgency of, the visit:

(a) PHPs shall have written policies and procedures and a monitoring system to assure that OMAP Members have access to appointments according to the following standards:

(A) FCHPs and PCOs:

(i) Emergency Care — The OMAP Member shall be seen immediately or referred to an emergency department depending on the OMAP Member's condition;

(ii) Urgent Care — The OMAP Member shall be seen within 48 hours; and

(iii) Well Care — The OMAP Member shall be seen within 4 weeks or within the Community Standard.

(B) DCOs:

(i) Emergency Care — The OMAP Member shall be seen or treated within 24-hours;

(ii) Urgent Care — The OMAP Member shall be seen within one to two weeks depending on OMAP Member's condition; and

(iii) Routine Care — The OMAP Member shall be seen for routine care within an average of eight (8) weeks and within twelve (12) weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate.

(C) MHOs and CDO's:

(i) Emergency Care — OMAP Member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care — OMAP Member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care — OMAP Member shall be seen for an intake assessment within 2 weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of OMAP Members through the office such that OMAP Members are not kept waiting longer than non-OMAP Member patients, under normal circumstances. If OMAP Members

are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, OMAP Members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through Complaint and Appeal reviews, OMAP termination reports, and OMAP Member surveys to determine if waiting times for clients in all settings are appropriate;

(c) PHPs shall have written procedures and a monitoring system for timely follow-up with OMAP Member(s) when Participating Providers have notified the PHP that the OMAP Member(s) have failed to keep scheduled appointments. The procedures shall address determining why appointments are not kept, the timely rescheduling of missed appointments, as deemed Medically or Dentally Appropriate, documentation in the Clinical Record or non-clinical record of missed appointments, recall or notification efforts, and outreach services. If failure to keep a scheduled appointment is a symptom of the OMAP Member's diagnosis or disability or is due to lack of transportation to the PHP's Participating Provider office or clinic, PHPs shall provide outreach services as Medically Appropriate;

(d) PHPs shall have policies and procedures that ensure Participating Providers will attempt to contact OMAP Members if there is a need to cancel or reschedule the OMAP Member's appointment and there is sufficient time and a telephone number available;

(e) PHPs shall have written policies and procedures to Triage the service needs of OMAP Members who walk to the PCP's office or clinic with medical, mental health or dental care needs. Such Triage services must be provided in accordance with OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(f) OMAP Members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the OMAP Member's needs or be evaluated for treatment within two hours by a medical, mental health or dental Provider.

(6) PHPs shall have written policies and procedures that ensure the maintenance of 24-hour telephone coverage (not a recording) either on site or through call sharing or an answering service, unless this requirement is waived in writing by OMAP and/or OMHAS because the PHP submits an alternative plan that will provide equal or improved telephone access:

(a) Such policies and procedures shall ensure that telephone coverage provides access to 24-hour care and shall address the standards for PCPs or clinics callback for emergency, urgent, and routine issues and the provision of interpretive services after office hours;

(b) FCHPs and PCOs shall have an adequate on-call PCP or clinic backup system covering internal medicine, family practice, OB/Gyn, and pediatrics, as an operative element of FCHP's and PCO's after-hours care;

(c) Such policies and procedures shall ensure that relevant information is entered into the appropriate Clinical Record of the OMAP Member regardless of who responds to the call or the time of day the call is received. PHPs shall monitor for compliance with this requirement;

(d) Such policies and procedures shall include a written protocol specifying when a medical, mental health or dental Provider must be consulted. When Medically Appropriate, all such calls shall be forwarded to the on-call PCP who shall respond immediately to calls which may be emergent in nature. Urgent calls shall be returned appropriate to the OMAP Member's condition, but in no event more than 30 minutes after receipt. If information is inadequate to determine if the call is urgent, the call shall be returned within 60 minutes;

(e) Such policies and procedures shall ensure that all persons answering the telephone (both for the PHP and the PHP's Participating Providers) have sufficient communication skills and training to reassure OMAP Members and encourage them to wait for a return call in appropriate situations. PHPs shall have written procedures and trained staff to communicate with hearing impaired OMAP Members via TDD/TTY;

(f) PHPs shall monitor compliance with the policies and procedures governing 24-hour telephone coverage and on-call PCP coverage, take corrective action as needed, and report findings to the PHP's Quality Improvement committee;

(g) PHPs shall monitor such arrangements to ensure that the arrangements provide access to 24-hour care. PHPs shall, in addition, have telephone coverage at PHP's administrative offices that will permit access to PHPs' administrative staff during normal office hours, including lunch hours.

(7) PHPs shall develop written policies and procedures for communicating with, and providing care to OMAP Members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone:

ADMINISTRATIVE RULES

(a) Such policies and procedures shall address the provision of qualified interpreter services by phone, in person, in PHP administrative offices, especially those of OMAP Member services and Complaint and Grievance representatives and in emergency rooms of contracted hospitals;

(b) PHPs shall provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits, to interpret for OMAP Members with hearing impairment or in the primary language of non-English speaking OMAP Members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the OMAP Member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the Provider to be able to understand the OMAP Member's complaint; to make a diagnosis; respond to OMAP Member's questions and concerns; and to communicate instructions to the OMAP Member;

(c) PHPs shall ensure the provision of care and interpreter services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the OMAP Member;

(d) PHPs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered services for all OMAP Members and shall arrange for services to be provided by Non-Participating referral Providers when necessary:

(A) PHPs shall have a written plan for ensuring compliance with these requirements and shall monitor for compliance;

(B) Such a plan shall include procedures to determine whether OMAP Members are receiving accommodations for access and to determine what will be done to remove existing barriers and/or to accommodate the needs of OMAP Members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all OMAP Members including, but not limited to, the following:

(i) Street level access or accessible ramp into facility;

(ii) Wheelchair access to lavatory;

(iii) Wheelchair access to examination room; and

(iv) Doors with levered hardware or other special adaptations for wheelchair access.

(e) PHPs shall ensure that Participating Providers, their facilities and personnel are prepared to meet the special needs of OMAP Members who require accommodations because of a disability:

(A) PHPs shall have a written plan for meeting the needs of OMAP Members;

(B) PHPs shall monitor Participating Providers for compliance with the access plan and take corrective action, when necessary.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 38-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0280

Oregon Health Plan Prepaid Health Plan Informational Requirements

(1) Prepaid Health Plans (PHPs) shall develop informational materials for Potential Office of Medical Assistance Programs (OMAP) Members:

(a) PHPs shall provide OMAP and/or Office of Mental Health and Addiction Services (OMHAS) with informational materials sufficient for the potential OMAP Member to make an informed decision about PHP selection and Enrollment. Information on Participating Providers must be made available from the PHP, upon request to Potential OMAP Members, and must include Participating Providers' name, location, qualification and the availability of the PCP, clinic and specialists. Informational materials may be included in the application packet for Potential OMAP Members;

(b) PHPs shall ensure that all PHP's staff who have contact with Potential OMAP Members are fully informed of PHP and OMAP and/or OMHAS policies, including Enrollment, Disenrollment, Complaint and Grievance policies and the provision of interpreter services including which Participating Providers' offices have bilingual capacity;

(c) PHPs shall cooperate and provide accurate information to OMAP for the updating of the comparison charts.

(2) Informational materials that PHPs develop for OMAP Members and Potential OMAP Members shall meet the language requirements of, and be culturally sensitive to the PHP's OMAP membership including members with disabilities or reading limitations, and including substantial

populations whose primary language is not English in its particular Service Area(s)

(a) PHPs shall be required to follow OMAP's substantial household criteria required by ORS 411.062, which determines and identifies those populations that are considered non-English speaking households; however, PHP shall only be responsible for those identified languages, if the substantial population is 35 or more non-English speaking households with the same language in its Service Area. The PHP shall be required to provide informational materials, which at a minimum, shall include the OMAP Member handbook and information about Complaints and Appeals in the primary language of each substantial population. Alternative forms may include, but are not limited to audio tapes, close-captioned videos, large type and Braille;

(b) Form correspondence sent to OMAP Members, including but not limited to, Enrollment information, choice and OMAP Member counseling letters and denial of service notices shall include instructions in the appropriate languages of each substantial population of non-English speaking OMAP Members on how to receive an oral translation of the material;

(c) All written informational materials distributed to OMAP Members shall be written at the sixth grade reading level and printed in 12 point print or larger;

(d) PHPs shall provide written notice to affected OMAP Members of any significant changes in program or service sites that impacts the OMAP Members' ability to access care or services from PHP's Participating Providers. Such notice shall be provided at least 30 calendar days prior to the effective date of that change, or as soon as possible if the Participating Provider(s) has not given the PHP sufficient notification to meet the 30 days notice requirement. OMAP and/or OMHAS will review and approve such materials within two working days.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0300

Oregon Health Plan Prepaid Health Plan Member Education

CDO: Chemical Dependency Organization

DCO: Dental Care Organization

DHS: Department of Human Services

ENCC: Exceptional Needs Care Coordination

FCHP: Fully Capitated Health Plan

MHO: Mental Health Organization

PCD: Primary Care Dentist

PCO: Physician Care Organization

PCP: Primary Care Provider

PHP: Prepaid Health Plan (FCHP, PCO, DCO, CDO and MHO)OHP: Oregon Health

Plan OMHAS: Office of Mental Health and Addiction Services OMAP: Office of

Medical Assistance Programs

(1) PHPs shall have an ongoing process of OMAP Member education and information sharing that includes orientation to the PHP, a PHP OMAP Member handbook and health education. OMAP Member education shall include: (a) The availability of ENCC through FCHPs and PCOs for OMAP Members with special health care needs, who are Aged, Blind or Disabled; and

(b) The appropriate use of the delivery system, including a proactive and effective education of OMAP Members on how to access Emergency Services and Urgent Care Services appropriately.

(2) PHPs shall offer PHP orientation to new OMAP Members by mail, phone, or in person within 30 days of Enrollment unless no address can be obtained, a telephone number is not provided by OMAP, and a DHS agency is unable to assist in delivering the information to the OMAP Member.

(3) PHP OMAP Member handbook materials:

(a) The PHP OMAP Member handbook shall be made available for new OMAP Members, as described in OAR 410-141-0280, Oregon Health Plan PHP Informational Requirements, and shall be distributed within 14 calendar days of the OMAP Member's effective date of coverage with PHP;

(b) At a minimum the information in the PHP OMAP Member handbook shall contain the following elements:

(A) Location(s), office hours and availability of physical access for OMAP Members with disabilities to PHP and PCP and PCD offices;

(B) Telephone number(s) (including TTY) for OMAP Members to call for more information and telephone numbers relating to information listed below;

(C) OMAP Member's choice and use of PCPs, PCDs and policies on changing PCPs, PCDs;

(D) Use of the PHP's appointment system;

ADMINISTRATIVE RULES

(E) Use of the PHP's referral system, including procedures for obtaining benefits, including authorization requirements;

(F) How OMAP Members are to access Urgent Care Services and advice;

(G) How and when OMAP Members are to use Emergency Services including information on Post-Stabilization Care Services, related to an emergency medical condition that are provided after an OMAP Member is stabilized in order to maintain the stabilized condition, or, under the circumstances to improve or resolve the OMAP Member's condition;

(H) Information on the PHP's Complaint process and information on fair hearing procedures;

(I) How OMAP Members are to access interpreter services including sign interpreters;

(J) Information on the OMAP Member's rights and responsibilities;

(K) Information on the OMAP Member's possible responsibility for charges including Medicare deductibles and coinsurances (if they go outside of PHP for non-emergent care), co-payments, and charges for non-covered services;

(L) The transitional procedures for new OMAP Members to obtain prescriptions, supplies and other necessary items and/or services in the first month of Enrollment with the PHP if they are unable to meet with a PCP, PCD, other prescribing Practitioner or obtain new orders during that period;

(M) What services can be self-referred to both Participating and Non-Participating Providers (FCHPs, PCOs and MHOs only);

(N) To adult OMAP Members written information on Advance Directive policies including:

(i) A description of applicable state law;

(ii) OMAP Member rights under Oregon law;

(iii) The contractor's policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience.

(O) How to request information on the PHP's Physician Incentives;

(P) The OMAP Members right to request and obtain copies of their Clinical Records (and that they may be charged a reasonable copying fee) and to request that the record be amended or corrected;

(Q) How OMAP Members are to obtain emergent and non-emergent ambulance services (FCHP and PCO only) and other medical transportation to appointments, as appropriate;

(R) Explanation of the amount, scope and duration of covered and Non-covered Services in sufficient detail to ensure that OMAP Members understand the benefits to which they are entitled;

(S) How OMAP Members are to obtain prescriptions including information on the process for obtaining non-formulary and over-the-counter drugs (FCHPs and PCOs only);

(T) PHP's Confidentiality Policy;

(U) Name, locations, telephone numbers of, and non-English languages offered by current Participating Providers, including information on PHP's PCPs/PCDs that are not accepting new OMAP Members (not MHOs) including at a minimum, information on PCPs, specialists and hospitals in the OMAP Member's Service Area;

(V) The extent to which; and how, OMAP Members may obtain benefits, including family planning services, from out of network Providers;

(W) Any restrictions on the OMAP Member's freedom of choice among network Providers;

(X) Policies on referrals for specialty care and for other benefits not furnished by the OMAP Member's PCP;

(Y) How and where OMAP Members are to access any benefits that are available under OHP but are not covered under the PHPs' Contract, including any cost sharing, and how transportation is provided.

(c) If the PHP OMAP Member handbook is returned with a new address, the PHP shall remail the PHP OMAP Member handbook or use the telephone number provided by DHS to reach the OMAP Member. If the PHP is unable to reach the OMAP Member by either mail or telephone, the PHP shall retain the PHP OMAP Member handbook and have it available upon request for the OMAP Member;

(d) PHPs shall, at a minimum, annually and upon request provide the PHP OMAP Member handbook to OMAP Members, OMAP Member's Representative and to clinical offices for distribution to OMAP Members;

(e) The PHP OMAP Member handbook shall be reviewed by PHP for accuracy at least yearly and updated with new or corrected information as needed to reflect the PHP's internal changes and regulatory changes. If changes impact the OMAP Members' ability to use services or benefits, the updated materials shall be distributed to all OMAP Members;

(f) The 'DHS Client Handbook for the OHP' is in addition to the PHP OMAP Member handbook and cannot be used to substitute for the PHP OMAP Member handbook.

(4) PHPs shall have written procedures and criteria for health education of OMAP Members. Health education shall include: information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. Health education may be provided by PHP's Practitioner(s) or other individual(s) or program(s) approved by the PHP. PHPs shall endeavor to provide health education in a culturally sensitive manner in order to communicate most effectively with individuals from nondominant cultures: PHPs shall ensure development and maintenance of an individualized health educational plan for OMAP Members who have been identified by their Practitioner as requiring specific educational intervention. DHS may assist in developing materials that address specifically identified health education problems to the population in need.

(5) PHPs shall provide an identification card to OMAP Members, unless waived by OMAP and/or OMHAS, which contains simple, readable and usable information on how to access care in an urgent or emergency situation. Such identification cards shall confer no rights to services or other benefits under the Oregon Health Plan and are solely for the convenience of the PHP's, OMAP Members and Providers.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 29-2001, f. 8-13-01, cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0320

Oregon Health Plan Prepaid Health Plan Member Rights and Responsibilities

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure OMAP Members have the rights and responsibilities included in this rule:

(a) PHPs shall communicate these policies and procedures to Participating Providers;

(b) PHPs shall monitor compliance with policies and procedures governing OMAP Member rights and responsibilities, take corrective action as needed, and report findings to the PHP's Quality Improvement Committee.

(2) OMAP Members shall have the following rights:

(a) To be treated with dignity and respect;

(b) To be treated by Participating providers the same as other people seeking health care benefits to which they are entitled;

(c) To choose a PHP or PCM as permitted in OAR 410-141-0060, Oregon Health Plan Managed Care Enrollment Requirements, a Primary Care Physician (PCP) or service site, and to change those choices as permitted in OAR 410-141-0080, Oregon Health Plan Disenrollment from PHPs, and the PHP's administrative policies;

(d) To refer oneself directly to mental health, chemical dependency or family planning services without getting a referral from a PCP or other Participating provider;

(e) To have a friend, family member, or advocate present during appointments and at other times as needed within clinical guidelines;

(f) To be actively involved in the development of his/her treatment plan;

(g) To be given information about his/her condition and covered and non-covered services to allow an informed decision about proposed treatment(s);

(h) To consent to treatment or refuse services, and be told the consequences of that decision, except for court ordered services;

(i) To receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;

(j) To have written materials explained in a manner that is understandable to the OMAP Member;

(k) To receive necessary and reasonable services to diagnose the presenting condition;

(l) To receive covered services under the Oregon Health Plan which meet generally accepted standards of practice and is Medically Appropriate;

(m) To obtain covered Preventive Services;

(n) To have access to urgent and emergency services 24 hours a day, 7 days a week as described in OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

ADMINISTRATIVE RULES

- (o) To receive a referral to specialty practitioners for Medically Appropriate covered services;
- (p) To have a clinical record maintained which documents conditions, services received, and referrals made;
- (q) To have access to one's own clinical record, unless restricted by statute;
- (r) To transfer of a copy of his/her clinical record to another provider;
- (s) To execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, chemical dependency or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127 as amended by the Oregon Legislative Assembly 1993 and the OBRA 1990 — Patient Self-Determination Act;
- (t) To receive written notices before a denial of, or change in, a benefit or service level is made, unless such notice is not required by federal or state regulations;
- (u) To know how to make a Complaint or Appeal with the PHP and receive a response as defined in OAR 410-141-0260–410-141-0266;
- (v) To request an Administrative Hearing with the Department of Human Services;
- (w) To receive interpreter services as defined in OAR 410-141-0220, Oregon Health Plan Prepaid Health Plan Accessibility; and
- (x) To receive a notice of an appointment cancellation in a timely manner.
- (3) OMAP Members shall have the following responsibilities:
- (a) To choose, or help with assignment to, a PHP or PCM as defined in 410-141-0060, Oregon Health Plan Enrollment Requirements, and a PCP or service site;
- (b) To treat the PHP's, practitioner's, and clinic's staff with respect;
- (c) To be on time for appointments made with practitioners and other providers and to call in advance either to cancel if unable to keep the appointment or if he/she expects to be late;
- (d) To seek periodic health exams and preventive services from his/her PCP or clinic;
- (e) To use his/her PCP or clinic for diagnostic and other care except in an Emergency;
- (f) To obtain a referral to a specialist from the PCP or clinic before seeking care from a specialist unless self-referral to the specialist is allowed;
- (g) To use urgent and Emergency Services appropriately and notify the PHP within 72 hours of an emergency;
- (h) To give accurate information for inclusion in the Clinical Record;
- (i) To help the practitioner, provider or clinic obtain Clinical Records from other providers which may include signing an authorization for release of information;
- (j) To ask questions about conditions, treatments and other issues related to his/her care that is not understood;
- (k) To use information to make informed decisions about treatment before it is given;
- (l) To help in the creation of a treatment plan with the provider;
- (m) To follow prescribed agreed upon treatment plans;
- (n) To tell the practitioner or provider that his/her health care is covered under the Oregon Health Plan before services are received and, if requested, to show the practitioner or other provider the OMAP Medical Care Identification form;
- (o) To tell the DHS worker of a change of address or phone number;
- (p) To tell the DHS worker if the OMAP Member becomes pregnant and to notify the DHS worker of the birth of the OMAP Member's child;
- (q) To tell the DHS worker if any family members move in or out of the household;
- (r) To tell the DHS worker if there is any other insurance available;
- (s) To pay for Non-covered services under the provisions described in OAR 410-120-1200 and 410-120-1280;
- (t) To pay the monthly OHP premium on time if so required;
- (u) To assist the PHP in pursuing any third party resources available and to pay PHP the amount of benefits it paid for an injury from any recovery received from that injury;
- (v) To bring issues, or Complaints or Grievances to the attention of the PHP; and
- (w) To sign an authorization for release of medical information so that DHS and the PHP can get information which is pertinent and needed to respond to an Administrative Hearing request in an effective and efficient manner.

Stat. Auth.: ORS 409
Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0340

Oregon Health Plan Prepaid Health Plan Financial Solvency

(1) Prepaid Health Plans (PHPs) shall assume the risk for providing Capitated Services under their Contracts/agreements with OMAP and/or OMHAS. PHPs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports for submission to OMAP and/or OMHAS, as applicable:

(a) PHPs shall comply with solvency requirements specified in Contracts/agreements with OMAP and/or OMHAS, as applicable. Solvency requirements of PHPs shall include the following components:

(A) Maintenance of restricted reserve funds with balances equal to amounts specified in Contracts/agreements with OMAP and/or OMHAS. If the PHP has Contracts/agreements with both OMAP and OMHAS, separate restricted reserve fund accounts shall be maintained for each Contract/agreement;

(B) Protection against catastrophic and unexpected expenses related to Capitated Services for PHPs. The method of protection may include the purchase of stop loss coverage, reinsurance, self-insurance or any other alternative determined acceptable by OMAP and/or OMHAS, as applicable. Self-insurance must be determined appropriate by OMAP and/or OMHAS;

(C) Maintenance of professional liability coverage of not less than \$1,000,000 per person per incident and not less than \$1,000,000 in the aggregate either through binder issued by an insurance carrier or by self insurance with proof of same, except to the extent that the Oregon Tort Claims Act, ORS 30.260 to 30.300 is applicable;

(D) Systems that capture, compile and evaluate information and data concerning financial operations. Such systems shall provide for the following:

(i) Determination of future budget requirements for the next three quarters;

(ii) Determination of incurred but not reported (IBNR) expenses;

(iii) Tracking additions and deletions of OMAP Members and accounting for Capitation Payments;

(iv) Tracking claims payment;

(v) Tracking all monies collected from third party resources on behalf of OMAP Members; and

(vi) Documentation of and reports on the use of incentive payment mechanisms, risk-sharing and risk-pooling, if applicable.

(b) PHPs shall submit the following applicable reports as specified in agreements with OMAP and/or OMHAS:

(A) An annual audit performed by an independent accounting firm, containing, but not limited to:

(i) A written statement of opinion by the independent accounting firm, based on the firm's audit regarding the PHP's financial statements;

(ii) A written statement of opinion by an independent actuarial firm about the assumptions and methods used in determining loss reserve, actuarial liabilities and related items;

(iii) Balance Sheet(s);

(iv) Statement of Revenue, Expenses and Net Income, and Change in Fund Balance;

(v) Statements of Cash Flows;

(vi) Notes to Financial Statements;

(vii) Any supplemental information deemed necessary by the independent accounting firm or actuary; and

(viii) Any supplemental information deemed necessary by OMAP and/or OMHAS.

(B) PHP-specific quarterly financial reports. Such quarterly reports shall include, but are not limited to:

(i) Statement of Revenue, Expenses and Net Income;

(ii) Balance Sheet;

(iii) Statement of Cash Flows;

(iv) Incurred But Not Reported (IBNR) Expenses;

(v) Fee-for-service liabilities and medical/hospital expenses that are covered by risk-sharing arrangements;

(vi) Restricted reserve documentation;

(vii) Third party resources collections (OMHAS contractors); and

(viii) Corporate Relationships of Contractors (FCHPs, DCOs, CDOs and PCOs) or Incentive Plan Disclosure and Detail (MHOs).

(C) PHP-specific utilization reports;

(D) PHP-specific quarterly documentation of the Restricted Reserve. Restricted reserve funds of FCHPs, PCOs, DCOs and CDOs shall be held

ADMINISTRATIVE RULES

by a third party. Restricted reserve fund documentation shall include the following:

- (i) A copy of the certificate of deposit from the party holding the restricted reserve funds;
- (ii) A statement showing the level of funds deposited in the restricted reserve fund accounts;
- (iii) Documentation of the liability that would be owed to creditors in the event of PHP insolvency;
- (iv) Documentation of the dollar amount of that liability which is covered by any identified risk-adjustment mechanisms.

(2) MHOs shall comply with the following additional requirements regarding restricted reserve funds:

(a) MHOs that subcontract any work described in agreements with OMHAS may require subcontractors to maintain a restricted reserve fund for the subcontractor's portion of the risk assumed or may maintain a restricted reserve fund for all risk assumed under the agreement with OMHAS. Regardless of the alternative selected, MHOs shall assure that the combined total restricted reserve fund balance meets the requirements of the agreement with OMHAS;

(b) If the restricted reserve fund of the MHO is held in a combined account or pool with other entities, the MHO, and its subcontractors as applicable, shall provide a statement from the pool or account manager that the restricted reserve fund is available to the MHO, or its subcontractors as applicable, and has not been obligated elsewhere;

(c) If the MHO must use its restricted reserve fund to cover services under its agreement with OMHAS, the MHO shall provide advance notice to OMHAS of the amount to be withdrawn, the reason for withdrawal, when and how the restricted reserve fund will be replenished, and steps to be taken to avoid the need for future restricted reserve fund withdrawals;

(d) MHOs shall provide OMHAS access to restricted reserve funds if insolvency occurs;

(e) MHOs shall have written policies and procedures to ensure that, if insolvency occurs, OMAP Members and related clinical records are transitioned to other MHOs or providers with minimal disruption.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0400

Oregon Health Plan Prepaid Health Plan Case Management Services

DCO: Dental Care Organization
FCHP: Fully Capitated Health Plan
MHO: Mental Health Organization
OHP: Oregon Health Plan
PCO: Physician Care Organization
PHP: Prepaid Health Plan

(1) Prepaid Health Plans provide Case Management Services under the Oregon Health Plan.

(2) Prepaid Health Plan Case Management Services are defined as follows:

(a) FCHPs and PCOs provide Medical Case Management as defined in OAR 410-141-0000, Definitions;

(b) DCOs provide Dental Case Management as defined in OAR 410-141-0000, Definitions. DCOs shall make Dental Case Management staff available for training, Regional OHP meetings, and case conferences involving their OMAP Members in all service areas;

(c) MHOs provide Mental Health case management for capitated and non-capitated mental health services as defined in OAR 410-141-0000, Definitions.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0405

Oregon Health Plan Fully Capitated Health Plan and Physician Care Organization Exceptional Needs Care Coordination (ENCC)

Fully Capitated Health Plans (FCHPs) and Physician Care Organizations (PCOs) provide Exceptional Needs Care Coordination (ENCC) under the Oregon Health Plan:

(1) FCHPs and PCOs shall make available ENCC services as defined in OAR 410-141-0000, Definitions, for all Capitated Services;

(2) FCHPs and PCOs shall make ENCC services available at the request of the Aged, Blind or Disabled OMAP Member, his or her Representative, a physician, or other medical personnel serving the OMAP

Member, or the Aged, Blind or Disabled OMAP Member's agency case manager;

(3) FCHPs and PCOs shall make Exceptional Needs Care Coordinators available for training, Regional OHP meetings and case conferences involving their Aged, Blind and Disabled OMAP Members in all their Service Areas;

(4) FCHP and PCO staff who coordinate or provide ENCC services shall be trained to and exhibit skills in communication with and sensitivity to the unique health care needs of people who are Aged, Blind, Disabled or have special health care needs. FCHPs and PCOs shall have a written position description for the staff member(s) responsible for managing ENCC services and for staff who provide ENCC services;

(5) FCHPs and PCOs shall have written policies that outline how the level of staffing dedicated to ENCC is determined;

(6) FCHPs and PCOs shall make ENCC services available to OMAP Members who are Aged, Blind, Disabled or having special health care needs during normal office hours, Monday through Friday. Information on ENCC services shall be made available when necessary to an OMAP Member's Representative during normal business hours, Monday through Friday;

(7) FCHPs and PCOs shall provide the Aged, Blind, Disabled or special health care need OMAP Member or his or her Representative who requests ENCC services with an initial response by the next working day following the request, as appropriate;

(8) FCHPs and PCOs shall periodically inform all of their Practitioners and the Practitioner's staff of the availability of ENCC services, provide training for medical office staff on ENCC services and other support services available for serving the Aged, Blind, Disabled or special need OMAP Members; FCHPs and PCOs shall assure that the ENCCs name(s) and telephone number(s) are made available to both agency staff and OMAP Members or their Representatives;

(9) FCHPs and PCOs shall have written procedures that describe how they will respond to ENCC requests;

(10) FCHPs and PCOs shall make ENCC services available to coordinate the provision of covered services to Aged, Blind, Disabled or special need OMAP Members who exhibit inappropriate, disruptive or threatening behaviors in a Practitioner's office;

(11) Exceptional Needs Care Coordinators shall document ENCC services in OMAP Member medical records as appropriate and/or in a separate OMAP Member case file.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.725

Hist.: HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0420

Oregon Health Plan Prepaid Health Plan Billing and Payment Under the Oregon Health Plan

(1) All billings for Oregon Health Plan Clients to Prepaid Health Plans (PHPs) and to Office of Medical Assistance Programs (OMAP), shall be submitted within four (4) months and twelve (12) months, respectively, of the date of service, subject to other applicable OMAP billing rules. Submissions shall be made to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive Enrollments;

(c) Medicare is the primary payor;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of Provider to certify the OMAP Member's eligibility); or

(e) Third Party Resource (TPR). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payor of last resort and is not considered an alternative resource or TPR.

(2) Providers must be enrolled with OMAP to be eligible for Fee-for-Service (FFS) payment by OMAP. Mental health Providers, except Federally Qualified Health Centers, must be approved by the Local Mental Health Authority (LMHA) and the Office of Mental Health and Addiction Services (OMHAS) before enrollment with OMAP. Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider enrollment.

(3) Providers, including mental health Providers, do not have to be enrolled with OMAP to be eligible for payment for services by PHPs except that Providers who have been excluded as Medicare/Medicaid Providers by

ADMINISTRATIVE RULES

OMAP, CMS or by lawful court orders are ineligible to receive payment for services by PHPs.

(4) Providers shall verify, before rendering services, that the OMAP Member is eligible for the Medical Assistance Program on the date of service and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of Covered Services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payor before rendering services. Providers shall inform OMAP Members of any charges for non-covered services prior to the services being delivered.

(5) Capitated Services:

(a) PHPs receive a Capitation Payment to provide services to OMAP Members. These services are referred to as Capitated Services;

(b) PHPs are responsible for payment of all Capitated Services. Such services should be billed directly to the PHP, unless the PHP or OMAP specifies otherwise. PHPs may require Providers to obtain preauthorization to deliver certain Capitated Services.

(6) Payment by the PHP to Providers for Capitated Services is a matter between the PHP and the Provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any Provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information;

(iv) The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of Valid Pre-Authorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Pre-authorizations for prescription drugs must be completed and the pharmacy notified within 24 hours. If a pre-authorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify Providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the Provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the OMAP Member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the OMAP Member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the OMAP Member requests an extension, or if the PHP justifies to OMAP a need for additional information and how the extension is in the OMAP Member's interest.

(D) For all other pre-authorization requests, PHPs shall notify Providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14 day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies the need for additional information and how the delay is in the interest of the OMAP Member. The PHP shall make a determination as the OMAP Member's health condition requires, but no later than the expiration of the extension. PHPs shall notify OMAP Members of a denial within five working days from the final determination using an OMAP or OMHAS approved client notice format.

(b) Claims Payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with Appeal rights to the OMAP Member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of Valid Claims within 45 calendar days of receipt and at least 99% of Valid Claims within 60 calendar days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the OMAP Member may be financially responsible. Such notice shall be provided to the OMAP Member and the treating Provider within 14calendar days of the final determination. The notice to the OMAP Member shall be an OMAP or OMHAS approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (OMAP 3030) shall be attached. The notice to the Provider shall include the reason for the denial;

(D) PHPs shall not require Providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved Providers to bill Medicare;

(F) PHPs shall not deny payment of Valid Claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the OMAP Member's Clinical Record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the OMAP Member receives within the PHP, for authorized referral care, and for Urgent Care Services or Emergency Services the OMAP Member receives from non-contracted Providers. FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care OMAP Members receive from Non Participating Providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the OMAP Member and any required attendant for out-of-state services (as defined in General Rules) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by OMAP;

(e) PHPs shall be responsible for payment of covered services provided by a Non-Participating Provider that were not pre-authorized if the following conditions exist:

(A) It can be verified that the Participating Provider ordered or directed the covered services to be delivered by a Non-Participating Provider; and

(B) The covered service was delivered in good faith without the preauthorization; and

(C) It was a covered service that would have been pre-authorized with a Participating Provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to Non-Participating Providers (Providers enrolled with OMAP that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-120-1295. This rule does not apply to Providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(7) Other Services:

(a) OMAP Members enrolled with PHPs may receive certain services on an OMAP FFS basis. Such services are referred to as Non-Capitated Services;

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by OMAP on an OMAP FFS basis. Before providing services, Providers should contact the PHPs identified on the OMAP Member's Medical Care Identification or, for some mental health services, the CMHP. Alternatively, the Provider may call the OMAP Provider Services Unit to obtain information about coverage for a particular service and/or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate OMAP administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill OMAP directly for Non-Capitated Services in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

ADMINISTRATIVE RULES

(e) OMAP shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and OMAP administrative rules and supplemental information;

(f) OMAP will not pay a Provider for provision of services for which a PHP has received a Capitation Payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of OMAP, OMHAS, nor a PHP except as provided for in OMAP administrative rules and supplemental information (e.g., Capitated Services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with non-public teaching hospitals will reimburse those hospitals for Graduate Medical Education (GME), if the hospitals are:

(A) Neither a type A nor type B hospitals;

(B) Not paid according to a type A or type B payment methodology; and,

(C) In remote areas greater than 60 miles from the nearest acute care hospital, with a graduate medical student teaching program.

(i) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a Provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for OHP Clients.

(9) OHP Clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client/per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide Primary Care access, and management services for Preventive Services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. OMAP payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM Managed Services are covered services that shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(d) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate OMAP administrative rules and supplemental information.

(10) All OHP Clients who are enrolled with a PCO receive inpatient hospital services on an OMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled OMAP Provider;

(b) All services shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(c) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate OMAP administrative rules and supplemental information.

(11) OHP Clients who are not enrolled with a PHP receive services on an OMAP FFS basis:

(a) Services may be received directly from any appropriate enrolled OMAP Provider;

(b) All services shall be billed directly to OMAP in accordance with billing instructions contained in the OMAP administrative rules and supplemental information;

(c) OMAP shall pay at the OMAP FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate OMAP administrative rules and supplemental information.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 17-1995, f. 9-28-95, cert. ef. 10-1-95; HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 15-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 52-2001, f. & cert. ef. 10-1-01; OMAP 57-2002, f. & cert. ef. 10-1-02; OMAP 4-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 23-2004(Temp), f. & cert. ef. 3-23-04 thru 8-15-04; OMAP 33-2004, f. 5-26-04, cert. ef. 6-1-04; OMAP 37-2004(Temp), f. 5-27-04 cert. ef. 6-1-04 thru 11-15-04; OMAP 47-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0440

Prepaid Health Plan Hospital Contract Dispute Resolution

When there is a failure to reach agreement on a contract between a Fully Capitated Health Plan (FCHP) or a Physician Care Organization (PCO) and a non Type A, Type B, or Critical Access hospital, the two disagreeing parties must engage in non-binding mediation. This requirement to engage in non-binding mediation does not apply to disagreements involving emergency or urgent services as defined in Oregon Health Plan Administrative Rules. Either the hospital, FCHP, or the PCO can call for mediation. If the parties agree on a mediator their selection shall stand. If a mediator cannot be mutually agreed on, the State will make the selection from the recommended names forwarded by each party. The cost of mediation will be evenly split between the FCHP or PCO and the hospital.

(1) The mediation will proceed under the following guidelines:

(a) Access to care for Oregon Health Plan Members is of critical importance;

(b) Any agreement must operate within the capitation rate received by the FCHP or PCO;

(c) Reimbursement levels must bear some relationship to the cost of the services;

(d) Consideration shall be given to the efforts of each part to manage the overall utilization of health care resources and control costs;

(e) A comparison to statewide averages of each party's cost of services, service utilization rates and administrative costs may be considered in reaching a mediation recommendation.

(2) No client medical information, communication between parties, nor any other non public information used in the mediation may be disclosed to any person not a party to the mediation. All such information shall not be admissible nor disclosed in any subsequent administrative, judicial or mediation proceeding.

(3) Within thirty (30) days of the conclusion of the mediation, the mediator will issue a report to the State and to the involved parties that will include mediation findings, and recommendations. All confidential information will be excluded from the mediator's report.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 13-2002, f. & cert. ef. 4-1-02; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0480

Oregon Health Plan Benefit Package of Covered Services

(1) OMAP Members are eligible to receive, subject to Section (11) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are Medically or Dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 section (4) for funded line coverage information.

(2) Medical Assistance Benefit Packages follow practice guidelines adopted by the Health Services Commission (HSC) in conjunction with the Prioritized List of Health Services unless otherwise specified in rule.

(3) Diagnostic Services that are necessary and reasonable to diagnose the presenting condition of the OMAP Member are covered services, regardless of the placement of the condition on the Prioritized List of Health Services.

(4) Comfort care is a covered service for an OMAP Member with a Terminal Illness.

(5) Preventive Services promoting health and/or reducing the risk of disease or illness are covered services for OMAP Members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors, (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(6) Ancillary Services are covered, subject to the service limitations of the Medical Assistance Program rules, when the services are Medically or Dentally Appropriate for the treatment of a covered condition-treatment pair, or the provision of ancillary services will enable the OMAP Member to retain or attain the capability for independence or self-care. A list of Ancillary Services is included in the Prioritized List of Health Services, adopted in OAR 410-141-0520.

(7) The provision of Chemical Dependency Services must be in compliance with the Office of Mental Health and Addiction Services (OMHAS) Administrative Rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the requirements in the Chemical Dependency subsection of the Statement of Work in the Fully Capitated Health Plan and Physician Care Organization contracts.

ADMINISTRATIVE RULES

(8) In addition to the coverage available under section (1) of this rule, an OMAP Member may be eligible to receive, subject to section (12), services for treatments which are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP Client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded co-morbid conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by OMAP for fee-for-service OHP Clients or a finding by the Prepaid Health Plan (PHP) for OMAP Members that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

- (i) Treating physician opinion;
- (ii) Medical research;
- (iii) Community standards; and
- (iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any OMAP Member, especially an OMAP Member with a disability or with a comorbid condition, Providers must determine whether the OMAP Member has a funded condition and paired treatment that would entitle the OMAP Member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD-9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(9) OMAP shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of covered services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, OMAP shall make a retrospective determination under this subsection, provided OMAP is notified of the emergency situation during the next business day. If OMAP denies a requested service, OMAP shall provide written notification and a notice of the right to an Administrative Hearing to both the OHP Client and the treating physician within five working days of making the decision.

(10) If a condition/treatment pair is not on the Health Services Commission's list of prioritized services and OMAP determines the condition/treatment pair has not been identified by the Commission for inclusion on the list, OMAP shall make a coverage decision in consultation with the Health Services Commission.

(11) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-141-0500, Excluded Services and Limitations for Oregon Health Plan Clients.

(12) General anesthesia for dental procedures which are Medically and/or Dentally Appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those OMAP Members with concurrent needs: age, physical, medical or mental status, or degree of difficulty of the procedure as outlined below:

(a) Children under three years old with dental needs determined by the dentist or oral surgeon as requiring general anesthesia;

(b) Children over three years old requiring substantial dental care determined by the dentist or oral surgeon as requiring general anesthesia that may protect the child from unnecessary trauma;

(c) OMAP Members with physical, mental or medically compromising conditions;

(d) OMAP Members with dental needs for who local anesthesia is ineffective because of acute infection, anatomic variations, or allergy;

(e) Acute situational anxiety, fearfulness, extremely uncooperative or uncommunicative client with dental needs, determined by the dentist or oral surgeon, sufficiently important that dental care cannot be deferred;

(f) OMAP Members who have sustained extensive orofacial and dental trauma; or

(g) OMAP Members with dental needs who otherwise would not obtain necessary dental care when, in the decision of the dentist or oral sur-

geon, the need for dental treatment outweighs the risks of general anesthesia. The OMAP Member's dental record must clearly document the justification for the level of anesthesia and why, in the estimation of the dentist or oral surgeon, the treatment in an office setting is not possible.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 31-1993, f. 10-14-93, cert. ef. 2-1-94; HR 7-1994, f. & cert. ef. 2-1-94; HR 39-1994, f. 12-30-94, cert. ef. 1-1-95; HR 26-1995, f. 12-29-95, cert. ef. 1-1-96; HR 19-1996, f. & cert. ef. 10-1-96; HR 1-1997(Temp), f. 1-31-97, cert. ef. 2-1-97; HR 12-1997, f. 5-30-97, cert. ef. 6-1-97; HR 15-1997, f. & cert. ef. 7-1-97; HR 26-1997, f. & cert. ef. 10-1-97; OMAP 17-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 32-1998, f. & cert. ef. 9-1-98; OMAP 39-1998, f. & cert. ef. 10-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 61-2003, 9-5-03, cert. ef. 10-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

410-141-0520

Prioritized List of Health Services

(1) The Prioritized List of Health Services (Prioritized List) is the Oregon Health Services Commission's (HSC) listing of physical health services with "expanded definitions" of Ancillary Services and Preventive Services and the HSC's practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HSC. The HSC maintains the most current list on the HSC website (http://www.ohpr.state.or.us/hsc/index_hsc.htm) or, for a hardcopy, contact the Office of Health Policy and Research. This rule incorporates by reference the October 1, 2003 Prioritized List with technical revisions effective April 1, 2004 and October 1, 2004, including expanded definitions and practice guidelines, and available on the HSC website.

(2) Certain Mental Health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). These codes are identified on their own Mental Health (MH) section of the appropriate lines on the Prioritized List of Health Services.

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Office of Mental Health and Addiction Services and approval to bill Medicaid for CD services.

(4) The October 1, 2003 Prioritized List with technical revisions effective April 1, 2004 and October 1, 2004, is in effect and condition/treatment pairs through line 546 are funded.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-04; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05

Adm. Order No.: OMAP 28-2005(Temp)

Filed with Sec. of State: 5-10-2005

Certified to be Effective: 5-10-05 thru 11-5-05

Notice Publication Date:

Rules Adopted: 410-050-0861

Rules Amended: 410-050-0860

Subject: The tax rate stated in Rule 410-050-0860 does not have an end date. The proposed amendment sets an end date of December 31, 2004. The new rule 410-050-0861 establishes a new rate set by the Department of Human Services Director for the period beginning January 1, 2005. The new rate is a reduction from 0.95% to 0.68%.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-050-0860

Director Determines Rate of Tax

(1) The tax rate is determined by the Director.

ADMINISTRATIVE RULES

(2) The tax rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax rate for the period beginning July 1, 2004 through December 31, 2004 is 0.95 percent.

(3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the Hospitals as to the effective date of the rate reduction.

(4) A Hospital is not guaranteed that any additional moneys paid to the Hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the Hospital.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 91-2004(Temp), f. & cert. ef. 12-3-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05

410-050-0861

Tax Rate

The Tax rate for the period beginning January 1, 2005 is 0.68 percent.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 28-2005(Temp), f. & cert. ef. 5-10-05 thru 11-5-05

Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 7-2005(Temp)

Filed with Sec. of State: 5-2-2005

Certified to be Effective: 5-2-05 thru 10-28-05

Notice Publication Date:

Rules Amended: 333-054-0010, 333-054-0020, 333-054-0030, 333-054-0050, 333-054-0060, 333-054-0100

Subject: The United States Department of Agriculture recently handed down new requirements mandating that WIC state programs implement certain provisions regarding authorized WIC vendors. The rule changes focus on:

- Identifying stores that derive more than 50% of their food sales from WIC food sales as "MT 50's";
- Not authorizing any "MT 50's" until a federal moratorium is lifted;
- Not allowing "MT 50's" to offer incentive items or delivery service to shoppers;
- Notifying all vendors of the first violation of a sanction that requires a pattern before documenting any other violations;
- Allowing vendors, other than "MT 50's" limited delivery service to shoppers;
- Requiring all vendors to purchase infant formula from a state authorized infant formula provider;
- Requiring all vendors to maintain documentation of formula purchases for the duration of the agreement period; and
- Changing the monetary calculations for state implemented sanctions requiring a civil money penalty in lieu of disqualification.

Rules Coordinator: Christina Hartman—(503) 731-4405

333-054-0010

Definitions

(1) "Adequate Participant Access" means a determination based on the availability of other vendors within a five-mile radius, geographic barriers to using other vendors, local agency recommendations based upon identified participants' needs, and the availability of public transportation and roads.

(2) "Applicant" means any person, or person with an interest in the business, making a written request for authorization to participate in the WIC Program, including vendors that reapply for authorization.

(3) "Authorization" means the process by which DHS assesses, selects, and enters into agreements with stores that apply or subsequently reapply to be vendors.

(4) "Authorized food" means any supplemental foods listed on the WIC Authorized Food List or the food instrument.

(5) "Authorized shopper" means the participant or any person designated by a participant who has been documented as such at the local agency to act on the participant's behalf and, in the case of an infant or child, the caretaker or the caretaker's designee.

(6) "CFR" means Code of Federal Regulations.

(7) "CMP" means civil money penalty.

(8) "Compliance buy" means a single covert, on-site visit in which a DHS representative poses as an authorized shopper and attempts to transact, or transacts, one or more food instruments.

(9) "DHS" means Oregon Department of Human Services.

(10) "Disqualification" means the act of ending the WIC Program participation of a vendor, whether as a punitive sanction or for administrative reasons.

(11) "FNS" means the Food and Nutrition Service of the U. S. Department of Agriculture.

(12) "FSP" means the Food Stamp Program, of the Food and Nutrition Service of the U.S. Department of Agriculture.

(13) "Food instrument" means a WIC Program voucher, check, coupon or other WIC approved document, which is used to obtain authorized foods.

(14) "Incentive item" means a food or non-food item offered free of charge to WIC shoppers to motivate them to shop at a particular store.

(15) "Inventory audit" means an examination of food invoices or other proofs of vendor purchases to determine whether a vendor has purchased sufficient quantities of authorized foods to support the vendor's claim for reimbursement for such foods from DHS during a specific period of time.

(16) "Investigation" means a period of review, not to exceed 24 months, of a vendor's compliance with program rules and procedures.

(17) "Local agency" means:

(a) A public or private non-profit health or human services agency that provides health services, either directly or through contract, in accordance with 7 CFR § 246.5;

(b) An Indian Health Service unit;

(c) An Indian tribe, band or group recognized by the Department of the Interior which operates a health clinic or is provided health services by an Indian Health Service unit; or

(d) An intertribal council or group that is an authorized representative of Indian tribes, bands or groups recognized by the Department of the Interior, which operates a health clinic or is provided health services by an Indian Health Service unit.

(18) "MT 50" means an authorized vendor or applicant that derives, or is expected to derive, more than 50% of its total annual food sales from WIC food sales.

(19) "Participant" means any pregnant woman, breastfeeding woman, post-partum woman, infant or child who receives authorized foods or food instruments under the WIC Program, and the breastfed infant of any participating breastfeeding woman.

(20) "Pattern" means three or more of the same rule violation that occurs within a single investigation.

(21) "Peer group" means a group of vendors categorized by DHS based on store type and store size.

(22) "Person" means a human being, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(23) "Person with an interest in the business" means an officer, director, partner, or manager of the business or a shareholder with 25% interest or more in the business.

(24) "Price adjustment" means an adjustment made by DHS, in accordance with the vendor agreement, to the purchase price on a food instrument, which matches the vendor's actual shelf price, for the total of the individual items, but exceeds the maximum amount allowable by DHS for the vendor's peer group for that food instrument.

(25) "Routine monitoring" means an overt, on-site visit in which DHS authorized representatives or federal officials identify themselves to vendor personnel.

(26) "Trafficking" means buying or selling food instruments for cash.

(27) "U.S.C." means United States Code.

(28) "Vendor" means the current owner(s) or any person with an interest in the business, of any retail store location that is currently authorized by DHS to participate in the WIC Program.

(29) "Vendor agreement" means a standard written legal contract between the vendor and DHS that sets forth responsibilities of the parties.

(30) "Vendor overcharge" means intentionally or unintentionally charging DHS more for authorized foods than the actual shelf price or the price they charge other shoppers.

(31) "Vendor Price List" means a list of current authorized foods and minimum stock requirements, with current shelf prices completed by the vendor.

ADMINISTRATIVE RULES

(32) "Violation" means an activity that is prohibited by OAR 333-054-0000 through 333-054-0070 and is classified in OAR 333-054-0050.

(33) "WIC Authorized Food List" means the list of supplemental foods approved by the State of Oregon.

(34) "WIC Program" means the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) authorized by Section 17 of the Federal Child Nutrition Act of 1966, as amended, 42 U.S.C. §1786.

Stat. Auth.: ORS 291.003, 409.600, 431.110 & 431.250

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; HD 31-1994, f. & cert. ef. 12-22-94; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

333-054-0020

Vendor Participation

(1) Only authorized vendors may accept food instruments in exchange for authorized foods.

(2) Application:

(a) An applicant shall submit a completed application to DHS, which includes: an application form; a Vendor Price List; a sample of the applicant's current bank endorsement stamp or other method of endorsement approved by DHS, listing the specific store name and store number; a current Food Stamp Authorization number and any other documents or information required by DHS.

(b) DHS may limit the periods during which applications for vendor authorization will be accepted and processed. DHS will process applications, outside of the limited application period, when it determines the applicant's store is necessary to ensure adequate participant access in a specific geographic location.

(3) Selection Criteria. In order for DHS to consider authorizing an applicant, the applicant shall:

(a) Demonstrate and maintain competitive pricing as determined by DHS based on the average redemption prices of individual authorized foods within the peer group appropriate to the applicant's characteristics, plus a DHS-determined percentage;

(b) Possess a current bank account number;

(c) Ensure the store has adequate refrigeration facilities;

(d) Not have, within the previous six years, a criminal conviction or civil judgment involving fraud or any other offense related to the applicant's business integrity or honesty;

(e) Possess a current FSP authorization number. Pharmacies shall be exempt from this selection requirement due to the nature of the services they provide for the WIC Program;

(f) Not have a history of serious violations with either the WIC Program or Food Stamp Program;

(g) Not be currently disqualified from participation in another state's WIC Program. DHS shall not authorize an applicant that has been assessed a CMP in lieu of disqualification by another state WIC Program until the period of the disqualification that would otherwise have been imposed has expired;

(h) Not be currently disqualified from participation in the Food Stamp Program. DHS shall not authorize an applicant that has been assessed a FSP civil money penalty in lieu of disqualification until the period of the disqualification that would otherwise have been imposed has expired; and

(i) Have a fixed location for each store.

(j) Stock representative items from all food categories specified on the Vendor Price List. Minimum quantities specified on the Vendor Price List shall be stocked or on order before authorization of an applicant:

(A) DHS may grant a written exception if the applicant is able to provide documentation that appropriate stock was on order at the time of the initial on-site review and will be in the store within 7 days;

(B) DHS may grant a written exception to this requirement for cases where there is no participant need in the applicant's area for a specific authorized food item, such as infant formula. DHS shall determine participant need based on the local agency's input regarding a vendor request for exception, vendor redemption data relative to the vendor's request, and the number of infants using formula in the vendor's store's zip code. If a local agency notifies the vendor of a specific need for that authorized food item, the vendor will ensure that the authorized food item is available within 7 days of the request;

(C) Pharmacies are exempt from this requirement; however, they shall obtain infant formula, including formula that requires a prescription, within 72 hours of a DHS or participant request.

(k) An applicant's store which is necessary to ensure adequate participant access may be exempt from OAR 333-054-0020(3)(a) and (j).

(l) Pursuant to USDA Moratorium dated 12/8/2004, an applicant that is likely to derive more than 50% of the store's annual food revenue from WIC transactions will not be authorized, except for cases of participant access hardship as determined solely by DHS. When the moratorium is lifted, this requirement will be automatically repealed. MT 50's that were authorized prior to December 8, 2004 are exempt from this selection criterion.

(m) MT 50's must abide by the incentive item restrictions in 333-054-0030(11)(s).

(n) An applicant must purchase infant formula, which is to be sold to WIC shoppers, only from wholesalers, distributors, and retailers authorized by the Oregon WIC Program.

(o) An applicant must maintain invoices or receipts to show source of formula purchases for at least 3 years. Vendor must also maintain documentation of total food sales throughout the vendor agreement.

(4) Authorization Requirements:

(a) DHS or the local agency shall conduct a documented on-site visit prior to, or at the time of, authorization of an applicant, including evaluating the inventory and condition of authorized foods and providing the applicant with the WIC Program information prior to or at the time of authorization;

(b) DHS shall conduct a live interactive training prior to or at the time of authorization. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training; and

(c) Once authorized, the vendor shall remain in compliance with the current selection criteria set forth in OAR 333-054-0020(3) for the duration of the vendor agreement. DHS shall disqualify the vendor at any time the vendor does not meet the current selection criteria.

(5) Application Denials. DHS shall give the applicant written notification of denial, in conformance with ORS chapter 183, as otherwise provided in these rules, DHS may deny an applicant authorization for reasons including, but not limited to, the following:

(a) The applicant's failure to meet the selection criteria;

(b) The applicant's failure to meet all of the WIC rules initially or for the duration of the vendor agreement;

(c) The applicant's store or business has been sold by its previous owner in an attempt to circumvent a WIC Program sanction. In making this determination, DHS may consider such factors as whether the applicant's store or business was sold to a relative by blood or marriage of the previous owner(s) or sold to any person for less than its fair market value;

(d) The applicant's history of redemption of food instruments;

(e) The applicant's refusal to accept training from the WIC Program;

or

(f) The applicant's misrepresentation of information on the application.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-02-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

333-054-0030

Vendor Agreements

(1) Each applicant who has been approved for authorization shall sign a vendor agreement. The term of a vendor agreement shall not exceed three years. The vendor agreement shall be signed by a representative of DHS and a representative of the vendor who has the legal authority to sign the vendor agreement and obligate the applicant to the terms of the vendor agreement.

(2) A vendor shall apply for authorization prior to the expiration of each vendor agreement and shall meet the selection criteria in effect at the time of each application. DHS or local agency shall provide a vendor with not less than 15 days advance written notice of the expiration of its vendor agreement.

(3) In the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, and equipment failure) DHS shall disqualify the vendor.

(4) DHS shall immediately terminate the vendor agreement if it determines that the vendor has provided false information in connection with its application for authorization.

(5) Either DHS or the vendor may terminate the vendor agreement for cause after providing at least 15 days advance written notice to the other party.

(6) DHS shall terminate a vendor agreement when DHS determines that there is an inappropriate relationship, real or apparent, which jeopard-

ADMINISTRATIVE RULES

izes the fair and objective administration of the program between a vendor and DHS or any of its local agencies.

(7) When a vendor has more than one store location, the vendor agreement shall include a list of each store's name and location. Individual store locations may be added or deleted, by amendment to the vendor agreement or disqualification of an individual store location, without affecting the remaining store locations. Each store location included in the vendor agreement shall meet all applicable laws and rules.

(8) Neither DHS nor the vendor is obligated to renew the vendor agreement.

(9) The vendor agreement does not constitute a license or property interest.

(10) DHS may terminate the vendor agreement if a vendor has not been selected for regular use by at least five (5) authorized shoppers during the six-month period prior to the agency's review.

(11) Vendor Responsibility. A vendor shall:

(a) Comply with all applicable federal and state laws, rules and regulations, in addition to the terms of the vendor agreement;

(b) Be accountable for any intentional or unintentional action of its owners, officers, managers or employees, with or without the knowledge of management, who violate the vendor agreement or federal or state statutes, regulations, policies or procedures governing the Program. The vendor is also accountable for the actions of anyone who works as a checker, whether they are paid or not;

(c) Designate one person, at each authorized vendor location, to serve as the designated trainer. The designated trainer shall train all checkers and other staff involved with WIC transactions regarding the handling of food instruments. The vendor or its designated trainer shall promptly inform employees of changes in the WIC Program, including changes to the WIC Authorized Food List;

(d) Ensure that the designated trainer and store manager or other management employee participate in training prior to, or at the time of, the vendor's first authorization and annually thereafter. During the period in which a vendor agreement is in effect, DHS shall conduct at least one live interactive training for that vendor. DHS shall designate the date, time, and location of the training, except that DHS shall provide the vendor with at least one alternate date on which to attend such training;

(e) At all reasonable times, provide DHS' authorized representative or federal government official access to the vendor's facilities, books, records and documents. The vendor shall provide the above entities and individuals access to food instruments negotiated on the day of review, shelf price records, financial records and other documents that DHS or federal officials determine are pertinent to determining a vendor's compliance. The vendor shall also, upon request, furnish to DHS, within two days, verification of total vendor purchases of specific items in order to justify amounts claimed as WIC Program purchases;

(f) For a period of three years, maintain purchase and receiving records, including, but not limited to, inventory records showing all wholesale and retail purchases, state and federal tax returns, and other pertinent records that substantiate the volume and prices charged for redeemed food instruments. In the case of retail purchases, the vendor shall provide receipts specifying the authorized food item purchased, quantity, unit price and date of purchase;

(g) Notify DHS in writing of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change:

(A) In the event of a cessation of operations or any change in ownership, the legal authority obligating the vendor, or store location, the vendor agreement shall be terminated;

(B) In the event of a name change for any store the vendor shall, within 60 days of the change, ensure that the store's outside sign bears the same name as that listed on the vendor agreement; and

(C) If the vendor closes any store listed in the vendor agreement which contains more than one store location, the vendor shall notify DHS in writing of the closed store's name, address, and telephone number. This written notification shall be considered an amendment of the vendor agreement unless disapproved in writing by DHS within 15 days of DHS' receipt of the vendor's notification.

(h) Notify DHS in the event of any change in store facilities which adversely impacts participants' ability to transact food instruments, (including, but not limited to: store remodel, building damage, or equipment failure), by no later than 5 p.m. the next business day.

(i) Not sell expired authorized food or infant formula to authorized shoppers;

(j) Mark all authorized foods with the price charged for these products to the general public or prominently display the price of the foods near the location of the foods in clear view of customers and in a manner that clearly identifies the price with the specific food item;

(k) Upon DHS' request, complete and return a Vendor Price List by the deadline set by DHS;

(l) Maintain the premises in a sanitary condition;

(m) Not retain WIC identification or any information that identifies a shopper as a WIC participant or disclose information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(n) Not engage in any conduct that would discriminate against any authorized shopper or participant based on the individual's race, color, national origin, gender, age, and disability. Complaints of discrimination will be forwarded to the USDA for follow-up in accordance with 7 CFR § 246.8(b).

(o) Use the "WIC" acronym or logo only as follows:

(A) To identify the vendor as an authorized WIC vendor;

(B) To identify authorized food items by attaching shelf-talkers stating "WIC-approved" or "WIC-eligible" to store shelves.

(p) Not use the "WIC" acronym and/or logo in any way that might give the impression to WIC shoppers that the store location is:

(A) Owned by the Oregon WIC Program;

(B) Operated by the Oregon WIC Program;

(C) Officially endorsed by the Oregon WIC Program; or

(D) Preferred by the Oregon WIC Program.

(q) Comply with investigations by federal or state officials; and

(r) Implement corrective action as directed by DHS within 30 days from the issuance of a "Notice of Non-Compliance."

(s) MT 50's are prohibited from offering incentive items, including food items or other free merchandise, to WIC shoppers unless the vendor provides DHS with proof that these items were obtained at no cost to the vendor and DHS approves the provision of the incentive items.

(A) The provision of cash gifts, lottery tickets, transportation, and delivery are not allowable incentives.

(B) The vendor may not circumvent this requirement by soliciting someone else to purchase and then donate the item for the store's use.

(12) Redemption of food instruments. A vendor shall:

(a) Require each authorized shopper to produce that individual's WIC identification card prior to the transaction. The vendor shall not require the authorized shopper to provide any other identification or information in addition to the WIC identification card in order to use the food instrument;

(b) Not allow any employee, owner, or person with an interest in the business, who is also an authorized shopper, to redeem a food instrument for which he or she is an authorized shopper;

(c) Complete all food instrument transactions at the authorized store location. The vendor shall not deliver food purchased with food instruments to WIC participants unless the transaction was completed at the store location before delivery, no extra charge is added to the purchase price, and the service is also offered to non-WIC shoppers. This service is not allowed for MT 50 vendors.

(d) Refuse to accept food instruments that appear to be altered;

(e) Accept only valid food instruments made payable to "Any Authorized Oregon WIC Vendor";

(f) Accept only food instruments within the time period indicated in the "First Day To Use" and "Last Day To Use" boxes. The vendor shall refer the authorized shopper back to the local clinic if either of these dates is missing or if the "Last Day To Use" is handwritten;

(g) Ensure authorized shoppers receive the same treatment as provided to other customers such as honoring manufacturer's coupons, in-store specials or store promotions and not requiring separate lines for WIC authorized shoppers;

(h) Not accept any food instrument in exchange for alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances, as defined in 21 U.S.C. § 802;

(i) Not accept any food instrument in exchange for credit or non-food items other than those listed in (h);

(j) Not accept any food instrument in exchange for food items or quantities other than those specifically identified on the food instrument, including charging the WIC Program for supplemental food in excess of those listed on the food instrument;

(k) Ensure that only those brand names and food types listed on the WIC Authorized Food List are purchased;

(l) Not influence the authorized shopper's choice of authorized foods;

ADMINISTRATIVE RULES

(m) Not charge authorized shoppers for authorized foods obtained with food instruments;

(n) Not charge DHS more than the vendor's current shelf price or the advertised sale price, whichever is lower, for authorized food purchases;

(o) Not include sales tax or container deposits as part of the purchase price of the authorized foods listed on the food instrument;

(p) Write the actual purchase price in the designated box on the food instrument before the authorized shopper signs the food instrument. The purchase price shall include only the authorized food items actually provided to the authorized shopper at the time of the transaction;

(q) Duly witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of any food instrument accepted for payment and compare that signature with the signature on the WIC Program identification card, ensuring that these signatures match;

(r) Provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(s) After each transaction, return the WIC Program identification card to the authorized shopper.

(13) Post-redemption of food instruments. A vendor shall:

(a) Not provide a refund or exchange for an authorized food item obtained with a food instrument, except for an exchange of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(b) Not alter any food instrument, including by use of correction fluid;

(c) Prior to deposit of a food instrument, stamp each food instrument with the vendor's unique DHS-approved 4-digit number in the designated area on the front of the food instrument;

(d) Prior to deposit of the food instrument, endorse the back of each redeemed food instrument with the store's bank endorsement stamp or other method of endorsement approved by DHS;

(e) Deposit each redeemed food instrument into the vendor's bank within the time period designated on the front of the food instrument; and

(f) Not deposit a food instrument for reimbursement for foods or formula not received by an authorized shopper.

(14) Improperly redeemed food instruments:

(a) DHS may make price adjustments in order to comply with price limitations in accordance with the vendor agreement. The maximum amount DHS will reimburse a vendor for a food instrument is the average peer group price of the food instrument plus a DHS-determined percentage;

(b) DHS may deny reimbursement to the vendor for improperly redeemed food instruments or may demand refunds for reimbursements already made on improperly redeemed food instruments. In addition to denying payment or assessing a claim, DHS may sanction the vendor for overcharges or other errors in accordance with OAR 333-054-0060;

(c) The vendor shall reimburse DHS, within 30 days of DHS' written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments and for unsubstantiated volumes of authorized foods;

(d) When DHS denies reimbursement for a food instrument or requests payment for an improperly redeemed food instrument, the vendor shall have an opportunity to provide DHS with written justification for the error. A vendor shall submit the written justification, along with the returned food instrument, within the timeframe on the front of the food instrument; and

(e) The vendor shall not seek restitution from an authorized shopper or participant for a food instrument that has not been or will not be reimbursed or partially reimbursed by DHS, or for which DHS has requested repayment from the vendor.

(f) The vendor shall not contact the shopper after the transaction has been completed, or ask the local WIC clinic to intercede, to correct an error that was made during the transaction, such as a missing signature.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

333-054-0050

Violations

Violations shall be classified as either Type 1, 2, or 3 violations based on the severity of the violation. Each violation is listed by type below:

(1) Type 1 Violations:

(a) Accepting a food instrument that does not bear a "First Day To Use" and "Last Day To Use" date or is not made payable to "Any Authorized Oregon WIC Vendor";

(b) Accepting a food instrument before the "First Day To Use" or after the "Last Day To Use";

(c) One incident of failing to maintain an adequate stock of authorized foods or formula to fill food instruments consistent with vendor agreement requirements. DHS may grant an exception if the vendor is able to provide documentation that the appropriate stock was on order at the time of the violation and received by the vendor within 7 days of the violation;

(d) Failing to notify DHS of any change in ownership, store name, store location or permanent store closure at least 30 days prior to the effective date of the change;

(e) Failing to notify DHS by no later than 5 p.m. the next business day following any change in store facilities which adversely impact participants' ability to transact food instruments;

(f) Failing to prominently display shelf prices for authorized foods;

(g) Failing to complete and return the Vendor Price List by the deadline set by DHS;

(h) Failing to correctly endorse food instruments;

(i) Failing to enter the actual purchase price in the designated box before the authorized shopper signs the food instrument;

(j) Failing to provide the authorized shopper with a receipt for foods purchased with a food instrument; and

(k) Failing to ensure that within 60 days of a name change the outside sign bears the same name as that listed on the vendor agreement.

(2) Type 2 violations:

(a) Influencing an authorized shopper's selection of authorized foods;

(b) Accepting any food instrument when a valid WIC Program identification card is not presented prior to the transaction;

(c) Requesting or requiring any identification or information from the authorized shopper other than the WIC Program identification card;

(d) Failing to witness the authorized shopper's signature at the time of the transaction, in the designated box, on the front of the food instrument accepted for payment or failing to compare that signature with the signature on the WIC Program identification card;

(e) Treating authorized shoppers differently than other customers, such as a separate line for authorized shoppers or discourteous treatment;

(f) Selling expired authorized foods or infant formula to authorized shoppers;

(g) Failing to ensure that the designated trainer is able to demonstrate the correct procedure for processing a food instrument;

(h) Allowing a purchase of authorized infant formula in a quantity not prescribed on the food instrument;

(i) Failing to reimburse DHS, within 30 days of written request, for amounts paid by DHS to the vendor on improperly redeemed food instruments;

(j) Retaining WIC identification or any information that identifies a shopper as a WIC participant or disclosing information regarding a client of the WIC Program to any person other than DHS, its representatives or a federal official;

(k) Failing to maintain sanitary conditions;

(l) Including sales tax or container deposits as part of the actual cost of the authorized foods listed on the food instrument;

(m) Failing to:

(A) Respond to a request issued by DHS;

(B) Accept training when required by DHS;

(C) Implement corrective action imposed by DHS;

(D) Comply with terms in a final order issued by DHS; or

(E) Comply with an investigation by federal or state officials.

(n) Charging authorized shoppers for authorized foods obtained with food instruments;

(o) Using the "WIC" acronym or logos in an unauthorized manner;

(p) Obtaining infant formula from a source not specified in 333-054-0020(3)(n); and

(q) Not maintaining and/or providing to DHS upon request, invoices or receipts to show source(s) of formula purchase.

(3) Type 3 violations:

(a) For the following violations, DHS shall disqualify a vendor for one year:

(A) A pattern of providing unauthorized food items, in exchange for food instruments, including charging for authorized food provided in excess of those listed on the food instrument;

(B) A pattern of allowing the purchase of brand names or food types other than those listed on the WIC Authorized Food List;

ADMINISTRATIVE RULES

(C) Failing to provide purchasing/receiving records to substantiate the volume and prices charged to DHS, within two business days of DHS' request for such documentation;

(D) Refusing DHS or a federal official access to food instruments negotiated on the day of review;

(E) A pattern of failing to stock appropriate quantities of authorized foods and infant formula;

(F) Seeking restitution from WIC Program participants or authorized shoppers for a food instrument that has not been or will not be paid by DHS or for which reimbursement has been requested by DHS;

(G) Providing change when redeeming a food instrument;

(H) Violating the nondiscrimination clause listed in the vendor agreement or OAR 333-054-0030(11)(n);

(I) A pattern of allowing a refund or any other item of value in exchange for authorized foods or providing exchanges for authorized food items obtained with food instruments, except for exchanges of an identical authorized food item when the original authorized food item is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food item. An identical authorized food item means the exact brand and size as the original authorized food item obtained and returned by the authorized shopper;

(J) Providing false information or omitting pertinent information on the vendor application; and

(K) MT 50's only: A pattern of providing WIC shoppers with incentive items or other free merchandise/services not approved by DHS.

(b) For the following violations, DHS shall disqualify the vendor for three years:

(A) One incident of the sale of alcohol, an alcoholic beverage, or a tobacco product in exchange for a food instrument;

(B) A pattern of claiming reimbursement for the sale of an amount of a specific authorized food item which exceeds the store's documented inventory of that authorized food item for a specific period of time;

(C) A pattern of vendor overcharges;

(D) A pattern of receiving, transacting and/or redeeming food instruments outside of authorized channels or locations. This includes, but is not limited to: use of an unauthorized vendor/and or unauthorized person, and/or redemption of food instruments outside of an authorized store location.

(E) A pattern of charging for authorized foods not received by the authorized shopper; and

(F) A pattern of providing credit or non-food items in exchange for food instruments, other than those items listed in OAR 333-054-0050(3)(b)(A), (3)(c)(A) and (3)(c)(B).

(c) Six year disqualification:

(A) One incident of buying or selling a food instrument for cash (trafficking);

(B) One incident of selling a firearm, ammunition, explosive, or controlled substance, as defined in 21 U.S.C. § 802, in exchange for a food instrument.

(d) Permanent Disqualification: Conviction of trafficking in food instruments or selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. § 802 in exchange for a food instrument.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

333-054-0060

Vendor Sanctions

(1) Prior warning:

(a) DHS may, but is not required to notify the vendor that Type 1 or Type 2 violations have occurred before imposing a sanction.

(b) DHS shall notify the vendor of the initial occurrence of a Type 3 violation that requires a pattern of occurrences in order to impose a sanction, prior to documenting another violation, unless notification would compromise an investigation.

(2) Type 1 violations:

(a) For the first Type 1 violation, DHS may issue the vendor a "Notice of Non-Compliance", regardless of how many Type 1 violations occur during a single compliance buy.

(b) For the second Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan to DHS within 14 days of the date of DHS' notice. If the ven-

dor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented within 30 days of the "Notice of Non-Compliance."

(c) For the third Type 1 violation committed within twelve months of the first Type 1 violation, regardless of how many Type 1 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for six months.

(3) Type 2 violations:

(a) For the first Type 2 Violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may issue the vendor a "Notice of Non-Compliance" requiring the vendor to submit a written corrective action plan within 14 days of DHS' notice. If the vendor does not submit an acceptable written corrective action plan within the time period specified, DHS may disqualify the vendor from the WIC Program for six months. DHS may disqualify the vendor for six months if the approved corrective action is not implemented with in 30 days of the "Notice of Non-Compliance."

(b) For the second Type 2 violation committed within 24 months of the first Type 2 violation, regardless of how many Type 2 violations occur during a single compliance buy, DHS may disqualify the vendor from the WIC Program for one year.

(c) For a Type 2 violation followed by a Type 1 violation within 24 months of the first violation, DHS may disqualify a vendor from the WIC Program for six months.

(d) DHS may disqualify a vendor from the WIC Program for one year for a combination of three Type 1 and 2 violations, such as a Type 2 violation, followed by a Type 1, followed by a Type 2, within 24 months of the first violation.

(4) Type 3 violations:

(a) For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(A), DHS shall disqualify the vendor for one year. For the first Type 3 violation listed in OAR 333-054-0050(3)(a)(B) to (J), DHS may disqualify the vendor for up to one year.

(b) For a Type 3 violation listed in OAR 333-054-0050(3)(a)(K), DHS shall disqualify the vendor for one year.

(c) For a Type 3 violation listed in OAR 333-054-0050(3)(b)(A) to (F), DHS shall disqualify the vendor for three years.

(d) For a Type 3 violation listed in OAR 333-054-0050(3)(c)(A) and (B), DHS shall disqualify the vendor for six years.

(e) For a Type 3 violation listed in OAR 333-054-0050(3)(d), DHS shall permanently disqualify the vendor. A vendor is not entitled to receive any compensation for revenues lost as a result of such violation.

(f) For a second Type 3 violation referred to in OAR 333-054-0060(4)(a), (b) and (c) of this section, DHS shall double the second sanction. Civil money penalties may only be doubled up to the limits allowed under OAR 333-054-0060(5)(j)(C).

(g) For a third Type 3 violation referred to in OAR 333-054-0050(4)(a), (b) and (c) of this section, DHS shall double the third sanction and all subsequent sanctions that were previously imposed. DHS shall disqualify vendor and may not impose CMPs in lieu of disqualification for third or subsequent sanctions for violations referred to in OAR 333-054-0060(4)(a), (b) and (c).

(5) Disqualification:

(a) A vendor may not apply for authorization during a period of disqualification or termination from the WIC Program.

(b) DHS shall not accept a vendor's voluntary withdrawal from the WIC Program as an alternative to disqualification. In addition, DHS may not use non-renewal as an alternative to disqualification.

(c) DHS shall disqualify a vendor that does not pay, partially pays or fails to timely pay, a CMP assessed in lieu of disqualification, for the length of the disqualification corresponding to the violation for which the CMP was assessed. If this vendor was assessed more than one CMP in lieu of disqualification as the result of a single investigation, DHS shall disqualify the vendor for the period corresponding to the most serious violation.

(d) The total period of disqualification imposed for DHS violations, resulting from a single investigation, listed in OAR 333-054-0050(1), OAR 333-054-0050(2) and OAR 333-054-0050(3)(a)(B) through (J) may not exceed one year.

(e) After a vendor is disqualified, in order to participate in the WIC Program, they must apply for authorization.

(f) Prior to disqualifying a vendor, DHS shall determine if disqualification of the vendor would result in inadequate participant access. If DHS determines that disqualification of the vendor would result in inadequate

ADMINISTRATIVE RULES

participant access, DHS shall not disqualify the vendor and shall impose a CMP in lieu of disqualification. DHS shall include documentation of its participant access determination and any supporting documentation in each vendor's file. DHS shall not impose a CMP in lieu of disqualification for third or subsequent sanctions, even if the disqualification results in inadequate participant access. DHS shall not impose a CMP in lieu of disqualification for trafficking or an illegal sales conviction, even if the disqualification results in inadequate participant access.

(g) DHS shall disqualify a vendor who has been disqualified from the FSP. The disqualification shall be for the same length of time as the FSP disqualification, although it may begin at a later date than the FSP disqualification. Such disqualification by the WIC Program shall not be subject to administrative or judicial review under the WIC Program.

(A) DHS may disqualify a vendor who has been assessed a CMP in lieu of disqualification in the FSP, as provided in 7 CFR § 278.6. The length of such disqualification shall correspond to the period for which the vendor would otherwise have been disqualified in the Food Stamp Program. DHS shall determine if the disqualification of a vendor would result in inadequate participant access prior to disqualifying a vendor for FSP disqualification pursuant to paragraph (9) of this section or for any of the violations listed in this section. If DHS determines that disqualification of the vendor would result in inadequate participant access, DHS shall not disqualify or impose a CMP in lieu of disqualification. DHS shall include participant access documentation in vendor files.

(B) DHS shall provide the appropriate FNS office with a copy of the notice of adverse action and information on vendors it has disqualified for any of the violations listed in paragraphs OAR 333-054-0060(4)(a), (4)(b) and (4)(c) of this section. This information shall include the vendor's name, address, identification number, the type of violation(s), length of the disqualification, or the length of the disqualification corresponding to the violation for which a FSP CMP was assessed.

(h) Disqualification from the WIC Program may result in disqualification as a retailer in the FSP. Such disqualification may not be subject to administrative or judicial review under the FSP.

(i) DHS may disqualify a vendor that has been disqualified or assessed a CMP in lieu of disqualification by another WIC state agency for a mandatory sanction.

(A) The length of the disqualification shall be for the same length of time as the disqualification by the other WIC state agency or, in the case of a CMP in lieu of disqualification assessed by the other WIC state agency, for the same length of time for which the vendor would otherwise have been disqualified. The disqualification may begin at a later date than the sanction imposed by the other WIC state agency.

(B) If DHS determines that disqualification of a vendor would result in inadequate participant access, DHS shall not impose a CMP in lieu of disqualification.

(j) DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification pursuant to 333-054-0050(3)(a)(A), 333-054-0050(b) through (d) violations:

(A) Determine the vendor's average monthly redemptions for at least the 6-month period ending with the month immediately preceding the month during which the notice of administrative action is dated;

(B) Multiply the average monthly redemptions figure by 10 percent (.10);

(C) Multiply the product from paragraph (5)(j)(B) of this section by the number of months for which the store would have been disqualified. This is the amount of the CMP, provided that the CMP shall not exceed \$10,000 for each violation. For a violation that warrants permanent disqualification, the amount of the CMP shall be \$10,000. DHS shall impose a CMP for each violation when during the course of a single investigation DHS determines a vendor has committed multiple violations. The total amount of CMPs imposed for violations cited as part of a single investigation shall not exceed \$40,000.

(k) DHS shall use the following formula to calculate a CMP imposed in lieu of disqualification pursuant to any Type 1, Type 2, or 333-054-0050(3)(a)(B) to (K) violation.

(A) Determine the CMP by using the formula provided in (5)(j);

(B) DHS has discretion to reduce the amount of this CMP in quarterly increments, after reviewing the following criteria:

(i) Whether the vendor had other WIC violations or complaints within the 12 months immediately preceding the month the notice of administrative action is dated;

(ii) The degree of severity of the violations and/or complaints in (5)(k)(B)(i);

(iii) If the vendor being sanctioned is part of a multi-store chain, whether there is a pattern within the corporation of violations and the seriousness of those violations;

(iv) The degree of cooperation shown by the vendor, demonstrated by the vendor's willingness to schedule staff training and to make changes in store operations based on DHS recommendations.

(l) DHS shall disqualify a vendor for a period corresponding to the most serious sanction when during the course of a single investigation DHS determines a vendor has committed multiple violations. DHS shall include all violations in the notice of administrative action. If a sanction for a specific violation is not upheld after a hearing or appeal, DHS may impose a sanction for any remaining violations.

(m) If the basis for disqualification of a vendor is for violation of OAR 333-054-0050(3)(d), the effective date of the disqualification is the date the vendor received notice, either actual or constructive, of the disqualification.

(6) DHS shall, where appropriate, refer vendors who abuse the WIC Program to appropriate federal, state or local authorities for prosecution under applicable statutes.

(7) A vendor who commits fraud or abuse of the Program is subject to prosecution under applicable federal, state or local laws. A vendor who has embezzled, willfully misapplied, stolen or fraudulently obtained program funds, assets, or property shall be subject to a fine of not more than \$25,000 or imprisonment for not more than five years or both, if the value of the funds is \$100 or more. If the value is less than \$100, the penalties are a fine of not more than \$1,000 or imprisonment for not more than one year or both.

(8) A vendor may be subject to actions in addition to the sanctions in this section, such as claims by DHS of reimbursement for improperly redeemed food instruments and penalties outlined in 7 CFR § 246.12(1)(2)(i).

(9) DHS shall use the following criteria to determine inadequate participant access:

(a) The availability of other authorized vendors within a five-mile radius;

(b) Geographic barriers to using other authorized vendors;

(c) Local agency recommendations based upon identified participants' needs; and

(d) Availability of public transportation and roads.

(10) Any time DHS uses criteria in (9), DHS shall include participant access documentation in vendor file.

(11) DHS shall not reimburse for food instruments submitted by a vendor for payment during a period of disqualification.

(12) A vendor is not entitled to receive any compensation for revenues lost as a result of a disqualification.

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

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: HD 7-1993, f. & cert. ef. 6-11-93; OHD 17-2001, f. 8-2-01, cert. ef. 8-15-01; OHD 22-2002, f. & cert. ef. 12-24-02; PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

333-054-0100

Effective Date

The effective date for rules 333-054-0000, 333-054-0040, 333-054-0070 and 333-054-0100 shall be December 24, 2002.

Stat. Auth.: ORS 291.003, 431.110, 431.250 & 409.600

Stats. Implemented: ORS 409.600

Hist.: PH 19-2003(Temp), f. & cert. ef. 11-14-03 thru 5-12-04; PH 22-2003, f. 12-31-03, cert. ef. 1-5-04; PH 7-2005(Temp), f. & cert. ef. 5-2-05 thru 10-28-05

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 6-2005(Temp)

Filed with Sec. of State: 4-25-2005

Certified to be Effective: 4-25-05 thru 9-30-05

Notice Publication Date:

Rules Amended: 461-165-0180

Subject: OAR 461-165-0180 is being amended to add the Child Care Provider Additional Eligibility Requirements which requires child care providers to meet the requirements of the Criminal History Check rules (OAR 410-007-0280 and 461-165-0420).

Rules Coordinator: Annette Tesch—(503) 945-6067

ADMINISTRATIVE RULES

461-165-0180

Eligibility of Child Care Providers

To be eligible for child care payment from the Department, a provider must meet all of the requirements in sections (1), (2), (3), (4), and (5) of this rule.

(1) The provider must submit a completed Department listing form to the Department. If information available to the Department provides no basis for denial, the Department will approve the provider to receive payment for child care from the Department unless:

(a) The provider was previously found ineligible for payment and was not subsequently determined to be eligible; or

(b) The Department determines, following completion of Criminal History (CH) and Child Protective Service (CPS) records checks, that the provider, or other subject person, is not eligible for payment.

(2) The provider must:

(a) Allow the Department to inspect the site of care while child care is provided.

(b) Keep daily attendance records that show the arrival and departure times each day for each child in care and billing records for each child receiving child care benefits from the Department. The provider must keep the records for 12 months and provide them to Department staff on request.

(c) Be the person who actually provides the child care. The provider must notify the Department before using someone else to supervise children on a temporary basis.

(d) Not be in the same filing group as the child cared for and must not be the child's parent.

(e) Provide evidence of compliance with the Department's administrative rules, upon request of Department staff.

(f) Not bill a Department client for an amount collected by the Department to recover an overpayment or an amount paid by the Department to a creditor of the provider because of a lien, garnishment, or other legal process.

(3) The provider must not have a history of behavior that indicates a substantial risk to the health or safety of children in the provider's care. This determination is based on a review of CH and CPS records, an investigation of complaints, if any, and information provided by another agency. The following process is followed to determine whether there is a disqualifying history:

(a) The provider and all persons identified under OAR 461-165-0180(4) are considered "subject individuals" under OAR 410-007-0210(27)(a)(H) and must complete and sign the authorization for a records check and, if necessary, an authorization to release information and fingerprint cards, as necessary for the Department to complete a current records check.

(b) The Department may conduct a national criminal history check through the Oregon State Police and the Federal Bureau of Investigation as specified in OAR 410-007-0290 and may withhold authorization for payment to a provider until the check is complete.

(c) If the Department obtains information of a disqualifying crime, condition, or child protective services history with respect to the persons identified in sub-section (a) of this section, as described in OAR 410-007-0280, 410-007-0290, 461-165-0410, or 461-165-0420, the Department will conduct a weighing test as described in OAR 410-007-0200 to 410-007-0380.

(4) Each provider must meet the requirements of either subsection (a) or (b) of this section:

(a) A provider subject to OAR 414-205-0000 to 414-205-0170, 414-300-0000 to 414-300-0440, or 414-350-0000 to 414-350-0250 must be currently certified or registered with the Child Care Division (CCD) of the Employment Department and be in compliance with the applicable rules.

(b) A provider exempt from the rules specified in subsection (a) of this section must:

(A) Submit names of the following persons together with their authorizations for a record check through the CH record system maintained by the Oregon State Police and the CPS record system maintained by the Department:

(i) The provider and each person the provider uses to supervise children in his or her absence.

(ii) In the case of a provider who provides care for children in the provider's home:

(I) Each person 16 years of age or older who lives in the provider's home; and

(II) Each person who frequently visits the home of the provider during the hours care is provided and may have unsupervised access to a child there.

(iii) The site director of a child care facility exempt from the requirement to be certified by CCD, and each employee of the facility who may have unsupervised access to children in the facility.

(B) Meet the following requirements:

(i) Be in such physical and mental health as will not adversely affect his or her ability to care for a child in care and either:

(I) Be 18 years of age or older; or

(II) Be 16 or 17 years of age and listed with the Department in active status before May 1, 2004. When a provider under the age of 18 applies to be listed, a responsible adult must also sign the application and must jointly assume all the responsibilities of the minor provider, including the obligation to repay an overpayment. An adult whose child is cared for by the minor provider may not serve as the responsible adult if the Department makes a payment for that care.

(ii) Report to the Department, with respect to any person covered by paragraph (3)(b)(A) of this rule, any arrest and any involvement with CPS or any other agency that provides child protective services.

(iii) Report to the Department any change to his or her name or address and the addition of any person to the household within 10 days of occurrence.

(iv) Report suspected child abuse of any child in his or her care to CPS or a law enforcement agency.

(v) Supervise each child in care at all times.

(vi) Prevent persons who have demonstrated behavior that may have a detrimental effect on a child from having access to the children in his or her care.

(vii) Allow custodial parents of children in his or her care to have immediate access to their children at all times.

(viii) Inform parents of the need to obtain immunizations for their children.

(ix) Take reasonable steps to protect children in his or her care from the spread of infectious diseases.

(x) Provide information, in a manner specified by the Department, required to conduct CH and CPS records checks or determine whether the provider meets health and safety requirements.

(C) Ensure that the facility where care is provided meets the following standards, unless the care is provided in the home of the child. A provider who provides care where the child lives must meet only the requirements of subparagraph (iii) of this paragraph.

(i) The facility has safe drinking water.

(ii) The facility has a working smoke detector on each floor level and in any area where children nap.

(iii) All floor levels used by children have two usable exits to the outdoors (a sliding door or window that can be used to evacuate children is considered a usable exit), or, if a second floor is used for child care, the provider has a written plan for evacuating children in an emergency.

(iv) Fireplaces, space heaters, electrical outlets, wood stoves, stairways and other hazards have barriers to protect children.

(v) Firearms, ammunition, and other dangerous items such as medicine, drugs, cleaning supplies, paints, plastic bags, and poisonous and toxic materials are kept in a secure place out of children's reach.

(vi) The building, grounds, toys, equipment, and furniture are maintained in a clean, sanitary, and hazard-free condition.

(vii) The facility has a telephone in operating condition.

(5) A provider is not eligible to receive a child care payment if the Department has referred an overpayment against the provider to a collection agency and the claim is unsatisfied.

Stat. Auth.: ORS 181.537 & 411.060

Stats. Implemented: ORS 181.537, 411.060 & 411.122

Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 17-1994(Temp), f. & cert. ef. 8-15-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 2-1997, f. 2-27-97, cert. ef. 3-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 12-1997, f. & cert. ef. 8-25-97; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 13-2004, f. 4-29-04, cert. ef. 5-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 6-2005(Temp), f. & cert. ef. 4-25-05 thru 9-30-05

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

Adm. Order No.: SPD 4-2005

Filed with Sec. of State: 4-19-2005

Certified to be Effective: 4-19-05

Notice Publication Date: 1-1-05

ADMINISTRATIVE RULES

Rules Adopted: 411-070-0033

Subject: Chapter 411, Division 070, Temporary Rule 0033, the Post Hospital Extended Care benefit will be transitioned for permanent adoption, effective 01/28/2005. This rule provides clarification and guidance for implementation of OMAP rules that reference the Post Hospital Skilled Care benefit, (410-120-1210).

The Department of Human Services, Seniors and People with Disabilities local offices and Area Agencies on Aging (AAA) are responsible for prior authorization of this benefit for Fee-For-Service OHP clients and are unfamiliar with federal Medicare rules for skilled care. The rule gives clear requirements for assessing a client's eligibility for the PHEC/Post Hospital Extended Care benefit.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-070-0033

Post Hospital Extended Care Benefit

(1) The Post Hospital Extended Care Benefit (OAR 410-120-1210(3)(a)(G)) is an Oregon Health Plan benefit that consists of a stay of up to twenty days in a nursing facility to allow discharge from hospitals.

(2) This benefit must be prior authorized by Pre-Admission Screening for clients not enrolled in managed care.

(3) To be eligible for the Post Hospital Extended Care Benefit, the client must meet all of the following:

(a) Be receiving Oregon Health Plan Plus or Standard, Fee-for-Service benefits;

(b) Not be Medicare eligible;

(c) Have a medically-necessary, qualifying hospital stay consisting of:

(A) An OMAP-paid admission to an acute-care hospital bed, not including a hold bed, observation bed or emergency room bed;

(B) The stay must consist of three or more consecutive days, not counting the day of discharge.

(d) Transfer to a nursing facility within 30 days of discharge from the hospital;

(e) Needs skilled nursing or rehabilitation services for hospitalized condition, meeting Medicare skilled criteria;

(f) These skilled services are needed on a daily basis;

(g) The daily services can be provided only in a nursing facility, meaning:

(A) The client would be at risk of further injury from falls, dehydration or nutrition because of insufficient supervision or assistance at home; or

(B) The client's condition would require daily transportation to hospital or rehabilitation facility by ambulance; or

(C) It is too far to travel to provide daily nursing or rehabilitation services in the client's home.

(4) The client may qualify for another twenty day Post-Hospital Extended Care Benefit only if the client has been out of a hospital and has not received skilled nursing care for 60 consecutive days in a row and meets all the criteria in OAR 411-070-0032(3).

(5) Clients eligible for the twenty day Post-Hospital Extended Care Benefit are not eligible for long term care nursing facility or Home and Community Based waiver services unless the client meets the eligibility criteria in OAR 411-015-0100 or 411-320-0010(21, 22, or 23).

Stat. Auth.: ORS 409, 410.070 & 414.065

Stats. Implemented: 410.070 & 414.065

Hist.: SPD 4-2005, f. & cert. ef. 4-19-05

Adm. Order No.: SPD 5-2005(Temp)

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 6-1-05 thru 10-31-05

Notice Publication Date:

Rules Adopted: 411-999-0025

Subject: This temporary rule is being adopted to implement the Seniors Farmers' Market Nutrition Program. The rule adopts eligibility requirements as established by the USDA grant that funds the program.

Rules Coordinator: Lynda Dyer—(503) 945-6398

411-999-0025

Seniors Farmers' Market Nutrition Program

(1) This program is funded by a grant from the United States Department of Agriculture and is available to individuals age 60 and older who meet the following eligibility criteria on April 1, 2005:

(a) Have income at or below 135% of the Federal Poverty Level as found in OAR 461-155-0290.

(b) Receive Medicaid benefits while residing in their own home as provided under Title XIX of the Social Security Act, or Food Stamp Benefits.

(2) The program is funded to cover 17,330 eligible participants at \$40 per household.

(3) Benefits will be awarded on a first come first serve basis. Once the funds are depleted no further benefits may be granted.

(4) Program begins June 1, 2005 and ends on October 31, 2005.

(5) Denial notices will not be sent to those who will not qualify. Hearings rights are not available for those who do not qualify.

(6) This benefit will not affect any benefit granted by the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

Hist.: SPD 5-2005(Temp), f. 4-21-05, cert. ef. 6-1-05 thru 10-31-05

Adm. Order No.: SPD 6-2005

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 4-1-05

Rules Adopted: 411-020-0060, 411-020-0070, 411-020-0080, 411-020-0090, 411-020-0100, 411-020-0110, 411-020-0130

Rules Amended: 411-020-0000, 411-020-0002, 411-020-0010, 411-020-0015, 411-020-0020, 411-020-0030, 411-020-0040

Rules Ren. & Amended: 411-020-0050 to 411-020-0120

Subject: Chapter 411, Division 020, Adult Protective Services rule will be permanently adopted on July 1, 2005. The overall changes clarify specific definitions and steps in Chapter 411, Division 020, the Adult Protective Service process. Specifically:

- 411-020-0000 updates language to reflect Department of Human Services rather than Department of Human resources and to use 'people first' language. It also clarifies the scope of services to include current practice and specifies the availability of services. Statutory reference and administrative rule reference is included for every type (facility and community) of protective service complaints. This rule also specifies the intervention model used in APS activities as a cooperative and social service model.

- 411-020-0002 adds definitions of certain terms to reflect best practice standards. These include "APS Risk Management," "community based care facility," "disability," "evidence," "inconclusive," "informed choice," "older adult," "relevant," "risk assessment," "self-determination," "serious risk of harm," "substantiated," "undue influence," and "unsubstantiated."

- 411-020-0010 updates statutory cites.

- 411-020-0015 clarifies that eligibility for APS services is not based on income.

- 411-020-0020 clarifies responsibilities of mandatory reporters of elder abuse and includes procedures for notification of the complainant when the investigation has been concluded.

- 411-020-0030 is expanded to include specific coverage of protected health information as confidential material.

- 411-020-0040 provides a general overview of the services provided in Adult Protective Services. Specific services are described in detail in the following sections.

- 411-020-0060 details the process of screening referrals for protective services.

- 411-020-0070 describes the process of consultation and when it is appropriate as an alternative to assessment or investigation.

- 411-020-0080 describes the triage process of determining required response times for APS referrals.

- 411-020-0090 describes the components of an assessment completed with a reported victim needing protective services.

- 411-020-0100 details the steps required in the process of investigating an APS complaint.

- 411-020-0110 describes the process of providing appropriate intervention for an APS client at risk of harm.

- 411-020-0120 details the required steps in documenting an APS investigation for both community and facility cases.

ADMINISTRATIVE RULES

• 411-020-0130 describes the components of APS Risk Management as a way of continuing to monitor and intervene in APS cases.
Rules Coordinator: Lynda Dyer—(503) 945-6398

411-020-0000

Purpose and Scope of Program

(1) **Responsibility:** The Department of Human Services (DHS) Seniors and People with Disabilities (SPD) has responsibility to provide Adult Protective Services to older adults and to adults with disabilities whose situation is within its jurisdiction to investigate.

(2) **Intent:** The intent of the program is to provide protection and intervention for adults who are unable to protect themselves from harm and neglect.

(3) **Scope of Services:** The scope of services includes:

- (a) Receiving reports of abuse, neglect or self-neglect;
- (b) Providing and documenting risk assessment of reported victims;
- (c) Conducting and documenting investigations of reported wrongdoing; and
- (d) Providing appropriate resources for victim safety.

(4) **Availability:** Adult Protective Services are available from the Department to any adult resident of a DHS-licensed facility, to Nursing Facility residents regardless of age, and to any adult residing in the community who meets the eligibility criteria listed in OAR 411-020-0015.

(5) **Statutory and Administrative Rule Guidance:** Oregon has adopted laws and administrative rules to address different types of abuse or neglect to vulnerable adults. See Section 411-020-0010, Authority and Responsibility.

(6) **Intervention Model:**

(a) As a human services agency, the Department embraces a social model of intervention with a primary focus on offering safety and protection to the reported victim. The over-arching ethical value in Adult Protective Services is the obligation to balance the duty to protect older adults and adults with disabilities with the duty to protect their rights to self-determination.

(b) The Department relies upon other key sources, such as law enforcement, legal, medical, and regulatory professionals, to assist in responding to the overall problems associated with abuse and neglect, and encourages active participation and sharing of appropriate information by Adult Protective Service staff on APS multi-disciplinary teams.

(c) The Department supports efforts to promote education and outreach services that help identify and prevent abuse and neglect of older adults and adults with physical disabilities.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: PWC 750(Temp), f. 8-18-75, ef. 8-21-75; PWC 769, f. 10-20-75, ef. 10-25-75; AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0000 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0002

Definitions

(1) "Abuse" means a range of actions or inactions, including abandonment, financial exploitation, neglect, physical abuse, emotional or verbal abuse, self-neglect, and sexual abuse.

(a) "Abandonment" means the desertion or intentional forsaking of an older adult or an adult with a disability for any period of time by a person who has assumed responsibility for providing care, when that desertion or forsaking would place the adult at serious risk of harm.

(b) "Emotional or verbal abuse" means the intentional infliction of anguish, distress, or intimidation through verbal or non-verbal acts or denial of civil rights.

(c) "Financial exploitation" means the illegal or improper use, by means including, but not limited to, deceit, coercion, fraud, or undue influence, of the resources (including medications) of an older adult or person with a disability.

(d) "Neglect" means the failure (whether intentional, careless or due to inadequate experience, training or skill) to provide basic necessary care or services when agreed to by legal, contractual, or otherwise assumed responsibility when such failure may lead to physical or emotional harm. This includes failure of a person who has fiduciary responsibility to assure the continuation of necessary care (for example, failure to pay for necessary care resulting in the withdrawal of services).

(e) "Physical abuse" means the use of physical force that may result in bodily injury, physical pain, or impairment. Physical abuse may include, but is not limited to:

(A) Such acts of violence as striking (with or without object), hitting, beating, punching, shoving, shaking, slapping, kicking, pinching, and burning;

(B) The intentionally inappropriate use of drugs or physical restraints;

(C) The intentional mis-administration of types or amounts of drugs in order to cause harm to the person receiving them; and

(D) The use of force-feeding or physical punishment.

(f) "Self-neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(g) "Sexual abuse" means non-consensual sexual contact or behavior that includes, but is not limited to, sexual harassment, inappropriate or unwanted sexual comments, and threats. These activities are considered non-consensual if a person does not make, or is incapable of making, an informed choice.

(2) "APS Risk Management" means the process by which APS continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(3) "Area Agency on Aging (AAA)" means the agency designated by the Department with responsibility to provide a comprehensive and coordinated system of service to older adults or adults with disabilities in a designated planning and service area.

(4) "At-risk" means there is reason to believe injury, hazard, damage or loss may occur.

(5) "Community Based Care Facility" means an Assisted Living Facility, Residential Care Facility, Adult Foster Home, or registered Room and Board Facility.

(6) "Conservatorship" means that a court has issued an order appointing and investing a person with the power and duty of managing the property of another person.

(7) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(8) "Disability" for the purposes of these rules means any physical or cognitive condition that significantly interferes with an adult's ability to protect his or her self from harm or neglect (See section 411-020-0015, Eligibility.)

(9) "Elder abuse" means abuse as defined in OAR 411-021-0005, Alleged Elderly Abuse, of any adult aged 65 years of age or older. Abuse to adults 65 and over which does not fall within those administrative rules is considered Adult Protective Services.

(10) "Evidence" for the purpose of these rules means material gathered, examined or produced during the course of an APS investigation. This includes, but is not limited to, witness statements, documentation, photographs and relevant physical evidence.

(11) "Facility abuse" means abuse or neglect of care that occurs in facilities that are licensed (such as Residential Care Facilities, Assisted Living Facilities, Nursing Facilities, or Room and Board Facilities that are registered) when the reported perpetrator is the facility itself or is an employee or agent of the facility. Commercial adult foster homes, including those with limited licenses, are to be treated as facilities. Relative foster homes are to be treated as non-facility settings.

(12) "Guardianship" means a court has issued an order appointing and investing a person with the power and duty of managing the care, comfort or maintenance of an incapacitated adult.

(13) "Imminent danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(14) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(15) "Informed choice" means the person has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, and be able to reasonably choose from among those options and communicate that choice.

(16) "Law enforcement agency" means:

- (a) Any city or municipal police department;
- (b) Any county sheriff's office;
- (c) The Oregon State Police;
- (d) Any District Attorney; or
- (e) The Oregon Department of Justice.

(17) "Licensed care facility" means a facility licensed by the Department, including Nursing Facilities, Assisted Living Facilities, Residential Care Facilities, and Adult Foster Homes.

ADMINISTRATIVE RULES

(18) "Local office" means the local service staff of the Department or Area Agency on Aging.

(19) "Mandatory reporter" for the purpose of these rules means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If a person is a mandatory reporter and, while acting in an official capacity, comes in contact with and has reasonable cause to believe that any person living in a nursing facility or an older adult in any setting has suffered abuse or neglect, he or she must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124-050 to 124-095 and OAR chapter 411, division 021, (Elder Abuse) or ORS 441.615 to 441.695 and OAR 411-085-0005 and 411-085-0360 to 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the person, while acting in an official capacity, comes into contact with anyone who has abused an older adult or any person living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(C) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or a nursing facility or a person who contracts to provide services to a nursing facility.

(D) Peace officer;

(E) Clergy;

(F) Licensed clinical social worker; physical, speech, or occupational therapist;

(G) Senior center employee;

(H) Information and referral or outreach worker;

(I) Area Agency on Aging employee; and

(J) For nursing facility abuse, all of the above, plus legal counsel, guardian, or family member of the resident.

(20) "Older adult," for the purpose of these rules, means any person 65 years of age or older.

(21) "Relevant" means tending to prove or disprove the allegation at hand.

(22) "Risk Assessment" means the process by which a person is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system and other relevant factors are also evaluated to determine their impact on the person's ability to become or remain safe.

(23) "Self-determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(24) "Serious risk of harm" means that without intervention the person is likely to incur substantial injury or loss.

(25) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(26) "Undue influence" means the process by which a person uses his or her role and power to exploit the trust, dependency, and fear of another person and to deceptively gain control over the decision making of the second person.

(27) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0010

Authority and Responsibility

The Department is granted statutory authority and responsibility to protect older adults and people who are blind or have a disability and are aged 18 years or older, from harm or neglect. Specific authorizing statutes include:

(1) General Adult Protective Services

(a) ORS 410.020 authorizes the Department to adopt rules, consistent with federal and state laws and regulations, for providing social services, including protection, to individuals needing or requesting services.

(b) OAR chapter 411, division 020 details the steps in the adult protective service process.

(2) Reported Abuse in Adult Foster Homes

(a) ORS 443.767 requires the Department to promptly investigate any complaint that a resident of an adult foster home has been injured, abused, or neglected and is in imminent danger, or has died or been hospitalized, and any complaint alleging the existence of any circumstances that could result in injury, abuse, or neglect of a resident and could place the resident's health or safety in imminent danger.

(b) OAR 411-050-0455 details the steps for filing, investigating and documenting complaints in Adult Foster Homes.

(3) Reported Abuse in Residential Care Facilities or Assisted Living Facilities

(a) ORS 443.435 allows the Department access to a facility to determine whether it is maintained and operated in accordance with ORS 443.000-443.455 and 443.991(2) and the rules of the director.

(b) OAR 411-055-0230 details methods for conducting inspections and investigations in Residential Care Facilities.

(4) Reported Resident Abuse in Nursing Facilities

(a) ORS 441.635 requires mandatory reports and investigations of reportedly abused residents while ORS 441.650-441.695 address the process of investigation.

(b) OAR 411-089-0010 to 411-089-0030 details the procedure for receiving, investigating and documenting investigations in Nursing Facilities and the corrective action procedure for substantiated complaints.

(5) Reported Abuse in Room and Board Facilities

(a) ORS 443.500 allows the Department access to a registered residential facility (room and board) to investigate complaints of abuse for purposes of ascertaining compliance with applicable rules, statutes, ordinances and regulations. If the department has reasonable cause to believe any facility is operating without registration in violation of ORS 443.480 to 443.500, it may apply to the circuit court for a search warrant.

(b) OAR 411-068-0060 to 411-068-0075 details procedures for filing and investigating complaints in Room and Board Facilities.

(6) Reported Elder Abuse

(a) ORS 124.050 to 124.095 mandates reports and investigations of reportedly abused older adults.

(b) OAR 411-021-0000 to 411-021-0025 details the procedures for reporting, investigating and documenting complaints of reported abuse to older adults.

Stat. Auth.: ORS 410.070 & 411.116

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0010 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0015

Eligibility Criteria

(1) Adult protective services as defined in OAR 411-020-0040 are available for:

(a) Adults aged 65 and older

(b) Adults aged 18 and older who have a disability as defined in these rules, and

(c) Anyone living in a nursing facility when they are reported to be victims of "abuse" as defined in these rules.

(2) Reported abuse to people who are entitled to services from Mental Health and Developmental Disability Services under ORS 430.735-430.765 and OAR 410-009-0050 to 410-009-0160 should be referred for investigation by County Mental Health offices or the Office of Investigations and Training.

(3) Eligibility for protective services is not dependent upon income or source of income.

Stat. Auth.: ORS 410.070 & 411.116

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0015 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0020

Reporting and Notification

(1) Mandatory reporters shall report instances of suspected elder abuse (as defined in ORS 124.050) or abuse of residents in nursing facilities (as defined in ORS 441.650) to a Department designated local office or a local law enforcement agency.

(2) Reporting of instances involving abuse or neglect of older adults and adults with disabilities is highly encouraged for non-mandatory reporters.

(3) The identity of the person reporting the suspected abuse shall be confidential and can be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

ADMINISTRATIVE RULES

(4) When a community investigation has been completed, the complainant may be informed (verbally, unless notification in writing is requested) either that appropriate action is being taken, or that no abuse was found.

(5) When a facility investigation has been completed, notification of the complainant and other appropriate parties will be done according to procedures spelled out in the relevant facility licensing rules.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0030

Confidentiality

(1) Oregon and federal statutes provide for the confidentiality of the identity of certain persons and information obtained as a result of an adult protective service intervention. Confidentiality of information is important to protect the privacy of individuals, to encourage the reporting of abuse and neglect, and to facilitate the obtaining of information.

(2) All information involving non-facility based investigations is confidential and can be disclosed only by judicial process, or as required by specific exceptions under state and federal law, or with the consent of the victim, but no names can be released without the consent of the person named except as provided in sub-section (4).

(3) If the investigation involves a licensed care facility, information regarding the complaint and subsequent findings will be made available to the general public upon request. On these types of complaints, information regarding the identity of the complainant, the reported victim, and all witnesses, and the protected health information of any party will remain confidential, unless release is specifically authorized by the affected person or otherwise dictated by judicial process.

(4) Where the Department deems it is appropriate, the names of the complainant, reported victim, witnesses and any investigative report may be made available to the following sources:

- (a) Any law enforcement agency;
- (b) An agency that licenses or certifies a facility where the reported abuse occurred, or licenses or certifies the person who practices there;
- (c) Mental Health and Developmental Disability Services;
- (d) The Long Term Care Ombudsman; or
- (e) Any governmental or private non-profit agency providing protective services to the reported victim when that agency meets the confidentiality standards of ORS 124.090.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0040

Services Provided

(1) Local Department designated offices will follow procedural guidelines consistent with Department policies guiding protective service response activities. Although the role of Adult Protective Service is civil rather than criminal investigation, cooperative agreements with regulatory and enforcement agencies, such as local law enforcement, district attorneys, and licensing agencies are desirable.

(2) The Department will establish and maintain agreements and understandings with other key agencies having a role in protecting the interests and rights of individuals who are the subject of these rules, including the Oregon State Police and the Department of Justice.

(3) The adult protective services function consists of a standard series of activities, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and adult protective service risk management. Deviations from these activities may be appropriate in order to protect the reported victim, but the reasons for these deviations should be staffed and properly documented in the investigative record.

(4) Adults have the right to make informed choices (as defined in 411-020-0002(15)) that do not conform to societal norms as long as those decisions are not harmful to others. This includes the right to refuse participation in APS assessments, investigation, or intervention.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 461-020-0005; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0060

Screening

(1) All calls or contacts involving the possibility of abuse or neglect should be directed to APS screening.

(2) Screening is the skilled interviewing process used to gather and assess information in order to determine protective services eligibility. This activity includes a determination of whether the complaint meets the definition(s) of abuse as contained in administrative rules.

(3) If the complaint meets the definition(s) of abuse, screening activities may include, but are not limited to:

(a) Gathering information about the reported victim's current level of functioning;

(b) Gathering demographic information and the history of the current problem;

(c) Reviewing any agency records related to the complaint;

(d) Gathering information from collateral sources.

(4) If the complaint does not meet the definition(s) of abuse but requires intervention, response will include referral to other resources, including case management, licensing, or other services as appropriate.

(5) If the complaint does not meet the definition(s) of abuse or require intervention, but could be addressed by specialized information or assistance, a referral to APS Consultation may be appropriate.

(6) If the complaint involves a client who is currently receiving case management or eligibility services, the worker(s) assigned to the client are to be notified. If the complaint involves a commercial adult foster home, the local licensor is to be notified.

(7) Each local office will develop a protocol for tracking the outcome of every APS screening referral. A call number or other identifier will be assigned and shared with the complainant at the time of screening, so that the complainant can re-contact the office and determine the disposition of the report.

Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0070

Consultation

(1) Consultation is the process by which adult protective services provides specialized information or assistance, enhanced referral, or technical assistance via electronic means, including telephone, fax or e-mail, to assist in harm reduction.

(2) Consultation as an alternative to assessment or investigation is only appropriate when the report does not meet eligibility criteria for abuse or neglect or for investigation of licensing violation.

(3) The local office is to maintain a record of reports resolved by consultation.

Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0080

Triage

(1) Triage is the APS process of determining the nature and severity of risk to the client and others and the immediacy of response required.

(2) The Department will provide for a prompt and timely initial response to all protective service referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by the Department are as follows:

(a) Community cases. (Non-Facility, Elder Abuse and Adult Protective Services)

(A) Immediately: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The person is in the process of being harmed due to criminal activity, medical emergency, fire, etc., or is a clear and present danger to self or others; or

(B) Within two hours of receipt of complaint: Initiate investigation within two hours when the reported victim is identified as being in imminent danger; or

(C) By the end of the next Department working day: Initiate investigation by the end of the next working day when the person is identified as being in a hazardous situation that is one that could lead to increased harm or risk; or

(D) Within five Department working days: When screening determines that the situation is problematic, one that is chronic or ongoing, or is a general complaint in which an immediate response is unlikely to change the reported victim's risk level, an investigation should be initiated within five working days.

(b) Facility cases.

ADMINISTRATIVE RULES

- (A) Nursing facility cases:
 - (i) Within two hours:
 - (I) If the resident's health or safety is in imminent danger; or
 - (II) The resident has recently died, been hospitalized or been treated in an emergency department as a result of suspected abuse or neglect; or
 - (ii) Prior to the end of the next working day: If circumstances exist that could result in abuse.
 - (B) Adult Foster Homes.
 - (i) Within two hours:
 - (I) If the complaint alleges the client has been injured, abused or neglected and that any resident's health or safety is in imminent danger; or
 - (II) That the resident has died or been hospitalized due to abuse or neglect;
 - (ii) By the end of the next Department working day: If circumstances exist that could result in injury, abuse or neglect.
 - (C) Assisted Living Facility, Residential Care Facility, Room and Board Facility:
 - (i) Immediately: If circumstances exist that could result in injury, abuse or neglect and could place the person's health or safety in imminent danger; or
 - (ii) By the end of the next working day: In all other cases.
- Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767
Stats. Implemented: ORS 410.040, 410.070 & 411.116
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0090 Assessment

- (1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.
 - (2) Assessment in adult protective service cases will be conducted in person with the reported victim, usually in the reported victim's home or the facility where he or she lives.
 - (3) The assessment may include:
 - (a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, domestic violence providers, etc. in keeping with Department confidentiality guidelines.
 - (b) The use of accepted screening tools as well as the worker's professional judgment to determine the person's safety and functional abilities.
 - (4) If there is evidence that the person's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results will be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.
 - (5) Upon completion of the initial APS assessment, the complaint will be continued for investigation where there is a reported perpetrator, or will proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim will be offered resource information, and the case will be documented and closed.
 - (6) Results of the APS Assessment of the victim's cognitive and functional abilities will be recorded in the relevant portions of the Client Assessment and Planning System or other Department-approved system. A summary of the relevant portions will be included in the APS report.
- Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767
Stats. Implemented: ORS 410.040, 410.070 & 411.116
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0090 Assessment

- (1) Assessment is the process by which the APS worker determines the reported victim's degree of risk, level of functioning, adequacy of information and ability to protect his or her own interests. Assessment additionally determines the reported victim's ability to reduce the risk of harm in his or her environment and to make informed choices and understand the consequences of those choices. These factors are evaluated in relation to the allegation of abuse or neglect.
- (2) Assessment in adult protective service cases will be conducted in person with the reported victim, usually in the reported victim's home or the facility where he or she lives.
- (3) The assessment may include:

- (a) Consultation with family, neighbors, law enforcement, mental health, hospice, in-home services, medical practitioners, domestic violence providers, etc. in keeping with Department confidentiality guidelines.
 - (b) The use of accepted screening tools as well as the worker's professional judgment to determine the person's safety and functional abilities.
 - (4) If there is evidence that the person's cognitive abilities may be impaired, recognized assessment tools may be administered to gauge those abilities. The initial assessment results will be used as a screening to determine the need for professional diagnostic or clinical evaluation of the reported victim's capacity to make informed choices, and to determine an appropriate course of action if clinical evaluation is not available.
 - (5) Upon completion of the initial APS assessment, the complaint will be continued for investigation where there is a reported perpetrator, or will proceed directly to intervention where self-neglect is established. Where there is no perpetrator and self-neglect is not established, the reported victim will be offered resource information, and the case will be documented and closed.
 - (6) Results of the APS Assessment of the victim's cognitive and functional abilities will be recorded in the relevant portions of the Client Assessment and Planning System or other Department-approved system. A summary of the relevant portions will be included in the APS report.
- Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767
Stats. Implemented: ORS 410.040, 410.070 & 411.116
Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0100 Investigation

- (1) Investigation is the process of determining whether abuse or neglect occurred. The investigation results in a finding as to whether the initial complaint is substantiated or unsubstantiated, or whether the results of the investigation are inconclusive.
- (2) An investigation is to be completed and documented when a perpetrator is reported to have abused or neglected a victim.
- (3) Investigations are to be objective, professional and complete.
- (4) In completing the investigation, the adult protective service worker is responsible for carrying out the following steps:
 - (a) Identifying the reported victim(s), the reported perpetrator(s) and any parties reported to have information relevant to proving or disproving the allegation;
 - (b) Immediately notifying law enforcement if any of the following conditions exist, and proceeding collaboratively in a way that does not further endanger the reported victim. Any law enforcement officer accompanying the investigator must be identified as such to any party interviewed. Conditions include:
 - (A) There is reason to believe a crime has been committed;
 - (B) Access to the reportedly abused person is denied and legal assistance is needed in gaining access;
 - (C) The situation presents a credible danger to the Department worker or others and police escort is advisable; or
 - (D) Forensic photographic or other evidence is needed.
 - (c) Conducting unannounced interviews with the above parties to gather all relevant available evidence. All interviews are to be private unless the person being interviewed requests the presence of someone else. Any persons sitting in should be advised of the confidential nature of the investigation;
 - (d) Obtaining and reviewing any available and relevant documentary or physical evidence;
 - (e) Creating additional investigatory aids, such as maps or drawings that can aid in proving or disproving the allegation;
 - (f) Maintaining a record of interviews and evidentiary review, in notes, tape recordings, copies, photographs, or other appropriate means;
 - (g) Determining the facts of the case based on a fair and objective review of the available relevant evidence;
 - (h) Concluding whether the preponderance (majority) of the evidence indicates whether the incident occurred and whether abuse or neglect is substantiated or unsubstantiated, or determining that the evidence is inconclusive.
- (5) Completing a report in accordance with the documentation standards in OAR 411-020-0120.
- (5) In conducting facility abuse investigations, the Department protocols governing activities of investigations further include:
 - (a) Notifying the Department's Client Care Monitoring Unit (CCMU) if:
 - (A) A situation exists in a nursing facility that meets criteria for CCMU to complete the investigation. Where CCMU will conduct the

ADMINISTRATIVE RULES

investigation, the field office will provide coordination to assure immediate victim safety;

(B) A situation exists in a residential care facility or an assisted living facility that could cause CCMU to conduct a survey. This includes reports of facility-wide issues.

(b) Providing an opportunity for the complainant or a designee of the complainant, or both, to accompany the investigator to the site of the reported violation for the sole purpose of identifying persons or objects relevant to the investigation;

(c) Conducting an unannounced site visit to the facility;

(d) Arranging for immediate protection. The worker is to direct the provider to correct any substantiated problem immediately;

(e) Advancing to the Department detailed findings and reports indicating the need for sanction. The local office is to refer these reports to the appropriate office for corrective action within 60 days of the receipt of the complaint for a community based care facility and within 62 days for a nursing facility.

Stat. Auth.: ORS 410.070, 124.050 – 124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0110

Intervention

(1) Intervention is the process by which APS assists the victim to reduce or remove the threat of harm that has placed them at risk.

(2) Intervention may include, but is not necessarily limited to:

(a) Arranging for emergency services such as law enforcement, emergency medical care, etc. as needed;

(b) Providing education and counseling to the person at risk and other parties as appropriate;

(c) Facilitating the delivery of additional available support services, including legal, medical and other services, and helping to arrange for possible alternative living arrangements or alternate decision makers as needed;

(d) Providing advocacy to assure the rights of the reported victim are protected.

(3) Intervention may happen one or more times during the assessment or investigation process, or as an end result of the assessment or investigation. The initial APS intervention is designed to be short-term crisis response. Longer term intervention may be made available through APS Risk Management or through non-APS case management.

(4) A person who can make an informed choice may refuse assistance or intervention. In this case the worker is to provide the person with appropriate resource information and a way to re-contact protective services should a threat of harm recur or reach a level unacceptable to the person.

(5) If the person at risk is unable to make an informed choice due to a lack of capacity, appropriate intervention should include medical assessment to determine whether capacity can be improved or restored.

(6) If the person at risk is unable to consent to assessment or treatment, consideration should be given to involuntary intervention, including, as appropriate, guardianship, conservatorship, protective orders, or civil commitment. In all such cases the intervention initiated must be the least restrictive available, must respect the values of the person at risk and should be sought only when it has been determined that there is no surrogate decision maker in place, or that such person is not acting responsibly in that role.

(7) If the person lacks appropriate information, the worker should provide or arrange for the provision of all relevant information in a manner that is timely, accessible to the person, and balanced, in order to support the person's right to make an informed choice.

(8) When the assessment or investigation is complete, the case will be either:

(a) Documented and referred to APS Risk Management for further monitoring and intervention if the situation meets the criteria in 411-020-0130, or

(b) Closed and documented because:

(A) The situation is resolved or has been referred to appropriate services for resolution; or

(B) The person at risk, having the ability to do so, decides not to have further protective services.

Stat. Auth.: ORS 410.070, 124.050–124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0120

Documentation

(1) Documentation of the investigation must be done by the local office in a timely manner and in a standard report format consistent with Department policy.

(2) Community reports.

(a) Documentation of community assessments and investigations will include, but not necessarily be limited to:

(A) A summary of findings,

(B) Conclusions, and

(C) Any plans of action that are recommended or taken.

(b) Data in the report will include:

(A) Complaint type (elder abuse or adult protected service);

(B) Characteristics of the reported victim;

(C) Relationship of the reported victim to the complainant, witnesses and reported perpetrator;

(D) Type of reported mistreatment or abuse;

(E) Conclusion; and

(F) Outcome.

(c) Reports are to be written, coded and closed on a Department-approved system, (e.g., Oregon ACCESS).

(3) Facility Reports.

(a) Facility investigations are to be written at the local office in a standard report format consistent with Department policy and are to be forwarded to the Department within 60 days of the receipt of the complaint.

(b) Documentation of facility investigations will include, for each allegation:

(A) A statement of the allegation;

(B) Summary of witness statements;

(C) Investigator observations, including documentary review;

(D) Findings of fact;

(E) Conclusion.

(c) When abuse or neglect is substantiated, findings in the investigation may be used to support civil or criminal sanctions against the perpetrator or care facility.

(d) Hard copies of facility investigation reports are retained by the local office for a period of ten years after last activity.

(4) If the reported abuse is also the subject of a law enforcement report or criminal prosecution, copies of investigation reports must be forwarded to the law enforcement agency having jurisdiction.

(5) The Department may collect standardized statewide data on all types of Adult Protective Services including, but not limited to, information on the number of cases, types of incidents, person characteristics, and outcomes.

Stat. Auth.: ORS 410.070, 410.610-700, 411.116, 441.635, 443.500 & 443.767

Stats. Implemented: ORS 410.070 & 411.116

Hist.: AFS 5-1980, f. & ef. 1-25-80; Renumbered from 461-011-0005 by Ch. 784, OL 1981 & AFS 69-1981, f. 9-30-81, ef. 10-1-81; SSD 5-1994, f. & cert. ef. 11-15-94; Renumbered from 411-020-0050, SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

411-020-0130

APS Risk Management

(1) APS Risk Management is the process by which APS continues to provide active reassessment and intervention to a reported victim once the initial assessment or investigation phase has been completed.

(2) Referral to APS Risk Management is appropriate when:

(a) Assessment indicates that the person continues to be vulnerable and at serious risk of harm; and

(b) Continued reassessment and intervention can reduce the risk of harm; and

(c) There is no other source of case management available to the person.

(3) APS Risk Management includes:

(a) The development and implementation of an individualized plan to reduce the risk of harm to the client;

(b) Regular active contact with the client to reassess the risk of harm and the effectiveness of interventions;

(c) Documentation of assessments and interventions.

(4) APS Risk Management continues until assessment demonstrates that the level of harm has been reduced to an acceptable level. Approval by supervisor or designee will be required to continue a Risk Management case beyond one year.

Stat. Auth.: ORS 410.070, 124.050–124.095, 411.116, 441.635, 443.500, 443.767

Stats. Implemented: ORS 410.040, 410.070 & 411.116

Hist.: SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05

ADMINISTRATIVE RULES

Department of Human Services, Vocational Rehabilitation Services Chapter 582

Adm. Order No.: VRS 2-2005

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 7-1-05

Notice Publication Date: 3-1-05

Rules Amended: 582-001-0010, 582-100-0040

Subject: 1. OAR 582-001-0010 is amended to add definitions for the terms “individual with a disability,” “individual with a significant disability,” “individual with a most significant disability,” and “severe mental or physical impairment.”

2. OAR 582-100-0040 is amended to operate within the parameters of 34 CFR 361.36, to identify the clients whose services would not be affected by an Order of Selection (or waiting list), and to identify the client priority groups under an Order of Selection. These priority groups will determine which clients receive services and which clients are placed on a waiting list if there is an Order of Selection.

Rules Coordinator: Robert Trachtenberg—(503) 945-6734

582-001-0010

Definitions for Chapter 582

The following definitions apply to each Division in Chapter 582 of the Oregon Administrative Rules unless otherwise indicated:

(1) “Act” refers to the federal Rehabilitation Act of 1973, as amended (29 U.S.C. 701 et seq.).

(2) “Administrator” refers to the Administrator of the Office of Vocational Rehabilitation Services.

(3) “Applicant” refers to an individual who submits an application for vocational rehabilitation services in accordance with 34 CFR 361.41(b)(2).

(4) “Assessment for determining eligibility and vocational rehabilitation needs” refers to, as appropriate in each case:

(a) A review of existing data to determine if an individual is eligible for vocational rehabilitation services; and to assign priority for an order of selection if in effect; and

(b) To the extent necessary, the provision of appropriate assessment activities to obtain necessary additional data to make the eligibility determination and assignment;

(c) To the extent additional data are necessary to make a determination of the employment outcomes and the nature and scope of vocational rehabilitation services to be included in the individualized plan for employment of an eligible individual, a comprehensive assessment to determine the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice, including the need for supported employment, of the eligible individual. This comprehensive assessment:

(A) Is limited to information that is necessary to identify the rehabilitation needs of the individual and to develop the individualized plan of employment of the eligible individual;

(B) Uses as a primary source of information, to the maximum extent possible and appropriate and in accordance with confidentiality requirements: Existing information obtained for the purposes of determining the eligibility of the individual and assigning priority for an order of selection for the individual; and Information that can be provided by the individual and, if appropriate, by the family of the individual;

(C) May include, to the degree needed to make such a determination, an assessment of the personality, interests, interpersonal skills, intelligence and related functional capacities, educational achievements, work experience, vocational aptitudes, personal and social adjustments, and employment opportunities of the individual and the medical, psychiatric, psychological, and other pertinent vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation needs of the individual; and

(D) May include, to the degree needed, an appraisal of the patterns of work behavior of the individual and services needed for the individual to acquire occupational skills and to develop work attitudes, work habits, work tolerance, and social and behavior patterns necessary for successful job performance, including the use of work in real job situations to assess and develop the capacities of the individual to perform adequately in a work environment;

(d) Referral, for the provision of rehabilitation technology services to the individual, to assess and develop the capacities of the individual to perform in a work environment; and

(e) An exploration of the individual’s abilities, capabilities, and capacity to perform in work situations, which must be assessed periodically during trial work experiences, including experiences in which the individual is provided appropriate supports and training.

(5) “Assistive technology device” refers to any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

(6) “Assistive technology service” refers to any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device, including:

(a) The evaluation of the needs of an individual with a disability, including a functional evaluation of the individual in his or her customary environment;

(b) Purchasing, leasing, or otherwise providing for the acquisition by an individual with a disability of an assistive technology device;

(c) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

(d) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(e) Training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

(f) Training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with a disability.

(7) “CFR” refers to the Code of Federal Regulations.

(8) “Client Assistance Program” or “CAP” refers to a federally-funded program authorized under 34 CFR 370 that is independent of OVRS and whose purpose is to provide information, advocacy, and legal representation to individuals seeking OVRS services.

(9) “Client’s Representative” refers to any person identified by the client as being authorized to speak or act on behalf of the client or to assist the client in any matter pertaining to services of OVRS, unless a representative has been appointed by a court to represent the client, in which case the court-appointed representative is the client’s representative.

(10) “Community Rehabilitation Program” or “CRP” refers to:

(a) A program that provides directly or facilitates the provision of one or more of the following vocational rehabilitation services to individuals with disabilities to enable those individuals to maximize their opportunities for employment, including career advancement:

(A) Medical, psychiatric, psychological, social, and vocational services that are provided under one management.

(B) Testing, fitting, or training in the use of prosthetic and orthotic devices.

(C) Recreational therapy.

(D) Physical and occupational therapy.

(E) Speech, language, and hearing therapy.

(F) Psychiatric, psychological, and social services, including positive behavior management.

(G) Assessment for determining eligibility and vocational rehabilitation needs, including technicians for assessment tests.

(H) Rehabilitation technology.

(I) Job development, placement, and retention services.

(J) Evaluation or control of specific disabilities.

(K) Orientation and mobility services for individuals who are blind.

(L) Extended employment.

(M) Psychosocial rehabilitation services.

(N) Supported employment services and extended services.

(O) Services to family members if necessary to enable the applicant or eligible individual to achieve an employment outcome.

(P) Personal assistance services.

(Q) Services similar to the services described in subsections (A) through (P) of this definition, including vendors who provide training, write resumes, consult on self-employment plans, assist with a self-employed business, or write PASS plans.

(b) For the purposes of this definition, the word program means an agency, organization, or institution, or unit of an agency, organization, or institution, that provides directly or facilitates the provision of vocational rehabilitation services as one of its major functions. It does not include the prospective employer of the client.

ADMINISTRATIVE RULES

(11) "Comparable services and benefits" refers to:

(a) Services and benefits that are:

(A) Provided or paid for, in whole or in part, by other Federal, State, or local public agencies, by health insurance, or by employee benefits;

(B) Available to the individual at the time needed to ensure the progress of the individual toward achieving the employment outcome in the individual's individualized plan for employment in accordance with **34 CFR 361.53**; and

(C) Commensurate to the services that the individual would otherwise receive from OVRs.

(b) For the purposes of this definition, comparable benefits do not include awards and scholarships based on merit.

(12) "Competitive employment" refers to work:

(a) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(b) For which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(13) "DHS" refers to the Oregon Department of Human Services.

(14) "Eligible individual" refers to an applicant for vocational rehabilitation services who meets the eligibility requirements of **34 CFR 361.42(a)**.

(15) "Employment outcome" refers to, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment, as defined in OAR 582-001-0010(12), in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(16) "Extended employment" refers to work in a non-integrated or sheltered setting for a public or private nonprofit agency or organization that provides compensation in accordance with the Fair Labor Standards Act.

(17) "Extended services" refers to ongoing support services and other appropriate services that are needed to support and maintain an individual with a most significant disability in supported employment and that are provided by a State agency, a private nonprofit organization, employer, or any other appropriate resource, from funds other than funds received under this part and 34 CFR part 363 after an individual with a most significant disability has made the transition from support provided by OVRs.

(18) "Extreme medical risk" refers to a probability of substantially increasing functional impairment or death if medical services, including mental health services, are not provided expeditiously.

(19) "Family member", for purposes of receiving vocational rehabilitation services in accordance with 34 CFR 361.48(i), refers to an individual:

(a) Who either:

(A) Is a relative or guardian of an applicant or eligible individual; or

(B) Lives in the same household as an applicant or eligible individual;

(b) Who has a substantial interest in the well-being of that individual;

and

(c) Whose receipt of vocational rehabilitation services is necessary to enable the applicant or eligible individual to achieve an employment outcome.

(20) "Impartial hearing officer" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, or employee of an institution of higher education) — an individual is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by the agency to serve as a hearing officer;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Has knowledge of the delivery of vocational rehabilitation services, the State plan, and the Federal and State regulations governing the provision of services;

(e) Has received training with respect to the performance of official duties; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual.

(21) "Individual with a disability" refers to an individual:

(a) Who has a physical or mental impairment; and

(b) Whose impairment constitutes or results in a substantial impediment to employment; and

(c) Who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services.

(22) "Individual with a most significant disability" refers to

(a) An individual who meets the criteria for supported employment under OAR 582-001-0010(43); or

(b) An eligible individual who:

(1) Has a severe mental or physical impairment that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(2) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(23) "Individual with a significant disability" refers to an eligible individual who does not qualify as an individual with a most significant disability as defined at OAR 582-001-0010(22); and

(a) The individual is currently receiving SSI or SSDI or requires or required a Trial Work Experience or Extended Evaluation to determine if the individual is capable of benefiting from vocational rehabilitation services in terms of an employment outcome; or

(b) The individual:

(A) Has a severe mental or physical impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(B) Is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(24) "Integrated setting":

(a) With respect to the provision of services, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals other than non-disabled individuals who are providing services to those applicants or eligible individuals;

(b) With respect to an employment outcome, refers to a setting typically found in the community in which applicants or eligible individuals interact with non-disabled individuals, other than non-disabled individuals who are providing services to those applicants or eligible individuals, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(25) "Maintenance" refers to monetary support provided to an individual for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the individual and that are necessitated by the individual's participation in an assessment for determining eligibility and vocational rehabilitation needs or the individual's receipt of vocational rehabilitation services under an individualized plan for employment. Examples: The following are some examples of expenses that would meet the definition of maintenance. The examples are illustrative only, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment:

(a) The cost of a uniform or other suitable clothing that is required for an individual's job placement or job-seeking activities.

(b) The cost of short-term shelter that is required in order for an individual to participate in assessment activities or vocational training at a site that is not within commuting distance of an individual's home.

(c) The initial one-time costs, such as a security deposit or charges for the initiation of utilities, that are required in order for an individual to relocate for a job placement.

(d) The costs of an individual's participation in enrichment activities related to that individual's training program.

(26) "Mediation" refers to the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies. Mediation under the program must be conducted in accordance with the requirements in **34 CFR 361.57(d)** by a qualified and impartial mediator as defined in **34 CFR 361.5(b)(43)**.

(27) "OAR" refers to the Oregon Administrative Rules.

(28) "Ongoing support services", as used in the definition of "Supported employment"

(a) Refers to services that are:

(A) Needed to support and maintain an individual with a most significant disability in supported employment;

(B) Identified based on a determination by OVRs of the individual's need as specified in an individualized plan for employment; and

(C) Furnished by OVRs from the time of job placement until transition to extended services, unless post-employment services are provided

ADMINISTRATIVE RULES

following transition, and thereafter by one or more extended services providers throughout the individual's term of employment in a particular job placement or multiple placements if those placements are being provided under a program of transitional employment;

(b) Must include an assessment of employment stability and provision of specific services or the coordination of services at or away from the worksite that are needed to maintain stability based on:

(A) At a minimum, twice-monthly monitoring at the worksite of each individual in supported employment; or

(B) If under specific circumstances, especially at the request of the individual, the individualized plan for employment provides for off-site monitoring, twice monthly meetings with the individual;

(c) Consist of:

(A) Any particularized assessment supplementary to the comprehensive assessment of rehabilitation needs;

(B) The provision of skilled job trainers who accompany the individual for intensive job skill training at the work site;

(C) Job development and training;

(D) Social skills training;

(E) Regular observation or supervision of the individual;

(F) Follow-up services including regular contact with the employers, the individuals, the parents, family members, guardians, advocates or authorized representatives of the individuals, and other suitable professional and informed advisors, in order to reinforce and stabilize the job placement;

(G) Facilitation of natural supports at the worksite;

(H) Any other service identified in the scope of vocational rehabilitation services for individuals, described in **34 CFR 361.48**; or

(I) Any service similar to the foregoing services.

(29) "ORS" refers to the Oregon Revised Statutes.

(30) "OVRs" refers to the Office of Vocational Rehabilitation Services.

(31) "Parent or Guardian" refers to a person or persons having legal responsibility for the overall welfare and well-being of a client under age 18 or a client who, if over age 18, is considered legally incompetent.

(32) "Personal assistance services" refers to a range of services provided by one or more persons designed to assist an individual with a disability to perform daily living activities on or off the job that the individual would typically perform without assistance if the individual did not have a disability. The services must be designed to increase the individual's control in life and ability to perform everyday activities on or off the job. The services must be necessary to the achievement of an employment outcome and may be provided only while the individual is receiving other vocational rehabilitation services. The services may include training in managing, supervising, and directing personal assistance services.

(33) "Physical and mental restoration services" refers to:

(a) Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

(b) Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with State licensure laws;

(c) Dentistry;

(d) Nursing services;

(e) Necessary hospitalization (either inpatient or outpatient care) in connection with surgery or treatment and clinic services;

(f) Drugs and supplies;

(g) Prosthetic and orthotic devices;

(h) Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with State licensure laws;

(i) Podiatry;

(j) Physical therapy;

(k) Occupational therapy;

(l) Speech or hearing therapy;

(m) Mental health services;

(n) Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services, or that are inherent in the condition under treatment;

(o) Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

(p) Other medical or medically related rehabilitation services.

(34) "Physical or mental impairment" refers to:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculo-skeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(b) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(35) "Post-employment services" refers to one or more of the services identified in **34 CFR 361.48** that are provided subsequent to the achievement of an employment outcome and that are necessary for an individual to maintain, regain, or advance in employment, consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. Post-employment services are intended to ensure that the employment outcome remains consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. These services are available to meet rehabilitation needs that do not require a complex and comprehensive provision of services and, thus, should be limited in scope and duration. If more comprehensive services are required, then a new rehabilitation effort should be considered. Post-employment services are to be provided under an amended individualized plan for employment; thus, a re-determination of eligibility is not required. The provision of post-employment services is subject to the same requirements as the provision of any other vocational rehabilitation service. Post-employment services are available to assist an individual to maintain employment, e.g., the individual's employment is jeopardized because of conflicts with supervisors or co-workers, and the individual needs mental health services and counseling to maintain the employment; to regain employment, e.g., the individual's job is eliminated through reorganization and new placement services are needed; and to advance in employment, e.g., the employment is no longer consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

(36) "Provider of community rehabilitation services" refers to any CRP, business, or independent contractor that is paid by OVRs to provide any service listed in OAR 582-001-0010(10).

(37) "Qualified and impartial mediator" refers to an individual who:

(a) Is not an employee of a public agency (other than an administrative law judge, hearing examiner, employee of a State office of mediators, or employee of an institution of higher education) — an individual serving as a mediator is not considered to be an employee of a public agency for the purposes of this definition solely because the individual is paid by a public agency to serve as a mediator;

(b) Is not a member of the State Rehabilitation Council for OVRs;

(c) Has not been involved previously in the vocational rehabilitation of the applicant or eligible individual;

(d) Is knowledgeable of the vocational rehabilitation program and the applicable Federal and State laws, regulations, and policies governing the provision of vocational rehabilitation services;

(e) Has been trained in effective mediation techniques consistent with any State-approved or -recognized certification, licensing, registration, or other requirements; and

(f) Has no personal, professional, or financial interest that would be in conflict with the objectivity of the individual during the mediation proceedings.

(38) "Rehabilitation engineering" refers to the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

(39) "Rehabilitation technology" refers to the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

(40) "Severe mental or physical impairment" refers to the use of this term in the federal Rehabilitation Act of 1973, as amended.

(41) "State plan" refers to the State plan for vocational rehabilitation services submitted by OVRs under **34 CFR 361.10**.

ADMINISTRATIVE RULES

(42) "Substantial impediment to employment" refers to a physical or mental impairment that (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual's abilities and capabilities.

(43) "Supported employment" refers to:

(a) Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals with ongoing support services for individuals with the most significant disabilities:

(A) For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

(B) Who, because of the nature and severity of their disabilities, need intensive supported employment services from OVRS and extended services after transition as described in OAR 582-001-0010(17) to perform this work; or

(b) Transitional employment, as defined OAR 582-001-0010(46), for individuals with the most significant disabilities due to mental illness.

(44) "Supported employment services" refers to ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment that are provided by OVRS:

(a) For a period of time not to exceed 18 months, unless under special circumstances the eligible individual and the rehabilitation counselor or coordinator jointly agree to extend the time to achieve the employment outcome identified in the individualized plan for employment; and

(b) Following transition, as post-employment services that are unavailable from an extended services provider and that are necessary to maintain or regain the job placement or advance in employment.

(45) "Transition services" refers to a coordinated set of activities for a student designed within an outcome-oriented process that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities must be based upon the individual student's needs, taking into account the student's preferences and interests, and must include instruction, community experiences, the development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student's individualized plan for employment.

(46) "Transitional employment", as used in the definition of "Supported employment," refers to a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most significant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

(47) "Transportation" refers to travel and related expenses that are necessary to enable an applicant or eligible individual to participate in a vocational rehabilitation service, including expenses for training in the use of public transportation vehicles and systems. Examples: The following are examples of expenses that would meet the definition of transportation. The examples are purely illustrative, do not address all possible circumstances, and are not intended to substitute for individual counselor judgment.

(a) Example 1: Travel and related expenses for a personal care attendant or aide if the services of that person are necessary to enable the applicant or eligible individual to travel to participate in any vocational rehabilitation service.

(b) Example 2: The purchase and repair of vehicles, including vans, but not the modification of these vehicles, as modification would be considered a rehabilitation technology service.

(c) Example 3: Relocation expenses incurred by an eligible individual in connection with a job placement that is a significant distance from the eligible individual's current residence.

(48) "Vocational rehabilitation services":

(a) If provided to an individual, refers to those services listed in **34 CFR 361.48**; and

(b) If provided for the benefit of groups of individuals, also refers to those services listed in **34 CFR 361.49**.

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

Stat. Auth.: ORS 344.530

Stats. Implemented: ORS 344.530, 344.550

Hist.: VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05

582-100-0040

Order of Selection for Services

(1) If the full range of vocational rehabilitation services cannot be provided to all eligible individuals who apply, the Administrator of OVRS shall invoke an Order of Selection.

(2) During an Order of Selection, OVRS shall continue to provide all needed services to any individual who is in active plan status prior to the effective date of the order of selection, including clients receiving or subsequently eligible for post-employment services as described at OAR 582-001-0010(35).

(3) During an Order of Selection, OVRS shall continue to provide services needed to determine eligibility.

(4) As part of the eligibility determination, OVRS shall determine the priority category in which eligible clients qualify.

(5) Priority of Service Order. Open plans implemented before the effective date of an Order of Selection and individuals needing Post Employment services shall not be impacted. The following priorities shall be applied statewide:

(a) Priority One. Eligible persons who meet all three of the following criteria shall be served first, in the order of each individual's date of application:

(A) The individual is classified with a Most Significant Disability consistent with OAR 582-010-0010(22); and

(B) The individual has a severe mental or physical impairment that seriously limits three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(C) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(b) Priority Two. Eligible persons not qualifying as Priority One who meet all three of the following criteria shall be served second, in the order of each individual's date of application:

(A) The individual is classified with a Most Significant Disability consistent with OAR 582-010-0010(22); and

(B) The individual has a severe mental or physical impairment that seriously limits two or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills) in terms of an employment outcome; and

(C) The individual is expected to require two or more vocational rehabilitation services over an extended period of time to achieve or maintain a successful employment outcome.

(c) Priority Three. Eligible persons classified with a significant disability consistent with OAR 582-010-0010(23) shall be served third, in the order of each individual's date of application;

(d) Priority Four. All other eligible persons shall be served fourth in the order of each individual's date of application.

(5) The count of functional capacities to determine whether an individual has a most significant disability consistent with OAR 582-010-0010(22) and to determine the priority of the individual for an Order of Selection under OAR 582-100-0040 shall be based a count of the following seven items only: mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, and work skills. Sub-categories within these seven capacities are not counted for this determination.

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

Stat. Auth.: ORS 344

Stats. Implemented: ORS 344.511 - 344.690 & 344.710 - 344.730

Hist.: VRD 3-1980, f. & ef. 7-2-80; VRD 3-1991, f. & cert. ef. 9-11-91; VRD 2-1993, f. & cert. ef. 9-15-93; VRS 5-2004, f. & cert. ef. 8-5-04; VRS 2-2005, f. 4-20-05, cert. ef. 7-1-05

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Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 3-2005(Temp)

Filed with Sec. of State: 4-25-2005

Certified to be Effective: 5-1-05 thru 10-28-05

Notice Publication Date:

Rules Amended: 259-060-0120, 259-060-0500

Subject: Housekeeping change only.

Rolls back previously approved fee increase to prior fee schedule; amends current rule to provide that fingerprint processing fee is to

ADMINISTRATIVE RULES

be based on current charges by Oregon State Police and Federal Bureau of Investigation; and requires completion of Form PS-21.

A copy of the proposed rules are available by contacting the rules coordinator listed on this form.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-060-0120

Private Security Officer or Private Security Officer—Alarm Monitor Certification

(1) Under ORS 181.873(1)(a), it is unlawful for a person to engage in the business of, or perform any service as, a private security officer or private security officer-alarm monitor, or to offer services in such capacity, unless the person has obtained certification as an armed or unarmed private security officer or private security officer-alarm monitor, in accordance with these rules.

(a) A Department-licensed executive manager may temporarily assign a person who is not certified as required by these rules to perform security services within this state for a period of time not to exceed 90 days if:

(A) The person is employed in another state;

(B) The person holds a private security officer-alarm monitor or private security officer's certification or licensure from another state; and

(C) The certification or licensing standards of the other state meet or exceed the standards of this state.

(D) The intent of this provision is to allow a company to transfer its employees to this state for the purpose of temporary assignment.

(E) A Department-licensed executive manager shall provide to DPSST a copy of the authorizing state's statutory requirements for private security officers, demonstrating that the officer has undergone a criminal history fingerprint background check. Additionally, the executive manager shall complete Form PS-9 (Private Security Waiver for Reciprocity), a triplicate form; the original shall be mailed to the Department or its designated staff, one copy shall be retained by the employer, and one copy shall be retained by the employee. The employee copy of this form shall be carried on the employee's person at all times while performing security services in this state or while on duty. It shall be presented to any law enforcement officer upon demand and shall be displayed to any other person upon reasonable request.

(F) The reciprocity packet shall bear a postmark on or before the first day the applicant performs security services in this state.

(b) A Department-licensed executive manager may temporarily assign a person, whose application for certification as a private security officer or private security officer-alarm monitor is being processed, to perform security services within this state for a period of time not to exceed 120 days under the following conditions:

(A) The applicant has completed all the requirements under this section (OAR 259-060-0120), including training;

(B) A Department-licensed manager has completed and signed the applicable portions of Form PS-20 (Private Security Temporary Work Permit), affirming the above requirements have been met;

(C) The Department-licensed executive manager or supervisory manager has attached the original of Form PS-20 to Form PS-1 (Application for Licensure or Certification of Private Security Services Provider); and

(D) The Department-licensed manager has mailed to the Department each of the items in this section, [Form PS-1 (Application for Licensure or Certification), Form PS-4 (Affidavit of Person Rolling Prints) and fingerprint cards, Form PS-6 (Affidavit of Instructor and Private Security Provider Testing Results) and applicable fees] as a complete packet. Form PS-4 is a sworn statement and must be sealed in a tamper-proof bag, along with the fingerprint cards, by the person rolling the prints; Form PS-6 is a sworn statement, and must be sealed in a tamper-proof bag by the issuing instructor. The application packet shall bear a postmark on or before the first day the applicant performs security services. Form PS-27 (Private Security Code of Ethics) is for the use of the applicant.

(E) If an applicant has not completed each step of the application process, including training, the applicant shall not perform unsupervised security services. Such persons may only provide security services under the direct supervision of a certified private security officer, licensed proprietary security manager or security contractor. The person being monitored shall not make decisions regarding any course of action independent of the person providing the direct supervision. The duration for direct supervision for an applicant is no more than 21 calendar days, during which time the applicant must be under the uninterrupted presence of a certified private security officer or certified private security officer-alarm monitor.

(F) The intent of the Form PS-20 provision is to allow a company to employ and deploy a private security officer, private security officer-alarm

monitor or manager, while the application for certification or licensure is being processed. No temporary work permit shall be issued for armed security applicants.

(G) The Form PS-20 will last no longer than 120 days and, in any event, shall end upon written notice from the Department to the applicant that the permit has been administratively terminated under subsection (1)(b)(H) of this rule.

(H) Upon written notice from the Department to the applicant and the manager who signed the Form PS-20, the permit and authority to provide private security services may be administratively terminated for the following reasons:

(i) The Department has reason to believe that a person with the applicant's name and birth date has been convicted of a disqualifying crime listed in OAR 259-060-0020.

(ii) The application is incomplete or the Department has been unable to verify application information to its satisfaction due to non-response or non-compliance of the applicant.

(iii) Applicant has violated any private security administrative rule or condition imposed by Form PS-20. Applicants who provide false information in their application, contrary to their sworn oath, shall be disqualified from reapplying for a period of 10 years.

(iv) The fingerprint cards of applicant have been rejected under subsection 5(b) of this rule.

(I) Upon notification from the Department that the Form PS-20 has been administratively terminated because of a deficiency in application, the manager who signed the permit shall notify the applicant that he or she may not perform security services. A new application with corrected deficiencies must be filed, along with a new certification fee, prior to the applicant resuming duties. This provision does not apply to terminations based upon criminal conviction disqualification.

(J) The termination of the Form PS-20 due to a criminal conviction disqualification is subject to the contested case hearing procedures set forth in OAR 259-060-0300.

(c) The Department or its designated staff may administratively terminate the application process if the Department is unable to complete the certification process due to non-response or non-compliance of the applicant after exhausting the following efforts:

(A) A letter shall be mailed by the Department to the applicant, and the last known employer of the applicant, identifying the deficiencies in the Form PS-1, or the rejection of the fingerprint cards of applicant.

(B) The applicant and any manager supervising the applicant shall have 14 calendar days from the date of mailing to bring the applicant into compliance and to notify the Department that the deficiencies are corrected. The Department may, in its discretion, elect to extend the time for compliance upon good cause shown by the applicant or its manager.

(C) If the Department is unable to determine a current address for the applicant, or if the applicant or manager does not respond and correct the deficiencies within 14 calendar days, or such additional time authorized by the Department, the Department shall list the applicant's status as "administratively terminated." The Department shall notify the applicant at his or her last known address, and notify the last known employer of the applicant, that the Department has administratively terminated the application process.

(D) Once the application process has been administratively terminated, the applicant will be required to submit a new Form PS-1, with another certification fee. An applicant whose application process has been administratively terminated shall not be eligible to perform security services until a new, complete application and fees are submitted to the Department, along with a Form PS-6 providing proof of new basic training.

(2) The requirements for certification as an unarmed private security officer or alarm monitor are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075; and

(d) Submission to the Department of the completed application packet as required under Sub (5) of this rule, together with the appropriate fees.

(3) The requirements for certification as an armed private security officer are as follows:

(a) Compliance with the minimum standards for certification under OAR 259-060-0020;

ADMINISTRATIVE RULES

(b) Successful completion of the mandatory eight-hour basic classroom instruction required under OAR 259-060-0060, including successful completion of the written examination;

(c) Successful completion of the mandatory four-hour assessment module required under OAR 259-060-0075;

(d) Successful completion of the mandatory 15-hour firearms course and marksmanship qualification required under OAR 259-060-0070, including successful completion of the written examination and satisfaction of marksmanship requirements; and

(e) Submission to the Department of the completed application packet as required under (5) of this rule, together with the appropriate fees.

(4) A certified private security officer or private security officer-alarm monitor or applicant shall carry the certificate or Form PS-20 on his or her person at all times while performing security services or while on duty. The certificate or Form PS-20 shall be presented to any law enforcement officer upon demand, and shall be displayed to any other person upon reasonable request.

(5) The application packet for certification as a private security officer or private security officer-alarm monitor shall include:

(a) A completed Form PS-1, including a sworn affidavit attesting to the truth and correctness of the information provided by the applicant, and acknowledging the Department's right to terminate a temporary work permit. Falsification of this application can result in a denial of certification for up to ten years, as well as pursuit of criminal charges.

(b) A completed fingerprint packet. The Department shall accept fingerprint cards correctly rolled and completed by private security or public safety personnel trained to roll fingerprints, or a person who is employed and trained by a private business that provides fingerprinting services. These fingerprint cards must be submitted on the pre-printed FBI fingerprint cards supplied by the Department, and shall be sealed in a tamper-proof bag by the person rolling the prints. There shall be a fee charged for the third submittal of fingerprint cards if rejected twice by the Federal Bureau of Investigation;

(A) A fingerprint packet shall include two fingerprint cards, and a Form PS-4. The person rolling the fingerprints shall complete Form PS-4, enclose the two completed fingerprint cards and the Form PS-4 in the tamper-proof bag, seal it, and return it to the applicant.

(B) When the fees, application and completed fingerprint packet are received, the Department will assign a Private Security Identification number to the applicant, record that number on the fingerprint cards and forward the fingerprint cards to Oregon State Police. The Oregon State Police shall process one set of the prints and send the other set of prints to the Federal Bureau of Investigation (FBI) for processing;

(C) The applicant's fingerprints will be retained and kept on file by the Oregon State Police Identification Services Section;

(D) The Oregon State Police Identification Services Section will notify the Department or its designated staff of any criminal record disclosed through processing the applicant's fingerprint cards; and

(E) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department shall comply with the most current requirements.

(c) The original Form PS-6 sealed by the instructor in the approved tamper-proof bag;

(d) A completed Form PS-7 (Private Security Instructor Evaluation) (optional);

(e) The original of completed Form PS-20 (if employed).

(6) The applicant shall submit the nonrefundable certification fee (including the fingerprint processing fee) to the Department or its designated staff, along with the application packet. The application will be rejected unless the certification fee is paid by business check, money order or cashier's check. No personal checks, credit cards or cash will be accepted.

(7) The completed application packet shall be mailed to the Department or its designated staff prior to the applicant performing any security services.

(8) Renewal of certification shall occur every two years subject to the following conditions:

(a) The certificate holder shall, within the 90-day period prior to certificate expiration, obtain refresher training as provided for in OAR 259-060-0080, submit the Form PS-6, required fees and a completed Form PS-21 (Renewal of Private Security Licensure or Certification). A copy of the Form PS-21 must be carried on the provider's person, while performing private security duties, until a new certificate is received.

(b) The provider shall submit the nonrefundable renewal fee to the Department or its designated staff. The renewal application will be reject-

ed unless the renewal fee is paid by business check, money order or cashier's check. No personal checks, credit cards or cash will be accepted.

(c) The renewal documents shall be received by the Department not more than 90 days prior to the anniversary date of the certification or licensure to allow for processing of the forms and criminal history check. The background check may determine convictions or other conditions under OAR 259-060-0020 that would disqualify the provider.

(d) Failure to comply with renewal requirements shall result in the expiration of certificate or license.

(A) Persons reapplying within 90 days of expiration shall complete the Form PS-21, and shall submit the certification fee.

(B) Persons reapplying after 90 days of expiration shall complete the Form PS-21 (Application for Licensure or Certification), and shall submit the certification fees, plus a \$25.00 late submission penalty fee.

(C) Persons continuing to provide private security services, after the certification has expired shall be subject to penalties as provided for in ORS 181.991.

(9) Any certified private security officer who is arrested or charged criminally shall notify the officer's employer, or the Department if the officer is not employed, of that fact not later than 48 hours after the arrest or charge is filed. Any employer who knows that an employee has been arrested or charged with a crime shall notify the Department of that fact not later than 48 hours after the employer acquired knowledge. The initial notification may be by telephone, but must be immediately followed by written notification. The notification shall include the specific charges, the county and state where any charges are pending, the investigating agency, and the date of the arrest. Failure to notify the Department may result in suspension of the arrested person's certification or licensure.

(10) The applicant or private security provider shall notify the Department or its designated staff within 14 calendar days of any change of address by using Form PS-23 (Private Security Services Provider Change of Information). Executive managers may use the form to advise the Department of the termination of employment, or provide their own list. Under ORS 305.385, a summary of all private security providers and applicants is provided annually to the Oregon Department of Revenue, including name, address and Social Security number.

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

Stat. Auth.: ORS 181.873 - 181.878 & 181.883 - 181.885

Stats. Implemented: ORS 181.873 - 181.878 & 181.883 - 181.885

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 3-2005(Temp), f. 4-25-05, cert. ef. 5-1-05 thru 10-28-05

259-060-0500

License Fees

Payments to the Department are non-refundable, and must be paid by business check, money order or cashier's check. No personal checks, credit cards or cash will be accepted. The following fees shall be charged by the Department in carrying out the provisions of the Act:

(1) The fee of \$50 or the issuance of each two-year certification as a private security officer or private security officer-alarm monitor.

(2) Appropriate fees shall be submitted with each application for a fingerprint criminal history check. These fees are to recover the costs administering the fingerprint check through the Oregon State Police and Federal Bureau of Investigation. An additional fee will be charged for the third submittal of fingerprint cards when rejected for filing by FBI. Current fee schedules for processing fingerprints may be obtained from the Department.

(3) The fee of \$50 for the issuance of a two-year license as a private security supervisory manager.

(4) The fee of \$250 for the issuance of a two-year license as a private security executive manager.

(5) The fee of \$80 for the issuance of a two-year certification as a private security instructor.

(6) The fee of \$20 for the issuance of each upgrade, duplicate or replacement card issued.

(7) The late submission penalty fee of \$25 may be added to the fees for recertification if the provider fails to renew certification within 90 days of the expiration date of the license or certificate. If an applicant provides documented proof, such as payroll data, that he or she has not been employed to provide private security services since the prior certification or licensure expired, the late penalty may be waived by the Department's designated staff.

ADMINISTRATIVE RULES

(8) In the event a non-sufficient check is received for payment, an additional \$25 administrative fee will be assessed.

Stat. Auth.: ORS 181.878
Stats. Implemented: ORS 181.878
Hist.: PS 1-1997(Temp), f. 2-21-97, cert. ef. 2-24-97; PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. & cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 12-2003, f. & cert. ef. 7-24-03; DPSST 3-2005(Temp), f. 4-25-05, cert. ef. 5-1-05 thru 10-28-05

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

Adm. Order No.: DMV 11-2005

Filed with Sec. of State: 4-25-2005

Certified to be Effective: 5-1-05

Notice Publication Date: 3-1-05

Rules Amended: 735-010-0008, 735-010-0045, 735-010-0230, 735-020-0010, 735-022-0040, 735-022-0050, 735-022-0060, 735-024-0030, 735-024-0070, 735-024-0130, 735-032-0000, 735-150-0010, 735-150-0020, 735-150-0030, 735-150-0040, 735-150-0110, 735-150-0140

Rules Repealed: 735-140-0000, 735-140-0010, 735-140-0015, 735-140-0020, 735-140-0025, 735-140-0030, 735-140-0040, 735-140-0060, 735-140-0070, 735-140-0080, 735-140-0090, 735-140-0100, 735-140-0110, 735-140-0120, 735-140-0130, 735-140-0135, 735-140-0140, 735-150-0090, 735-150-0180

Subject: Chapter 655, Oregon Laws 2003 (SB 468), transfers Driver and Motor Vehicle Service Division of the Department of Transportation (DMV) duties, functions and powers relating to titling and registration of manufactured structures and manufactured structure trip permits to the Department of Consumer and Business Services (DCBS). It also transfers to DCBS, DMV's regulatory authority over vehicle dealers who deal in manufactured structures. The effective date for this transfer is May 1, 2005. DMV is repealing all of Division 140 rules, the rules related to manufactured structures, and amending other DMV rules that refer to or pertain to manufactured structures. DMV rules that regulate manufactured structure dealers in Division 150 are being repealed and amended to delete references to manufactured structures, mobile homes and mobile structures. Other changes are being made to clarify the current language.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-010-0008

Definitions

As used in Division 10 rules, the following definitions apply:

(1) "Bulk distribution" means the distribution of surveys, marketing materials and solicitations, regardless of the medium used for distribution, including but not limited to:

(a) Material distributed to a targeted group of people to tell them about the suitability or quality of a product or service;

(b) Market research which involves contacting individuals;

(c) Nonprofit entities seeking donations of labor, products or money; or

(d) Political material designed to encourage membership in a political organization, or to gain support for individuals seeking election to public office, or solicit money or labor for a political campaign or election.

(2) "Business entity" means a corporation, organization, firm, association, partnership, governmental agency, lawful commercial enterprise or other legal entity, other than an individual.

(3) "Business address" means the physical address of the place in which or from which a business entity operates.

(4) "Business name" is the name, including an abbreviation or acronym, by which a business is designated in official records and under which it conducts business.

(5) "Conducting business with DMV" includes any business with DMV that results in the creation of a customer record or change to an existing customer record.

(6) "County of use" means the county in which a vehicle is primarily used, when that county is:

(a) Other than the county of the owner's residence or business address; and

(b) Other than the county of the vehicle address provided to DMV.

(7) "Customer number" means the distinguishing number assigned by DMV to each individual or business entity for which a customer record has been created.

(8) "Customer record" means the computer record created by DMV at the time an individual or business entity first does business with DMV.

(9) "Descriptive address" means information sufficient to identify the location of a residence or business entity if there is no actual street or rural route address, or to explain where a person lives if the person has no fixed residence.

(10) "Disseminator," as used in ORS 802.179(13), means a person whose primary business function is the sale or distribution of information and who does not otherwise qualify for personal information under ORS 802.179.

(11) "DMV" means the Oregon Department of Transportation, Driver and Motor Vehicle Services Division.

(12) "Employment address" means the address of the public agency employing a police officer or eligible public employee as provided in ORS 802.250.

(13) "Insurance support organization," as used in ORS 802.179(6), means a person who regularly engages in assembling or collecting information about a natural person for the primary purpose of providing the information to an insurer or insurance agent in connection with claims investigation activities, antifraud activities, underwriting or rating. "Insurance support organization" does not include an insurer, an insurance agent, a governmental institution, medical care institution or medical professional.

(14) "Legitimate business" means a lawful business enterprise operating in compliance with federal, state and local law.

(15) "Mailing address" means an address other than an actual residence or business address to which a person or business entity mail delivered, including a post office box or address of a service provider.

(16) "Motor vehicle record" means any record that pertains to a grant of driving privileges, an identification card, vehicle title or vehicle registration issued by DMV. "Motor vehicle record" does not mean a record pertaining to a manufactured structure.

(17) "Person" means an individual, an organization or an entity but does not include the State of Oregon or any agency thereof.

(18) "Personal information" means the following information that identifies an individual:

(a) Driver license, driver permit or identification card number;

(b) Name;

(c) Address (excluding five-digit zip code); and

(d) Telephone number.

(19) "Primary residence" means the state, jurisdiction or physical location where an individual lives, during any 12-month period, more than he or she lives elsewhere during that period.

(20) "Records list" means a list of driver or vehicle records compiled by selecting records that meet one or more general criteria, where the criteria is not specific to any one person or vehicle. Records lists would include such things as a list of vehicle records of a given manufacturer or a list of licensed drivers over the age of 65. A records list would not include records that were selected by a specific identifier, such as an individual's driver license number or a vehicle's registration plate number.

(21) "Registration address" means the vehicle address, if one is provided or is a vehicle address is not provided:

(a) The vehicle owner's residence address if the owner is an individual; or

(b) The vehicle owner's, business address if the owner is other than an individual. Some examples may include a business, school district, organization or church.

(22) "Residence address" means the actual address at which an individual resides more than he or she lives elsewhere during a 12-month period. If an individual resides an equal amount of time at two or more addresses, the individual shall determine which address is his or her residence address and use that as the residence address in conducting business with DMV. A residence address shall not be that of a service provider, except for purposes of titling or registering a vehicle owned by the service provider or obtaining an Oregon driver license, driver permit or identification card by the service provider.

(23) "Service Provider" means a business which facilitates the collection or delivery of mail, or businesses that provide vehicle registration

ADMINISTRATIVE RULES

services for another party. A mail service shall be considered to be a Service Provider.

(24) "True name" means the name an individual uses to conduct his or her business, such as the name used when filing tax forms, in social security records, or to obtain an insurance policy, bank account, mortgage or drivers license.

(25) "Vehicle address" means the residence or business address where the vehicle is primarily housed, or from where the vehicle is primarily dispatched when different than the actual residence or business address of the owner.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 803.370 & 807.050
Stats. Implemented: ORS 802.175 - 802.270, 803.220, 803.370, 807.050, 807.420, 807.560 & 821.080
Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 6-1999, f. & cert. ef. 12-17-99; DMV 10-2000, f. & cert. ef. 9-21-00; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-010-0045

Other Department Records and Their Fees

(1) Other records available and the fees for the records are:

(a) Driving Under the Influence of Intoxicants Convictions and Alcohol Diversion Enrollment List (DUII and Diversion Lists) — A list of persons who have been convicted of driving under the influence of intoxicants or have enrolled in an alcohol diversion program. The list includes the name, address if known, date of birth, arrest date, conviction or enrollment date, the court type and location and the zip code, if available. The list is available weekly at a fee of \$7.50 per list.

(b) Duplicate Photo Image — A copy of a duplicate image of a driver license or identification card photograph is available exclusively to law enforcement officials at a fee of \$6.50 per photograph.

(c) Hearing Tapes — Upon request, a copy of the tape recording of a hearing will be provided to qualified requestors. The request must be in writing and accompanied by a fee of \$6 per tape.

(2) Personal information shall not be included in any motor vehicle record requested unless the requester qualifies to receive such information under ORS 802.175 to 802.179 and OAR 735-010-0200 to 735-010-0230.

(3) Requests for information where a fee is not specified in rule or law shall be charged actual cost only, using the criteria set forth in OAR 735-010-0000.

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179, 802.183, 802.220 & 802.230
Stats. Implemented: ORS 802.177, 802.179, 802.200, 802.220 & 802.230
Hist.: DMV 16-1998, f. 12-17-98, cert. ef. 1-1-99; DMV 21-2002, f. & cert. ef. 11-18-02; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-010-0230

Request for Personal Information by a Person with Financial Interest in a Vehicle

(1) This rule provides for release of personal information from DMV motor vehicle records to a person who has a financial interest in a vehicle, as authorized by ORS 802.179(16). Personal information shall only be released by DMV, to a person with a financial interest in a vehicle under ORS 802.179(16), for use in titling and registration of the vehicle.

(2) Except as otherwise provided in this rule, to have a financial interest in a vehicle a person must:

(a) Hold an interest in a vehicle that is reflected on the current title or salvage title;

(b) Be the owner of a vehicle as defined in ORS 801.375(1). An owner also includes a person who has acquired an ownership interest, but is not shown on the current title because the title has not been issued showing current ownership;

(c) Be the lessee of the vehicle under a lease agreement;

(d) Be the lessor of the vehicle under a lease agreement;

(e) Be a person entitled to the possession and use of the vehicle under a security agreement;

(f) Have a security interest in the vehicle; or

(g) Be a vehicle dealer who has acquired an ownership interest of the type described in subsection (2)(b) of this rule but is exempt from obtaining a title reflecting such interest under ORS 803.105.

(3) A person must submit documentation or information sufficient for DMV to verify their financial interest in the vehicle. Except as otherwise provided in this rule, such information or documentation includes:

(a) The current title or salvage title or the title or salvage title record of this state or of the jurisdiction in which the vehicle is titled. If registered in a state which does not issue title, the current registration document;

(b) An application for Oregon title or salvage title that is submitted or presented to DMV, that reflects the ownership interest and is supported by a primary ownership document(s) or other documentary evidence of ownership, as described in OAR 735-020-0010; or

(c) A verification from another jurisdiction that an application for title or a salvage title has been submitted that reflects that person's ownership interest;

(d) A notice of transfer of a vehicle to a vehicle dealer submitted to DMV under the provisions of ORS 803.105, or verification from another jurisdiction that such notice has been filed with that jurisdiction under similar provisions.

(4) DMV may consider other information or documents as verification of a financial interest if the document(s) covered in section (3) of this rule are not available and where the person can otherwise show they have acquired an ownership interest in the vehicle. Other information or documents that may be considered include, but are not limited to:

(a) A bill of sale signed by the owner(s) of record. "Owner of record" means the person(s) shown as the current owner in the vehicle records of the department;

(b) A security or purchase agreement for the vehicle;

(c) A canceled check used to purchase the vehicle;

(d) A completed and notarized affidavit to establish financial interest in a vehicle, DMV Form 7116(A); or

(e) A transitional ownership document submitted to DMV and which is not invalidated or rejected.

(5) Information or documents used for verification of a financial interest in a vehicle for the purpose of this rule shall:

(a) Indicate who has an interest in the vehicle. Information shall be sufficient for DMV to determine that the interest is of a type that would qualify as a financial interest as covered in section (2) of this rule; and

(b) Include a description of the vehicle sufficient to identify the vehicle in which the person has an interest.

(6) DMV may rely on the following to determine if personal information will be provided to a person who has a financial interest:

(a) Information or documents in DMV's possession;

(b) Information or documents available to DMV from other sources;

or

(c) Information or documents requested by DMV, from the person to whom the personal information is to be released.

(7) Except as otherwise provided in this rule, the information or a document(s) required to verify a financial interest shall be submitted to DMV or presented to DMV for review and DMV must be satisfied as to the validity of the information or document(s).

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

Stat. Auth.: ORS 184.616, 184.619, 192.440, 802.179 & 802.183

Stats. Implemented: ORS 802.179

Hist.: DMV 15-1998, f. 11-17-98, cert. ef. 12-1-98; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-020-0010

Perfection of Security Interest; Primary Ownership Document

(1) This rule specifies the documents DMV will consider primary ownership documents for the purposes of perfecting a security interest in a vehicle.

(2) Except as provided in section (3) of this rule, a primary ownership document is:

(a) A manufacturer's certificate of origin (MCO) or equivalent document as described in OAR 735-022-0030 through 735-022-0060. This subsection applies to:

(A) A vehicle or camper built by a manufacturer that has never been titled or registered; and

(B) A vehicle or camper built, assembled, or reconstructed using a component kit that has never been titled or registered. The MCO may only be considered a primary ownership document for the vehicle parts contained in the kit.

(b) A current certificate of title or salvage title issued for a vehicle or camper; or

(c) A Certificate to Obtain Title for a Vehicle (U.S. Government Form SF 97), for a vehicle or camper previously owned by the U.S. Government and where interest is being transferred.

(3) Notwithstanding section (2) of this rule, DMV may, at its discretion, consider other documents to be primary ownership documents when:

(a) DMV is satisfied that the original Oregon title has been lost or destroyed, and that there has been a change in interest;

(b) Interest has been transferred by operation of law under Oregon law, or through court action in a court having jurisdiction over persons or property located in Oregon, and the primary ownership documents described in section (2) of this rule are not otherwise available;

(c) The security interest is in a vehicle or camper not manufactured for sale in the U.S., and that is not currently registered or titled in the U.S.;

ADMINISTRATIVE RULES

(d) The security interest is in a vehicle or camper last titled or registered outside the U.S.; or

(e) DMV is satisfied that a primary ownership document described in section (2) of this rule was never issued, is not obtainable, or has been surrendered to another jurisdiction.

(4) Documents DMV may determine are primary ownership documents under section (3) of this rule include but are not limited to:

(a) A court judgment or decree from a court having jurisdiction over persons or property located in Oregon that awards ownership of a vehicle or camper as a matter of law;

(b) A sheriff's bill of sale;

(c) A certificate of possessory lien foreclosure as described in OAR 735-020-0012;

(d) A completed and signed Inheritance Affidavit (DMV Form 735-516) vesting the interest of a deceased owner in the person designated by all the heirs as the owner of the vehicle or camper;

(e) A completed and signed Certificate of Ownership of an Assembled Light Trailer or Heavy Trailer (DMV Form 735-6644) for a trailer built by someone other than a manufacturer;

(f) A completed and signed Application for Replacement Title (DMV Form 735-515) or Application for Replacement Salvage Title (DMV Form 735-230) where:

(A) The application is accompanied by an Application for Title and Registration (DMV Form 735-226) that includes a release of interest from anyone listed on the original title that will not be listed on the new title; and

(B) Any change in interest is of a type not subject to odometer disclosure requirements under ORS 803.102 and OAR 735-028-0000 through 735-028-0100;

(g) A completed and signed Certification of Ownership Facts (DMV Form 735-550);

(h) An Ownership document issued by the U.S. Armed Forces for a vehicle or camper owned by a member of the U.S. Armed Forces;

(i) A salvage title, salvage bill of sale, or wrecker's bill of sale on a vehicle or camper whose title has been surrendered to a jurisdiction; or

(j) For a vehicle or camper described under subsections (3)(c) and (d) of this rule:

(A) A certificate for export purposes issued by a foreign jurisdiction; or

(B) A vehicle or camper registration if the vehicle has been registered but is not currently titled.

(5) When the application for notation of a security interest is for a vehicle or camper that is initially being titled as assembled, reconstructed, or a vehicle replica, the primary ownership document must be specific to the frame or unibody.

(6) When the application for notation of a security interest is for a vehicle or camper manufactured in more than one stage, the primary ownership document(s) must cover each stage of manufacture.

(7) DMV may invalidate a primary ownership document as evidence of ownership if it determines:

(a) The document is fraudulent or contains false information; or

(b) The document does not show the most current ownership interest in the vehicle or camper.

(8) If, after a title has been issued, it is determined that the evidence of ownership is invalid under section (7) of this rule, DMV may cancel the vehicle title. Before a title is cancelled, DMV will send a notice of the proposed cancellation to the vehicle owner or lessee, security interest holder(s) and lessor (if applicable), as listed in DMV records. A cancellation becomes effective 10 days after the date the notice is deposited with the postal service, unless a hearing is requested within that 10-day period. If a timely hearing is requested, the cancellation will be contingent on the outcome of the hearing.

(9) A title cancellation under section (8) of this rule automatically invalidates the security interest(s) noted on that title. A new application for notation for perfection of security interest and valid evidence of ownership must be submitted to DMV before security interest in a vehicle can be perfected pursuant to ORS 803.097.

(10) DMV will not invalidate a primary ownership document as evidence of ownership based solely on missing title requirements (e.g., missing odometer information, and fees).

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

Stat. Auth.: ORS 184.616, 184.619, 801.402, 802.010, 803.097

Stats. Implemented: ORS 803.097, 184.616, 184.619, 801.402, 803.097

Hist.: MV 2-1988, f. & cert. ef. 1-7-88; Administrative Renumbering 3-1988, Renumbered from 735-110-0510; MV 18-1988, f. & cert. ef. 6-1-88; MV 9-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 10-2002, f. & cert. ef. 6-24-02; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-022-0040

Manufacturer's Certificate of Origin (MCO) Form and Content

(1) MCOs must be printed on a form provided by the manufacturer.

(2) An MCO may only be completed by the manufacturer of the vehicle or the manufacturer's designee.

(3) An MCO issued for a complete vehicle must contain at least the following:

(a) The name of the vehicle manufacturer;

(b) The vehicle year model, make and identification number; and

(c) The name of the party to whom interest has been assigned.

(4) An MCO issued for a multi-stage manufactured vehicle (i.e., a vehicle manufactured as a kit), must contain at least the name of the vehicle manufacturer, the vehicle make and identification number, and the name of the party to whom interest has been assigned for each stage of manufacture. In addition, the MCO must:

(a) Contain the vehicle year model, if the MCO is from the final stage manufacturer; or

(b) Indicate the vehicle is incomplete and identify what portion of the vehicle is covered.

(5) An MCO issued for a component kit must identify that the MCO is for a kit or "glider" and contain at least the following:

(a) The name of the component kit manufacturer;

(b) The component kit year model, make and identification number;

and

(c) The name of the party to whom interest has been assigned.

(6) If the MCO does not contain the required information, DMV may:

(a) Require further documentation;

(b) Refuse to issue title; or

(c) Both subsections (a) and (b) of this section.

Stat. Auth.: ORS 802.010, 803.045, 803.050 & ORS 820.500

Stats. Implemented: ORS 803.045 & ORS 820.500

Hist.: MV 6-1987, f. & ef. 6-17-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0510; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-022-0050

When Manufacturer's Certificate of Origin (MCO) Is Required

(1) DMV requires an MCO to be submitted with an application for title for a:

(a) Vehicle built by a manufacturer; and

(b) Reconstructed motor truck built using a component kit.

(2) For vehicles built in stages by two or more manufacturers, DMV requires an MCO from each manufacturer for the portion of the vehicle manufactured.

(3) For reconstructed motor trucks rebuilt using a component kit, the MCO provided must be for the component kit.

(4) Notwithstanding section (1) of this rule:

(a) For vehicles with a year model of 1987 or earlier, MCO requirements apply exclusively to passenger vehicles, motor homes, mopeds, motorcycles, all-terrain vehicles and motor trucks built with component kits;

(b) An MCO is not required if the manufactured vehicle or reconstructed vehicle has been previously titled or registered in any jurisdiction.

(5) DMV may require or accept an MCO in other situations. Example: When a person (other than a manufacturer) builds a vehicle and an MCO is issued for some or all of the major component parts (i.e., frame, chassis, motor).

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045, 803.050 & 820.500

Stats. Implemented: ORS 803.045 & 820.500

Hist.: MV 6-1987, f. & ef. 6-17-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0520; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-022-0060

Documents Equivalent to Manufacturer's Certificate of Origin (MCO)

(1) DMV may accept equivalent documents in lieu of an MCO when:

(a) The original MCO has been lost or destroyed;

(b) The vehicle was not manufactured for sale in the United States and an MCO was never issued for the vehicle;

(c) In the case of multi-stage manufactured vehicles where an MCO was not produced for the first stage, or where a portion of the vehicle was previously titled or registered; or

(d) The manufacturer does not produce an MCO.

(2) Equivalent documents must provide evidence of releases of interest forming a complete chain of ownership from the current applicant back to the point of manufacture. If a portion of the vehicle was previously titled or registered, the chain of ownership for that portion of the vehicle must go back to the last owner of record.

ADMINISTRATIVE RULES

(3) Examples of equivalent documents are:

(a) A copy of the manufacturer's invoice to the dealer when the MCO has been lost or destroyed. The invoice must be signed by the owner or office manager of the dealership and provide information as to the disposition of the original MCO; or

(b) A letter from the manufacturer indicating to whom the interest of the vehicle was assigned with connecting bills of sale from subsequent purchasers.

(4) DMV may withhold issuance of title even if equivalent documents are provided if it has reason to believe the MCO is available or that it may be in the possession of a third party.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.045, 803.050 & 820.500

Stats. Implemented: ORS 801.402

Hist.: MV 6-1987, f. & ef. 6-17-87; Administrative Renumbering 3-1988, Renumbered from 735-090-0530; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-024-0030

Definitions Relating to Vehicles and Documents for Vehicles that Have Been Damaged, Altered, or Rebuilt

The following definitions and application of terms apply to OAR 735-024-0030 through 735-024-0170:

(1) "Accepting Vehicles as Salvage Material" as used in ORS 819.040, means to receive or purchase a vehicle that has already been wrecked, dismantled, or disassembled.

(2) "Assembled Vehicle" as defined in ORS 801.130 and these rules, means a vehicle:

(a) With a body that does not resemble any particular year model or make of vehicle;

(b) That is not a vehicle rebuilt by a manufacturer;

(c) That is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(d) That is not an antique vehicle, a vehicle of special interest, a reconstructed vehicle or a replica.

(3) "Brand," "branded title," or "title brand" means a notation, indicator, symbol or phrase that is or has been printed, stamped or otherwise affixed to a certificate of title to indicate the history, condition, or circumstances of a vehicle. A title brand does not necessarily indicate the extent to which a vehicle may have been damaged, whether a vehicle has been repaired or to what degree a damaged vehicle has been repaired.

(4) "Certificate of Title" or "title" is defined in ORS 801.185. A title:

(a) May be issued by Oregon or some other jurisdiction;

(b) When issued by Oregon, is issued under ORS 803.045 or as is provided in 821.060;

(c) Except where designated, does not include a "salvage title certificate," "salvage title" or "salvage certificate";

(d) Is not issued to vehicles that:

(A) Are dismantled, disassembled, or substantially altered;

(B) Are otherwise in a condition that would require the title to be surrendered to the DMV for cancellation; or

(C) Have been issued a junk title, junk certificate or similar ownership document or brand as described in OAR 735-020-0070.

(e) Follows the frame or unibody of the vehicle for which the title was originally issued.

(5) "Dismantle" and "Disassemble" are defined in OAR 735-024-0050.

(6) "Frame" or "Unibody" refer to the major component(s) of a vehicle that form the support structure, undercarriage or lower structure of the vehicle, excluding such things as wheels or suspension. "Frame" does not include the body of the vehicle.

(7) "Insurer" as used in ORS 801.527 and 819.014 and in these rules, means a person engaged in the business of entering into policies of insurance. The term does not include persons who are self-insured.

(8) "Primary Ownership Document" is defined in ORS 801.402 and OAR 735-020-0010.

(9) "Proof of Compliance" means a document issued by DMV as evidence that:

(a) The title or primary ownership document was surrendered to DMV in accordance with ORS 819.010, 819.012 or 819.014; and

(b) The title or primary ownership document was marked, or DMV received other documentation that satisfied DMV that the vehicle was wrecked, dismantled, disassembled or totaled.

(10) "Reconstructed Vehicle," or "reconstructed" as defined in ORS 801.405 and these rules, means either:

(a) A vehicle that:

(A) Has a body that resembles and primarily is a particular year model or make of vehicle;

(B) Is not a vehicle rebuilt by a manufacturer;

(C) Is not a vehicle built in a factory where the year model and make are assigned at the factory; and

(D) Is not a replica; or

(b) A motor truck that has been rebuilt using a component kit if the manufacturer of the kit assigns a vehicle identification number and provides a manufacturer's certificate of origin for the kit.

(11) "Replica" as defined in ORS 801.425 and these rules, means a vehicle with a body built to resemble and be a reproduction of another vehicle of a given year and given manufacturer.

(12) "Salvage Title Certificate," "Oregon Salvage Title Certificate" or "salvage title" as defined in ORS 801.454 and this rule means a written document issued by DMV under the provisions of ORS 803.140 and 819.016 as evidence of vehicle ownership. Unless designated otherwise, an Oregon Salvage Title Certificate is not a certificate of title.

(13) "Salvage title," "salvage certificate" and "wrecker's bill of sale" means a document issued for a vehicle to indicate the vehicle has been damaged, wrecked or salvaged or words of similar import. "Salvage title" does not refer to an Oregon salvage title certificate as defined by ORS 801.454 and this rule, unless the Oregon salvage title certificate reflects a brand that indicates the vehicle was damaged in another jurisdiction, before being titled in Oregon.

(14) "Substantially Alter the Form" is defined in OAR 735-024-0050.

(15) "Totaled vehicle" and "totaled" as defined in ORS 801.527 and these rules means:

(a) A vehicle that is declared a total loss by an insurer that is obligated to cover the loss or that the insurer takes possession of or title to;

(b) A vehicle that is stolen, if it is not recovered within 30 days of the date that it is stolen and if the loss is not covered by an insurer; or

(c) A vehicle that has sustained damage that is not covered by an insurer and that is such that the estimated cost to repair the vehicle is equal to at least 80 percent of the retail market value of the vehicle prior to the damage. For purposes of this subsection, "retail market value" is determined utilizing publications used by financial institutions doing business in Oregon.

(16) "Wreck" is defined in OAR 735-024-0050.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.0140, 819.016, 821.060

Stats. Implemented: ORS 803.015, 803.420

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 18-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-024-0070

Vehicles that Are Wrecked, Dismantled, Disassembled, or Substantially Altered in Form — Responsibility of Parties

(1) The types of vehicles that are subject to the provisions of ORS 819.010 (e.g., wrecked, dismantled, substantially altered) include:

(a) Vehicles of the type that, when operated over the highways of this state, are required to be registered and titled;

(b) Class I or III all-terrain vehicles;

(c) Snowmobiles; and

(d) Any other vehicle that has been issued a title by DMV; or by another jurisdiction.

(2) ORS 819.010 and any related rules apply if the activity described in ORS 819.010 and OAR 735-024-0050 is performed in this state, and the vehicle is of a type covered in section (1) of this rule. This applies to vehicles titled in Oregon, those titled in another jurisdiction, and any vehicle not subject to title requirements.

(3) A person who dismantles, disassembles, wrecks or substantially alters the form of a vehicle, must comply with the provisions of ORS 819.010 and apply for an Oregon salvage title except as provided in ORS 819.016 and OAR 735-024-0130.

(4) Primary ownership documents for vehicles described in section (1) of this rule may be surrendered to DMV, in lieu of the certificate of title where a title does not exist, or where ownership is being transferred by operation of law and the title is not available.

(5) The Oregon title certificate, foreign title certificate, or primary ownership document must be surrendered to DMV together with the application for salvage title, if a salvage title is required.

(6) The Oregon title must be surrendered to DMV along with a written statement that indicates the vehicle was dismantled, disassembled, wrecked or substantially altered, if a salvage title is not required. The statement must be submitted on a DMV Form 735-6017, "Notice of Vehicle to be Dismantled/Proof of Compliance," if submitted by someone other than a wrecker issued a certificate under ORS 822.110.

(7) Except as provided in section (11) of this rule, registration cards and registration plates that are required to be surrendered, may be submit-

ADMINISTRATIVE RULES

ted with the title or primary ownership document, or submitted separately to DMV, along with information as to why they are being surrendered.

(8) Vehicles that are subject to this rule may not be repaired, rebuilt, transferred, or the frame or unibody used for repairing or constructing another vehicle, until a salvage title is applied for and issued, consistent with ORS 819.016 and 819.018.

(9) If a salvage title is not required, DMV may issue proof of compliance upon request, if:

(a) The title or primary ownership document is surrendered to DMV;

(b) DMV is provided with documentation that indicates the vehicle has been wrecked, dismantled or disassembled; and

(c) DMV is satisfied that a salvage title is not required.

(10) The act of wrecking, dismantling, disassembling or substantially altering a vehicle will not by itself cause a vehicle to be considered a totaled vehicle. Such a vehicle:

(a) Is subject to the requirements under ORS 819.010 and DMV rules; and

(b) Is not considered totaled, and is not subject to requirements that apply to totaled vehicles unless the vehicle was determined to be totaled before the vehicle was dismantled, disassembled, wrecked or substantially altered.

(11) Notwithstanding section (7) of this rule, a person with a valid wrecker certificate issued under ORS 822.110 may destroy registration cards and registration plates on behalf of DMV. A wrecker that destroys registration cards and registration plates on behalf of DMV must ensure that all registration cards and registration plates are destroyed to the extent they can never be used again.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.012 - 819.018

Stats. Implemented: ORS 819.010 - 819.040

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-024-0130

Salvage Title — Vehicles Subject and When/Who Required to Apply

(1) An Oregon salvage title is an ownership document that is used to assign interest and to make an odometer disclosure on a vehicle, from the time that the certificate of title is required to be surrendered to DMV until:

(a) The vehicle is repaired, rebuilt or is issued a certificate of title; or

(b) It is determined that all of the following apply:

(A) The vehicle will not be rebuilt or repaired;

(B) Ownership of the vehicle or frame or unibody of the vehicle will not be transferred; and

(C) The frame or unibody of the vehicle will not be used in repairing or constructing another vehicle.

(2) Vehicle types subject to the issuance of salvage titles, include any vehicle:

(a) Of the type required to be titled or registered in this state, if operated over the highways;

(b) Class I and III all-terrain vehicles required to be titled and registered by DMV;

(c) Snowmobiles required to be titled and registered by DMV; and

(d) Any other vehicle that has been issued a certificate of title by DMV, or some other jurisdiction.

(3) Except as provided in section (4) of this rule, application must be made for a salvage title on any subject vehicle that is:

(a) Wrecked, dismantled, disassembled, or where the form of the vehicle is substantially altered, as covered in ORS 819.010 and OAR 735-024-0050;

(b) Determined to be a totaled vehicle, and the title is required to be surrendered to DMV under ORS 819.012 or 819.014; or

(c) An abandoned vehicle that is sold under the provisions of ORS 819.220.

(4) As provided in ORS 819.016 and section (1) of this rule, application for salvage title is not required if the person does not intend to rebuild or repair the vehicle, to transfer the vehicle or frame or unibody, or to use the frame or unibody for repairing or constructing another vehicle. Persons who do not apply for salvage title, must make known their intent when surrendering the title or primary ownership document, as otherwise required by law and the rules of DMV. All of the following apply:

(a) If at the time the title or primary ownership documents are required to be surrendered, a final determination as to the disposition of the vehicle or frame or unibody has not been made, the person must apply for a salvage title;

(b) If there is any action to register or operate the vehicle over the highways, other than the temporary operation of the vehicle with a trip permit issued for a period not to exceed ten (10) days, the person must apply for a salvage title regardless of the amount of repair done to the vehicle; and

(c) A "transfer" occurs when there is any transfer of interest in the vehicle, or the frame or unibody of the vehicle, except in the case of a transfer of interest in a vehicle that has been wrecked, disassembled, dismantled or substantially altered as defined in OAR 735-024-0050, and where all of the following apply:

(A) The person who wrecked, disassembled, dismantled or substantially altered the vehicle complies with ORS 819.010;

(B) Proof of compliance is issued under ORS 819.040;

(C) The vehicle is sold to a person engaged in salvage and who holds a wrecker certificate issued under ORS 822.110; and

(D) The person engaged in salvage crushes, compacts or shreds the vehicle including the frame or unibody of the vehicle.

(5) When a salvage title is required, application must be made:

(a) For a vehicle that is declared a total loss by an insurer that is obligated to cover the loss, or that the insurer takes possession of or title to:

(A) The insurer must apply for the salvage title if the insurer obtains the title as provided under ORS 819.014, unless a salvage title has already been issued;

(B) The owner must apply for the salvage title if the vehicle owner does not surrender the title to the insurer.

(b) By the owner for a vehicle that is totaled due to damage when the loss is not covered by an insurer;

(c) By any person who purchases an abandoned vehicle sold under ORS 819.220;

(d) By any person who wrecks, dismantles, disassembles or substantially alters the form of a vehicle, unless:

(A) A salvage title or similar document has already been issued by Oregon or some other jurisdiction, and the person is not required to apply for a salvage title in his or her name under OAR 735-024-0170; or

(B) Provisions of section (4) of this rule apply.

(e) By any person who receives or purchases a vehicle subject to salvage title requirements unless:

(A) A salvage title or similar document has already been issued by Oregon or some other jurisdiction, and the person is not required to apply for salvage title in his or her name under OAR 735-024-0170;

(B) Provisions of section (4) of this rule apply; or

(C) A totaled vehicle was purchased prior to January 1, 1992, and is not subject until the vehicle, frame or unibody is transferred, or the vehicle is wrecked, dismantled, disassembled, or substantially altered in form.

(6) The term "receive" as used in section (5) of this rule and ORS 819.012, does not apply to auctions or other parties who as an agent of another, take possession or control of a vehicle, but who do not actually acquire an interest in the vehicle or vehicle salvage. This section does not:

(a) Relieve insurers or persons who are actually transferring interest in the vehicle or vehicle salvage, from the responsibility to apply for and provide any purchaser with a salvage title, as required under ORS 819.012 through 819.018 and this rule; or

(b) Prevent parties from entering into agreements to allow agents to apply for and provide salvage titles to any purchaser on behalf of another.

(7) An odometer disclosure is required when application is made for the issuance or transfer of a salvage title for motor vehicles, except those exempt from disclosure requirements under OAR 735-028-0010.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.012 - 819.018

Stats. Implemented: ORS 803.140, 819.010 - ORS 819.040 & 49 CFR Part 580

Hist.: MV 32-1991, f. 12-30-91, cert. ef. 1-1-92; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-032-0000

Replacement and Duplicate Registration Plates

(1) For the purpose of this rule the following definitions apply:

(a) "Replacement plate(s)" means the registered plate(s) that:

(A) Is issued when the plate(s) last assigned to a vehicle is lost, destroyed or mutilated, as provided in ORS 803.530; and

(B) Bears a different number or letter sequence than the plate(s) last assigned to that vehicle.

(b) "Duplicate plate(s)" means the registration plate(s) that:

(A) Is issued when the last plate(s) assigned to a vehicle is lost, mutilated or destroyed as provided in ORS 803.530; and

(B) Bears the same number or letter sequence as the plate(s) last assigned to the vehicle.

(2) If a registration plate(s) is lost (including loss by theft), mutilated or destroyed the vehicle owner may make application to the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) for replacement or duplicate plates.

(3) To obtain replacement or duplicate plates the vehicle owner must make application to DMV and:

ADMINISTRATIVE RULES

(a) Pay the replacement or duplicate plate fee as provided in ORS 803.575;

(b) Pay the plate manufacturing fee when required under ORS 803.570 and as provided in OAR 735-032-0010; and

(c) Meet any other applicable requirements for the title and registration of the vehicle.

(4) DMV will determine whether the plates issued are required to be issued as duplicate plates or replacement plates. In most cases, DMV will issue replacement plates.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.530, 803.570, 805.200

Stats. Implemented: ORS 803.530

Hist.: MV 29-1986, f. 12-31-86, ef. 1-1-87; Administrative Renumbering 3-1988, Renumbered from 735-100-0300; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0010

Definitions

As used in this division and ORS Chapter 822:

(1) "Additional (or supplemental) place of business" or "additional (or supplemental) location" means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer, and which is operated under the same name as the main business location.

(2) For purposes of this rule, OAR chapter 735, division 024, division 152, ORS Chapters 819 and 822, "Auto Recycler" has the same meaning as "wrecker" as defined under OAR 735-152-0000 and means a person issued a wrecker certificate under ORS 822.110.

(3) "Advertise" means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(4) "Agent" means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and the registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in Division 150.

(5) "Business day" means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

(6) "Cancellation" has the same meaning as "revocation" as defined in section (26) of this rule.

(7) "Certified dealer" means a dealer who holds a valid dealer certificate issued under ORS Chapter 822.

(8) "Circumstances beyond the dealer's control", as used in ORS 822.045(3)(b), OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances, if those circumstances result in the physical destruction of, or inaccessibility to vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, 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 the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

(9) "Closure" means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer's certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

(10) "Date of sale," or use of similar terms to indicate the day that the sale occurred, means the date on which the purchaser takes possession of the vehicle except, for those sales made by auto auction companies which only allow certified dealers to act as purchasers. With respect to auto auctions and for purposes of consignee payment under ORS 822.060(1)(d), "date of sale" means, the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

(11) "Dealer" means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

(12) "Dealership," "place of business" or "business location" means a location within the State of Oregon where activities specified in ORS 822.005 take place.

(13) "Designated dealer" means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

(14) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(15) "DMV Administrator" means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

(16) "Employee" means:

(a) A person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

(A) Determining the frequency, method and amount of compensation;

(B) Determining whether the person's work is continuous or intermittent;

(C) Determining the hours or frequency of a person's work; or

(D) Retaining the ability to terminate the relationship.

(b) A real estate salesperson who engages in the sale of mobile homes or manufactured housing and whose vehicle certificate is held by a broker.

(17) "Good faith effort" as used in ORS 822.045(3)(a) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer's efforts are in good faith if written documentation is provided that verifies:

(A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and

(B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, prior to sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(18) "Location," "main business location" or "main dealership" means a location identified and listed as the dealer's main business location on the most current application for vehicle dealer certificate.

(19) "Normal business hours" means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

(20) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

(21) "Permanent revocation" means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(22) "Probation" means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

(23) "Principal" means an owner, partner, corporate officer or other person who controls or manages the business organization or the employees or agents of the business organization.

(24) "Rebuilder" means a person engaged in conducting a "vehicle rebuilding business" as specified in ORS 822.070.

(25) "Revocation" means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

(26) "Sanction" means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

(27) "Suspension" means a period of time specified by DMV during which a vehicle dealer is prohibited from:

(a) Buying, selling, brokering, trading or exchanging any vehicle. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and

(b) Acting as DMV's agent.

(28) "Violation" means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) & (2).

(29) "Warning" means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035

Stats. Implemented: ORS 822.005 - 822.080

ADMINISTRATIVE RULES

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 17-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0020

Exemptions From Vehicle Dealer Certification Requirement

(1) A person who rents or leases space to a vehicle dealer who holds a current valid certificate is not a dealer as defined in OAR 735-150-0010(11).

(2) The following apply where there is a formal display of vehicles, such as an auto show, by a group of dealers for a period of ten (10) days or less:

(a) Except as otherwise provided in this section and ORS 822.015(9), a dealer participating in a display must either be a certified vehicle dealer or a manufacturer of vehicles not engaged in sales to the public;

(b) A person who only rents or leases space to a participating dealer does not need a vehicle dealer certificate;

(c) A certified vehicle dealer does not need a supplemental certificate; and

(d) This section does not apply to RV shows held in accordance with OAR 735-150-0045.

(3) The exemption in ORS 822.015(2) will be narrowly construed to exempt from dealer regulatory requirements only those persons who engage in buying, selling or exchanging vehicles as a mere incident to their personal ownership and use of those vehicles. This includes a business or corporate entity that holds such vehicles primarily for its own transportation needs, but not primarily for sale or exchange. No person may apply for certificates of title for the purpose of avoiding dealer regulatory requirements while dealing in vehicles.

(4) A person is not a rebuilder if that person:

(a) Is an employee of a certified vehicle dealer; or

(b) Is engaged solely in the repair of damaged vehicles at the request of the registered owner(s) of the vehicle(s).

(5) An employee of a dealer as defined in OAR 735-150-0010(16) is not required to have a separate dealer certificate in order to buy or sell vehicles on behalf of his or her employer.

(6) A certified vehicle dealer does not need a supplemental certificate for the location of an auction conducted by the dealer. This exemption applies when all the following conditions exist:

(a) Vehicles sold at the auction are consigned to the dealer;

(b) Vehicles are sold on the basis of the highest bid or most favorable offer;

(c) The auction does not exceed three (3) consecutive days; and

(d) The dealer does not own the property where the auction is conducted. If the dealer rents or leases the property where the auction is conducted, the rent/lease period must not exceed three (3) consecutive days.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015 & 822.035

Stats. Implemented: ORS 822.015

Hist.: MV 7-1987, f. & ef. 7-13-87; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0030

Dealer Location Regulations

(1) Except as permitted under section (2) of this rule, each business location established by a dealer must:

(a) Have sufficient space to display one or more vehicles of the type the dealer has been issued a certificate to sell;

(b) Provide a means for the public to contact the dealer or an employee of the dealer at all times during the dealer's normal business hours;

(c) Display an exterior sign, permanently affixed to the land or a building, that identifies the dealership by the name printed on the vehicle dealer certificate, with letters clearly visible to the major avenue of traffic; and

(d) Display, in a publicly accessible and conspicuous manner, the vehicle dealer certificate.

(2) Where zoning or local ordinance prevent compliance, DMV may exempt a dealer from the requirements of subsections (1)(a), (b), or (c) of this rule if the dealer:

(a) Submits a written request for the exemption(s) to DMV documenting why an exemption should be granted;

(b) Agrees to an on-site inspection if required by DMV to determine the validity of the request and to seek reasonable alternatives to the exemption(s) requested; and

(c) Complies with any alternative proposed by DMV that substantially meets the requirements for the exemption requested.

(3) All locations from which a rebuilder conducts a "vehicle rebuilding business" as described in ORS 822.070 must be listed on an application for a vehicle dealer certificate as either the main business location or a supplemental business location. Each location must comply with the requirements of section (1) of this rule unless an exemption under section (2) of this rule is granted.

(4) The following apply to dealer locations, unless exempt under OAR 735-150-0020:

(a) A dealer must have a certificate or supplemental certificate for each location where the dealer sells or displays vehicles for sale. A dealer who uses a supplemental place of business, must have a supplemental certificate from DMV before business can be conducted at the supplemental location; and

(b) A dealer who moves a place of business or changes the business name must submit a completed and signed DMV Application to Correct Dealer/Rebuilder Vehicle Dealer Certificate and obtain a corrected dealer certificate before business can be conducted.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.025, 822.035 & 822.040

Stats. Implemented: ORS 822.020, 822.035 & ORS 822.040

Hist.: MV 7-1987, f. & ef. 7-13-87; Administrative Renumbering 3-1988, Renumbered from 735-071-0057; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0040

Designation of Dealers as Agents

(1) Persons issued a dealer certificate under ORS 822.020 and who meet the qualifications set forth in OAR 735-150-0039, are designated as DMV's agent pursuant to ORS 802.031 and may perform the duties of an agent as identified in section (4) of this rule.

(2) Snowmobile dealers and Class I and Class III all-terrain vehicle dealers are designated as agents of DMV pursuant to ORS 802.031.

(3) DMV may impose sanctions against a dealer's agent status as provided in OAR 735-150-0120.

(4) DMV's agent 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 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 ORS 803.600;

(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; and

(f) Accept applications and fees for transfers of registration plates except as provided in section (9) of this rule.

(5) A dealer who, on behalf of a purchaser, accepts an application, collects fees and obtains registration plates, stickers and temporary registration, as applicable, must ensure delivery of the items obtained to the purchaser. Within five working days of receipt from DMV the dealer must:

(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.

ADMINISTRATIVE RULES

(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, 803.600

Stats. Implemented: ORS 802.031, 803.565, 803.600, 803.602, 803.645, 821.060, 821.080, 822.005, 822.080, 803.600

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 5-1998(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; DMV 9-2004, f. & cert. ef. 5-24-04; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0110

Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

(1) Allows or assists a person who is not an employee of the dealer to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.

(2) Fails to submit all taxes or fees due this state, another state or a political subdivision in connection with the sale or transfer of a vehicle.

(3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.

(4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.

(5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.

(6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.

(7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.

(8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.

(9) Commits any offense specified in ORS 822.045.

(10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.

(11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

(12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.

(13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.

(14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.

(15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.

(16) Sells a vehicle of a type not authorized by the dealer's certificate.

(17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.

(18) Makes a false statement of material fact in:

(a) An application for a dealer certificate or attachments thereof;

(b) Any investigation by DMV or law enforcement; or

(c) Any DMV document.

(19) Commits a felony by violating ORS 822.605.

(20) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.

(21) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(22) Allows or permits the unlawful use of any certificate or registration plate.

(23) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080 & 822.035

Stats. Implemented: ORS 822.005 – 822.080

Hist.: MV 3-1980, f. 2-15-80, ef. 4-1-80; Suspended by MV 5-1980(Temp), f. & ef. 4-2-80; MV 4-1981, f. 4-1-81, ef. 4-10-81; MV 7-1982, f. & ef. 3-3-82; MV 7-1987, f. & ef. 7-13-87; MV 1-1988, f. & cert. ef. 1-5-88; Administrative Renumbering 3-1988, Renumbered from 735-071-0003; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

735-150-0140

Schedule of Civil Penalties for Certified Dealers

DMV adopts the following civil penalty schedule as a guide to the imposition of civil penalties pursuant to ORS 822.009. While this schedule is the primary source used to determine the amount of the civil penalty, a civil penalty assessed against a certified dealer may be modified in accordance with the provisions of OAR 735-150-0130. As used in this rule, an offense will be considered a second or subsequent offense if a dealer was notified in writing within the three (3) previous years of the occurrence of the same offense:

(1) Failure to comply with any provision of OAR 735-150-0030(1) through (3), concerning dealer location regulations:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(2) Failure to comply with the provisions of OAR 735-150-0030(4) concerning dealer location regulations:

(a) For the first violation: \$500;

(b) For the second and subsequent violation(s): \$1,000.

(3) Failure to comply with OAR 735-150-0040(5), (6) or (7), concerning the delivery of registration items:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(4) Failure to comply with any provision of OAR 735-150-0050, concerning acceptance and submission of title or registration application fees:

(a) For the first violation: warning;

(b) For the second violation: \$250;

(c) For the third violation: \$500;

(d) For the fourth and subsequent violation(s): \$1,000.

(5) Failure to comply with any provision of OAR 735-150-0060, concerning issuance of temporary registration permits:

(a) For the first violation: warning;

(b) For the second violation: \$50;

(c) For the third violation: \$100;

(d) For the fourth and subsequent violation(s): \$250.

(6) Failure to comply with any provision of OAR 735-150-0070, concerning trip permits issued by dealers:

(a) For the first violation: warning;

(b) For the second violation: \$50;

(c) For the third violation: \$100;

(d) For the fourth and subsequent violation(s): \$250.

(7) Failure to comply with any provision of OAR 735-150-0080, concerning requirements for issuing light vehicle or recreational vehicle trip permits:

(a) For the first violation: warning;

(b) For the second violation: \$50;

(c) For the third violation: \$100;

(d) For the fourth and subsequent violation(s): \$250.

(8) Failure to comply with OAR 735-150-0110(1), prohibiting a dealer from allowing a person not employed by the dealership to engage in dealer activity:

(a) For the first violation: \$250;

ADMINISTRATIVE RULES

- (b) For the second violation: \$500;
- (c) For the third and subsequent violation(s): \$1,000.
- (9) Failure to comply with OAR 735-150-0110(2), concerning failing to submit all taxes and fees:
 - (a) For the first violation: \$250;
 - (b) For the second violation: \$500;
 - (c) For the third and subsequent violation(s): \$1,000.
- (10) Failure to comply with OAR 735-150-0110(3), concerning a dealer who signs a name or allows any other person to sign a name of an owner, security interest holder or lessor on title or transfer documents without a Power of Attorney:
 - (a) For the first violation: \$500;
 - (b) For the second and subsequent violation(s): \$1,000.
- (11) Failure to comply with OAR 735-150-0110(4), concerning dealing in stolen vehicles. For the first and subsequent violation(s): \$1,000.
- (12) Failure to comply with OAR 735-150-0110(6), concerning altered vehicle identification numbers:
 - (a) For the first violation: \$1,000;
 - (b) For the second and subsequent violation(s): \$1,000.
- (13) Failure to comply with OAR 735-150-0110(7), concerning odometers, except violations of ORS 815.410, 815.420 and 815.430:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (14) Violation of ORS 815.410, 815.420 and 815.430, concerning odometer tampering and notices: For the first and subsequent violation(s): \$1,000.
- (15) Failure to comply with OAR 735-150-0110(8), concerning fraudulent title or registration documents. For the first and subsequent violation(s): \$1,000.
- (16) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of ORS 822.045, including the failure to comply with OAR 735-150-0110(10), concerning acting as a vehicle dealer any time between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (17) \$1,000 civil penalty for the first and subsequent violation(s) of ORS 822.045(1)(d), (e) or (k) or OAR 735-150-0039.
- (18) Failure to comply with OAR 735-150-0110(11), concerning issuance of temporary registration permits to persons not eligible:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (19) Failure to comply with OAR 735-150-0110(12), concerning failure to notify DMV of a vehicle transferred to the dealer:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth violation: \$250;
 - (e) For the fifth and subsequent violation(s): \$500.
- (20) Failure to comply with OAR 735-150-0110(13), concerning failure to remove foreign registration plates:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth and subsequent violation(s): \$250.
- (21) Failure to comply with OAR 735-150-0110(14), concerning failure to destroy foreign registration plates:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$50;
 - (c) For the third violation: \$100;
 - (d) For the fourth and subsequent violation(s): \$250.
- (22) Failure to comply with OAR 735-150-0110(15), concerning the physical inspection of vehicle identification numbers:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (23) Failure to comply with OAR 735-150-0110(16), concerning sale of vehicles of a type not allowed:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (24) Failure to comply with ORS 822.060(1)(a), (b), (c), (e), (h) or (i), concerning consignment sales:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (25) Violations of ORS 822.060(1)(d), (f) or (g) or 822.065, concerning consignment sales:
 - (a) For the first violation: \$500;
 - (b) For the second and subsequent violation(s): \$1,000.
- (26) Failure to comply with OAR 735-150-0110(18) concerning making a false statement of material fact:
 - (a) For the first violation: \$500;
 - (b) For the second and subsequent violation(s): \$1,000.
- (27) Any violation of the Oregon Vehicle Code or OAR chapter 735 not otherwise classified in this rule:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (28) Violations of ORS 822.047(1), (2) or (3) concerning requirements of broker contract:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$250;
 - (c) For the third violation: \$500;
 - (d) For the fourth and subsequent violation(s): \$1,000.
- (29) Violations of OAR 735-150-0035 concerning dealer records:
 - (a) For the first violation: warning;
 - (b) For the second violation: \$500;
 - (c) For the third and subsequent violation(s): \$1,000.
- (30) Violations of OAR 735-150-0045 and, ORS 822.082 through 822.084 concerning special rules and statutory provisions for RV dealers:
 - (a) For a certified dealer or person acting as a show organizer that conducts a show without a license:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (b) For failing to display a show license at a show:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (c) For a certified dealer or person acting as a show organizer that fails to include a dealer in a show license application:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (d) For selling a new RV without maintaining a service facility:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (e) For selling a new RV while maintaining a service facility that is not primarily engaged in the service and repair of RVs:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (f) For failing to prominently display the location of the dealer's service facility at a sales facility or RV show:
 - (A) For the first violation: Warning;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (g) For subcontracting a service facility rather than directing the service operation:
 - (A) For the first violation: \$250;
 - (B) For the second violation: \$500;
 - (C) For the third and subsequent violation(s): \$1000.
 - (h) For a certified dealer or person acting as a show organizer that conducts a show beyond the scope of the show license. For example, for additional days or hours:
 - (A) For the first violation: \$250;

ADMINISTRATIVE RULES

- (B) For the second violation: \$500;
- (C) For the third and subsequent violation(s): \$1000.

(i) For submitting an application that contains a false statement or omission of material fact:

- (A) For the first violation: \$250;
- (B) For the second violation: \$500;
- (C) For the third and subsequent violation(s): \$1000.

(j) Except as otherwise provided in OAR 735-150-0140, the following apply for any violation of OAR 735-150-0045 and ORS 822.082 to 822.084:

- (A) For the first violation: \$250;
- (B) For the second violation: \$500;
- (C) For the third and subsequent violation(s): \$1000.

(31) Violation of OAR 735-150-0055 concerning charging document processing fees for submitting titles and registrations to DMV:

- (a) For the first violation: \$250;
- (b) For the second violation: \$500;
- (c) For the third and subsequent violation(s): \$1000.

(32) Violation of OAR 735-150-0037 concerning records; satisfying prior interest; providing clear title:

- (a) For the first violation: Warning;
- (b) For the second violation: \$250;
- (c) For the third violation: \$500;
- (d) For the fourth and subsequent violation(s): \$1000.

(33) Violation of OAR 735-150-0110(22), concerning the unlawful use of any certificate or registration plate:

- (a) For the first violation: \$100;
- (b) For the second violation: \$500;
- (c) For the third violation: \$750;
- (d) For the fourth and subsequent violation(s): \$1000.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.009 & 822.035
Stats. Implemented: ORS 822.009, 822.035 & 822.045

Hist.: MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98; DMV 12-1998(Temp), f. & cert. ef. 9-14-98 thru 3-12-99; DMV 2-1999, f. & cert. ef. 2-19-99; DMV 8-2000, f. & cert. ef. 8-10-00; DMV 10-2001, f. & cert. ef. 6-14-01; DMV 22-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DMV 26-2001, f. 12-14-01, cert. ef. 1-1-02; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05

Department of Transportation, Highway Division Chapter 734

Adm. Order No.: HWD 3-2005
Filed with Sec. of State: 4-26-2005
Certified to be Effective: 4-26-05
Notice Publication Date: 3-1-05
Rules Amended: 734-035-0110

Subject: Under current law, a surplus parcel of property that is of use only to the adjacent property owner may be sold to that owner without the usual requirements of publication of notice in newspapers and a formal appraisal of the property. However, in most cases this applies only if the value of the property does not exceed \$5,000. For properties worth between \$5,000 and \$20,000, the cost of publication and appraisals can exceed the value of the property, or provide minimal return. Private parties contact the Department seeking to purchase these properties. The Department cannot handle many of these requests because of the unfavorable cost-benefit ratio. By defining "minimal value" property as those up to \$20,000, the Department will streamline the process for additional properties, and therefore be able to honor more citizens' requests because they will become cost-effective. The rule also clarifies what kind of notification must be given, and what kind of valuation will be done, in lieu of publication and appraisal.

Rules Coordinator: Brenda Trump—(503) 945-5278

734-035-0110

Exception to Appraisal Requirements and Publication of Notice of Sale

(1) Purpose. The purpose of this rule is to establish criteria and procedures to exempt surplus real properties from the usual appraisal and public notice requirements prior to disposal, as allowed by ORS 184.634.

(2) Definitions. The following definitions apply to this rule:

- (a) "Minimal value" means a value of \$20,000 or less.

(b) "Formal appraisal" means the appraisal process described in OAR 734-035-0080.

(3) Exempt Properties. Notwithstanding OAR 734-035-0080 and 734-035-0090, the Department may sell or dispose of real property or an interest therein direct to a private party without publication of a notice of sale or formal appraisal when:

(a) The property, because of its size, shape, location, utility, condition of title, or restriction imposed upon the property by the Department, has minimal value and is useful only to adjacent property owners; or

(b) The property may not be disposed of to anyone other than adjacent property owners because of local land use ordinances.

(4) Requirements in lieu of formal appraisal and publication:

(a) When, under this rule, a property is exempt from the formal appraisal process, the Department will determine the value of the property. The Department may use valuations or appraisals of comparable properties, assessors' reports, or any other data that adequately demonstrates the value of the subject property. The Department will include in its file the data it used to determine the value or a summary of the data.

(b) When, under this rule, a property is exempt from the publication requirements of OAR 734-035-0080 or 735-035-0090, the Department will notify adjacent property owners, and the local road authority when the property is adjacent to a road, of the proposed sale of real property at least 21 days before the date of the sale of the real property. The 21 days will be counted from the date the notice is hand delivered to the address, or from the date of mailing. The following apply to notification:

(A) The notification must be in writing and include a description of the property to be sold, the terms of purchase, and an opportunity to bid;

(B) The Department will notify by hand delivery, or by certified or registered mail, at the discretion of the Department. Delivery or mailing will be to the last known residence address of the adjacent property owner(s) of record in the county clerk's office in the county where the property is located. If the Department has another address it believes to be more current, it may use that address in place of the address on file with the county clerk; and

(C) Actual receipt of the notice by the adjacent property owner is not necessary for the Department to meet the requirements of this rule.

Stat. Auth.: ORS 184.616, 184.619 & 184.634

Stats. Implemented: ORS 184.634

Hist.: HWY 9-1990, f. & cert. ef. 5-24-90; HWD 3-2005, f. & cert. ef. 4-26-05

Department of Veterans' Affairs Chapter 274

Adm. Order No.: DVA 2-2005
Filed with Sec. of State: 4-22-2005
Certified to be Effective: 4-22-05
Notice Publication Date: 4-1-05

Rules Amended: 274-005-0040, 274-020-0200, 274-020-0387, 274-020-0388, 274-020-0411, 274-020-0440, 274-028-0005, 274-028-0035, 274-040-0025, 274-045-0001, 274-045-0150, 274-045-0190, 274-045-0220, 274-045-0411, 274-045-0471

Subject: These rules have now been amended to eliminate the use of "and/or" in the text of the Department's administrative rules. In a memo dated November 4, 2004, the Department of Justice, General Counsel Division suggested this change to eliminate the possibility of incorrect interpretation of the rules. The remaining amendments are for housekeeping purposes.

NOTE: OAR 274-021-0005 which was listed on the Notice of Proposed Rulemaking, filed February 23, 2005, has been removed from this filing and incorporated into another permanent rulemaking filing.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-005-0040

Formal Process (Over \$75,000)

(1) Except under subsection (3)(b) and section (4) of this rule, the Director of Veterans' Affairs (director) shall make a public announcement to obtain a list of contractors interested in providing professional services to the director. The director will request statements of qualifications or proposals, or both, for either single projects or groups of projects. The announcement will be made in trade periodicals or newspapers of general circulation, and electronically through the Department of Administrative Services on-line Vendor Information Program (VIP) and may include the following:

ADMINISTRATIVE RULES

- (a) Description of project type(s);
- (b) Typical project(s) scope;
- (c) Anticipated project start and completion dates;
- (d) Any special requirements;
- (e) Closing date by which statements of interest and qualifications must be received; and
- (f) Evaluation criteria and selection procedure.

(2) Initial screening:

(a) The director shall establish an evaluation committee. The committee shall, for each proposed project, evaluate statements of qualifications and performance data. The committee shall evaluate each firm on areas including, but not limited to:

- (A) Approach to the project;
- (B) Capability;
- (C) Credentials;
- (D) Experience;
- (E) Performance data (when applicable); and
- (F) Proposed project cost.

(b) Based on the established evaluation criteria, the committee shall select, in order of preference, a list of at least three firms (short list) deemed to be most highly qualified to provide the required services;

(c) The evaluation committee will interview the short listed firms and make a recommendation to the director on which one should be hired. When a proposal is requested, the evaluation committee may elect to eliminate the interview step and recommend the most qualified firm to the director.

(3) Final Selection:

(a) The director or designee shall select the most qualified firm and negotiate a contract with that firm. In making the final selection, the director shall consider the estimated value of the services to be rendered, the project scope, and complexity:

(A) Should the director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The director will then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the director will terminate negotiations. The director will then undertake negotiations with the third most qualified firm.

(B) Should the director be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section until an agreement is reached or a decision not to contract for professional services is made.

(b) When the director determines that only one firm exists that is capable of performing the required services, within the required time frame, the director may negotiate a sole source contract with that firm. "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. A sole source designation eliminates the necessity for a selection process.

(4) Special Services. In cases where the service needed is one performed only by a specialized group such as Bond Counsel, Financial Advisors, Certified Public Accountants, and other similar specialties; and a list of qualified persons, companies, or firms interested in providing this service is maintained by a state or federal agency, a company specializing in maintaining such a list, or is available from another source, the director may obtain and use such a list in lieu of making a public announcement. The director may also include on any such list persons, companies, or firms known by the director to be interested or qualified to provide the needed services. The director will utilize the process set out in sections (2) and (3) of this rule to select the contractor.

Stat. Auth.: ORS 279.051, 279.712, 406.030, 407.115, 407.169, 407.177, 407.179, 407.181 & 407.275

Stats. Implemented: ORS 279.051, 279.712, 406.030, 407.115, 407.169, 407.177, 407.179, 407.181, 407.275, 407.377, 407.465 & 408.360

Hist.: DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 5-2000, f. & cert. ef. 4-24-00; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0200

Definitions for OAR 274-020-0200 to 274-020-0450

As used in these regulations or any amendments to them, or any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the director or any of his duly authorized agents or employees in connection with the administration of the provisions of Article XI-A of the Oregon Constitution and ORS chapter

407, providing for the loaning of money to qualified persons who served in the Armed Forces of the United States, unless otherwise required by context:

(1) "Armed Forces" means and includes:

- (a) Army;
- (b) Navy;
- (c) Marines;
- (d) Air Force;
- (e) Coast Guard;
- (f) WAC (Since July 1, 1943);
- (g) Waves;
- (h) Women Marines;
- (i) WAFFS;
- (j) Spars;
- (k) Women's Air Force Service Pilots (WASP);

(l) Commissioned Officers of the Public Health Service. Service with Coast Guard between December 23, 1941, and November 10, 1943, inclusive. Service with the Army, Navy, Marine Corps, or Coast Guard between November 11, 1943, and July 28, 1945, inclusive. Eligible by executive order between July 29, 1945, and July 3, 1952, inclusive. Since July 3, 1952, when serving with the Armed Forces;

(m) Active service of commissioned officers of the National Oceanic and Atmospheric Administration or its predecessor organization, the Coast and Geodetic Survey, after July 29, 1945. Coast and Geodetic Survey officers while serving with the Army or Navy before July 29, 1945.

(2) "Active Duty" means that status in the Armed Forces in which the person on "active duty" is under the command of and subject to discipline and on active duty pay status in the respective branch of the Armed Forces in which the person is serving:

(a) Members of the reserve components; persons on a retired status from the Armed Forces; cadets at West Point, the United States Coast Guard Academy, the United States Air Force Academy, and Midshipmen at Annapolis, were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having entered active Federal Service for duty other than training.

(3) "Honorable Discharged" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's service with the Armed Forces are characterized as "Honorable" or "Under Honorable Conditions".

(4) "Separated" means the termination of active duty with the Armed Forces.

(5) "Resident" or "Bona Fide Resident" means one who has domiciled within the state.

(6) "Domicile" means the legal residence of a veteran and consists of actual or inchoate residence in conjunction with the intention to maintain that residence, or the home of the veteran, where, when temporarily away, he has the intention of returning:

(a) Temporary absence from the state, such as vacation, military leave, or reasons of health, will not destroy the domicile;

(b) Temporary presence in the state without an intention to establish a permanent home will not support a domicile in the state;

(c) Domicile of an unemancipated minor shall be governed by his legal parent, (if the parents are divorced, the one having custody controls);

(d) Domicile of an emancipated minor shall be determined by choice.

(7) "Acquisition" means:

(a) The purchase and improvement of a home or farm; or

(b) The payment of the balance of a purchase price and interest on purchase contract of a home or farm and its improvements; or

(c) The refinancing of an existing purchase money security instrument on a home or farm or an instrument in the nature thereof, and the improvement of the property purchased; or

(d) Improvements of a home or farm.

(8) "Improvements" means any new construction, or any necessary or beneficial additions, alterations, or changes appurtenant to the house which add to the appraised value of the premises.

(9) "Security" means all of the real property, mobile home, or floating home that is to be acquired for a home and for which purpose the loan is requested.

(10) "Home" means any residential-type structure, including out-buildings and the real property in connection with it, if any, including long-term leaseholds, which is established, maintained, and used primarily as a principal residence by the veteran.

(11) "Farm" includes:

(a) "Home"; and

ADMINISTRATIVE RULES

(b) A parcel of land being used to obtain a profit in money by utilizing accepted farming practices to raise crops or livestock or poultry or dairying or combinations thereof.

(12) "Security Instrument" means a mortgage, deed of trust, or similar document used to perfect the lien on the security by the Director of Veterans' Affairs (ODVA). The lien will be a first lien on the home, except:

(a) As otherwise required by Oregon law, or allowed by Oregon law and approved in writing by ODVA; or

(b) When an ALTA mortgagee's title insurance policy is in force insuring the state against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(13) "Minor" means any single person under the age of 18 years, but any person shall be deemed to have arrived at the age of majority upon their marriage.

(14) "Transfer" means a change of ownership, either by operation of law, act of the parties, or both, such as deed, contract, certificate, court decree, property settlement, foreclosure, easement, condemnation, or adverse possession of the premises.

(15) "Lease" means the giving of possession and use of profits of secured property for a period of time in return for compensation.

(16) "Possession" means exclusive dominion and physical control of the secured property but occupancy is not necessary.

(17) "Lease Option" means a lease of real property with an option to purchase the property within a stipulated period of time.

(18) "Rent" means the giving of possession of secured property for occupancy for a specific period of time in return for a stipulated amount of compensation.

(19) "Underwriter/Designated Loan Officers" means those employees of the Department whose paramount responsibility shall be the approval or rejection of all applications for loans.

(20) "Department" means the Oregon Department of Veterans' Affairs (ODVA).

(21) "Net Appraised Value" is also known as loan value," and both terms mean the lesser of the appraised value or the Purchase Price. The "appraised value" is the value established by an appraisal obtained by or at the direction of ODVA, or an appraisal approved by ODVA.

(22) "Loan to Value Ratio" is the loan amount or balance divided by the net appraised value.

(23) "Original Loan" means:

(a) The first loan the veteran receives; or

(b) The first loan based on a restored loan right.

(24) "Subsequent Loan" means any loan or loans granted after the original loan and are in these categories:

(a) Additional loan;

(b) Second loan; and

(c) Veterans' Home Improvement loan.

(25) "Veteran" means any person eligible to receive a loan under the provisions of Article XI-A of the Oregon Constitution and sections (1) through (6) of this rule.

Stat. Auth.: ORS 406.030 & 407.115

Stats. Implemented: ORS 40

Hist.: DVA 22, f. 11-15-57, ef. 11-14-57; DVA 26, f. 12-13-60; DVA 29, f. 7-3-63, ef. 9-2-63; DVA 32, f. 12-2-65, ef. 10-25-65; DVA 33, f. 12-7-66, ef. 1-11-67; DVA 35, f. 12-19-68, ef. 1-11-69; DVA 38, f. 5-10-71, ef. 6-11-71; DVA 43, f. 3-2-73, ef. 3-29-73; DVA 45, f. & ef. 12-1-75; DVA 47, f. & ef. 4-20-76; DVA 48, f. & ef. 1-3-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 1-1980, f. & ef. 1-15-80; DVA 4-1980, f. & ef. 12-1-80; DVA 3-1990, f. & cert. ef. 5-1-90; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0387

Reamortization of Loans

The Director of Veterans' Affairs may adjust payments and other terms of the loan under the following conditions:

(1) Tax adjustments.

(2) A change in the interest rate.

(3) A change in the insurance premiums.

(4) Errors or omissions on the operative loan documents.

(5) When the balance of the loan will not amortize within the terms of the security document.

(6) Any expenditure or advance of funds as provided under ORS 407.135 (formerly 407.080), 407.145(2) (formerly 407.090(2)), and the security document.

Stat. Auth.: ORS 406 & 407

Stats. Implemented: ORS 407.095, 407.135 & 407.145

Hist.: DVA 9-1982(Temp), f & ef. 4-9-82; DVA 12-1982, f. & ef. 5-17-82; DVA 7-1996, f. & cert. ef. 7-22-96; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0388

Property Tax Amortization and Escrow Accounting

(1) Except as otherwise provided herein, payments required on all loans shall include an amount, which represents advances, for taxes paid by the Director of Veterans' Affairs (director) on the security:

(a) The amounts shall be determined each year by dividing the amount advanced by the number of loan payments due during the year, increased to the next whole dollar;

(b) The amounts so determined shall be added to and become part of the loan payment unless full payment of the advance is made pursuant to subsection (c) or (d) of this section;

(c) As soon as possible after taxes are paid on November 15th of each year, the director may notify each borrower by mail of the amount of the tax advance. If full payment of the tax advance is made to the director, the amount determined in subsection (a) of this section shall be deleted from the loan payments. Upon such payment the borrower shall be credited with prior loan payments made to the extent of the amounts contained therein that represent repayment of the tax advance;

(d) If for any reason the taxes cannot be paid on November 15th, the director will send the notice as provided in subsection (c) of this section as soon as possible after the taxes are paid;

(e) Effective with taxes paid in November of 1990 (1990-91 taxes) through November of 2003 (2003-2004 taxes), the director generally did not advance funds for the payment of taxes on property that was security for a loan being charged less than seven percent interest unless an escrow account had been established on the loan for the payment of taxes. The interest rate charged was the "loan rate" or "composite rate" where more than one loan (with different interest rates) is secured by the property;

(f) Effective with taxes (including delinquent taxes) to be paid in November of 2004 (2004-2005 taxes), the director may approve a borrower's request to advance funds for the payment of taxes on property that is security for a loan unless an escrow account had been established on the loan for the payment of taxes. The interest rate being charged is the "loan rate" or "composite rate" where more than one loan (with different interest rates) is secured by the property;

(g) Notwithstanding the provisions of subsection (1)(e) and (1)(f) of this rule, the director may advance funds for the payment of taxes on property that is security for a loan under the provisions of the Servicemembers Civil Relief Act. In addition, the director may advance funds to pay property taxes if sufficient funds are not available in the escrow account, by overdrawing the escrow account balance.

(2) The director may allow owners of the security to directly pay the taxes and hazard insurance due on the security, subject to the following conditions:

(a) For existing accounts or qualified assumptions of existing accounts, the owner of the property must make written application to the director on a form prescribed by the director. Said application also must conform with the following:

(A) The application must be submitted by September 1st of the year application is made;

(B) At the time of application, payments on the loan must be current and the applicant's credit history must be satisfactory as determined by the director at his sole discretion and,

(C) The loan balance, including any accruals, at the time of application must not be more than 80 percent of the "real market value" of the security as shown by the county tax assessor.

(D) If a request is approved, any funds the director holds in an applicable escrow account, which are not scheduled for disbursement will be returned to the borrower and the borrower will be responsible for any future disbursements.

(b) For new loan applications, the applicant must make written request to the director. Said application also must conform with the following:

(A) The loan-to-value ratio must be 80 percent or less of the net appraised value;

(B) The loan must have no restrictions by virtue of mortgage insurance that the lender pay taxes and insurance.

(3) All applications, for permission to pay taxes and hazard insurance directly, will receive a written approval or disapproval from the director. If the application is approved, the applicant will be advised of the date when the director will discontinue making disbursements, if applicable and the date the loan payment will be adjusted, if necessary.

(4) The director may revoke any permission granted concerning the payment of taxes and hazard insurance on the security by giving the owner of the security 30 days written notice of the revocation, except as otherwise

ADMINISTRATIVE RULES

provided herein. If the director advances funds to pay unpaid taxes or hazard insurance, any advance by the director for such a shortage or deficiency also will constitute immediate revocation by the director of permission for the owner to pay directly any taxes and hazard insurance due on the security, and the account will revert to the last signed agreement between the director and borrower for the payment of taxes, hazard insurance and other obligations. Any advances by the director, including any interest and fee, shall be paid back within the remaining payment/escrow year. The borrower may not change this obligation without prior written approval from the director.

(5) Sections (1), (2), (3) and (4) of this rule are not applicable to payments made under contracts for the purchase of state-owned property. Contract purchaser(s) may prepay the current year's property taxes in a lump sum and have the tax portion removed from the following year's payment(s).

(6) Monthly simple interest home improvement loans are handled as follows:

(a) If the borrower has an existing account with ODVA the taxes will continue to be paid per the terms of that account;

(b) When an existing account is paid in full and the loan-to-value ratio (LTV) is 80 percent or less of the net appraised value, the borrower may at the director's discretion pay their own taxes directly to the county and the borrower may at the director's discretion pay their own hazard insurance;

(c) If the borrower does not have an existing account and the LTV is greater than 80 percent, the borrower must pay their taxes and hazard into an escrow account as part of their standard payment.

(7) Pursuant to the provisions of ORS 407.169, beginning November 1, 1990, escrow accounts are available for the prepayment of estimated property taxes and insurance. All borrowers with loans, and all purchasers buying property from the director on a land sale contract, based on a daily simple interest calculation, may make prepayments of estimated property taxes into an escrow account, subject to the following conditions:

(a) The owner of the property must make written application to the director on a form prescribed by the director;

(b) Applicants will have the option of either repaying the previous year's tax advance as provided by section (1) of this rule, or of permitting said tax advance to remain part of the principal balance on the loan with the payments of said loan adjusted to repay the tax advance with interest over the remaining life of the loan.

(8) On monthly simple interest loans with escrow accounts, the required escrow payment may be based, inter alia, on the preceding year's disbursements for such items as property taxes, fire and extended coverage premiums, other required insurance premiums, condominium/homeowners dues, and bankrofted amounts. In cases of un-assessed new construction, the estimate may be based, inter alia, on the assessment of comparable residential property in the market area.

(9) The director will pay interest on the escrow account as provided by ORS 86.245(1).

(10) Effective May 24, 1995, all escrow accounts on monthly simple interest loans and tax escrows on daily simple interest loans will be administered in the following manner:

(a) The director may require a cushion that shall be no greater than 1/6 of the estimated total annual disbursements from the escrow account. Estimated disbursements may be modified by an amount not exceeding the most recent year's change in the national Consumer Price Index for all urban consumers (CPI, all items);

(b) At the end of an escrow account computation year, an aggregate analysis will be completed on each escrow account to determine the borrower's escrow account payment(s) for the new payment year. The borrower will be notified of any shortage, deficiency, or surplus in the escrow account and the amount of escrow account payment to be included in the loan payment;

(c) If the loan is two months or more delinquent in payments an analyzes will not be done until the loan is brought current.

(d) If the analysis determines there is not sufficient money in the escrow account to pay the required disbursements, the shortage or deficiency may be advanced by the director. The required escrow payments on the loan will be increased to recover any interest, fee or advance by the director for such a shortage or deficiency, or the borrower may repay the advance, interest or fee in a lump sum;

(e) If the analysis determines there is a surplus in the escrow account equal to or greater than \$25, the entire surplus shall be refunded to the borrower. If the surplus is less than \$25, this amount will be retained in the escrow account and credited against the next year's escrow payments;

(f) A statement itemizing all escrow account activity, (annual escrow statement) will be provided to the borrower each year.

(11) The following definitions apply to section 10 above:

(a) "Aggregate analysis" — to analyze the escrow account by calculating the sufficiency of escrow funds as a whole, as opposed to calculating components separately.

(b) "Cushion" — funds that the director may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account.

(c) "Deficiency" — the amount of a negative balance in an escrow account.

(d) "Escrow account" — any account that the director establishes or controls on behalf of a borrower to pay taxes, insurance premium, or other charges, as applicable.

(e) "Escrow account computation year" — a 12-month period that the director establishes for the escrow account.

(f) "Shortage" — an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

(g) "Surplus" — an amount by which the current escrow account balance exceeds the target balance of the account.

(h) "Target balance" — the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion.

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

Stats. Implemented: ORS 406.030 & 407.275

Hist.: DVA 26-1982(Temp), f. & ef. 10-1-82; DVA 3-1983, f. 1-14-83, ef. 1-15-83 and Suspend by DVA 4-1983(Temp); DVA 4-1983(Temp), f. & ef. 2-1-83; DVA 10-1983, f. 9-8-83, ef. 2-1-84; DVA 13-1983, f. & ef. 11-1-83; DVA 10-1984, f. 10-8-84, ef. 10-15-84; DVA 9-1985, f. 6-20-85, ef. 7-1-85; DVA 2-1989, f. & cert. ef. 6-1-89; DVA 2-1990, f. & cert. ef. 2-1-90; DVA 1-1991, f. & cert. ef. 5-1-91; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1995, f. 5-23-95, cert. ef. 5-24-95; DVA 11-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-2001, f. & cert. ef. 7-23-01; DVA 1-2004(Temp), f. & cert. ef. 1-15-04 thru 7-13-04; DVA 3-2004, f. & cert. ef. 2-24-04; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0411

Disclosure of Information and Fees

(1) Information in the custody of the Director of Veterans' Affairs (director) will be disclosed, or protected from disclosure, consistent with the provisions of ORS Chapter 192.

(2) Requests for information can be made verbally, but the director reserves the right to require the request to be in writing, signed and dated, naming or describing the information desired and the date the information is needed. A reasonable period of time must be allowed for the custodian of the records to locate and assemble the requested information. Restrictions may be placed upon where the information will be delivered or made available for inspection. The director shall designate a staff employee to be the department's records custodian, whose function is to perform the duties necessary to manage the department's records in accordance with all applicable laws. These duties may include, but are not limited to, certifying records to be true copies of the original documents on file in the custody of the director.

(3) Mailing lists of Oregon Department of Veterans' Affairs (ODVA) active account holders, and Vets News recipients, may be made available upon payment of the required fee. The mailing lists will not contain the names of persons who submit a written request for deletion of their name from the list on the basis that such disclosure would constitute an unreasonable invasion of privacy.

(4) The following information will not be disclosed except pursuant to an order issued by the director or by the Attorney General of the State of Oregon:

(a) Internal communications of an advisory nature preliminary to any final agency determination of policy or action;

(b) The name of a confidential informant or information submitted to the department in confidence where submission of the information was not required and the department has obliged itself in good faith not to disclose the information.

(5) The following information will not be disclosed except pursuant to an order issued by the Attorney General:

(a) Information relating to the appraisal of real and personal property prior to making a loan secured by that property;

(b) Information of a financial, medical, or personal nature relating to any individual, if such disclosure would constitute an unreasonable invasion of privacy.

(6) Fees will be charged to reimburse the department the cost of making information available or for producing copies of records:

ADMINISTRATIVE RULES

(a) For mailing lists, the fee is derived from the actual production costs. The lists are available in alphabetical or zip code order;

(b) The director may require reimbursement for any additional costs actually incurred by the department;

(c) For all requests for copies of documents, the charge is based on the actual costs incurred for search of files and for documents provided;

(d) For necessary safeguard of documents where a requestor is allowed to research records on department premises, a staff employee, designated by the director, must be present. The fee to be charged for this service will be equal to the hourly pay of the employee designated. In appointing an employee to safeguard departmental records, the director shall consider whether the pay range of the designated employee is reasonable and appropriate, reflecting the technicality and sensitivity of the documents being researched;

(e) The director may waive the fees provided in subsections 6(a), 6(c) and 6(d) of this rule for city, county, state, and federal agencies, and for individuals obtaining information from their own files;

(f) The director may require payment of any and all fees identified in this section, in a form satisfactory to the director, prior to providing any disclosure of documents or information. Advance charges for anticipated labor expenses may be made by the director on an estimated basis.

(7) The purchase of a mailing list does not constitute permission to use ODVA's name in any marketing or advertising approach, whether expressly stated, inferred or implied.

Stat. Auth.: ORS 192, 406.030 & 407.115

Stats. Implemented: ORS 192, 406.030 & 407.115

Hist.: DVA 29-1982, f. 12-30-82, ef. 1-1-83; DVA 8-1984, f. 8-6-84, ef. 8-15-84; DVA 6-1986, f. & ef. 5-1-86; DVA 3-1988, f. 6-30-88, cert. ef. 7-1-88; DVA 6-1989, f. & cert. ef. 12-1-89; DVA 2-1993, f. & cert. ef. 1-4-93; DVA 8-1996, f. & cert. ef. 9-23-96; DVA 2-2005, f. & cert. ef. 4-22-05

274-020-0440

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

- (a) New Loan;
 - (b) Assumption by Eligible Veteran;
 - (c) Transfer of Ownership;
 - (d) Partial Release, Easement, and Modification of Mortgage;
 - (e) Timber Release;
 - (f) Firewood Release;
 - (g) Purchase of State-Owned Property;
 - (h) Dishonored Check;
 - (i) Reissue of Stale, Lost, Destroyed or Missing Document;
 - (j) Mineral Rights and Geothermal Resource Rights Release; and
 - (k) Veterans' Home Improvement Loan.
- (1) Borrower requests to cancel private mortgage insurance.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

(a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit reporting firm. A credit report fee may be charged for each applicant unless a co-applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) A loan fee shall be charged on a conventional loan not to exceed 2 percent.

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company.

(b) Assumption by an eligible veteran under ORS 407.305. Effective with applications received on or after July 1, 1985, the director shall charge a fee of 1.125 percent of the total of the unpaid balance plus any new funds loaned. The minimum service fee shall be \$100;

(c) Transfer of Ownership:

(A) The fee for transfer shall be:

- (i) Through June 30, 1985, 1 percent of the unpaid balance;
- (ii) Effective July 1, 1985, 1.125 percent of the unpaid balance;
- (iii) Effective May 1, 1992, \$450.

(B) No fee will be charged when a transfer results from:

- (i) Divorce;

(ii) Death;

(iii) Marriage;

(iv) Transfer of the interest of one or more current owners to the other owner or owners; or

(v) Transfer to a relocation company on an unrecorded contract.

(d) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on an urban property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(B) \$450 plus the cost of an appraisal for a partial release or modification of mortgage on a farm property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(C) \$50 for consenting to an easement;

(D) \$100 for partial release involving release of a mobile home which is to be replaced with another home;

(E) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(F) \$50 for processing request to relocate personal property mobile home;

(G) A larger fee may be charged in complex cases to cover extra processing costs; and

(H) A fee for the partial release of property to a government entity for public use as noted in Chapter 238 Oregon Laws 1995. This fee may be modified or waived at the discretion of the director.

(e) Timber Release:

(A) The director shall charge \$200 for a release of more than 7,500 and less than 30,000 board feet of timber. No refund will be made after application. The director shall charge \$1,200 for a release of 30,000 board feet or more of timber. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including 7,500 board feet of timber will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(f) Firewood Release:

(A) The director shall charge \$200 for a release of more than six and less than 20 cords of firewood. No refund will be made after application. The director shall charge \$1,200 for a release of 20 cords or more of firewood. \$1,000 of the \$1,200 fee will be refunded to the applicant if the request is withdrawn before the director is committed to an appraiser for the cost of a property appraisal. One release of up to and including six cords of firewood, will be allowed each calendar year without a fee being charged;

(B) An increased fee may be charged in complex cases to cover extra costs.

(g) Purchase of State-Owned Property:

(A) A credit report fee may be charged equal to the amount charged by the credit reporting firm. A credit report fee may be charged for each applicant unless a co-applicant is the applicant's spouse;

(B) A fee of 1.125 percent shall be charged on the amount of the contract on all properties whether or not the purchaser is a veteran. The minimum fee will be \$250. There will be no fee for a cash sale. If improvements in lieu of a cash down payment are part of the purchase agreement, a \$50 fee will be charged for any necessary completion inspection(s) after the first one. The provisions of section (4) of this rule apply to any fee charged;

(C) In the event of cancellation of an offer after acceptance for processing by Loan Processing, but prior to approval, all of the earnest money deposit except \$200 shall be refunded (\$200 to be retained by the director). If an application is canceled after approval, the full amount of the earnest money deposit shall be retained by the director;

(D) Notwithstanding the provisions of paragraph (3)(g)(C) of this rule, the director may refund all of the earnest money deposit if cancellation of the application was necessitated by some unexpected event such as redemption of the property before closing, or the death, disappearance, serious injury, serious illness, job loss, or job transfer of one or more of the parties to the transaction. Parties to the transaction include members of the immediate family.

(h) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the Director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower

ADMINISTRATIVE RULES

within a 12-month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check;

(i) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(j) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$50 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(k) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees, that may be incurred by ODVA, may be charged in an amount not to exceed the amount charged by the provider of the service.

(l) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(4) Fees will be collected in advance (except for dishonored checks). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the check is returned by the bank. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness. "Loan" means "contract" where context requires.

Stat. Auth.: ORS 82.300, 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282
Stats. Implemented: ORS 407.135, 407.145 & 407.275
Hist.: DVA 5-1982(Temp), f. & cert. ef. 2-12-82; DVA 16-1982, f. & cert. ef. 6-1-82; DVA 29-1982, f. 12-30-82, ef. 1-1-83; DVA 1-1983, f. 1-14-83, ef. 1-15-83; DVA 9-1983, f. & cert. ef. 7-1-83; DVA 15-1983, f. 12-20-83, ef. 1-1-84; DVA 7-1984, f. 7-25-84, ef. 8-15-84; DVA 7-1985, f. 5-22-85, ef. 7-1-85; DVA 4-1988, f. & cert. ef. 8-15-88; DVA 3-1989, f. & cert. ef. 8-16-89; DVA 5-1990, f. 8-20-90, cert. ef. 10-1-90; DVA 5-1991, f. 7-23-91, cert. ef. 7-24-91; DVA 7-1991, f. 10-31-91, cert. ef. 11-1-91; DVA 7-1992, f. & cert. ef. 5-1-92; DVA 12-1992(Temp), f. & cert. ef. 8-19-92; DVA 3-1993, f. & cert. ef. 1-4-93; DVA 5-1993, f. 3-16-93, cert. ef. 3-21-93; DVA 7-1995, f. & cert. ef. 7-21-95; DVA 10-1995, f. 9-11-95, cert. ef. 9-22-95; DVA 12-1995, f. & cert. ef. 9-22-95; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 1-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 7-1998, f. & cert. ef. 6-23-98; DVA 3-1999, f. & cert. ef. 9-22-99; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 2-2005, f. & cert. ef. 4-22-05

274-028-0005

Definitions

Selected words and terms as used in OAR chapter 274, division 028, are defined as follows:

(1) Veterans' Home Improvement loan means a loan or loans issued pursuant to OAR 274-028-0001 for not more than the total loan right where said loan funds are used to improve the basic livability of the home as defined in OAR 274-025-0010(7).

(2) Qualified improvements means the remodel or improvement of an existing home which will substantially enhance or protect the basic livability of the home.

(3) Processing Manual means the manual containing the policy for the Veterans' Home Improvement Loan Program, and any subsequent changes as they are effected.

(4) Veterans' Home Improvement Loan Program means all veterans' home improvement loans for which applications are received on or after November 12, 1997.

(5) Existing loan means any loan or loans obtained by the veteran to purchase or improve the property used as security for a loan with the Oregon Department of Veterans Affairs (ODVA).

(6) Loan to Value Ratio is the loan amount plus any outstanding balance owed to ODVA on the security divided by the net appraised value.

Stat. Auth.: Ch. 214 OL 1997 & ORS 406.030
Stats. Implemented: Ch. 214 OL 1997 & ORS 406.030
Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05

274-028-0035

Taxes, Hazard Insurance and Flood Insurance

(1) For veterans' home improvement loans which are subsequent to an existing loan, the director may pay property taxes or hazard or flood insurance on the existing loan until the existing loan is paid in full, after which it will be the borrower's responsibility to pay these items directly.

(2) If delinquent taxes become a lien against the security, or the borrower fails to maintain the required insurance, the director may pay the taxes or insurance and if so paid, will collect the amount paid by ODVA from the borrower through an escrow account per the provisions of OAR 274-020-0388.

Stat. Auth.: Ch. 214 OL 1997, 407.115, ORS 407.165 - 407.181 & 407.275
Stats. Implemented: Ch. 214 OL 1997, ORS 407.165 - 407.181 & 407.275
Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 2-2005, f. & cert. ef. 4-22-05

274-040-0025

The Director of Veterans' Affairs May Accept Gifts, Grants, and Donations for the Veterans' Home and Its Residents

Monetary gifts, grants, and donations will be deposited into the Oregon Veterans' Home Trust Fund.

(1) Any grant, donation, or gift that is accepted by the director, under ORS 408.365, whose use is for a designated purpose, shall only be used for the purpose specified, unless the limitations are released or modified by the donor or by law. Any designation for the use of a grant, donation, or gift may only be for a purpose related to the Veterans' Home or its residents.

(2) Any grant, donation, or gift that is accepted by the director, under ORS 408.365, unless otherwise designated for a specific purpose, may be used for the general purpose of operating the Oregon Veterans' Home including expenses that directly or indirectly benefit the residents.

(3) Any grant, donation, or gift, which had been submitted for a specific purpose for which it has been met, may be considered unrestricted and available for operational expenses upon notification to the donor.

(4) Any grant, donation, or gift of property, real or personal, that is accepted by the director under ORS 408.365, and is undesignated property, may be sold and the proceeds deposited into the Oregon Veterans' Home Trust Fund. Any designated property, real or personal, that is accepted by the director also may be sold and the proceeds deposited into the Oregon Veteran's Home Trust Fund and used for the benefit of the specified purpose, unless the limitations are released by the donor or law.

(5) Any non-monetary grant, donation, or gift of property, real or personal, that is accepted by the director, under ORS 408.365, for which it is determined by the director to have no practical value to ODVA, and can not be used or sold in a cost effective way, may be given or otherwise transferred to other organizations that assist veterans' in a manner consistent with ORS 293.090, 293.235, 406.030, 406.040, 406.050, and 408.365. Separate and apart from the provisions of OAR 125-050-0020, prior to offering donated property for public sale through the state Surplus Property Program, the director may make surplus or donated property available to entities, including but not limited to, those whose purpose is the care of veterans, survivors, and dependents, such as:

- Federal agencies;
- State agencies;
- Local agencies;
- Political subdivisions of the state;
- Any non-profit organization qualified to acquire federal surplus property pursuant to OAR 125-035-0045; who meet the purpose requirements above; and,
- Veteran's organizations; and
- The veteran's organizations operated retail store in Oregon Veterans' Home.

(6) Any real or personal property that is not used as designated in 5(a) through (g), may be disposed of consistent with OAR 125-050-0020.

(7) As used in this division, operational expenses include but are not limited to:

- Purchase of equipment;
- Facility maintenance;
- Facility repair;
- Purchase of payment of services and supplies;

ADMINISTRATIVE RULES

- (e) Vehicle repair and maintenance;
- (f) Vehicle purchases;
- (g) Recreational activities for the veterans' residents; and
- (h) Any other expenditure that, at the discretion of the director, is to the benefit of the residents of the Oregon Veterans' Home.

Stat. Auth.: ORS 183, 406.030, 406.040 & 408.365

Stats. Implemented: ORS 183, 406.030 & 406.040

Hist.: DVA 3-2000, f. & cert. ef. 4-21-00; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0001

Definitions for OAR 274-045-0001 to 274-045-0480

As used in these regulations or any amendments to them, or any blank form, document, publication, or written instrument of any kind prescribed, provided, published, issued, or used by the director or any of his duly authorized agents or employees in connection with the administration of the provisions of Article XI-A of the Oregon Constitution and ORS Chapter 407, providing for the loaning of money to qualified persons who served in the Armed Forces of the United States, unless otherwise required by context:

- (1) "Armed Forces" means and includes:

- (a) Army;
- (b) Navy;
- (c) Marines;
- (d) Air Force;
- (e) Coast Guard;
- (f) National Guard;
- (g) Federal Reserve Forces;

(2) "Active Duty" means that status in the Armed Forces in which the person on "active duty" is under the command of and subject to discipline and on active duty pay status in the respective branch of the Armed Forces in which the person is serving:

(a) Members of the reserve components; persons on a retired status from the Armed Forces; cadets at the United States Military Academy, and the United States Air Force Academy, and Midshipmen at the United States Naval Academy and the United States Coast Guard Academy, were on active duty only after reporting for active duty;

(b) Members of the National Guard were on active duty only after having entered active Federal Service for duty other than training.

- (3) "Acquisition" means:

- (a) The purchase and improvement of a home; or
- (b) The payment of the balance of a purchase price and interest on purchase contract of a home and its improvements; or
- (c) The refinancing of an existing purchase money security instrument on a home or an instrument in the nature thereof, and the improvement of the property purchased; or
- (d) Improvements of a home.

(4) "Agreement" means the contract between the Oregon Department of Veterans' Affairs (ODVA) and the approved lender, setting forth the terms and conditions under which program loans made by the approved lender will be purchased by the ODVA.

(5) "ALTA Mortgagee's Title Insurance" means a title insurance policy issued in American Land Title Insurance form by a title insurer licensed by the State of Oregon.

(6) "Approved Lender" means any "Lending Institution" as defined in ORS 407.177(8) that has entered into an agreement with ODVA to originate residential loans acceptable to ODVA or to act as a conduit for the origination of residential loans acceptable to ODVA. In determining whether or not to contract with a Lending Institution, ODVA may consider factors including, but not limited to the following:

- (a) ODVA's need for additional Approved Lenders, either on a statewide basis or in a specific geographical area,
- (b) Whether or not the Lending Institution has had any complaints filed against it or against any of its employees, agents, officers, directors, owners, or affiliates through the Consumer and Business Services Department of the State of Oregon, through any other regulatory agency or otherwise.
- (c) Whether or not representatives of the Lending Institution have attended any ODVA-sponsored training.
- (d) The reputation of the Lending Institution, including its employees, agents, officers, directors, owners or affiliates.
- (e) The number and experience of Lending Institution employees and other personnel available to originate loans or to act as a conduit for the origination of residential loans acceptable to ODVA.
- (f) Status and character of the institution's loan policies and procedures.

(g) The financial capability of the Lending Institution to originate loans or to act as a conduit for the origination of loans.

(h) The Lending Institution's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans' Affairs.

(i) Whether or not the deposits of the Lending Institution are insured by FDIC or some other federal agency or corporation.

(j) The experience, efficiency and performance of the Lending Institution in the area of residential lending and any other area of the Lending Institution's business.

(k) The willingness and commitment of the Lending Institution to accept and to fulfill the terms of an ODVA proposed contract.

(l) The result of any references which are checked as part of the application process.

(7) "Commitment" means a promise made by the ODVA to an Approved Lender or veteran, evidenced by a written commitment letter, setting forth the terms upon which the ODVA will purchase, originate, or accept by underwriting and closing a specific program loan made or processed by the Approved Lender or ODVA pursuant to a reservation of funds.

(8) "Department" means the Oregon Department of Veterans' Affairs.

(9) "Director" means the Director of Veterans' Affairs for the State of Oregon.

(10) "Domicile" means the legal residence of a veteran and consists of actual or inchoate residence in conjunction with the intention to maintain that residence, or the home of the veteran, where, when temporarily away, he or she has the intention of returning:

(a) Temporary absence from the State, such as vacation, military leave, or reasons of health, will not destroy the domicile;

(b) Temporary presence in the State without an intention to establish a permanent home will not support a domicile in the State;

(c) Domicile of an unemancipated minor shall be governed by his legal parent, (if the parents are divorced, the one having custody controls);

(d) Domicile of an emancipated minor shall be determined by choice.

(11) "Home" means any house or dwelling, including outbuildings, and the real property in connection with it, where the veteran has, or will, establish domicile.

(12) "Honorably Discharged" means that the official documents of discharge, service, or separation issued upon the termination of the veteran's service with the Armed Forces are characterized as "Honorable" or "Under Honorable Conditions".

(13) "Improvements" means any new construction, or any necessary or beneficial additions, alterations, or changes appurtenant to the house, which add to the appraised value of the premises.

(14) "Lease" means the giving of possession and use of profits of secured property for a period of time in return for compensation.

(15) "Lease Option" means a lease of real property with an option to purchase the property within a stipulated period of time.

(16) "Lending Institution" means an entity which is licensed, or otherwise legally authorized, to conduct business in the State of Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans and that, in the judgment of ODVA, is capable of meeting the needs of ODVA in carrying out the purposes of ORS Chapter 407. In determining whether or not an entity that is licensed, or otherwise legally authorized, to conduct business in Oregon exclusively or in part as a mortgage lender or a conduit for mortgage loans is capable of meeting the needs of ODVA in carrying out the purposes of ORS Chapter 407, ODVA may consider factors including, but not limited to the following:

(a) Whether or not the entity qualifies as a "Banking Institution" or similar entity including, but, not limited to an "Extranational Institution," a "Federal Bank," a "Federal Savings Bank," or a "Financial Institution" under ORS 706.005, 706.008, 707.744, or 723.042.

(b) Whether or not the entity qualifies as a "mortgage broker" under ORS 59.840 through 59.965 for a period of three years.

(c) Whether or not the representatives of the entity have attended any ODVA-sponsored training.

(d) The reputation of the entity or of any of its employees, agents, officers, directors, affiliates or owners.

(e) The financial capability of the entity to originate loans or to act as a conduit for the origination of loans.

(f) The entity's qualification as a loan originator or a seller/servicer for the Federal National Mortgage Association, the Federal Home Loan Mortgage Association, or the United States Department of Veterans Affairs.

ADMINISTRATIVE RULES

(g) The experience, efficiency, and performance of the entity in the areas of residential lending and any other area of the entity's business.

(17) "Loan Origination Guide/Mortgage Loan Origination Guide" means the manual containing the origination instructions for the Post Vietnam Era Veterans' Home Loan Program, and any subsequent changes as they are effected.

(18) "Loan to Value Ratio" is the loan amount or balance divided by the net appraised value.

(19) "Minor" means any single person under the age of 18 years, but any person shall be deemed to have arrived at the age of majority upon their marriage.

(20) "Net Appraised Value" is also known as "loan value," and both terms mean the lesser of the appraised value or the purchase price. The "appraised value" is the value established by an appraisal obtained by or at the direction of ODVA, or an appraisal approved by ODVA.

(21) "ODVA" means the Oregon Department of Veterans' Affairs acting by and through the director as defined in ORS 407.085(2)(b).

(22) "Original Loan" means:

(a) The first loan the veteran receives; or

(b) The first loan based on a restored loan right.

(23) "Possession" means exclusive dominion and physical control of the secured property but occupancy is not necessary.

(24) "Post Vietnam Era Veterans' Home Loan Program" means all home loans originated under this Division.

(25) "Qualified Insurer" means private mortgage insurance company(ies) licensed to do business in Oregon and with which ODVA has agreed to accept mortgage insurance coverage.

(a) When an ALTA mortgagee's title insurance policy is in force insuring the State against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(26) "Rent" means the giving of possession of secured property for occupancy for a specific period of time in return for a stipulated amount of compensation.

(27) "Reservation of Funds" (Rate Lock) means the setting aside of specific funds at a designated interest rate for a specific period of time.

(28) "Resident" or "Bona Fide Resident" means one who has domiciled within the State.

(29) "Security" means all of the real property that is to be acquired for a home and for which purpose the program loan is requested.

(30) "Security Instrument" means a mortgage, deed of trust, or similar document used to perfect the lien on the security by the ODVA. The lien will be a first lien on the home, except:

(a) As otherwise required by Oregon law, or allowed by Oregon law and approved in writing by ODVA; or

(b) When an ALTA mortgagee's title insurance policy is in force insuring the State against the usual losses covered by an ALTA policy as well as any loss from any prior encumbrance, and the encumbrance is acceptable to both the veteran and ODVA.

(31) "Separated" means the termination of active duty with the Armed Forces.

(32) "Subsequent Loan" means any loan or loans granted after the original loan and are in these categories:

(a) Additional loan;

(b) Second loan; and

(c) Veterans' Home Improvement loan.

(33) "Transfer" means a change of ownership, either by operation of law, act of the parties, or both, such as deed, contract, certificate, court decree, property settlement, foreclosure, easement, condemnation, or adverse possession of the premises.

(34) "Underwriter/Designated Loan Officers" means those employees of ODVA whose paramount responsibility shall be the approval or rejection of all applications for loans.

(35) "Veteran" means any eligible veteran as described in OAR 274-045-0001 through 274-045-0001(2)(b) eligible to receive a loan under the provisions of Article XI-A of the Oregon Constitution.

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

Stat. Auth.: ORS 406.030 & 407.115

Stats. Implemented: ORS 407

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2001(Temp), f. & cert. ef. 6-15-01 thru 12-11-01; DVA 9-2001, f. & cert. ef. 11-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0150

Property Tax Amortization and Escrow Accounting

(1) Except as otherwise provided herein, payments required on all loans shall include an amount, which represents advances, for taxes paid by the Director of Veterans' Affairs (director) on the security. If for any reason

the taxes cannot be paid on November 15th, the director will send the notice as soon as possible after the taxes are paid.

(2) All applications, for permission to pay taxes and hazard insurance directly, will receive a written approval or disapproval from the director. If the application is approved, the applicant will be advised of the date when the director will discontinue making disbursements, if applicable, and the date the loan payment will be adjusted, if necessary.

(3) The director may revoke any permission granted concerning the payment of taxes and hazard insurance on the security by giving the owner of the security 30 days written notice of the revocation, except as otherwise provided herein. If the director advances funds to pay unpaid taxes and/or hazard insurance, any advance by the director for such a shortage/deficiency also will constitute immediate revocation by the director of permission for the owner to pay directly any taxes and hazard insurance due on the security, and the account will revert to the last signed agreement between the director and borrower for the payment of taxes, hazard insurance and other obligations. Any advances by the director, including any interest and fee, shall be paid back within the remaining payment/escrow year. The borrower may not change this obligation without prior written approval from the director.

(4) Pursuant to the provisions of ORS 407.169, under this division, escrow accounts are available for the prepayment of estimated property taxes and insurance.

(5) On monthly simple interest loans with escrow accounts, the required escrow payment may be based, inter alia, on the preceding year's disbursements for such items as property taxes, fire and extended coverage premiums, other required insurance premiums such as mortgage insurance, condominium/homeowners dues, and bankrofted amounts. In cases of unassessed new construction, the estimate may be based, inter alia, on the assessment of comparable residential property in the market area.

(6) The director will pay interest on the escrow account as provided by ORS 86.245(1).

(7) Under this Division, all escrow accounts on monthly simple interest loans will be administered in the following manner:

(a) The director may require a cushion that shall be no greater than 1/6 of the estimated total annual disbursements from the escrow account. Estimated disbursements may be modified by an amount not exceeding the most recent year's change in the national Consumer Price Index (CPI) for all urban consumers (CPI, all items);

(b) At the end of an escrow account computation year, an aggregate analysis will be completed on each escrow account to determine the borrower's escrow account payment(s) for the new payment year. The borrower will be notified of any shortage, deficiency, or surplus in the escrow account and the amount of escrow account payment to be included in the loan payment;

(c) Except if a loan is two (2) months or more delinquent in payments, an analysis will not be done until the loan is brought current;

(d) If the analysis determines there is not sufficient money in the escrow account to pay the required disbursements, the director may advance the shortage/deficiency. The required escrow payments on the loan will be increased to recover any interest, fee or other advance by the director for such a shortage or deficiency, or the borrower may repay the advance, interest or fee in a lump sum;

(e) If the analysis determines there is a surplus in the escrow account equal to or greater than \$25, the entire surplus shall be refunded to the borrower. If the surplus is less than \$25, this amount will be retained in the escrow account and credited against the next year's escrow payments;

(f) A statement itemizing all escrow account activity, (annual escrow analysis) will be provided to the borrower each year.

(8) The following definitions apply to section (7) above:

(a) "Aggregate analysis" — to analyze the escrow account by calculating the sufficiency of escrow funds as a whole, as opposed to calculating components separately.

(b) "Cushion" — funds that the director may require a borrower to pay into an escrow account to cover unanticipated disbursements or disbursements made before the borrower's payments are available in the account.

(c) "Deficiency" — the amount of a negative balance in an escrow account.

(d) "Escrow account" — any account that the director establishes or controls on behalf of a borrower to pay taxes, insurance premium, or other charges, as applicable.

(e) "Escrow account computation year" — a 12-month period that the director establishes for the escrow account.

ADMINISTRATIVE RULES

(f) "Shortage" — an amount by which a current escrow account balance falls short of the target balance at the time of escrow analysis.

(g) "Surplus" — an amount by which the current escrow account balance exceeds the target balance of the account.

(h) "Target balance" — the estimated month end balance in an escrow account that is just sufficient to cover the remaining disbursements from the escrow account in the escrow account computation year, taking into account the remaining scheduled periodic payments, and a cushion.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 86.240, 86.245, 406.030, 407.115, 407.169 & 407.275
Stats. Implemented: ORS 406.030 & 407.275
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0190

Disclosure of Information and Fees

(1) Information in the custody of the Director of Veterans' Affairs (director) will be disclosed, or protected from disclosure, consistent with the provisions of ORS Chapter 192.

(2) Requests for information can be made verbally, but the director reserves the right to require the request to be in writing, signed and dated, naming or describing the information desired and the date the information is needed. A reasonable period of time must be allowed for the custodian of the records to locate and assemble the requested information. Restrictions may be placed upon where the information will be delivered or made available for inspection. The director shall designate a staff employee to be the Department's records custodian, whose function is to perform the duties necessary to manage the Department's records in accordance with all applicable laws. These duties may include, but are not limited to, certifying records to be true copies of the original documents on file in the custody of the director.

(3) Mailing lists of Oregon Department of Veterans' Affairs (ODVA) active account holders, and Vets News recipients may be made available upon payment of the required fee. The mailing lists will not contain the names of persons who submit a written request for deletion of their name from the list on the basis that such disclosure would constitute an unreasonable invasion of privacy.

(4) The following information will not be disclosed except pursuant to an order issued by the director or by the Attorney General of the State of Oregon:

(a) Internal communications of an advisory nature preliminary to any final agency determination of policy or action;

(b) The name of a confidential informant or information submitted to the Department in confidence where submission of the information was not required and the Department has obliged itself in good faith not to disclose the information.

(5) The following information will not be disclosed except pursuant to an order issued by the Attorney General:

(a) Information relating to the appraisal of real and personal property prior to making a loan secured by that property;

(b) Information of a financial, medical, or personal nature relating to any individual, if such disclosure would constitute an unreasonable invasion of privacy.

(6) Fees will be charged to reimburse the Department the cost of making information available or for producing copies of records:

(a) For mailing lists, the fee is derived from the actual production costs. The lists are available in alphabetical or zip code order;

(b) The director may require reimbursement for any additional costs actually incurred by the Department;

(c) For all requests for copies of documents, the charge is based on the actual costs incurred for search of files and for documents provided;

(d) For necessary safeguard of documents where a requestor is allowed to research records on Department premises, a staff employee, designated by the director, must be present. The fee to be charged for this service will be equal to the hourly pay of the employee designated. In appointing an employee to safeguard Departmental records, the director shall consider whether the pay range of the designated employee is reasonable and appropriate, reflecting the technicality and sensitivity of the documents being researched;

(e) The director may waive the fees provided in subsections 6(a), 6(c) and 6(d) of this rule for city, county, state, and federal agencies, and for individuals obtaining information from their own files;

(f) The director may require payment of any and all fees identified in this section, in a form satisfactory to the director, prior to providing any disclosure of documents or information. The director may make advance charges for anticipated labor expenses on an estimated basis.

(7) The purchase of a mailing list does not constitute permission to use ODVA's name in any marketing or advertising approach, whether expressly stated, inferred or implied.

Stat. Auth.: ORS 192, 406.030 & 407.115
Stats. Implemented: ORS 192, 406.030 & 407.115
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0220

Fees

(1) The Director of Veterans' Affairs (director) imposes fees for the following:

- (a) New Loan;
- (b) Partial Release, Easement, and Modification of Mortgage;
- (c) Dishonored Check;
- (d) Reissue of Stale, Lost, Destroyed or Missing Document;
- (e) Mineral Rights and Geothermal Resource Rights Release;
- (f) Veterans' Home Improvement Loan; and
- (g) Borrower requests to cancel private mortgage insurance.

(2) The fee will not be waived or reduced except when in the director's opinion, requiring the fee would cause an undue hardship. In the case of a dishonored check, the fee will be waived if the check was dishonored because of a bank error.

(3) Fee Schedule:

(a) New Loan:

(A) A credit report fee may be charged in an amount not to exceed the amount charged by the credit-reporting firm. A credit report fee may be charged for each applicant unless a co-applicant is the applicant's spouse;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser or actual cost;

(C) In the event of cancellation of the application after acceptance for processing and collection of credit report and appraisal fees, any money not used or obligated for credit reports or appraisals shall be refunded;

(D) The director shall charge a loan fee on conventional loans not to exceed two percent (2%);

(E) Flood determination fee for each loan may be charged in an amount not to exceed the amount charged by the flood determination company;

(b) Partial Release, Easement, and Modification of Mortgage. The director will charge the following fees:

(A) \$450 plus the cost of an appraisal for a partial release or modification of mortgaged property. The appraisal fee will be refunded to the applicant if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(B) \$50 for consenting to an easement;

(C) \$100 for partial release involving release of a mobile home, which is to be replaced with another home;

(D) \$1,100 for a partial release involving release of water rights. \$1,000 of the \$1,100 fee will be refunded if the request is withdrawn before the director is obligated to an appraiser for the cost of a property appraisal;

(E) A larger fee may be charged in complex cases to cover extra processing costs; and

(F) A fee for the partial release of property to a government entity for public use as noted in Chapter 238 Oregon Laws 1995. This fee may be modified or waived at the discretion of the director.

(c) Dishonored Check. Whenever a bank check issued in payment of an obligation due to the director of Veterans' Affairs is dishonored by the bank upon which the check is drawn, a fee in the amount of \$25 will be charged. If two dishonored checks are received from the same borrower within a 12-month period, the director may require this borrower to make all future payments by cash, money order, cashier's check or certified check;

(d) Reissue of Stale, Lost, Destroyed or Missing Document. Whenever a document issued by the director must be reissued because it has been outstanding too long without being used, or has been lost, destroyed or for some other reason is missing, a fee in the amount of \$25 may be charged for this service. "Document" means deed, satisfaction of mortgage, satisfaction of judgment, request for reconveyance, reconveyance, assumption agreement, contract, partial release, modification of mortgage, escrow closing papers (or some other document substantially the same as the ones enumerated). This fee may be waived if there is good reason to believe that the person requesting the reissue was not responsible for the delay that caused the document to become stale or for the disappearance of the original issue;

(e) Release of Mineral Rights and Geothermal Resource Rights. The director may charge a fee of \$50 for processing an application for release of mineral and geothermal resource rights. From this fee, ODVA will pay the cost of recording any document issued. An additional \$100 may be

ADMINISTRATIVE RULES

charged if the nature of the application requires a review by the Division of State Lands to determine the mineral and geothermal resource potential. A check or money order in the amount of \$100 made payable to the Division of State Lands will be required when the Division of State Lands review is necessary.

(f) Veterans' Home Improvement Loan:

(A) A credit report fee may be charged for residential mortgage credit reports in an amount not to exceed the amount charged by the credit reporting firm;

(B) An appraisal report fee may be charged in an amount not to exceed the amount charged by the appraiser;

(C) A flood determination fee may be charged in an amount not to exceed the amount charged by the flood determination company; and

(D) Any other fees that may be incurred by ODVA may be charged in an amount not to exceed the amount charged by the provider of the service.

(g) Borrower requests to cancel private mortgage insurance. The director may charge a \$100 inspection fee. In the event a full appraisal is necessary to establish value, and it is requested by the borrower, the \$100 inspection fee will be credited toward the cost of the appraisal.

(4) Fees will be collected in advance (except for dishonored checks). Where the director was not made a party to a transaction requiring payment of a fee, and the fee was not paid, the fee is due on demand. If payment is not made after 30 days written notice, it may be added to the amount due on the loan. The fee for dishonored checks may be added to the amount due on the loan when the bank returns the check. Any fee added to the amount due on the loan shall bear interest at the same rate as on the principal indebtedness.

Stat. Authority: ORS 82.300, 406.030, 407.115, 407.135, 407.145, 407.275 & 742.282
Stats. Implemented: ORS 407.135, 407.145 & 407.275
Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0411

Definitions

Selected words and terms as used in OAR chapter 274, division 045, are defined as follows:

(1) Veterans' Home Improvement loan means a loan or loans issued pursuant to OAR 274-045-0401 for not more than the total loan right where said loan funds are used to improve the basic livability of the home as defined in OAR 274-045-0001(11).

(2) Qualified improvements means the remodel or improvement of an existing home which will substantially enhance or protect the basic livability of the home, which are consistent with provisions of applicable tax laws.

(3) Processing Manual means the **Oregon Department of Veterans' Affairs (ODVA) manual** containing the policy for the Veterans' Home Improvement Loan Program and any subsequent changes as they are effected.

(4) Veterans' Home Improvement Loan Program means all veterans' home improvement loans for which applications are received on or after June 29, 2001, and the veterans eligible for this program.

(5) Existing loan means any loan or loans obtained by the veteran to purchase or improve the property used as security for a loan with the ODVA.

(6) Loan to Value Ratio is the loan amount plus any outstanding balance owed to ODVA on the security divided by the net appraised value.

[Publications referenced are available from the agency.]
Stat. Auth.: ORS 406.030, 407.115, 407.125 & Art. XI-A Or. Const.
Stats. Implemented: ORS 407.115, 407.125 & Art. XI-A Or. Const.
Hist.: DVA 10-2001, f. & cert. ef. 12-26-01; DVA 2-2005, f. & cert. ef. 4-22-05

274-045-0471

Taxes, Hazard Insurance and Flood Insurance

(1) For veterans' home improvement loans which are subsequent to an ODVA existing loan, the director may pay property taxes or hazard or flood insurance on the existing loan until the existing loan is paid in full, after which it will be the borrower's responsibility to pay these items directly.

(2) If delinquent taxes become a lien against the security, or the borrower fails to maintain the required insurance, the director may pay the taxes or insurance and if so paid, will collect the amount paid by ODVA from the borrower through an escrow account per the provisions of OAR 274-045-0150.

Stat. Auth.: ORS 406.030, 407.115, 407.125 & Art. XI-A Or. Const.
Stats. Implemented: ORS 407.115, 407.125 & Art. XI-A Or. Const.
Hist.: DVA 10-2001, f. & cert. ef. 12-26-01; DVA 2-2005, f. & cert. ef. 4-22-05

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Adm. Order No.: DVA 3-2005

Filed with Sec. of State: 4-22-2005

Certified to be Effective: 4-22-05

Notice Publication Date: 4-1-05

Rules Amended: 274-020-0341, 274-021-0005, 274-028-0010, 274-045-0070

Rules Repealed: 274-020-0341(T)

Subject: In conjunction with amending the text of the above stated administrative rules, this rule also replaces and supersedes the Temporary Rule 274-020-0341(T) filed on April 7, 2005, and effective April 8, 2005 through October 3, 2005. Please note that after the Notice of Proposed Rulemaking was filed on February 25, 2005, a Temporary Administrative Rule was filed on April 7, 2005 to reflect an adjusted interest rate. This adjustment was necessary due to changes in the market rate.

These rules have now been amended to eliminate citing the specific interest rates and effective dates in the OAR text while adding the text that describes the factors which the Director may consider in prescribing interest rates for the Department's Home Loan Programs.

These amendments will benefit eligible veterans by expediting the process of prescribing interest rates in the fluctuating market and also eliminate the Department's cost of sending notification of each change to the people on the OAR mailing list. The Department will continue to publish the interest rates and respective effective dates in the agency's Tables and Codes Manual, which is available for viewing by the public during regular business hours.

Rules Coordinator: Herbert D. Riley—(503) 373-2055

274-020-0341

Interest

(1) The Director, with the advice of the Advisory Committee, will prescribe interest rates for loans to be funded by the Oregon Department of Veterans' Affairs pursuant to this division. In prescribing interest rates, the Department will consider the following factors:

- (a) The current value of funds;
- (b) The solvency of the Department's Loan Program; and
- (c) The rates' effect on Veterans.

(2) In prescribing interest rates, the Department also may consider factors including, but not limited to the following:

- (a) The projected value of funds;
- (b) Any Federal tax law restrictions;
- (c) Actual or projected conventional mortgage rates;
- (d) The availability of funds;
- (e) Actual or projected loan demand;
- (f) The loan purpose; and
- (g) The source(s) of funds.

(3) The Director may prescribe rates of interest of up to two percent per annum more than the applicable basic rate determined under Subsections (1) and (2) above for loans used to acquire mobile homes and houseboats if, upon consideration of the factors described in Subsection (1) above, the Director determines that there is an economic need for such higher rate of interest.

(4) The Director periodically may change the prescribed rate of interest on a funded loan consistent with ORS 407.325(2) and applicable loan documents. In changing a prescribed rate of interest, the Director may exceed the limits in ORS 407.325(2) if the Director determines, in the Director's sole discretion, that such a change reduces the probability that invoking the provisions of section 4, Article XI-A of the Oregon Constitution will become necessary.

(5) The Director periodically may change the prescribed rate of interest on a loan to be funded by the Oregon Department of Veterans' Affairs to reflect reconsideration of, or changes in, factors considered under Subsections (1) and (2) above, or in consideration of additional factors.

(6) The Director may apply different rates of interest to different loans, depending upon factors including, but not limited to the following:

- (a) The time of an initial loan or commitment to fund a loan;
- (b) The initial rate of interest on a loan;
- (c) The type of loan;
- (d) The status of the borrower;
- (e) The status of the loan security;
- (f) The perceived risk associated with the loan;
- (g) Whether or not the department agreed to maintain an interest rate commitment within a certain range or for a certain time; and
- (h) Whether or not the applicant abandoned a previous loan application or loan commitment.

ADMINISTRATIVE RULES

(7) The Department will endeavor to record prescribed interest rates as reasonably as it is practical for the Department to do so, in its Tables and Codes Manual. This manual will generally be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, during regular business hours.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327

Stats. Implemented: ORS 407.325 & 407.327

Hist.: DVA 40, f. 5-27-71, ef. 5-27-71; DVA 45, f. & ef. 12-1-75; DVA 49, f. & ef. 6-1-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 1-1979, f. & ef. 12-5-79; DVA 4-1980, f. & ef. 12-1-80; DVA 6-1980(Temp), f. 12-19-80, ef. 1-1-81; DVA 1-1981, f. 3-1-81, ef. 4-1-81; DVA 2-1981(Temp), f. 3-11-81, ef. 4-1-81; DVA 4-1981, f. & ef. 4-16-81; DVA 5-1981(Temp), f. & ef. 8-10-81; DVA 7-1981, f. 10-30-81, ef. 11-1-81; DVA 8-1981, f. 10-30-81, ef. 12-1-81; DVA 10-1981(Temp), f. & ef. 12-22-81; DVA 3-1982(Temp), f. & ef. 2-3-82; DVA 11-1982, f. 4-23-82, ef. 1-1-83; DVA 15-1982, f. & ef. 6-1-82; DVA 27-1982(Temp), f. & ef. 10-15-82; DVA 5-1983, f. & ef. 2-15-83; DVA 10-1985, f. 8-23-85, ef. 1-1-86; DVA 6-1992(Temp), f. & ef. 4-15-92; DVA 9-1992, f. & ef. 8-3-92; DVA 10-1992(Temp), f. & ef. 8-17-92; DVA 1-1993, f. & ef. 1-4-93; DVA 6-1993(Temp), f. 3-30-93, cert. ef. 4-1-93; DVA 8-1993, f. 7-30-93, cert. ef. 9-27-93; DVA 10-1993(Temp), f. 10-18-93, cert. ef. 11-1-93; DVA 1-1994, f. 1-10-94, cert. ef. 2-1-94; DVA 2-1994(Temp), f. & ef. 4-15-94; DVA 4-1994, f. & ef. 6-22-94; DVA 5-1994(Temp), f. 9-15-94, cert. ef. 9-20-94; DVA 6-1994(Temp), f. 11-15-94, cert. ef. 11-18-94; DVA 2-1995, f. & ef. 3-23-95; DVA 3-1995(Temp), f. & ef. 5-11-95; DVA 4-1995(Temp), f. & ef. 5-18-95; DVA 6-1995(Temp), f. 6-23-95, cert. ef. 6-26-96; DVA 13-1995, f. & ef. 10-23-95; DVA 14-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; DVA 1-1996, f. & ef. 3-22-96; DVA 1-1997(Temp), f. 2-4-97, cert. ef. 2-7-97; DVA 3-1997, f. & ef. 6-25-97; DVA 5-1997, f. & ef. 10-22-97; DVA 2-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 6-1998, f. & ef. 6-23-98; DVA 8-1998(Temp), f. 7-28-98, cert. ef. 8-1-98 thru 1-27-99; DVA 1-1999, f. & ef. 1-22-99; DVA 2-1999, f. & ef. 9-22-99; DVA 4-1999(Temp), f. 12-14-99, cert. ef. 12-16-99 thru 6-12-00; DVA 2-2000(Temp), f. 3-30-00, f. 3-31-00 thru 6-12-00; DVA 6-2000, f. & ef. 5-23-00; DVA 7-2000(Temp), 6-12-00 thru 12-9-00; DVA 8-2000(Temp), f. 7-14-00, cert. ef. 7-17-00 thru 12-9-00; DVA 9-2000(Temp), f. 9-8-00, cert. ef. 9-11-00 thru 12-9-00; DVA 10-2000, f. 12-5-00, cert. ef. 12-10-00; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & ef. 2-22-02; DVA 3-2002(Temp), f. 3-29-02, cert. ef. 4-1-02 thru 9-27-02; DVA 5-2002(Temp), f. 6-26-02, cert. ef. 6-27-02 thru 9-27-02; DVA 6-2002, f. & ef. 9-24-02; DVA 8-2002(Temp), f. 9-25-02, cert. ef. 9-26-02 thru 3-24-03; DVA 1-2003(Temp), f. 1-17-03, cert. ef. 1-21-03 thru 3-24-03; DVA 2-2003, f. & ef. 3-24-03; DVA 4-2003(Temp), f. 4-18-03, cert. ef. 4-21-03 thru 10-17-03; DVA 6-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 10-17-03; DVA 7-2003(Temp), f. 7-31-03, cert. ef. 8-1-03 thru 10-17-03; DVA 8-2003(Temp), f. 8-14-03, cert. ef. 8-15-03 thru 10-17-03; DVA 10-2003, f. & ef. 9-23-03; DVA 13-2003(Temp), f. & ef. 10-8-03 thru 4-5-04; DVA 2-2004(Temp), f. 1-21-04, cert. ef. 1-22-04 thru 4-5-04; DVA 4-2004, f. 3-25-04, cert. ef. 3-26-04; DVA 5-2004(Temp), f. 4-6-04, cert. ef. 4-8-04 thru 10-4-04; DVA 7-2004(Temp), f. 4-28-04, cert. ef. 4-29-04 thru 10-4-04; DVA 8-2004(Temp), f. 5-10-04, cert. ef. 5-11-04 thru 10-4-04; DVA 9-2004(Temp), f. 8-5-04, cert. ef. 8-6-04 thru 10-4-04; DVA 10-2004(Temp), f. 8-18-04, cert. ef. 8-19-04 thru 10-4-04; DVA 12-2004, f. & ef. 9-22-04; DVA 1-2005(Temp), f. 4-7-05, cert. ef. 4-8-05 thru 10-3-05; DVA 3-2005, f. & ef. 4-22-05

274-021-0005

Foreclosed and Deeded Property

(1) When properties acquired under ORS 407.135 and 407.145(1) are being sold pursuant to the provisions of ORS 407.375, the sale will be under the following terms:

(a) Must be offered first by sealed bid.

(b) Must be advertised in the local newspaper and comply with the following:

(A) Published at least once during the 15 days prior to the bid opening;

(B) Advise prospective buyers that of the bidders who are persons meeting the eligibility requirements under Article XI-A of the Oregon Constitution (eligible veteran), the one who submits the highest bid shall be given the opportunity to purchase the property for the amount of a higher bid submitted by the highest bidder who is not eligible for a veterans loan. In order to be given an opportunity to match a higher bid, a bidder eligible for a loan under Article XI-A of the Oregon Constitution will have a specified time to match highest bid. The matching bid must be made in writing by 5 p.m. on the date and at the place specified in the notification. The matching bid opportunity is only available to a veteran purchasing the property solely in his or her own name, or with a lawful spouse. If the highest bid is not matched by a person eligible for a loan under Article XI-A of the Oregon Constitution, the highest bid will be accepted;

(C) State the minimum bid that will be accepted.

(2) When properties acquired under ORS 407.135 and 407.145(1) are being sold pursuant to the provisions of ORS 407.377, the sale will be under the following terms:

(a) The person with whom the Director of the Oregon Department of Veterans' Affairs ("ODVA" or the "Department") has entered into a personal services contract must post a "for sale" sign on the property; and

(b) The property must be advertised for sale at least once in a newspaper of general circulation in the locality where the property is located.

(3) Interest rate:

(a) The Director will prescribe interest rates for contract sales of ODVA properties. The Director may apply different rates of interest to different contract sales. Factors that the Director may consider in prescribing contract interest rates may include, but are not limited to the following:

(A) The current value of funds;

(B) The projected value of funds;

(C) The solvency of the Department's Loan Program;

(D) The rates' effect on veterans and other purchasers;

(E) Any federal tax law restrictions;

(F) Actual or projected conventional mortgage rates;

(G) The availability of lendable funds;

(H) Actual or projected demand for ODVA properties;

(I) The source(s) of funds; and

(J) Whether or not the purchaser is providing any approved "work equity" as part of the down payment on the contract.

(b) The Director may change the prescribed rates of interest from time to time to reflect changes in the Director's consideration of relevant factors.

(c) The Director will have the prescribed interest rate(s) published in the Department's Tables and Codes Manual. This publication will be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, during regular business hours.

(d) The interest rate on contracts with approved work equity is subject to the provisions of subparagraph (4)(b)(B)(i) of this rule;

(e) After the original purchase from the State of Oregon, each time ownership of the property is transferred to anyone (veteran or nonveteran), other than the surviving spouse, unmarried former spouse, surviving child, or surviving stepchild of the owner, the interest rate from the date of such transfer shall be the same as the then-prevailing interest rate under subsection (3)(a) of this section, or the existing interest rate on the contract, whichever is higher;

(f) The Director may modify the terms of the contract if agreeable to all parties.

(4) Each property will be sold on contract unless the Director finds that in a particular transaction it would be in the best interest of the Department that the property be sold on a Deed of Trust, or for cash. The terms of all sales will be as follows:

(a) Length:

(A) The maximum length of the contract will be established by the purchase price, as follows:

(i) \$63,000 and over — 30 years;

(ii) \$35,000–\$62,999.99 — 25 years;

(iii) \$15,000–\$34,999.99 — 20 years;

(iv) \$10,000–\$14,999.99 — 10 years;

(v) Under \$10,000 — 0 years (Cash Out Only)

(B) The Director may enter into a contract with terms different from the ones prescribed in this rule if the provisions of ORS 407.375(6) apply (no satisfactory bid received and sale negotiated).

(b) Down Payment:

(A) The term "purchase price" as used in this rule shall mean the actual purchase price agreed to by the purchaser and the Director;

(B) The Director may accept improvements of the property by the purchaser in lieu of other means of satisfying the down payment requirement, in which case the provisions of ORS 407.375(4) will apply and improvements in lieu of a cash down payment shall be subject to the following conditions and limitations:

(i) The interest rate on such a contract shall be one percent higher than the otherwise applicable contract interest rate in effect at the time of purchase, until the required improvements have been completed, inspected, and a completion letter appropriately issued. After the required improvements have been completed, inspected, and a completion letter has appropriately been issued the Director will lower the interest rate to the otherwise applicable contract interest rate, adjust the payment to reflect the lower rate, and amortize the remaining principal balance within the remaining term of the contract, provided that the purchaser has complied with the occupancy requirements provided by section (9) of this rule. The adjusted payment will be effective on the first day of the second full month following the Director's written approval of the completed improvements;

(ii) Improvements in lieu of a cash down payment will not be allowed unless the contract purchaser will occupy the property being purchased as provided by section (9) of this rule;

(iii) Improvements in lieu of a cash down payment will not be allowed unless the value added to the property by completed improvements is \$500 or more;

(iv) The Director will not consent to an assignment of the contract until the required improvements have been completed to the sole satisfaction of the Director or payment of what the original down payment would have been at the time of purchase or the new owner of the property signs an agreement agreeing to complete the improvements;

ADMINISTRATIVE RULES

(v) If the purchaser fails to complete all of the improvements within the time allowed by the Director or fails to make the property available for inspection by the Director's representative, the Director will give the purchaser 30 days notice to either complete all of the improvements or to pay a cash down payment. The down payment will be the amount the purchaser would have been required to pay if the property had been purchased without approved work equity. The Director will not give any allowance for completion of a portion of the improvements. If purchaser elects to make a cash down payment in lieu of completing improvements, the Director will lower the interest rate one percent to the base contract interest rate at the time of purchase, reamortize the remaining principal balance on the account, and adjust the principal and interest portion of the regular payment accordingly. Failure to complete all of the improvements or pay a cash down payment will constitute a default under the terms of the Contract of Sale. Thereafter, the Director may exercise any or all of the default remedies stated in the contract.

(C) The minimum down payment required will be established by whether the property will be owner-occupied, whether the property is classified as farm, residential, personal property, unique, unusual, or bare land, the asking price and the purchase price, as follows:

(i) Residential — Asking price less than \$80,000 — Five percent down payment if owner-occupied, otherwise 15 percent down payment. In cases where the purchase price is different than the asking price, the percentage (five or 15) will be applied to the purchase price;

(ii) Farm, Mobile Home With Land, Bare Land, Residential — Asking price \$80,000 or more — 10 percent down payment if owner-occupied, otherwise 20 percent down payment. In cases where the purchase price is different than the asking price, the percentage (10 or 20) will be applied to the purchase price;

(iii) Personal Property Mobile Home or Floating Home — 20 percent down payment if owner-occupied, otherwise 30 percent down payment;

(iv) Unique or Unusual Property — The required down payment will be stated on the property description sheet in an amount or percentage determined by the Director.

(5) A purchase of property from the Oregon Department of Veterans' Affairs will not be considered a loan under ORS 407.205.

(6) All purchasers must meet the department's repayment ability requirements.

(7) If a prospective purchaser submits more than one bid for the same property, only the highest such bid will be considered.

(8) The property will not be sold on contract to anyone who had an interest in the property at the time foreclosure action was commenced or a deed-in-lieu of foreclosure was accepted.

(9) A purchaser who states that he or she will be occupying the property in order to pay a lesser percentage of down payment or to receive approval of work equity must:

(a) Occupy the property within 60 days after the sale closes; and

(b) Continuously occupy the property as his or her principal primary residence for a period of not less than 365 days from the date of closing or initial occupancy, whichever is later.

(10) In the event purchaser fails to occupy the property as stated, the Director may require cash payment of an additional down payment. The required additional down payment will be the amount the purchaser would have been required to pay if the property had been purchased as nonowner-occupied, less any cash down payment received at closing. If work equity improvements were approved, the Director will not give any allowance for completion of all or any portion of the improvements. Following payment of the required additional down payment, the department will reamortize the remaining principal balance on the account and adjust the principal and interest portion of the regular payment accordingly.

Stat. Auth.: ORS 406.030, 407.115, 407.135, 407.145, 407.375 & 407.377
Stats. Implemented: ORS 407.135, 407.145, 407.375 & 407.377

Hist.: DVA 8-1982(Temp), f. & ef. 4-6-82; DVA 13-1982, f. & ef. 5-17-82; DVA 7-1983, f. 5-13-83, ef. 5-15-83; DVA 14-1983, f. 11-29-83, ef. 12-1-83; DVA 5-1984(Temp), f. & ef. 7-17-84; DVA 1-1985, f. & ef. 1-15-85; DVA 6-1985, f. 5-22-85, ef. 7-1-85; DVA 11-1985, f. & ef. 11-5-85; DVA 4-1987, f. & ef. 5-1-87; DVA 7-1987, f. 9-30-87, ef. 10-1-87; DVA 5-1990, f. 8-20-90, cert. ef. 10-1-90; DVA 2-1991, f. 5-29-91, cert. ef. 6-3-91; DVA 3-1996, f. 6-21-96, cert. ef. 6-22-96; DVA 9-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; DVA 5-2003, f. & cert. ef. 4-23-03; DVA 3-2005, f. & cert. ef. 4-22-05

274-028-0010 Interest Rate

(1) The Director may prescribe interest rate(s) on veterans' home improvement loans in a manner consistent with OAR 274-020-0341. The prescribed interest rates shall be "fixed interest rates" consistent with the usage of that term in ORS chapter 407.

(2) The Director will publish prescribed interest rates in the Department's Tables and Codes Manual. This publication will be available

for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, as permitted by the Department, during regular business hours.

Stat. Auth.: Ch. 214 OL 1997 & ORS 407.327

Stats. Implemented: Ch. 214 OL 1997 & ORS 407.327

Hist.: DVA 6-1997, f. & cert. ef. 10-22-97; DVA 3-2005, f. & cert. ef. 4-22-05

274-045-0070

Interest

(1) The Director, with the advice of the Advisory Committee, will prescribe interests rates for loans funded by the Oregon Department of Veterans' Affairs ("ODVA" or the "Department") pursuant to this division. In prescribing interest rates, the Department will consider the following factors:

- The current value of funds;
- The solvency of the Department's Loan Program; and
- The rates' effect on veterans.

(2) In prescribing interest rates, the Department also may consider factors including, but not limited to the following:

- The projected value of funds;
- Any federal tax law restrictions;
- Actual or projected conventional mortgage rates;
- The availability of funds;
- Actual or projected loan demand;
- The loan purpose; and
- The source(s) of funds.

(3) The Director periodically may change the prescribed rates of interest for loans to be funded by the Department to reflect reconsideration of, or changes in, factors considered under sections (1) and (2) of this rule, or in consideration of additional factors.

(4) The Director may prescribe different rates of interest for different loans, depending upon factors including, but not limited to the following:

- The time of an initial loan or commitment to fund a loan;
- The initial rate of interest on a loan;
- The type of loan;
- The status of the borrower;
- The status of the loan security;
- The perceived risk associated with the loan;
- Whether or not the Department agreed to maintain an interest rate commitment within a certain range or for a certain time; and
- Whether or not the applicant abandoned a previous loan application or loan commitment.

(5) The Department will endeavor to record prescribed interest rates as reasonably as it is practical for the Department to do so, in its Tables and Codes Manual. This publication will be available for viewing at the Oregon Department of Veterans' Affairs, 700 Summer Street NE, Salem, Oregon, as permitted by the Department, during regular business hours.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327

Stats. Implemented: ORS 407.325, 407.327

Hist.: DVA 2-2001, f. & cert. ef. 5-23-01; DVA 3-2005, f. & cert. ef. 4-22-05

Economic and Community Development Department Chapter 123

Adm. Order No.: EDD 2-2005(Temp)

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 4-21-05 thru 10-18-05

Notice Publication Date:

Rules Amended: 123-018-0055

Subject: This rule will implement ORS 285B.135, which allows the Department to deposit up to \$50,000 per financial institution to encourage a financial institution to participate in the Capital Access Program. The Department will provide a double match for all financial institutions that have less than \$100,000 in their loss reserve account as of August 31, 2004.

Rules Coordinator: Tawni Bean—(503) 986-0149

123-018-0055

Procedure for Enrollment of a Qualified Loan

(1) A Lender shall enroll a Qualified Loan under the Program:

(a) By notifying the Department in writing, on a form prescribed by the Department and thirty (30) days after the Qualified Loan is made, that it is enrolling a Qualified Loan. For purposes of this section, the date on which the Lender makes a Qualified Loan is the earlier of the date on which the Lender first disburses proceeds of the Qualified Loan to the Borrower,

ADMINISTRATIVE RULES

or the date on which the loan documents have been executed and the Lender has obligated itself to disburse proceeds of the loan; and

(b) By transmitting to the Department the Fees collected from the Lender and the Borrower in connection with the Qualified Loan. When the Loss Reserve Account is domiciled with the Lender, the deposit of Fees by the Lender to the Loss Reserve Account, with written notification by the Lender to the Department confirming such deposit, shall be deemed the transmitting of Fees by the Lender to the Department and shall satisfy the requirements of this section.

(2) The Department shall, upon receipt of documentation and Fees from the Lender as described in OAR 123-013-0055(1), enroll the Qualified Loan if the Department is satisfied that the Qualified Loan is eligible. The Department shall notify the Lender of enrollment within ten business days from receipt of documentation and Fees, in such form as will be determined by the Department.

(3) When the requirements of OAR 123-018-0055(1)(b) are met, the Department shall also transfer from the Fund to the Loss Reserve Account an amount equal to the combined amount of Fees paid by the Borrower and the Lender; except when the Qualified Loan has been made to a Borrower (1) in a Distressed Area, or (2) beginning July 1, 2004, from a bank that has less than \$100,000 in their Loss Reserve Account as of August 31, 2004, or (3) for use in the evaluation of Brownsfields, the Department shall transfer from the Fund to the Loss Reserve Account an amount equal to two times the combined Fees paid by the Borrower and the Lender.

(4) The amounts transferred by the Department from the Fund to the Loss Reserve Account of one or more Lenders in connection with any one Borrower, or any group of Borrowers among which a Common Enterprise exists, shall not exceed \$35,000.

(5) Before or when making a Qualified Loan, a Lender may obtain from the Department a commitment that funds sufficient to meet the Department's contribution required in OAR 123-018-0055(3) are available in the Fund to transfer to the Loss Reserve Account when the Qualified Loan is enrolled. The commitment shall be binding on the Department for thirty (30) days after the date of the reservation if the Lender has complied with OAR 123-018-0055(1).

Stat. Auth.: ORS 285B.126

Stats. Implemented: ORS 285B.138 & OL 1997, Ch. 686

Hist: EDD 3-1991, f. & cert. ef. 4-17-91; EDD 11-1992, f. & cert. ef. 8-18-92; EDD 1-1994(Temp), f. & cert. ef. 1-11-94; EDD 9-1998, f. & cert. ef. 5-22-98; EDD 23-2004(Temp), f. & cert. ef. 10-15-04 thru 4-13-05; Administrative correction 4-20-05; EDD 2-2005(Temp), f. & cert. ef. 4-21-05 thru 10-18-05

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Adm. Order No.: EDD 3-2005(Temp)

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 4-21-05 thru 10-15-05

Notice Publication Date:

Rules Amended: 123-024-0031

Subject: The new methodology concentrates on four variables to capture economic conditions at the county level. It then uses information from those counties to determine counties and areas to designate as distressed. To determine economic conditions of a county, the approach calculates changes in the average wage per job and the employment for all major sectors and weights them by their payroll for those sectors over a two-year period. Those measurements are then combined to develop a measure of economic change in an economy over the two-year period. Next, the economic standing of the county relative to the state is estimated by comparing the county's per capita personal income and unemployment rate with those of the state. This relative measure is then used to adjust the level of economic change in the county. The measure that results becomes the index that is used to judge whether a county is distressed or not.

Rules Coordinator: Tawni Bean—(503) 986-0149

123-024-0031

Methodology for Determining Distressed Areas

The determination of the economic distress index is based on four factors: the weighted average wage change for a county over the preceding two years; the weighted employment change for a county over the preceding two years; the per capita personal income of a county relative to the personal income of the state at the begin of the preceding two years; and the unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two year period.

(1) The weighted average wage change for a county is determined by weighting the change in the average wages for every industry sector by that

sector's share of total payroll for that county. The change is measured as a ratio. The weighted changes for all sectors are aggregated to arrive at one measure of the weighted average wage change for the whole economy in the county.

(2) The weighted employment change for a county is determined by weighting the change in employment for every industry sector by that sector's share of total payroll for that county. The change is measured as a ratio. These weighted changes are then aggregated to arrive at one measure of weighted employment change for the whole economy in the county.

(3) The per capita personal income of a county relative to the personal income of the state at the beginning of the preceding two years is measured as a ratio. This ratio is determined by dividing the county's per capita personal income by the state's per capita personal income, at the end of the preceding two year period.

(4) The unemployment rate of a county relative to the unemployment rate of the state at the beginning of the preceding two-year period is measured as a ratio. This ratio is determined by dividing the state's unemployment rate by the county's unemployment rate, at the end of the preceding two-year period.

(5) These four measures are then multiplied together to create an index that reflects the general economic conditions of a county's economy relative to those of the state. The multiplication of the factors of change (i.e. employment and wages) with relative factors (i.e. per capita personal income and unemployment rate) adjusts change in the county's economy by the general economic conditions prevailing in the state.

(a) The weights also allow the index to capture changes in different sectors of the economy as well as the importance of those sectors to the overall economy of a county.

(b) Counties experiencing no economic improvements at the aggregate level over the two year period will have an index that is less than or equal to 1. These counties are the distressed counties. Counties with indexes greater than 1 are counties that experienced significant improvement over the period after adjusting for their economic conditions relative to the state. These counties are the non-distressed counties.

(6) The determination of distressed areas in non-distressed counties may occur in two ways. The first is based on an analysis of census geography, namely, major sub-county areas that have unemployment and poverty rates similar to the distressed counties. Areas with poverty or unemployment rates similar to the distressed counties are considered distressed areas. The department shall conduct the analysis and make such determinations.

(7) The second method is based on petitions from local governments. Communities outside of distressed areas that consider themselves to be distressed must provide unemployment and poverty data that can be compared to those of the distressed counties. If such a data is found to meet the criteria for distressed counties, these areas will be designated as distressed. The department shall conduct the analysis and make such determinations.

Stat. Auth.: ORS 285A.075 (5)

Stats. Implemented: ORS 285A.095, 285B.062 & 285B.065

Hist.: EDD 12-1998, f. & cert. ef. 8-14-98; EDD 3-2005(Temp), f. & cert. ef. 4-21-05 thru 10-15-05

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Adm. Order No.: EDD 4-2005

Filed with Sec. of State: 5-5-2005

Certified to be Effective: 5-5-05

Notice Publication Date: 8-1-04

Rules Amended: 123-011-0020, 123-011-0021, 123-011-0025, 123-011-0027, 123-011-0030, 123-011-0035, 123-011-0040, 123-011-0045, 123-011-0050

Subject: The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Economic Development Revenue Bond program. This is intended to clarify the meaning of the rules, reflect accurate statutory references, clarify the maximum amount charged for closing fees, incorporate the "Oregon Express Bond Program" into the rules, and modify the fees charged for additional bonds issued under an initial eligibility amount.

Rules Coordinator: Tawni Bean—(503) 986-0149

123-011-0020

Purpose

The purpose of these rules is to provide procedures, standards and criteria for operation of the Oregon Economic Development Revenue Bond program authorized by ORS 285B.320 to 285B.371.

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

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

ADMINISTRATIVE RULES

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0021

Commission Powers

For the purposes of these rules, the Economic and Community Development Commission shall retain and possess, in addition to all authority reserved to it under OAR 123-011-0027, all rights and powers delegated to the Finance Committee. Upon written notice to the Finance Committee, the Economic and Community Development Commission may elect to exercise directly, either in a specific instance or generally, any right or power delegated to the Finance Committee under these rules and the Finance Committee shall not have the authority to exercise the right or power identified in the notice under the circumstances described in the notice.

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

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

Hist.: EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0025

Definitions

For the purposes of these rules, the following terms shall have the following meaning, unless the context clearly indicates otherwise:

(1) "Applicant" means any person, firm or public or private corporation or federal or state governmental subdivision or agency which submits an application for Oregon Economic Development Revenue Bonds.

(2) "Application" means the application form completed by the Applicant, and evaluated by the Finance Committee for determination of the Applicant's and Project's eligibility for Oregon Economic Development Revenue Bonds.

(3) "Bonds" means Oregon Economic Development Revenue Bonds issued by the State of Oregon under ORS 285B.320 to 285B.371.

(4) "Commission" means the State of Oregon Economic and Community Development Commission appointed under ORS 285A.040.

(5) "Finance Committee" means the Finance Committee for the Economic and Community Development Commission as allowed in ORS 285A.060.

(6) "Department" means the State of Oregon Economic and Community Development Department.

(7) "Eligible Project" means an economic development project as defined in ORS 285B.323 determined by the Finance Committee to be eligible under OAR 123-011-0035 for Oregon Economic Development Revenue Bonds.

(8) "Financial Institution" means any commercial bank, mutual savings bank, savings and loan association, insurance company, investment bank or NASD securities underwriter licensed or authorized to do business in the State of Oregon.

(9) "In-state Plant Relocation" means the relocation of an applicant's plant from one labor market area, as defined by the Oregon Employment Department, in Oregon to a different labor market area in Oregon.

(10) "Oregon Express Bond Program" means a program developed by the Department that involves a method of sale for a single client purchase that includes, but is not limited to, direct placement of bonds with a bank. Such a purchase does not require the use of placement agents, underwriters, marketing agents or letters of credit. To utilize this program, use of a standardized Departmental bond is required.

(11) "State" means the State of Oregon.

(12) "Treasurer" means the Treasurer of the State of Oregon or the Treasurer's designee.

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

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

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0027

Delegation

(1) Authority for the day-to-day operation of the Economic Development Revenue Bond Program, including determination of eligibility, authorization of the issuance of bonds, adoption of inducement and bond resolutions and amendments thereto, is delegated to the Finance Committee.

(2) The Finance Committee may adopt standards and procedures for the operation of the Bond program. Such standards and procedures shall not be inconsistent with any part of this division.

(3) The Department shall send to each member of the Commission a summary of each project to be considered by the Finance Committee. Commissioners shall receive such summaries in sufficient time to comment on the projects and to attend each Finance Committee meeting, as each individual Commissioner may in his or her sole discretion determine.

(4) The Commission shall review and evaluate the operation of the Bond program as it may from time to time determine and may order any changes that it considers necessary or desirable.

(5) The Commission shall retain final authority over policies and administrative procedures governing the operation of the Bond program.

(6) If at any time the Commission shall decide to take any action or make any decision, it may do so at any regular or special meeting or through any telephone conference call as the Commission in its sole discretion may determine.

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

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

Hist.: EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0030

Application

(1) An Applicant desiring issuance of Economic Development Revenue Bonds must submit a complete application to the Department in a form approved by the Department.

(2) The application shall be received by the Department at least 21 days prior to the Finance Committee meeting at which the application will be considered. The Department may waive this requirement at its sole discretion.

(3) A Resolution of Approval from the county having jurisdiction over the proposed project site shall be submitted with the Application. The form of the resolution is available from the Department.

(4) The project shall satisfy the applicable requirements of OAR chapter 123, division 8.

(5) A non-refundable application fee is to be submitted with the application:

(a) A \$250 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing of \$500,000 or less;

(b) A \$500 non-refundable application fee shall be paid by an Applicant seeking economic development revenue bond financing greater than \$500,000.

(6) Application materials may be obtained from the Oregon Economic and Community Development Department, 775 Summer Street N.E., Salem, OR 97310.

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

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

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0035

Determination of Eligibility

(1) The Department shall review the application.

(2) The Department shall make a recommendation to the Finance Committee to either approve or deny the application for eligibility for Economic Development Revenue Bonds. The review of the application will be based upon the standards set forth in this rule:

(a) The following economic activities are eligible for Economic Development Revenue Bonds, unless otherwise prohibited under subsection (b) of this section:

(A) Manufacturing or other industrial production;

(B) Agricultural development or food processing;

(C) Aquaculture development or seafood processing;

(D) Development or improved utilization of natural resources;

(E) Research and development;

(F) Destination resorts;

(G) Convention and trade centers;

(H) Construction of buildings for corporate headquarters;

(I) Product distribution facilities;

(J) Transportation or freight facilities;

(K) Scientific testing including, but not limited to, medical, clinical or engineering testing services;

ADMINISTRATIVE RULES

(L) Sports facilities not otherwise prohibited under paragraph (2)(b)(D) of this rule;

(M) Not-for-profit corporations organized under *Section 501(c)(3)* of the *U.S. Internal Revenue Code* and established solely for community benefit;

(N) Utilities, except electricity, to serve a designated, specified industrial site. General utility systems or systems which provide service primarily to residential or non-industrial commercial customers are not eligible;

(O) Other activities which represent a new technology or type of economic enterprise that the Finance Committee determines is needed to diversify the economic base of an area.

(b) Activities or projects that will not be considered for the issuance of Oregon Economic Development Revenue Bonds include:

(A) Retail businesses and shopping centers;

(B) Food service not part of a convention center or destination resort;

(C) Professional corporations for medicine, law, dentistry, or finance;

(D) Athletic, racquetball, handball clubs, amusement parks, or similar endeavors;

(E) Commercial office buildings except for corporate headquarters;

(F) Activities that maintain private memberships; are not open to the general public; or do not serve a broad cross section of the general public;

(G) Co-generation of electric power;

(H) Activities expressly ineligible under ORS 285B.323(1).

(c) The following serve as elaboration and clarification of activities which are eligible for Economic Development Revenue Bonds:

(A) "Destination Resort" may include incidental food service. This classification is not intended to include sleeping accommodations which otherwise would not assist the development of the tourist industry. Sleeping accommodations that do not include major convention meeting facilities or other major non-residential facilities are not eligible. Preferential treatment by the developer to any land purchaser is not allowed;

(B) "Convention Centers" may include sleeping accommodations, but approximately 1/3 of the total bond issue must be used for convention meeting facilities. Such facilities must have the capacity to seat a minimum of 300 people. However, the Finance Committee may approve financing for projects, as convention centers, consisting solely or primarily of sleeping accommodations, if the Applicant sufficiently demonstrates existing sleeping accommodations are inadequate for existing meeting facility space;

(C) "Corporate Headquarters" may qualify if the Applicant demonstrates it has at least one other facility subordinate to the facility for which eligibility is being requested. A minimum of 75 percent of the floor space must be allocated to the corporate headquarter function. Corporate headquarters do not include professional corporations for medicine, law, dentistry, or finance or office space to be leased to others;

(D) "Transportation" is not intended to include rolling stock or other highly moveable equipment operated by a carrier for hire;

(E) In deciding whether or not to approve economic development revenue bonding for a utility project, the Finance Committee may consider all relevant factors including but not limited to the utility company's published tariff schedules and construction and extension procedures as filed with the Oregon Public Utility Commission;

(F) "Pollution Control" equipment may qualify as part of projects that otherwise qualify under this rule. Where pollution control equipment costs are incidental to the total capital investment of the project, the Finance Committee may qualify such equipment, provided the Oregon Department of Environmental Quality concurs;

(G) "In-State Plant Relocations" not accompanied by an expansion of the applicant's business or employment, may be considered when the Applicant is able to demonstrate that:

(i) The relocation is caused by reasons beyond its control; or

(ii) The relocation will not cause a resulting loss of employment at the former site of the business; or

(iii) The relocation is necessary for the continued operation of the business.

(H) "Non-Profit Organizations" do not include religious, fraternal, or educational organizations;

(I) "Developer Project" may qualify. The Finance Committee shall have right of approval for each tenant occupying 25 percent or more of the leasable space. No more than 25 percent of the leasable space shall be leased to tenants relocating from another Oregon location, unless such relocation is accompanied by an expansion of the tenants' labor force. These conditions shall be incorporated into bond documents, shall survive closing and shall be enforceable for the term of the bond.

(d) Public Purpose. The Applicant must demonstrate that a public purpose is served by the proposed economic development project through eco-

omic diversification, creation of new jobs including construction activity, construction occurring before it otherwise could or would, economic activity occurring during economic slumps, tax dollars remaining in the State, and increased productivity. The county and city (if within the boundary of a city) having jurisdiction over the proposed project should provide a statement with regards to the potential benefit to be derived by the jurisdiction from the project. The Applicant is encouraged to demonstrate as many public purposes for the proposed project as can be prudently shown;

(e) Prior to determining that an economic development project is an Eligible Project, the Finance Committee shall:

(A) Determine that the action is cost effective, considering both major public expenses and major public benefits;

(B) Find that the project involved is consistent with the Department's comprehensive policy and programs;

(C) Find that the project satisfies the applicable requirements of OAR chapter 123, division 8;

(D) Find that the project will produce goods or services which are sold in markets for which national or international competition exists, or if the project is to be constructed and operated by a not-for-profit organization, that the project will not compete with local for-profit businesses;

(E) Determine that the action is the best use of the moneys involved, considering other pending applications for those moneys;

(F) Find that the project involved is consistent with all applicable adopted local economic development plans; and

(G) Provide for public notice of, and public comment on, the action. The public hearing is not a contested case hearing. Members of the public are invited to present written or oral testimony. Only Finance Committee members and Department staff will ask questions.

(f) The Finance Committee may deny an application if the Applicant does not demonstrate, to the satisfaction of the Finance Committee, that the project is financially feasible;

(g) The Finance Committee may deny an application if the Applicant (or any of the principals in the Applicant) is subject to any existing, pending or threatened litigation or unasserted claim, unless such litigation or claim is fully disclosed to the Finance Committee and the arrangements for the settlement thereof are acceptable to the Finance Committee. In any case where such litigation or claim is unknown to the Finance Committee at the time project eligibility is granted or if such litigation or claim arises subsequent to a grant of project eligibility, the Finance Committee may rescind the project eligibility;

(h) The Finance Committee may make any reasonable requirement of the Applicant related to the administration of the Oregon Economic Development Revenue Bond Program, including requirements that would survive closing and be enforceable for the term of the bond.

(3) The Finance Committee shall issue a Resolution for Project Eligibility for each economic development project determined to be an eligible project. The term of eligibility shall last 12 months unless extended by the Department or the Finance Committee.

(4) Administrative rules in effect at the time the Finance Committee determines a project to be eligible shall continue to govern the project until the bonds have been redeemed, notwithstanding any contrary provision in any subsequently adopted administrative rule.

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

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

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

Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 1-1985(Temp), f. & ef. 2-26-85; EDD 3-1985, f. & ef. 6-28-85; EDD 5-1985(Temp), f. & ef. 10-4-85; EDD 6-1985(Temp), f. & ef. 10-22-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 13-1990, f. & cert. ef. 6-7-90; EDD 14-1994(Temp), f. & cert. ef. 11-10-94; EDD 4-1995, f. 4-28-95, cert. ef. 5-3-95; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0040

Extension

(1) The Department may extend the eligibility granted by the Finance Committee for up to six months if the Department determines that the project still constitutes an eligible activity and that there is a reasonable prospect of the bonds being issued within the six-month extension period. The Applicant must provide updated financial information, proof of continued support by the county and a project status report to the Department, on a form approved by the Department, at least 14 calendar days before eligibility expires.

(2) The Finance Committee may extend eligibility if the Department denies extended eligibility or if the initial extension granted by the Department under section (1) of this rule has expired. The Finance Committee must determine that the project still constitutes an eligible activ-

ADMINISTRATIVE RULES

ity, and that there is a reasonable prospect of the bonds being issued within the extension period. The applicant must provide updated financial information, proof of continued support by the county, and a project status report, as well as an application for extension, on a form approved by the Department, at least one month prior to the expiration date of the original or extended eligibility period. The Finance Committee may waive this time period under extraordinary circumstances.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 1-1986, f. 1-28-86, ef. 2-1-86; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988(Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0045 Fees

In addition to the application fee specified in OAR 123-011-0030(5):

(1) The Applicant shall pay to the Department at the time of initial bond closing a closing fee of 1/2 of one percent of the total bond issue for the project. This initial fee shall not exceed \$50,000 for any single bond issue or single project eligibility.

(2) For the Oregon Express Bond Program, the Applicant shall pay to the Department at the time of the initial bond closing a fee of 1/4th of one percent of the total bond issuance for the project.

(3) An Applicant for a current refunding of an outstanding bond shall pay to the Department a processing fee of \$250 that shall accompany the request for the refunding.

(4) The Applicant shall pay to the Department a closing fee of 1/10 of one percent of the amount of the refunding bond or for any additional bonds issued under a single project eligibility. This closing fee may be waived for any refunding bond issued within 18 months of the closing date of the bond issue to be refunded.

(5) The Department may charge any out-of-pocket expenses, including but not limited to legal expenses, incurred by the Department for processing any bond request.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.326
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 15-1994, f. & cert. ef. 11-10-94; EDD 10-1996(Temp), f. & cert. ef. 12-4-96; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 14-2000(Temp), f. & cert. ef. 12-14-00 thru 6-12-01; Administrative correction 6-14-01; EDD 10-2001(Temp), f. & cert. ef. 12-13-01 thru 6-1-02; Administrative correction 11-29-02; EDD 4-2005, f. & cert. ef. 5-5-05

123-011-0050 Confidential Records

(1) Upon written request and within a reasonable time, the Director or his designee shall provide program records, for inspection in accordance with ORS Chapter 192.

(2) The person requesting records will be charged for preparing and mailing such records. Costs shall include but not be limited to costs incurred in locating records, separating exempt and nonexempt records, having a custodian present during the inspection, preparing lists of data, making photocopies and telefaxing materials. Fees to be collected shall be set forth in the Department's schedule of fees and may be amended from time to time as the Department may determine.

(3) Except as otherwise provided in ORS 192.410–192.595, records exempt from disclosure include but are not limited to:

(a) Reports and analyses of reports which bear on the Applicant's character, finances, management ability and reliability, and which were obtained in confidence from persons or firms not required by law to submit them and the Department has obliged itself in good faith not to disclose the information;

(b) Financial statements, tax returns, business records, employment history and other personal data submitted by or for Applicants, or analysis of such data;

(c) Intra-departmental advisory memoranda preliminary to a decision;

(d) Formulas, plans, designs and related information that constitute trade secrets under ORS Chapter 192;

(e) Personal financial statement;

(f) Financial statements of applicants;

(g) Customer lists;

(h) Information of an applicant pertaining to litigation to which the applicant is a party if the complaint has been filed, or if the complaint has not been filed, if the applicant shows that such litigation is reasonably likely to occur. This exemption does not apply to concluded litigation and nothing

in this section shall limit any right or opportunity granted by law to a party involved in litigation;

(i) Production, sales or cost data; and

(j) Marketing strategy information that relates to an applicant's plan to address specific markets and applicant's strategy regarding specific competitors.

Stat. Auth.: ORS 285A.075(5) & 285A.110
Stats. Implemented: ORS 285B.320 - 285B.371
Hist.: EDD 8-1984(Temp), f. 12-31-84, ef. 1-1-85; EDD 3-1985, f. & ef. 6-28-85; EDD 4-1988, f. & cert. ef. 2-10-88; EDD 6-1988(Temp), f. & cert. ef. 2-29-88; EDD 9-1988 (Temp), f. & cert. ef. 3-18-88; EDD 15-1988, f. & cert. ef. 5-24-88; EDD 36-1988, f. & cert. ef. 12-15-88; EDD 2-1999(Temp), f. & cert. ef. 3-18-99 thru 9-14-99; EDD 10-1999, f. & cert. ef. 10-11-99; EDD 4-2005, f. & cert. ef. 5-5-05

Adm. Order No.: EDD 5-2005

Filed with Sec. of State: 5-11-2005

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Notice Publication Date: 1-1-04

Rules Amended: 123-017-0007, 123-017-0020, 123-017-0025, 123-017-0030, 123-017-0035, 123-017-0037

Subject: • Eliminates the set aside for loans under \$50,000.

- Provides a preference for loans in distressed areas of the state.
- Eliminates the requirement that applicants obtain a resolution of support from the local city or county.
- Eliminates projects in distressed areas from the calculation of the 20 percent of the Fund county limit.

- Eliminates the preferential interest rate for loans to emerging small businesses in distressed areas.
- Extends the maximum loan term to 25 years.
- Allows the Director, in addition to the Finance Committee, to authorize reasonable extensions of time for loan repayments or to make reasonable modifications to loan terms.

Rules Coordinator: Tawni Bean—(503) 986-0149

123-017-0007

Policy and Set Asides

(1) It is the policy of the Economic and Community Development Commission, the Finance Committee and the Economic and Community Development Department to make loans from the Oregon Business Development Fund to qualified applicants without regard to race, color, creed, sex, age or national origin. Members of Oregon's minority and women business community are particularly encouraged to apply.

(2) Fifteen percent of the available money in the Fund shall be set aside for loans to emerging small enterprises that are located in or draw their work forces from within distressed areas.

(3) The Oregon Targeted Development Account is hereby established within the Oregon Business Development Fund to make loans in distressed areas. The Commission authorizes the Department to transfer from time to time up to \$10 million into or out of the Oregon Targeted Development Account.

Stat. Auth.: ORS 285A.110
Stats. Implemented: ORS 285B.050 - 285B.059, 285B.153, SB 402 & SB 1128
Hist.: EDD 1-1984, f. & ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0020

Preference

(1) Except in the case of a loan made from the Oregon Targeted Development Account, the Finance Committee shall give preference to loan applications for projects that demonstrate an overall community benefit and that have one or more of the following characteristics:

(a) Have a ratio of at least one projected job created or saved per \$30,000 sought to be borrowed from the Oregon Business Development Fund.

(b) Are operated by businesses with fewer than 50 employees;

(c) Are located in rural or distressed areas of the state;

(d) Are located in Enterprise Zones designated under ORS 285B.650–285B.728;

(e) Employ displaced workers in the area;

(f) Assist in the economic diversification of the area;

(g) Contain a significant amount of owner equity capital. At least ten percent of the project costs for established companies (three years old or more) and 30 percent of project costs for start-ups (firms less than three

ADMINISTRATIVE RULES

years old, or firms making the transition from research and development to production) must come from equity or subordinated loans from the owners;

(h) Maximize participation by financial institutions and local development groups;

(i) Produce goods or services for the export market;

(j) Encourage the flow of capital from outside the local area; and

(k) Do not cause severe adverse competitive disadvantages to existing businesses.

(2) The Finance Committee shall be the sole judge of the relative importance of each of the above factors for each individual loan application under consideration. Factors will not necessarily be assigned the same weights under all circumstances.

(3) In the case of a loan made from the Oregon Targeted Development Account, the Finance Committee will strive to fund projects that will create or save at least one job for every \$20,000 of Oregon Business Development Fund investment.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1998(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 6-1991(Temp), f. & cert. ef. 6-18-91; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0025

Application Procedure

(1) It is the policy of the Finance Committee to strive for and encourage, throughout the application process:

(a) Maximum participation by financial institutions and local development groups; and

(b) A minimum administrative burden on the applicant and on the local government.

(2) Any applicant may submit an application to the Department on a form approved by the Department, together with a \$100 application fee.

(3) If the amount of the loan being sought from the Fund is \$50,000 or less, the Director may in the Director's sole discretion approve or deny the loan request or forward it to the Finance Committee for the Committee's consideration.

(4) If the amount of the loan being sought from the fund exceeds \$50,000 the Department shall make a recommendation to the Finance Committee, which may in its sole discretion approve or deny the loan request.

(5) If a loan request is approved, the Department shall prepare the documents necessary to close the loan transaction. Such documents shall reflect all terms and conditions upon which the Finance Committee or the Director may have conditioned approval of the loan. Any material modifications of those terms and conditions must be approved by the Chair of the Finance Committee or his/her designee, or the Director for loans of \$50,000 or less.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.053 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-87; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0030

Loan Conditions

(1) The Director (for loan requests of \$50,000 or less) or the Finance Committee may approve a loan request if it finds that:

(a) Fund participation in any financing shall not exceed 40 percent of the total amount of the eligible project costs, except that Fund financing may be up to 50 percent when an application is submitted through a Financial institution.

(b) The proposed business development project is feasible and a reasonable risk from practical and economic standpoints, and the loan has reasonable prospect of repayment.

(c) The applicant can provide good and sufficient collateral for the loan. The Commission's security interest may be subordinated to the security interest of other lenders participating in the project. The security interest of loans from the Oregon Targeted Development Account will not be subordinated to the security interest of other lenders, unless the Finance Committee or the Director finds there is an abundance of collateral and/or company or guarantor financial strength. The Economic and Community Development Commission may make loans to emerging small businesses in distressed areas, as defined by the department, without regard to the requirements for security and collateral under ORS 285B.059 and 285B.062 that are otherwise applicable. Collateral value of out-of-state real property will be significantly discounted from nominal assessed or appraised value.

(d) Monies in the Oregon Business Development Fund are or will be available for the proposed business development project.

(e) There is a need for the proposed business development project.

(f) The applicant's financial resources are adequate to ensure success of the project.

(g) The applicant has not received or entered into a contract or contracts exceeding \$500,000 with the State of Oregon under authority of ORS 285B.050-285B.098, for the previous 365 days, nor is there an amount equal to 20 percent or more of the total value of the Fund in outstanding loans with the Commission at any one time for business development projects located in the same county as the proposed project. These restrictions do not apply to loans of \$100,000 or less, to loans to emerging small businesses or to loans to projects in distressed areas.

(2) The Finance Committee may, in its sole discretion, permit the assumption of an outstanding Oregon Business Development Fund Loan, if the assuming obligor satisfies the Finance Committee or the Director as to its willingness and ability to perform all obligations of the original borrower related to the loan, including but not limited to the obligation to repay the loan in accordance with its terms, and if the State's collateral position is not diminished. Oregon Business Development Fund loans are not, however, necessarily or automatically assumable.

(3) The applicant agrees to abide by all laws and regulations applicable to the applicant's project.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.059 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0035

Loan Agreement

If the Finance Committee approves the business development project, the Finance Committee or the Director, on behalf of the state, and the Borrower may enter into a loan contract of not more than \$500,000, secured by good and sufficient collateral (except as noted in OAR 123-017-0030(1)(c), that shall set forth, among other matters:

(1) A plan for repayment by the Borrower to the Oregon Business Development Fund moneys borrowed from the Fund used for the business development project with interest charged on those moneys at the fixed rate of one percentage point more than the prevailing interest rate on United States Treasury bills, notes or bonds of a comparable maturity. Loans made from the Oregon Targeted Development Account shall be made at a fixed rate of four percentage points less than the prevailing prime rate. The rate shall not be less than four percent. For the purposes of this section, the prevailing interest rate shall be the weekly average interest rate as set forth in the most recent Federal Reserve Statistical Release H.15(519) that the Department has received at the time the loan is approved. The repayment plan, among other matters:

(a) Shall provide for commencement of repayment by the applicant of moneys used for the business development project and interest thereon no later than one year after the date of the loan contract or at such other time as the Finance Committee may provide;

(b) May provide for reasonable extension of the time for making any repayment in emergency or hardship circumstances if approved by the Finance Committee or the Director;

(c) Shall provide for such evidence of debt assurance of, and security for, repayment of the loan as is considered necessary by the Finance Committee;

(d) Shall set forth a schedule of payments and the period of loan which shall not exceed the usable life of the contracted project or 25 years from the date of the contract, whichever is less. The term of the Fund loan will normally be matched to, and not exceed twice that of the commercial or private lender participating in the project. Loans from the Oregon Targeted Development Account shall be for a maximum term of 5 years, with a maximum amortization of 15 years. The term of the loan from the Oregon Targeted Development Account may be extended by the Finance Committee, with any additional terms and conditions, including interest rate, that it may determine. The payment schedule shall include repayment of interest that accrues during any period of delay in repayment authorized by subsection (a) of this section, and the payment schedule may require payments of varying amounts for collection of accrued interest;

(e) Shall set forth a procedure for formal declaration of delinquency or default of payment by the Department. Loans shall be declared delinquent when any payment is more than ten days late. Borrower shall be noti-

ADMINISTRATIVE RULES

fied in writing of declaration of delinquency, and shall have 31 days from the original payment date to bring the loan current. If the loan is not brought current, or arrangements satisfactory to the Department for bringing the loan current have not been made, the Department may declare the loan in default, declare the entire outstanding indebtedness to be forthwith due and payable and assign the loan to the Attorney General for collection.

(2) Provisions satisfactory to the Department for field engineering and inspection, the Department to be the final judge of completion of the contract.

(3) That the liability of the state under the contract is contingent upon the availability of moneys in the Oregon Business Development Fund for use in the business development project.

(4) Such further provisions as the Finance Committee considers necessary to ensure expenditure of the funds for the purposes set forth in the approved application.

(5) That the Department may institute appropriate action or suit to prevent use of the facilities of a business development project financed by the Oregon Business Development Fund if the Borrower is delinquent in the repayment of any moneys due the Oregon Business Development Fund.

(6) That the Borrower shall, six months after the loan proceeds are expended and annually thereafter for a total period of five years, or for the life of the loan, whichever is greater, report to the Director the number of jobs created/saved by the project financed, in a form as provided by the Department.

(7) That the Borrower is responsible for payment of:

(a) All of the expenses of the operation and maintenance of the project, including adequate insurance;

(b) All taxes and special assessments levied with respect to the leased premises and payable during the term of the lease;

(c) Insurance premiums and providing insurance in amount and coverage acceptable to the Finance Committee. Such insurance shall include but shall not be limited to: fire and hazard insurance, liability insurance, worker's compensation, unemployment insurance and flood insurance (if applicable); and

(d) All out-of-pocket costs associated with the loan closing including but not limited to filing and recording fees, title insurance and appraisals.

(8) That the Borrower will provide to the Department on an annual basis, within 90 days of the end of its fiscal year, the same type of financial statements as required by the participating bank. The Finance Committee or the Department may require additional financial information.

(9) That the Borrower will provide an assignment of life insurance on active principals in Borrower. In cases of abundant collateral and substantial depth in management, the Finance Committee, or Director for loans under \$50,000, may waive this requirement.

(10) In the case of loans of more than \$50,000 that are funded by proceeds from the Oregon Lottery, that the Borrower shall make a good faith effort to hire and retain low-income individuals who have received job training assistance from publicly funded job training providers and enter into a first-source hiring agreement with a publicly funded job training provider.

(11) If the loan will result in the construction, expansion, rehabilitation or remodeling of a facility to which the public has access, adequate access for handicapped persons must be provided. This provision applies only to firms that deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

(12) If a project involves building construction, expansion, rehabilitation or modification, a loan from the Fund shall be permanent and not interim financing.

(13) Loans made in whole or part from the Oregon Targeted Development Account are not subject to ORS 285B.059(2).

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.062 & 285B.092

Hist.: EDD 2-1983(Temp), f. & cert. ef. 5-25-83; EDD 1-1984, f. & cert. ef. 1-5-84; EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 9-1989(Temp), f. & cert. ef. 11-3-89; EDD 5-1990, f. & cert. ef. 3-5-90; EDD 25-1990 (Temp), f. & cert. ef. 9-13-90; EDD 29-1990, f. & cert. ef. 12-12-90; EDD 8-1996(Temp), f. & cert. ef. 8-13-96; EDD 4-1997, f. & cert. ef. 3-25-97; EDD 9-1997(Temp), f. & cert. ef. 10-7-97; EDD 8-1998, f. & cert. ef. 5-22-98; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

123-017-0037

Appeals, Servicing, Amendments and Modifications

(1) If the Director denies a loan request, the applicant may appeal the Director's decision to the Finance Committee. The Finance Committee may:

(a) Affirm the Director's denial; or

(b) Decide to consider the loan request itself.

(2) If the Finance Committee denies a loan request, the applicant has the right to appeal to the Finance Committee for a rehearing of its application.

(3) An applicant has the right to appear in person at the appeal hearing, and to introduce whatever books, documents and data it regards as necessary to support the appeal.

(4) An applicant whose appeal of the Director's or the Finance Committee's decision has been denied by the Finance Committee must submit a new application, including an additional \$100 application fee, to be eligible for further consideration of a new loan request.

(5) All loans shall be monitored by, and all loan repayments shall be made to, the Department.

(6) It is the responsibility of the Borrower to ensure that the Department receives its payment by the due date.

(7) Any request for modification or amendment to any loan condition shall be made in writing to the Department and approved by the Finance Committee or Director. However, in those cases where a requested amendment or modification will not have a serious adverse effect on the State's security position, the Chairperson or his/her designee from the Finance Committee or the Director may approve such requested amendment or modification.

(8) If the Director, the Finance Committee, its Chairperson or designee, consents to any requested modification or amendment, the Borrower shall be responsible for all costs, including filing fees, of modifying or amending of any loan documents, filings, recordings or financing statements.

Stat. Auth.: ORS 285A.110

Stats. Implemented: ORS 285B.059, 285B.062 & 285B.092

Hist.: EDD 10-1988, f. & cert. ef. 3-18-88; EDD 37-1988, f. & cert. ef. 12-15-88; EDD 11-1999, f. & cert. ef. 10-11-99; EDD 6-2001, f. & cert. ef. 10-9-01; EDD 5-2005, f. & cert. ef. 5-11-05

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Employment Department Chapter 471

Adm. Order No.: ED 2-2005

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 5-1-05

Notice Publication Date: 3-1-05

Rules Amended: 471-010-0050, 471-010-0054, 471-030-0048, 471-030-0095, 471-030-0120, 471-031-0175, 471-040-0005

Subject: The Employment Department is amending:

 OAR 471-010-0050 to change definitions;

 OAR 471-010-0054 to make the final record of Unemployment Insurance hearings non-confidential;

 OAR 471-030-0048 to change the reference from "weeks" to "hours";

 OAR 471-030-0095 to change the requirement for a signature in order to cancel a claim;

 OAR 471-030-0120 to update the requirements for serving on a jury as it relates to a claim;

 OAR 471-031-0175 to clarify the definition of "agricultural labor"; &

 OAR 471-040-0005 to clarify the procedure for requesting a hearing.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-010-0050

Definitions

(1) "Agent" means an individual who is authorized to act for or in the place of another individual or entity.

(2) "Aggregate information" means:

(a) For information relating to businesses: there must be at least three firms and no one firm makes up more than 80% of the data item being measured;

(b) For information relating to individuals: there must be at least three individuals in each aggregated data group being released.

(3) "Customer" means any employer, individual, public agency, public employee (other than Oregon Employment Department staff in the performance of duty), non-governmental entity or member of the public that provides information to the department or receives a department service.

(4) "Confidential information" means information obtained from employing units, employees or other individuals pursuant to ORS Chapter 657.

ADMINISTRATIVE RULES

(5) "Discharge of duties" means the duties related to the department programs and services pursuant to ORS Chapter 657, which includes, but is not limited to:

- (a) Administration of the department;
- (b) Delivery of department and workforce programs and services in accordance with state or federal law;
- (c) Cooperation with public employees in federal and state agencies administering unemployment insurance laws including, but not limited to system administration, coverage, collection of contributions, determination of eligibility and payment of benefits;
- (d) Cooperation with public employees in state agencies administering recognized Oregon compensation and retirement, relief or welfare laws;
- (e) Administration of federal or state grant programs awarded to the department in accordance with applicable laws, regulations or guidelines associated with the grant program;
- (f) General duties of an agency head including, but not limited to cooperation with law enforcement and elected officials; or
- (g) Cooperation with public employees in federal and state agencies charged with enforcing anti-discrimination and fair employment practice laws.

(6) "Functional control" means supervision by an Employment Department management employee over the work activities of a hosted worker, in the area of the public labor exchange (selecting and referring job seekers on employer openings on jobs listed with the Employment Department, directly assisting employers in listing jobs, and providing marketing or outreach services to the business community).

(7) As used in ORS Chapter 657.665(3)(a), the following terms have the following meaning:

- (a) "Governmental planning functions" means duties authorized by law which are undertaken by state, federal, or local government agencies, to facilitate policy decisions about the future. These functions include, but are not limited to, economic or similar modeling, impact analysis, projections, and forecasting;
- (b) "Governmental performance measurement functions" means duties authorized by law which are undertaken by state, federal, or local government agencies regarding the success and impact of government programs;
- (c) "Governmental program analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the impact and operation of government programs. These functions include, but are not limited to, fiscal analysis, budget analysis, and workload analysis;
- (d) "Governmental socioeconomic functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to better understand the socioeconomic conditions in which the governmental entity is operating. These functions include, but are not limited to, the analysis of demographic, labor force, employment, and income trends; and
- (e) "Governmental policy analysis functions" means duties authorized by law which are undertaken by state, federal, or local government agencies to determine or better understand the impact of policy choices and decisions. These functions include, but are not limited to, economic impact analysis, trend analysis, and economic or similar modeling.

(8) "Hosted Worker" means a non-Department employee or volunteer who works, at least partially, under the functional control of an Employment Department management staff. The roles and responsibilities as well as the duties and confidentiality implications must be addressed in a written agreement with the Hosted Worker's actual employer or the Worker if there is no employer.

(9) "Informed consent" means that, prior to collecting or disclosing information from customers:

- (a) The customer shall be informed of:
 - (A) How the information will be used;
 - (B) The authority which authorizes the collection or disclosure of the information;
 - (C) Whether the collection or disclosure of the information is mandatory or voluntary;
 - (D) That any information disclosed will come from state government files;
 - (E) The effects on the customer, if any, of not allowing collection or disclosure of the information; and
 - (F) The customer's ability to "opt in" or "opt out" of giving their consent for their information to be collected or disclosed.
- (b) If the information from the customer is to be submitted to the Employment Department by a one-stop delivery system partner for a cross-

match with Employment Department information, the customer shall also be informed that:

(A) The information may be shared with the Employment Department; and

(B) The information to be shared may be matched with information from Employment Department records.

(10) "Need-to-Know" means that access to, possession of, or other use of customer-related information is essential in order to carry out official duties. It does not include:

- (a) Accessing confidential information to satisfy curiosity, for personal gain, or to provide the information to friends, spouses, relatives or any other unauthorized individual;
- (b) Discussing confidential information among co-workers except as needed to perform official duties; or
- (c) Disclosing or discussing confidential information on personal time or in non-work settings.

(11) "One-stop delivery system" means the workforce development activities provided by one-stop delivery system partner entities as authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(12) "One-stop delivery system partner" means entities authorized by the Workforce Investment Act and HB 3835 (Chapter 684; Oregon Laws 2001) and described in local Memorandums of Understanding (MOU) developed by workforce investment boards and approved by the Governor's Office of Education & Workforce Policy.

(13) "Party" has the same meaning as in ORS 183.310(6).

(14) "Person" has the same meaning as in ORS 183.310(7).

(15) "Recognized compensation and retirement, relief or welfare laws," includes, but is not limited to the following:

- (a) Indigent Defense Program administered by the State Court Administrator pursuant to ORS 151.430 et. seq.;
- (b) Compensation of Crime Victims administered by the Department of Justice pursuant to ORS 147.005 et. seq.;
- (c) Housing for low income individuals administered by local housing authorities pursuant to ORS Chapter 456;
- (d) Programs administered by the Family Health Insurance Assistance Program pursuant to ORS 735.722 et. seq.;
- (e) Programs administered by the Department of Human Services, including, but not limited to:
 - (A) Children, Adults and Families administering:
 - (i) Foster care maintenance payments for youth administered in conjunction with the Oregon Youth Authority pursuant to ORS 420.810 et. seq.;
 - (ii) Maintenance payments to individuals with occupational handicaps administered pursuant to ORS 344.511 et. seq.;
 - (iii) Temporary Assistance to Needy Families; and
 - (iv) Food Stamps.
 - (B) Seniors and People with Disabilities.

(16) "Third Party" means an individual or entity other than an agent to whom the customer has authorized and directed disclosure.

(17) "Written disclosure agreement" means an interagency or other applicable agreement for sharing or disclosing information by written, electronic, paper, verbal or other means.

(18) "Workforce Investment Act" means the federal Workforce Investment Act of 1998 as codified in Public Law 105-220.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 657

Hist.: IDE 150, f. & ef. 2-9-76; IDE 152, f. 9-28-77, ef. 10-4-77; IDE 6-1980, f. & ef. 9-8-80; IDE 2-1984, f. & ef. 9-28-84; IDE 3-1985, f. & ef. 12-16-85; ED 4-1994, f. & cert. ef. 9-2-94; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 7-2002(Temp), f. 9-27-02, cert. ef. 9-29-02 thru 3-28-03; ED 4-2003(Temp), f. 3-27-03, cert. ef. 3-29-03 thru 9-24-03; ED 12-2003, f. 9-19-03, cert. ef. 9-21-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-010-0054

Authorized Disclosure

(1) The department is authorized to disclose confidential information or records to public agencies, provided that a written disclosure agreement is in place, under the following circumstances:

- (a) In the "discharge of duties" as authorized by the department Director;
- (b) For public administration of compensation and retirement, relief or welfare laws;

ADMINISTRATIVE RULES

(c) To state and federal government agencies authorized by ORS Chapter 657;

(d) For the purpose of providing payment of unemployment insurance benefits; or

(e) To state, federal, and local government agencies for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions, consistent with Sections (2) and (3) of this rule.

(2) The department is authorized to disclose confidential information or records for governmental planning, performance measurement, program analysis, socioeconomic analysis, and policy analysis functions by state, federal, or local agencies only if:

(a) The information is only used for planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis purposes;

(b) The information is necessary for the successful performance of those planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis activities; and

(c) The requesting agency's authorizing statute reasonably provides that the agency perform planning, performance measurement, program analysis, socioeconomic analysis, or policy analysis functions.

(3) As used in ORS Chapter 657.665(3)(a), the terms "Governmental planning, performance measurement, program analysis, socioeconomic analysis and policy analysis functions" do not authorize the disclosure of confidential information:

(a) For purposes of mass mailings or marketing;

(b) That was collected by way of surveys conducted for statistical purposes, including those conducted in collaboration with the U.S. Bureau of Labor Statistics;

(c) For program eligibility or enforcement purposes; or

(d) Regarding individual persons, unless those persons have given their informed consent for such disclosure.

(4) The department is authorized to disclose confidential information or records as authorized under ORS Chapter 657 to non-governmental entities if the non-governmental entity enters into a written disclosure agreement with the department that:

(a) Requires informed consent from the individual to whom the information pertains;

(b) Safeguards the information once in the hands of the non-governmental entity; and

(c) Requires the non-governmental entity to pay all costs associated with the disclosure.

(5) The department is authorized to disclose confidential information or records to a third party or agent if:

(a) The Oregon Employment Department staff receives a written authorization signed and dated by the customer that specifically states the information that may be disclosed;

(b) The written authorization is witnessed or verified by Oregon Employment Department staff, or notarized;

(c) The third party or agent presenting the request is the same party authorized to receive the information.

(6) The Department is authorized to disclose confidential information or records to one-stop delivery system partners within the state or local one-stop delivery system if:

(a) An agreement between the Employment Department and the one-stop delivery system partner(s), addressing confidentiality and authorized uses of the customer information, has been completed;

(b) The customer whose information or records are being disclosed has provided informed consent authorizing that the information may be shared or disclosed; and

(c) Notice is provided that a consent, or authorization, is on file within the one-stop delivery system.

(7) Unless otherwise authorized by these rules the department is authorized to disclose confidential information or records to a customer only under the following provisions:

(a) The Oregon Employment Department staff is sure that the information was provided by the customer, or was previously provided to the customer; or

(b) For Oregon Employment Department wage records, the wage records are identified under the name, social security number or account number of the customer; and

(c) The Oregon Employment Department staff is sure that the customer's identity is the customer to which the information directly relates.

(8) The department is authorized to disclose confidential information or records to the customer's attorney or Certified Public Accountant with-

out written authorization by the customer if the attorney or CPA affirmatively represents their client relationship with the customer. Disclosure to any other agent of the customer requires a written authorization under Section (5) of this rule.

(9) The department is authorized to disclose:

(a) Confidential information or records necessary to prepare for a pending hearing to the extent necessary for the proper presentation of an Oregon Unemployment Insurance benefit claim at a hearing before an Administrative Law Judge, once a request for hearing has been filed, or for a review arising under a state or federal program administered by the department to a party or agent of a party.

(b) Hearing records that are part of the official record of the hearing. Information or records submitted but not received into evidence remain confidential and are not subject to disclosure except to the party submitting the information or records.

(10) The department is authorized to disclose confidential information or records pursuant to a customer's request, to a legislator or other elected official, or their staff, if the department receives a copy of the customer's letter to the legislator or other elected official. The department will treat the letter as the customer's authorization for the legislator or other elected official, or their staff, to disclose the information necessary to fulfill the customer's request. If no letter is available, Oregon Employment Department staff will provide customer information only after verifying with the legislator or other elected official, or their staff, that the contact is from the customer. If contact was not from the customer, a written authorization is required.

(11) The department is authorized to disclose confidential information or records without the customer's specific authorization and without a written disclosure agreement under the following provisions:

(a) In the "discharge of duties" as authorized by the department Director for Oregon Employment Department programs under ORS Chapter 657;

(b) For mandatory disclosures under the Social Security Act or other federal law; or

(c) In accordance with state or federal laws requiring cooperation with properly identified law enforcement officers or District Attorneys in the performance of their duties and pursuant to a warrant for the arrest of an individual;

(d) To a court in a civil, criminal or grand jury proceeding to which the State of Oregon is a party;

(e) To authorized personnel of agencies of other states for the purpose of administering federally funded unemployment insurance programs, Temporary Assistance to Needy Families, child support enforcement programs, and food stamps;

(f) To properly identified officials of the United States Social Security Administration and the United States Department of Health and Human Services for audit and administration of the Supplemental Security Income Program;

(g) To properly identified officials of the United States Department of Agriculture for audit and administration of the food stamp program; or

(h) To properly identified officials of state and federal agencies charged with administration of fair employment practices and anti-discrimination activities.

(12) The department is authorized to publish aggregated information, even if that information is based on confidential records, using the standards in OAR 471-010-0050(2). Customers or one-stop delivery system partners receiving confidential information for approved purposes are required to adhere to the same confidentiality and aggregation standards that the Employment Department uses.

(13) Oregon Employment Department staff are expected to comply with Oregon child abuse reporting laws under ORS Chapter 419B.010, elderly abuse reporting laws under ORS Chapter 124.060, and patient abuse reporting laws under ORS 677.190.

(14) When an authorized representative of the department has been served a subpoena or other legal compulsory process to produce or disclose information from department records and the disclosure of such information is not specifically allowed under ORS Chapter 657 or this rule:

(a) The Director shall promptly inform the Assistant Attorney General assigned to the department of such demand;

(b) If the disclosure would, in the opinion of the Assistant Attorney General, be inconsistent with the provisions of state law or any policy or rule adopted pursuant to such law, the Assistant Attorney General shall take action to prevent the disclosure.

ADMINISTRATIVE RULES

(15) Drug or alcohol abuse information or records received from federally funded treatment programs, facilities or activities may not be used or redisclosed by the department without the written consent of the patient.

(16) The Workforce Investment Act establishes a one-stop delivery system through which core services are provided, including those of the Wagner-Peyser Act (29 U.S.C. 49 et. Seq.), and where one-stop delivery system partners work on a collaborative and cooperative basis. The Workforce Investment Act also calls for the state to use Unemployment Wage Records, to the extent possible by state law, for the purpose of evaluation performance outcomes by other one-stop delivery system partners. It is the responsibility of the Director of the Employment Department to disclose all appropriate information to one-stop delivery system partners for necessary delivery of service, program evaluation, and performance measurement purposes. For these purposes, the following activities are within the Director's "discharge of duties:"

(a) The department is authorized to disclose confidential unemployment insurance wage records to one-stop delivery system partners for performance measurement purposes only under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) The individual for whom information is requested must have given informed consent for the information to be shared;

(C) The information requested shall not be used for eligibility determination, case management, intake, compliance, or any other purposes, except as required by state or federal law; and

(D) There must be an interagency or other applicable agreement with the one-stop delivery system partners that provides for safeguarding of the disclosed information, prohibits re-disclosure of the information without the express consent of the Employment Department, and imposes sanctions for the unauthorized disclosure of confidential information.

(b) Job listing information provided by employers to the Employment Department for the purpose of administering the public labor exchange. At the employer's direction the following information may be shared with job seekers who are interested in a particular job opening:

(A) For "self-refer" job listings, the job will be listed with all needed information displayed directly for all interested job seekers, who may then contact the employer directly; or

(B) For "suppressed" job listings, the needed information is only provided to job seekers who are determined to be qualified for the job listing, and who are then given contact information by the Employment Department or authorized Hosted Workers.

(c) Information, not including employer wage records or employer tax data, necessary for providing services to businesses for activities within the one-stop delivery system or for activities of the regional Workforce Response Teams (described in the Governor's Executive Order #03-16). The information to be shared may include details such as who to contact, planned contact schedules, employer training needs, and results of contacts and telephone calls for coordinated service delivery to the business community if there is an agreement with the one-stop delivery system partner(s) or the Workforce Response Team. The agreement should provide for steps in safeguarding confidential employer information

(d) The department is authorized to disclose job seeker information to one-stop delivery system partners under the following conditions:

(A) The requesting entity is a one-stop delivery system partner as described in OAR 471-010-0050(11);

(B) There is an interagency or other applicable agreement with the one-stop delivery system partner describing how the information will be used, that provides for the safeguarding of the information, and imposes sanctions for the unauthorized re-disclosure of the information;

(C) The individual for whom information is requested must have been provided with informed consent; and

(D) The information to be disclosed must be:

(i) Based on the one-stop delivery system partner's "need to know" to perform official duties of their program; or

(ii) The individual job seeker has specifically directed or authorized the sharing of the information.

(17) Oregon Employment Department staff, hosted workers and any other entities or individuals with access to Employment Department information are authorized to access confidential information only on a "need to know" basis, as needed to perform official duties.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.665 & 657

Hist.: 1DE 6-1980, f. & ef. 9-8-80; 1DE 1-1981, f. & ef. 1-15-81; 1DE 1-1982, f. & ef. 6-30-82; 1DE 2-1984, f. & ef. 9-28-84; 1DE 3-1985, f. & ef. 12-16-85; ED 1-1991, f. & cert. ef. 4-1-91; ED 1-1996, f. 4-24-96, cert. ef. 4-29-96; ED 2-2000(Temp), f. 6-9-00, cert. ef. 6-11-00 thru 12-8-00; ED 7-2000, f. 12-1-00, cert. ef. 12-3-00; ED 3-2001(Temp), f. 3-16-01, cert. ef. 3-18-01 thru 9-14-01; ED 10-2001, f. 9-28-01, cert. ef. 9-30-01; ED 9-2002(Temp), f. 11-

27-02 cert. ef. 12-1-02 thru 5-30-03; ED 9-2003, f. 5-22-03, cert. ef. 5-25-03; ED 16-2003, f. 12-31-03, cert. ef. 1-4-04; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-030-0048

Amended Monetary Determinations

(1) An individual who receives a monetary claim determination under ORS 657.266(2) may request that the determination be amended. The Director upon receipt of such a request will examine wage records submitted to the Department by employers in an attempt to locate wages and/or hours of work alleged by the claimant to be missing. If the discrepancy involves only hours of work and the claimant has provided documentary evidence of hours sufficient to make the claim valid, the Director may issue a redetermination.

(2) If as the result of an investigation additional subject wages or hours of work are made available which either allow a non-valid claim to become valid, or increase the weekly benefit amount of a valid claim, a redetermination will be issued.

(3) If as the result of an investigation all or part of the requested wages or hours of work are not included in the claim determination, the Director will so notify the claimant. If the claimant requested an amended monetary determination as provided in section (1) of this rule within the period specified by ORS 657.266(5), such notice will be given by a determination amending or affirming the initial determination. Such notice shall be subject to appeal as provided in ORS 657.266(5).

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.266

Hist.: 1DE 2-1981(Temp), f. & ef. 2-16-81; IDE 4-1981, f. & ef. 4-1-81; ED 2-1995, f. 8-29-95, cert. ef. 9-3-95; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-030-0095

Claim Cancellations

(1) An initial or amended determination may be canceled at any time provided the requirements of ORS 657.266(4) are met.

(2) Requests for cancellation may be taken by phone or in writing. Any written request must be signed by the claimant or by an authorized agent of the claimant.

(3) Cancellation will be denied if benefits have been paid. Benefits have been paid if the claimant negotiates a benefit check or if the claimant's account in a bank or similar financial institution has been credited with one or more benefit payments.

Stat. Auth.: ORS 183.335, 657.260, 657.265 - 657.270, 657.335, 657.610 & OL 1993 Ch. 729

Stats. Implemented: ORS 657.267(4)

Hist.: IDE 151, f. 9-28-77, ef. 10-4-77; ED 4-1994, f. & cert. ef. 9-2-94; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-030-0120

Jury Duty

For purposes of ORS 657.155(1)(c), an individual who is in all respects otherwise eligible for unemployment insurance benefits shall not be denied benefits solely by reason of serving on jury duty provided:

(1) The individual does not miss an opportunity to perform suitable work as a result of jury duty; and

(2) The individual actively sought work during the hours and days of the week in which the individual was not engaged in serving on jury duty.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.155(1)(c)

Hist.: 1DE 1-1982, f. & ef. 6-30-82; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-031-0175

Agricultural Employment

(1) If agricultural services for an employing unit are determined to be employment under ORS 657.045 at any time during a calendar year, that employing unit shall be an employer liable for taxes on all cash remuneration paid for such services during that entire calendar year.

(2) Except as provided by ORS 657.045(3)(c), processing services which transform an agricultural commodity from its raw or natural state, and services performed with respect to an agricultural product after it has been transformed from its raw or natural state, do not constitute agricultural labor.

Stat. Auth.: ORS 657

Stats. Implemented: ORS 657.045

Hist.: ED 2-1989, f. & cert. ef. 10-30-89; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

471-040-0005

Request for Hearing

(1) A Request for hearing may be filed on forms provided by the Employment Department or similar offices in other states. Use of the form is not required provided the party specifically requests a hearing or otherwise expresses a present intent to appeal.

ADMINISTRATIVE RULES

(2) A request for hearing may be filed by mail, by fax, or by telephone with any Employment Department UI Center in Oregon. A request for hearing may be filed in person at any Employment Department office in Oregon, except for Employment Department UI Centers. A request for hearing may also be filed by mail or by fax with the Office of Administrative Hearings in Oregon.

(3) The filing date for any request for hearing shall be determined as follows:

(a) When delivered in person to any Employment Department office in the state of Oregon, the date of delivery, as evidenced by the receipt date stamped or written by the agency employee who receives the document, shall be the date of filing.

(b) When filed by mail, the date of filing shall be the postmarked date affixed by the United States Postal Service or, in the absence of a post-marked date, the most probable date of mailing.

(c) When filed by fax, the date of filing shall be the encoded date on the fax document unless such date is absent, illegible, or improbable, in which case the fax receipt date stamped or written by the agency employee, if available, shall be the date of filing. If a filing date cannot otherwise be determined, the most probable date of faxing shall be the date of filing.

(d) When filed by telephone, the date of filing shall be the date marked or stamped by the agency employee accepting the request for hearing.

(4) A request for hearing with respect to a claim for benefits shall not stay the payment of any benefits not placed in issue by the request for hearing, nor shall it stay an order previously entered allowing benefits.

(5) This rule is effective for all hearing requests filed after the effective date of this rule.

Stat. Auth.: ORS 183.335, 657.260, 657.265 - 657.270, 657.335, 657.610 & OL 1993, Ch. 729
Stats. Implemented: ORS 657.280, 657.610 & 657
Hist.: IDE 150, f. & ef. 2-9-76; IDE 5-1979, f. & ef. 8-27-79; ED 4-1994, f. & cert. ef. 9-2-94; ED 3-1999, f. 6-29-99, cert. ef. 7-4-99; ED 7-2003, f. 4-25-03, cert. ef. 4-27-03; ED 4-2004, f. 7-30-04, cert. ef. 8-1-04; ED 2-2005, f. 4-29-05, cert. ef. 5-1-05

**Employment Department,
Child Care Division
Chapter 414**

Adm. Order No.: CCD 1-2005

Filed with Sec. of State: 4-29-2005

Certified to be Effective: 4-29-05

Notice Publication Date: 3-1-05

Rules Amended: 414-205-0170

Subject: The Employment Department, Child Care Division, is amending:

OR 414-205-0170 to clarify that an individual enrolled in the Criminal History Registry may be removed or suspended from the Registry in certain circumstances, and to reflect the role of law enforcement agencies' role in child protective services investigations.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

414-205-0170

Grievance Review and Sanctions

(1) Providers have a right to review any action or decision affecting them. The CCD grievance procedures are available upon request to all applicants/providers for family child care registration.

(2) Registration may be denied, suspended, or revoked if a provider fails to meet requirements, provide CCD with information requested, allow an inspection, or correct deficiencies.

(3) Any action taken by CCD to deny, suspend, or revoke registration may be reported to USDA Child Care Food Programs, child care resource and referral agencies, Children, Adults and Families, Office of Self-Sufficiency and Office of Safety and Permanency for Children.

(4) A registration may be suspended immediately when CCD believes children may be at risk of harm in the family child care home. Such action may be taken before an investigation is completed.

(a) A provider whose registration has been suspended must immediately notify, verbally or in writing, all parents of the suspension.

(b) A provider whose registration has been suspended must post the suspension in the home where it can be viewed by parents.

(5) Registration will be denied, suspended or revoked if the provider or other resident of the home has been removed or suspended from the Criminal History Registry.

(6) If an individual listed in 414-205-0040(2)(a) or (b) has been charged with, arrested for, or a warrant is out for any crime which CCD has determined indicates behavior that would have a detrimental effect on a

child, the provider's application will be denied or registration will be suspended or revoked until the charge, arrest, or warrant has been resolved.

(7) Registration will be denied, suspended or revoked if an individual listed in OR 414-205-0040(2)(a) or (b) has been convicted of or sentenced for offenses that would disqualify the individual from the Criminal History Registry.

(8) Registration will be denied, suspended or revoked if an individual listed in OR 414-205-0040(2)(a) or (b) has a founded child protective services case or an open child protective services or law enforcement case that would disqualify the individual from the Criminal History Registry.

(9) Persons may be subject to a fine of up to \$100 per occurrence if:

(a) They provide child care without a registration when required by law to be registered; or

(b) They violate any of the terms or conditions of registration or these rules.

(10) The provider has the right to appeal any decision to deny, suspend, or revoke registration or to impose a fine, subject to the provisions of Chapter 183, Oregon Revised Statutes.

Stat. Auth.: ORS 657.610 & 657A.260

Stats. Implemented: ORS 657A.260

Hist.: CCD 1-2000, f. 3-31-00, cert. ef. 4-2-00; CCD 5-2004, f. & cert. ef. 11-16-04; CCD 1-2005, f. & cert. ef. 4-29-05

**Oregon Liquor Control Commission
Chapter 845**

Adm. Order No.: OLCC 1-2005

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 5-1-05

Notice Publication Date: 2-1-05

Rules Amended: 845-001-0008, 845-004-0020, 845-005-0303, 845-005-0314, 845-006-0434, 845-006-0475, 845-009-0135

Subject: These seven rules contain "and/or" references. We are making housekeeping-type changes to the rules so that they no longer contain "and/or" references.

Rules Coordinator: Katie Hilton—(503) 872-5004

845-001-0008

Confidentiality and Inadmissibility of Mediation Communications

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

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

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

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

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

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

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

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

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

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

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if dis-

ADMINISTRATIVE RULES

closed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

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

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

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

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential, nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." Agreement to Participate in a Confidential Mediation. The agency and the parties to the mediation agree to participate in a mediation in which the mediation communications are confidential, nondiscoverable and inadmissible to the extent authorized by OAR 845-001-0008(7) and this agreement. This agreement relates to the following mediation: [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

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

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

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

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

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

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

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

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confi-

dential information from the mediator or another party who does not agree to the disclosure.

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

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

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

(A) A request for mediation;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stat. Auth: ORS 36.224

Stat. Implemented: ORS 36.224, 36.228, 36.230, 36.232

Hist.: OLCC 8-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

ADMINISTRATIVE RULES

845-004-0020

Fees for Certain Services

(1) Purpose. In order to recover some of the costs involved, the Commission charges fees for certain services furnished to the public, license applicants and the industry.

(2) The Commission charges the following fees for lists of license or compliance actions:

(a) Weekly applications received list — \$5 for individual week, \$100 for annual subscription.

(b) Monthly Compliance Action Ratification list — \$10 for individual month, \$100 for annual subscription.

(c) Monthly staff and commission action list (licensing and permit actions) — \$10 for individual month, \$100 for annual subscription.

(d) Combination of lists (a), (b), and (c) above — \$200 for annual subscription.

(e) Combination of any two lists in (a), (b), or (c) above — \$150 for annual subscription.

(f) Any other monthly or weekly lists produced by the Commission Regulatory Program but not included in (a)–(c) above — \$5 plus 25 cents per page copying.

(3) The Commission charges the following per record fees for individualized lists of licensed premises by type and location. The Commission may, at its discretion, waive a fee in special instances. Records can be requested as either paper, labels, or diskettes:

(a) 0–999 Records — \$25;

(b) 1,000–2,999 — \$40;

(c) 3,000–4,999 — \$55;

(d) 5,000–6,999 — \$70;

(e) 7,000–8,999 — \$85;

(f) 9,000 and up Records — \$100.

(g) The following lists are available:

(A) Complete list of all licensees;

(B) List of licensees by license type;

(C) List of licensees by county or city; and

(D) List of licensees by license type and county or city.

(h) The Commission may make other lists available if the Commission, in its discretion, determines that the list fills a public need, can be produced using current computer programs, and warrants the dedication of staff time necessary to produce the list. The Commission may provide electronic copies of its records. The fee is the cost of the time and material needed to produce the copy.

(4) The Commission may provide electronic or paper copies of its license and compliance records for licensed businesses. The Commission will only provide copies of documents that are not exempt from public disclosure, and may redact social security numbers and other protected information from copies of documents in the file record before making them available for review. The Commission may make microfiche copies of records available to a licensee or a licensee's legal representative, if the licensee or their representative is requesting a copy of the records for a business that the licensee owns or operates. Requests for Commission license and compliance records must be received in writing, on forms prescribed by the Commission. The Commission charges the following fees for locating, researching, assembling, organizing, reviewing, redacting confidential information, copying, collating, and making records available for public viewing:

(a) File review of paper copies or microfiche files, up to 100 pages: \$5.00, plus 25 cents per page. The Commission may require payment of the full amount of fees at the time the request is received.

(b) File review of paper copies of individual files larger than 100 pages: \$13.00 for each hour of staff time to locate, research, assemble, organize, review, redact confidential or protected information, copy, and collate the file records, plus 25 cents per page. The Commission may require payment of the full amount of the photocopying fees at the time the request is received.

(c) File review of records available in an electronic format: \$5.00, plus the cost of the storage media.

(5) The Commission will provide copies of tapes of its hearings, monthly Commission meetings and other taped proceedings for a \$5 per tape fee. The Commission does not provide transcription service.

(6) Representatives of distilled spirits' suppliers may purchase monthly reports of sales and inventory by code number (brand) by retail outlet. The fee is \$20 for preparation of the report, plus \$2 for each code included in the report. The Commission will bill representatives monthly, with payment due within 30 days.

(7) The Commission will charge the supplier or carrier, according to the responsibility for damage, a fee for recouping merchandise. The Commission sets this fee based on an annual review of the Commission's labor and materials cost.

(8) The Commission's charge on special accounts that do not pay normal markup on liquor purchases is the landed cost plus a 5% handling fee per case. The handling fee for split cases will be 15% of the landed cost of each bottle ordered.

(9) The Commission charges the following fees for photocopying records not specified elsewhere in this rule: \$13 for each hour of staff time to locate, research, assemble, organize, copy or collate the records, plus 25 cents per page. The Commission may require payment of the amount of the photocopying fees at the time the request is received.

(10) The Commission may furnish copies without charge or at a substantially reduced fee if the Commission determines that the waiver or reduction of fees is in the public interest because making the record available primarily benefits the general public.

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

Stats. Implemented: ORS 192.440(3)

Hist.: LCC 11-1980, f. 3-3-80, ef. 4-1-80; Renumbered from 845-0010-355; LCC 30-1980, f. 12-22-80, ef. 1-1-81; LCC 30-1986, f. 11-20-86, ef. 1-1-87; OLCC 3-1990, f. 3-16-90, cert. ef. 4-1-90; OLCC 16-1991, f. 10-31-91, cert. ef. 1-1-91; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 5-2001, f. 8-15-01, cert. ef. 9-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

845-005-0303

Alcohol Impact Areas

(1) Purpose. In some of Oregon's larger cities, there are areas with very serious alcohol-related problems where it would take extraordinary resources to identify the particular licensed businesses whose customers contribute to the problems. In these circumstances, the Commission may designate an alcohol impact area and set uniform limitations and requirements that specify how alcohol may be sold in the area. The purpose of this rule is to describe how the Commission, through the rulemaking process, designates an alcohol impact area and sets uniform limitations and requirements within it.

(2) Requesting an Alcohol Impact Area. In order for the Commission to consider designating an alcohol impact area, it must receive a petition for rulemaking. The Commission initiates rulemaking only on petitions from an authorized representative of an incorporated city with a population over 300,000. The petition must propose rule language to reduce street drinking and public intoxication associated with off-premises sales, or noisy conduct and late night disturbances associated with on-premises consumption.

(3) Prerequisites for Petitioning. The Commission requires voluntary efforts to address problems of street drinking and public intoxication, or noisy conduct and late night disturbances, and requires the city to seek public input before petitioning the Commission. A city that plans to petition for an alcohol impact area must:

(a) Require affected businesses, citizens and city staff to make a serious and good faith effort to work cooperatively to develop a voluntary program to address the problems;

(b) Make reasonable efforts to identify and notify those likely to be affected, offering them an opportunity to participate in the city's process;

(c) Hold a public hearing where interested parties may comment on the documentation of problems and the proposed rule language;

(d) Offer in the public hearing an opportunity for affected businesses to explain why their business operation should be exempted from the proposed limitations and requirements; and

(e) Not take into consideration or make any proposal based on age, race, sex, disability, marital status, national origin, sexual orientation, color or religion.

(4) Petition Contents. The city must meet the petitioning requirements of the Administrative Procedures Act (APA), including a comprehensive petition which includes:

(a) An explanation of a serious and good faith effort by the affected businesses, citizens, and city staff to work cooperatively to develop a voluntary program to address the problem;

(b) A description and documentation of a lengthy, pervasive history of:

(A) Street drinking, public intoxication and related problems associated with off-premises sales that affect neighborhood livability. To document these problems, the city must use crime statistics, police reports, detoxification reports or similar records; or

(B) Noisy conduct, late night disturbances and related problems associated with on-premises consumption that affect neighborhood livability. To document these problems, the city must use police reports or other records of government bureaus or departments.

ADMINISTRATIVE RULES

(c) A list of all the licensed businesses in the proposed alcohol impact area, a description of the parts of those businesses which may be contributing to the problem and an explanation why it is not practical to determine the specific sources of the problems;

(d) Proposed rule language that designates the boundaries of the proposed alcohol impact area and a rationale for the boundaries;

(e) Proposed rule language to limit off-premises alcohol sales, to limit hours of alcohol sales or to set any other limitations or requirements for the alcohol impact area designed to reduce the documented problems;

(f) An assessment of the positive and negative impacts the proposed limitations and requirements would have, both short and long range, on:

(A) Each licensed business within the proposed alcohol impact area;

(B) The economic viability of the proposed alcohol impact area as a whole; and

(C) The surrounding areas and the local governing body.

(g) A list of all the licensed businesses in the proposed alcohol impact area that the city intends to not cover by the proposed limitations and requirements and an explanation of why they should not be covered; and

(h) A list of all the licensed businesses in the proposed alcohol impact area that requested an exemption from the limitations and requirements. The city must explain why it thinks each requesting business operation should or should not be exempted.

(5) Basis for Automatic Denial of Petition. The Commission automatically denies any petition that does not include the information required in section (4) of this rule.

(6) Commission's Notice of Rulemaking. If the Commission initiates rulemaking to consider a proposed alcohol impact area, the Commission follows its Notice of Rulemaking procedures, schedules a public rulemaking hearing and also:

(a) Makes a reasonable effort to identify and notify all neighborhood and business associations (registered with the Commission) and all licensees located in, or within 500 feet, of the proposed alcohol impact area; and

(b) Sends a copy of the city's proposed rule language to each of those associations and licensees.

(7) Commission's Rulemaking Process. In the process of rulemaking to consider the creation of an alcohol impact area, the Commission follows the APA requirements and also holds a public hearing at which interested parties may present additional information, and comment on the documentation of problems and the rule language proposed by the city.

(8) Designating an Alcohol Impact Area by the Commission. After reviewing the rulemaking record, the Commissioners consider whether or not to designate an alcohol impact area. In designating an alcohol impact area, the Commissioners set boundaries and uniform limitations and requirements which specify how alcohol may be sold in the area:

(a) In setting the boundaries of an alcohol impact area, the Commission identifies the boundaries by designating thoroughfares, waterways, or other similar boundaries. The Commission may extend the boundaries beyond the actual area where problems are concentrated;

(b) In setting limitations and requirements, the Commission may:

(A) Limit off-premises alcohol sales;

(B) Limit hours of alcohol sales; or

(C) Set any other limitations or requirements for the alcohol impact area that may reduce the documented problems, such as limiting the number of new outlets in the area.

(c) The Commission does not take into consideration the age, race, sex, disability, marital status, national origin, sexual orientation, color or religion of the licensees or the patrons of the licensed businesses within the alcohol impact area.

(9) Exemptions. After the Commission has established an alcohol impact area and the limitations and requirements are in effect, licensed businesses may apply for an exemption for their business operation:

(a) The request must be in writing and include:

(A) A list of the limitations and requirements from which the licensee wants to be exempted; and

(B) An explanation of how the licensee's business operation did not and will not contribute to the problem, and why their business operation should be exempted from each of the limitations and requirements from which they are requesting exemption.

(b) The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption;

(c) If the Commission denies a request for an exemption, the licensee has the right to a hearing to contest the decision. However, the licensee

must comply with all the limitations and requirements unless the Commission issues a final order which reverses the administrator's decision;

(d) The Commission notifies the originally petitioning city of requests for exemption;

(e) For this rule, "business operation" refers to basic business concepts, such as a "gift shop" or a "hotel." It does not refer to retailing practices, such as "selling alcohol only to people with rent receipts";

(f) Licensees must reapply for an exemption with each license renewal. The burden is on the licensee to convince the Commission that their business operation did not and will not contribute to the problems in the area and should be exempted from each of the limitations and requirements from which they are requesting exemption.

(10) Petitioning the Commission to Change an Alcohol Impact Area Rule. Any interested person may petition the Commission to amend or repeal an Alcohol Impact Area rule. The petitioner must follow the steps listed in OAR 137-001-0070. In a petition to amend an Alcohol Impact Area rule, a person may ask for changes to the boundaries, limitations or requirements for the Alcohol Impact Area.

(11) Automatic Review of an Alcohol Impact Area. Twelve months after an alcohol impact area goes into effect, the Commissioners offer a public forum for comment. After considering the comments, the Commissioners may decide to initiate the rulemaking process to consider whether to continue, change or repeal the rule establishing that alcohol impact area:

(a) Before holding the public forum, the Commission makes a reasonable effort to notify:

(A) Licensees and registered neighborhood and business associations located in the alcohol impact area;

(B) Anyone who commented or testified during the original rulemaking process which established the alcohol impact area; and

(C) The city which originally petitioned the Commission.

(b) If the Commissioners initiate rulemaking after the public forum, the Commission follows the notice procedures described in section (6) of this rule.

(12) Sanction. A violation of a limitation or requirement in an alcohol impact area rule is a Category III violation.

(13) Other Commission Action. Nothing in this rule prevents the Commission from imposing additional restrictions on any license in the alcohol impact area or refusing licenses within a designated alcohol impact area if warranted by any other law or rule of the Commission.

Stat. Auth: ORS 471, including 471.040, 471.157, 471.730(5) & (6)

Stats. Implemented: ORS 471.155, 471.168, 471.311, 471.313

Hist.: OLCC 8-1994, f. 12-23-94, cert. ef. 1-1-95; OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01, Renumbered from 845-005-0057; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

845-005-0314

Refusal to Accept an Application

(1) ORS 471.311(2) authorizes the Commission to reject any application that is not in the form required by rule. This rule defines the required form of a complete application. The Commission shall reject any application that is not in the form required by this rule. The Commission shall give applicants the opportunity to be heard if an application is rejected. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS 183.310 to 183.550.

(2) Any Commission forms, statements or requests required as part of an application shall be completed legibly to qualify for acceptance. To be legible as required by this rule, a form, statement or request must be signed and dated by the applicant and made or completed:

(a) In the English language;

(b) By typing or by printing that is clearly legible to Commission staff.

(3) Any floor or plot plan sketches required by this rule shall be completed legibly in ink on the Commission's Floor Plan form, be reasonably to scale and set forth in a manner that allows a person unfamiliar with the property to understand the general layout of the premises, and the boundaries and uses of areas proposed to be licensed.

(4) A complete application shall include any forms, statements or requests required by OAR 845-005-0312, all fully completed and signed and dated.

(5) A complete application shall include disclosures and documentation regarding parties with ownership or financial interest as defined by OAR 845-005-0311 as follows:

(a) Documentation of funding sources described on the Statement of Funding form. For instance, if funding is from a bank loan, documentation may be a copy of the loan agreement or the bank's written verification of

ADMINISTRATIVE RULES

loan commitment. Commission staff may require further documentation in the course of license investigation;

(b) Lease summary form(s) if the applicant is leasing the real property, equipment, furnishings or business at the location proposed to be licensed;

(c) Purchase agreement summary form(s) if the applicant is buying the real property, equipment, furnishings or business at the location proposed to be licensed and, if the purchase transaction has not been closed, a copy of the applicant's accepted earnest money agreement;

(d) Franchise agreement summary form if the applicant is or will be a franchisee at the location proposed to be licensed;

(e) If the applicant is not an individual, but is a registered entity as defined in OAR 845-005-0312(2) (for instance a corporation, a limited partnership, a LLC) and registered as such with the Oregon Secretary of State, a copy of such registration and a completed form showing the individuals and persons who are the owners, principals, directors, officers, trustees, investors, members or partners in the applicant registered entity.

(f) If any owner, member or partner with a 10% or greater ownership interest in the applicant registered entity is itself a registered entity, the applicant shall provide a completed form showing the individuals and persons who are the owners, principals, directors, officers, trustees, investors, members or partners in that registered entity.

(6) A complete application shall include documentation and disclosures that record how the applicant proposes to operate the licensed business, and demonstrate the applicant's qualification for a liquor license, as follows:

(a) Floor or plot plan sketch showing the areas proposed to be licensed for any Full or Limited On-Premises Sales license or Brewery Public House license, including identification of table seating that meets the dining seating requirement of OAR 845-006-0460 or 845-006-0461 if the application is for a Full On-Premises license;

(b) Floor or plot plan sketch showing the proposed on-premises alcohol service or consumption areas of any manufacturer's licensed premises;

(c) Operating data questionnaire form if the applicant will sell alcoholic beverages at retail;

(d) Food service proposal form if the application is for a license or privilege that requires food service to patrons at the licensed premises;

(e) All supporting documents required as attachments to the Commission's food service proposal form;

(f) If the application is by a private club for a Full On-Premises Sales license, a copy of the club's charter and copies of documentation of current dues-paid club membership of 200 or more members with voting rights in the affairs of the club.

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

Stat. Implemented: ORS 471.311(2)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 2-2002, f. 2-15-02 cert. ef. 3-1-02; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

845-006-0434

Minibars in Arena Suites

(1) ORS 471.180 allows a Limited On-Premises or Full On-Premises Sales licensee who operates suites in an arena to store alcoholic beverages in a minibar and to make those beverages available to guests of arena suites. The purpose of this rule is to regulate the use of minibars in arena suites. The Commission reserves the right to add restrictions regarding the service of alcohol from minibars to the license of any arena licensee when those restrictions are considered by the Commission to be a reasonable response to a potential public safety problem or concern.

(2) Definitions:

(a) "Adults": Persons 21 years of age or older;

(b) "Arena suite": An enclosed, leased, private suite which is separate from the general admission area in an arena. The Commission considers an arena suite as a part of the arena;

(c) "Containers": For purposes of this rule, an individual container of each alcoholic beverage listed below must contain no more than the following amount of alcohol:

(A) Distilled spirits: 1.7 ounces or 50 milliliters;

(B) Bottles or cans of malt beverage: 12 ounces or approximately 355 milliliters;

(C) Malt beverage in kegs: 8 liters;

(D) Wine or cider: 25.4 ounces or 750 milliliters;

(d) "Licensee": For purposes of this rule, licensee refers to an arena which has been issued a Limited On-Premises or Full On-Premises Sales license under the provisions of ORS chapter 471;

(e) "Minibar": A locked cabinet or locked refrigerator used to store alcoholic beverages;

(f) "Monitoring": An observation of suite guests for a reasonable amount of time by a service permittee who must serve food, alcoholic beverages, non-alcoholic beverages, or perform related duties in the suite during the period of monitoring to provide an opportunity for the permittee to observe whether minors are consuming alcohol, whether guests show any signs of visible intoxication and whether any unlawful acts are occurring;

(g) "Service Permittee": An individual who has successfully completed an approved Alcohol Server Education course and has a valid Service Permit;

(h) "Suite Holder": A person or entity that has entered an agreement to occupy an arena suite. Where such suite holder is a business or a corporation, that suite holder will designate at least one adult as the suite holder's representative for each event.

(3) Operational Rules for Arena Suites: The licensee may provide alcoholic beverages only under the following conditions in arena suites:

(a) Maximum Containers Allowed Per Suite:

(A) Each suite must be stocked with no more than:

(i) One 8 liter keg of malt beverage and 60 additional containers of a variety of alcoholic beverages; or

(ii) Eighty (80) containers of a variety of alcoholic beverages; no keg of malt beverage is permitted.

(B) Only one 8 liter keg of malt beverage may be present in a suite at any one time. Alcoholic beverages which are brought into the suite from other areas in the arena for immediate consumption by suite guests will not be counted in the maximum number of containers of alcohol allowed in the arena suite.

(b) Responsibilities of Suite Holder and Suite Guests:

(A) When the suite holder will not be present for an event, the suite holder must designate one adult as the suite holder's representative for that event. The suite holder or suite holder's representative must be present in the suite throughout each event;

(B) For purposes of OAR 845-006-0362 and 845-006-0345, the suite holder or suite holder's representative and suite guests are deemed to be the licensee's agents or representatives. The Commission holds the suite holder, the suite holder's representative and suite guests to the same standard of care in serving alcohol as the licensee.

(c) Responsibilities of the Licensee:

(A) A service permittee must monitor each suite for alcohol-related problems a minimum of four times each hour while the suite is occupied. However, the Commission may enter an agreement with a licensee to defer enforcement of this provision and to require less frequent monitoring when the Commission has reason to believe that less frequent monitoring will be adequate to insure that alcohol-related problems will not occur. The Commission will reserve the right to revoke the agreement and to require compliance with this subsection of the rule if the Commission has reason to believe more frequent monitoring is necessary to prevent alcohol-related problems;

(B) No alcohol may be consumed in an arena suite from one hour after an arena event has ended until 7:00 a.m. Notwithstanding this portion of the rule, if the arena suite is used for a private party when no arena event is occurring, no alcohol may be consumed in the arena suite from 12:00 midnight until 7:00 a.m. Under no circumstances may alcohol be served or consumed between 2:30 and 7:00 a.m.

(C) If a service permittee observes a minor or visibly intoxicated person being served or consuming alcoholic beverages, the service permittee must:

(i) Remove the alcohol from the minor or visibly intoxicated person;

(ii) Lock the minibar;

(iii) Notify the licensee about the minor or visibly intoxicated person who was consuming alcohol;

(iv) Call arena security to carry out the arena's operational plan with regard to minors or visibly intoxicated persons; and

(v) Serve all alcohol in the suite during the remainder of the event. After locking the minibar, a service permittee may either remain in the suite to serve alcohol throughout the remainder of the event or a permittee may serve alcohol to suite guests when monitoring the suite.

(D) If a minor has consumed alcohol in an arena suite, the minor must be removed from the arena suite.

(d) Keys to a Minibar: Only the licensee or a service permittee may unlock a minibar. The licensee or a service permittee must unlock a minibar only for a suite holder or suite holder's representative.

(e) Restocking a Minibar:

(A) Any employee who is at least 18 years old may restock a minibar when there are no suite guests present and no event is occurring;

ADMINISTRATIVE RULES

(B) Only a service permittee may restock a minibar during an event or when guests are present in the suite;

(C) Before restocking a minibar during an event or when guests are present in the suite, the service permittee must observe the guests to insure that there are no visibly intoxicated persons or minors consuming alcohol in the suite. A service permittee must not restock after 10 p.m.

(f) Posted Signs: Each minibar must have a clearly visible sign on the outside or inside of the minibar. The sign must explain the following liquor laws and rules: minors and visibly intoxicated persons must not drink alcohol; the suite holder, suite holder's representative and suite guests must remove the alcohol from any visibly intoxicated person; and no alcohol may be consumed in the suite from one hour after an event in the arena has ended until 7:00 a.m., or if no event is occurring in the arena, between 12 midnight and 7:00 a.m.

(g) Food in Arena Suites: At a minimum, each suite must contain a variety of snacks for guests to eat during the hours the minibar is unlocked.

(4) Records:

(a) The licensee must keep records of all sales of alcohol and food for each suite during the license term and must maintain the records for a period of at least two years;

(b) The licensee must make available for inspection by Commission staff on an annual basis the average total food and total alcohol sales for all arena suites.

(5) Violations: Violation of the provisions of paragraph (3)(c)(C) (response to minor or visibly intoxicated person consuming) and subsection (3)(e) (restocking minibar) of this rule are Category III violations in the Commission's sanction schedule. All other violations of sections (3) and (4) of this rule are Category IV violations under the Commission's sanction schedule:

(a) The licensee is responsible for knowing when minors and visibly intoxicated persons are present in arena suites and for taking reasonable steps to insure that they do not consume alcohol. If a minor or visibly intoxicated person consumes alcohol in an arena suite, the licensee is responsible for permitting the minor or visibly intoxicated person to consume alcohol in violation of liquor laws;

(b) Adherence to the provisions of this rule is not a defense to a charge of violating liquor laws. If the Commission determines that minibar use causes or creates liquor law violations or a public safety problem, the Commission reserves the right to require the licensee to use service permittees to serve all alcohol in arena suites.

Stat. Auth.: ORS 471, including 71.030, 471.040, 471.730(1) & (5)

Stats. Implemented: ORS 471.180

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

845-006-0475

License Changes Requiring Notice/Prior Approval

(1) As used in this rule:

(a) "Manager" means any person who has decision making authority and whose primary duties include control over the operation of the licensed premises and its employees with respect to the sale/service of alcoholic beverages. This definition may apply to more than one person at a particular licensed premises;

(b) "Partnership" means an association of two or more persons who carry on a business jointly and who demonstrate an intent to be treated as partners by signing a partnership agreement;

(c) "Person" includes individuals, corporations, partnerships or other business organizations;

(d) "Principal officer" includes the president, any vice president with responsibility over the operation of a licensed business, the secretary, the treasurer, or any other officer designated by the Commission.

(2) All licensees:

(a) Except as this rule allows, no person will obtain an interest in a licensed business as defined in OAR 845-005-0311 without prior Commission approval;

(b) Whenever a person named on the license wants to remove his/her name from the license, the licensee(s) must notify the Commission on the appropriate form and provide documentation that shows the person no longer has an interest in the licensed business;

(c) The Commission may suspend or cancel a license if the licensee fails to notify the Commission, obtain prior approval or to take corrective action as this rule requires. Where extraordinary circumstances make it impossible or impractical to obtain prior approval, the Commission may give conditional approval immediately. After investigation, the Commission may withdraw its conditional approval and give the licensee a

reasonable deadline to rescind the action, prior to any hearing to contest the disapproval;

(d) The Commission may disapprove a manager, a change or acquisition described in this rule for any of the grounds for which it may deny a license. If the Commission disapproves a change, acquisition or manager, it will notify the licensee in writing and set a reasonable time for divestiture or for removal of the person;

(e) Any change in an investment interest in a business that holds a committed license and is not yet in operation may result in the Commission withdrawing that committed license.

(3) Managers: The Commission may require a manager to complete an individual history if there is a violation or a compliance problem with the licensed premises.

(4) Corporate licensees (not publicly traded corporation):

(a) The corporate licensee must obtain prior written approval from the Commission whenever a person intends to acquire or accumulate ownership or control of ten percent or more of any class of stock in a licensed corporation;

(b) The corporate licensee must notify the Commission immediately in writing when there has been a change in an officer or director.

(5) Corporate licensees (publicly-traded):

(a) The corporate licensee must notify the Commission within 60 days of the acquisition whenever a person acquires or accumulates ownership or control of ten percent or more of any class of stock;

(b) The corporate licensee must notify the Commission by July 1 of each year of changes in officers and directors. The Commission can take immediate action to disapprove a change that it learns of prior to the annual notification date.

(6) Partnership licensees:

(a) The licensee must obtain prior written approval from the Commission whenever a person intends to become a general partner in a partnership or intends to acquire or control ten percent or more of the total investment commitment in a licensed limited partnership;

(b) The licensee must notify the Commission in writing whenever an existing approved partner increases or decreases his/her investment interest.

(7) Other legal entities: The Commission may require any legal entity other than a corporation, partnership or individual to provide notice and obtain approval of persons who have business relationships with the licensed entity. Commission staff will specify those requirements depending upon the nature of the licensed entity.

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

Stats. Implemented: ORS 471.313(4)(h)

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

845-009-0135

Responsible Vendor Program

(1) Purpose. ORS 471.344 requires the Commission to establish a Responsible Vendor Program for retail licensees, including the positive measures a licensee must take to participate in the program. The purpose of this rule is to set standards and procedures for program participation.

(2) Definitions. For purposes of this rule,

(a) "Retail licensee" and "licensee" mean a retail licensee as defined in ORS 471.392;

(b) "Program" means "Responsible Vendor Program;"

(c) "Alcohol" means alcoholic beverages;

(d) "Employee" means any employee, corporate officer, volunteer, or other person whose responsibilities include the sale or service of alcohol.

(3) Application Process. Any retail licensee who meets the program standards may participate. To apply for the program, the licensee must complete and submit a Commission-provided application form. Commission staff will review the application for completeness, and will:

(a) Approve a completed application that clearly indicates the licensee has all program standards in place; put the application in the licensee's file; and send a certificate to the licensee acknowledging the licensee as an approved Responsible Vendor. The Responsible Vendor Program is a self-certifying program. The approval means only that staff has reviewed the application to confirm that it is complete and that the licensee states in writing that he/she has all the program standards in place. The Commission may take administrative action if it learns that the licensee did not meet all the standards at the time of application; or

(b) Return an incomplete application that does not clearly indicate the licensee has all program standards in place. Staff will include a letter highlighting the reason/s the application is being returned.

(4) Program Standards. To qualify as a Responsible Vendor, a licensee must:

ADMINISTRATIVE RULES

(a) Train each employee in alcohol sales. Except for an on-premises employee who has a valid service permit, each employee must:

(A) Before selling alcohol, read and sign the Commission-provided off-premises brochure or, at the licensee's discretion, meet the alternative requirements of OAR 845-009-0130, Training Brochure Requirement for Off-Premises Sales Employees. Licensees must comply with the record keeping requirements of OAR 845-009-0130; and

(B) Within three days of beginning to sell alcohol, receive training that covers at a minimum the topics listed in Section (5) of this rule. Licensees may train their employees themselves; licensee's trainings do not require Commission approval. Licensees may also choose to use any clerk training course approved by the Commission under OAR 845-009-0145, Clerk Training Courses. Additionally, servers who have not completed a Server Education course must do so within the time required in OAR 845-009-0100, Service Permittee Requirements.

(b) Accept only identification allowed in ORS 471.130.

(c) In an area visible to employees, post the house policies on alcohol sales and checking identification. The licensee must have each employee read and sign the house policies which must include at a minimum:

(A) A list of valid types of identification which are accepted at the premises;

(B) Directions for properly checking identification, including the requirement to check anyone who appears to be under the age of 26 years. A licensee may have a house policy to check customers who appear to be older than 26 years; and

(C) Consequences for selling alcohol to a minor.

(d) Permanently post signs reminding patrons and employees of the legal requirements for selling alcohol. The signs must include:

(A) A list of valid types of identification which are accepted at the premises;

(B) A notice that anyone who appears to be under the age of 26 years must show valid identification. A licensee may post that their house policy is to check customers who appear to be older than 26 years.

(e) At a minimum, provide four employee trainings spaced at regular intervals within each 12-month period. The licensee must ensure that employees attend the trainings. The licensee must keep a record of each training which includes the date of the training, names of the employees who participated, and a summary of the training. Examples of training include computer based training, video training, classroom instruction, and meetings. The training may be done individually or in a group. At a minimum, each training must cover the topics listed in Section (5) of this rule.

(f) Have no prior Category I or II violation within the last five years for the licensee personally.

(g) Have no significant aggravating circumstances surrounding a violation by the licensee personally within the last year for selling alcohol to a minor. Aggravating circumstances include, but are not limited to, the licensee participating in or committing the violation (except as provided for under Section (6)(e) of this rule); an intentional sale to a minor; multiple employees or patrons involved in the violation; the violation results in death or personal injury; the sale was made to a person under age 18 who appeared to be under the age of 21 when the sale was made.

(5) Topics to be Covered in Responsible Vendor Training. All training required by this rule must include at a minimum the following topics:

(a) Guidelines for recognizing minors and visibly intoxicated persons;

(b) Legal forms of identification for purchasing alcohol;

(c) How to properly check identification, and how to recognize false or altered identification;

(d) The requirement that anyone who appears to be under the age of 26 years must show valid identification. If the licensee's house policy requires that they check customers who appear to be older than 26 years, the licensee must include that information;

(e) Recommended approaches for refusing sales of alcohol to minors or visibly intoxicated persons;

(f) A review of the consequences for selling to minors, and the importance of not selling alcohol to minors or visibly intoxicated persons; and

(g) A review of house policies on alcohol sales. Each licensee must ensure that his/her employees receive training that covers the licensee's own house policies.

(6) Maintenance of Responsible Vendor Status. To retain Responsible Vendor certification, a licensee must:

(a) Continue to meet all of the qualifying standards listed in Section (4) of this rule;

(b) Continue to have no Category I or II violation by the licensee personally;

(c) Require an Off-Premises Sales employee who sold alcohol to a minor or failed to properly verify identification to complete a clerk training course as required by OAR 845-009-0145, Clerk Training Courses; require an on-premises employee who sold alcohol to a minor or failed to properly verify identification to complete a training course that covers all the topics listed in Section (5) of this rule or a Commission-approved Alcohol Server Education course within 45 days of official Commission notification of the violation;

(d) Have had all Responsible Vendor standards in place at the time an employee or licensee sold alcohol to a minor or failed to properly verify identification; and

(e) Not personally sell alcohol to a minor more than one time in a two year period. There can be no significant aggravation surrounding the violation and all other elements of the program must remain in place.

(7) Sanctions. If the licensee's employee sells to a minor and the licensee is a certified Responsible Vendor who has all program standards in place, the Commission will not cancel the license of the licensee, or deny issuance of a license to the person who holds the retail license. The licensee will be eligible for reduced sanctions based on OAR 845-006-0500, Suspensions and Civil Penalties.

(8) Removal from Program and Reinstatement.

(a) For a sale to a minor or failure to properly verify identification by an employee, if the licensee did not have all of the Responsible Vendor standards in place at the time of the violation, the licensee is removed from the program. The licensee may reapply for the program one year after the violation is ratified.

(b) For a first sale to a minor or first failure to properly verify identification by a licensee personally, if there is aggravation, the licensee is removed from the program. The licensee may reapply for the program in one year.

(c) For a second violation involving a minor, whether for sale of alcohol or failure to properly verify identification by a licensee personally within a two year period, and irrespective of which of the two formed the first violation, the licensee is removed from the program. The licensee may reapply for the program in one year.

(d) For a Category I or II violation by the licensee personally, the licensee is removed from the program. The licensee may not reapply for the program. For a Category I or II violation by an employee, the licensee is removed from the program, but may reapply for the program in one year.

(e) If aggravating circumstances are involved in a sale to a minor or failure to properly verify identification by the licensee personally or by an employee, the licensee is removed from the program. The licensee may reapply for the program in one year.

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

Stats. Implemented: ORS 471.344

Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05; OLCC 1-2005, f. 4-21-05, cert. ef. 5-1-05

Adm. Order No.: OLCC 2-2005

Filed with Sec. of State: 4-21-2005

Certified to be Effective: 5-1-05

Notice Publication Date: 2-1-05

Rules Amended: 845-003-0670

Subject: This rule describes the authority the Commissioners retain, and the authority they delegate to the agency Administrator. We need to amend the rule to describe delegation of authority to prepare and issue Final Orders by Default to either the agency Administrator or the Administrative Law Judge, depending on circumstances.

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.

(3) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order by Default when a party, after requesting a hearing, fails to appear at the hearing and the agency file does not constitute the sole record.

(4) The Commissioners delegate to the ALJ the authority to prepare and issue a Final Order by Default when the default is the result of a party's failure to appear at the time scheduled for hearing and the agency file constitutes the sole record.

ADMINISTRATIVE RULES

(5) The Commissioners delegate to the Administrator the authority to prepare and issue a Final Order based upon an informal disposition by settlement.

(6) 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.

(7) 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.

(8) 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)
Stats. Implemented: ORS 183.341(2), 471.730(5)(6)
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; OLCC 2-2005, f. 4-21-05, cert. ef. 5-1-05

Oregon State Lottery Chapter 177

Adm. Order No.: LOTT 3-2005
Filed with Sec. of State: 4-27-2005
Certified to be Effective: 4-28-05
Notice Publication Date: 1-1-05
Rules Amended: 177-050-0027

Subject: This rule is being amended to clarify that a damaged Scratch-it ticket may still be paid by the Lottery if it can be reconstructed or there is enough of the ticket intact to validate that it is indeed a winning ticket.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-050-0027

Ticket Validation Requirements

(1) Besides meeting all of the other requirements in OAR chapter 177 and as may be printed on the back of each ticket, the following validation requirements shall apply with regard to Scratch-it game tickets.

(2) Except as provided in section (3) of this rule and OAR 177-050-0025(4), to be a valid Scratch-it game ticket, all of the following requirements must be met:

(a) Where applicable, each of the play symbols must have a play symbol caption underneath, and each play symbol must agree with its play symbol caption.

(b) Each of the play symbols and captions must be present in its entirety and be legible.

(c) Each of the play symbols and its play symbol caption must be printed according to game specifications.

(d) The game number, pack number, ticket number, bar code, bar code number, and VIRN number must be present and all information shall correspond with the Lottery's computer records.

(e) The play symbols, play symbol captions, game number, pack-ticket number, and VIRN number must be right-side-up and not reversed in any manner.

(f) The ticket must have exactly one pack-ticket number.

(g) The VIRN number of an apparent high-tier winning ticket shall appear on the Lottery's official record of winning ticket VIRN numbers; and a ticket with that VIRN number shall not have been paid previously.

(h) Each of the following must correspond precisely to the artwork on file at the Lottery: play symbols on the ticket, play symbol captions, pack-ticket numbers, display printing, game numbers, retailer validation code; and ticket VIRN number.

(3) **Damaged Tickets:** Notwithstanding OAR 177-046-0090 and section (2) of this rule, the Director may pay the prize on a winning Scratch-it ticket that is inadvertently or accidentally damaged so that it cannot be validated either through the Lottery's central computer system or because it is missing information required under section (2) of this rule, if the ticket is readable and is validated as a winning ticket by the Lottery's Security Section. For purposes of this rule, a Scratch-it ticket is unreadable if there is insufficient information remaining on the ticket for the Lottery's Security Section to reconstruct and validate the ticket.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.250
Hist.: LC 7-1987, f. & ef. 4-29-87; LC 4-1988, f. & cert. ef. 1-26-88; LC 4-1990, f. & cert. ef. 4-3-90; LC 6-1993, f. & cert. ef. 7-2-93; LC 7-1995, f. & cert. ef. 7-7-95; LC 6-1996, f. 5-30-96, cert. ef. 6-1-96; LC 1-1997, f. 1-31-97, cert. ef. 2-1-97; LOTT 15-2001, f. & cert. ef. 12-3-01; LOTT 13-2002(Temp), f. 9-6-02, cert. ef. 9-9-02 thru 3-6-03; LOTT 24-2002, f. & cert. ef. 11-25-02; LOTT 13-2004(Temp), f. & cert. ef. 11-29-04 thru 5-27-05; LOTT 3-2005, f. 4-27-05, cert. ef. 4-28-05

Adm. Order No.: LOTT 4-2005(Temp)
Filed with Sec. of State: 5-10-2005
Certified to be Effective: 5-10-05 thru 7-30-05
Notice Publication Date:
Rules Amended: 177-040-0026

Subject: The Oregon State Lottery Commission has authorized the sale of video line games in retailer establishments. To implement the sale of these new games, the Lottery has filed a temporary rule amendment to the above referenced rule. This rule amendment establishes temporary compensation rates to be paid to retailers for the sale of video lottery game shares on video lottery terminals that offer both video poker games and video line games. The Commission has adopted permanent rules that establish these compensation rates, but the rates do not become effective until July 31, 2005. Adoption of this temporary rule amendment will permit the Lottery to install and test video line games in the marketplace prior to this date by authorizing the Lottery to compensate retailers for the sale of shares from video line games during this interim time period. The current Lottery rule does not authorize compensation to retailers for the sale of video line game shares.

Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-040-0026

Retailer Compensation — Video Lottery Games

(1) The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (a) or subsection (b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (a) of this section for the first business year the contract is in effect. For each subsequent business year the contract is in effect, no less than 60 days before the beginning of the upcoming business year, the retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(a) 3-Tier Option:

Compensation — Net Receipts per Year — Percent of Net Receipts

Up to \$175,000 — 32.5%
\$175,000 to \$475,000 — 26%
\$475,000 and up — 17%

For example, if a retailer's annual net receipts are \$600,000, the retailer would receive over the course of the business year: 32.5% of the first \$175,000 (\$56,875), and 26% of the next \$300,000 (\$78,000), and 17% of the remaining \$125,000 (\$21,250), for a total of \$156,125.

(b) 2-Tier Option:

Compensation — Net Receipts per Year — Percent of Net Receipts

Up to \$650,000 — 26%
\$650,000 and up — 19%

For example, if a retailer's annual net receipts are \$1,000,000, the retailer would receive over the course of the business year: 26% of the first \$650,000 (\$169,000), and 19% of the remaining \$350,000 (\$66,500), for a total of \$235,500.

(2) The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares for video poker games as described in OAR 177-200-0070.

(3) **Temporary Compensation Rates:** Notwithstanding the provisions of section (2) of this rule, beginning on the effective date of this rule the temporary compensation rates for the sale of video lottery game shares on video lottery terminals that offer both video poker games as described in OAR 177-200-0070 and video line games as described in OAR 177-200-0075 are the compensation rates set forth in section (1) of this rule.

(4) This temporary rule is effective until July 31, 2005 at which time it expires.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)
Stats. Implemented: ORS 461.010

ADMINISTRATIVE RULES

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 5-27-04; LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05; LOTT 4-2005(Temp), f. & cert. ef. 5-10-05 thru 7-30-05

Hist.: TD 3-1990, f. & cert. ef. 12-21-90; TD 2-1994, f. & cert. ef. 9-9-94; OST 1-1999, f. & cert. ef. 2-1-99; OST 1-2005, f. & cert. ef. 4-22-05

Oregon State Treasury
Chapter 170

Oregon Youth Authority
Chapter 416

Adm. Order No.: OST 1-2005
Filed with Sec. of State: 4-22-2005
Certified to be Effective: 4-22-05
Notice Publication Date: 4-1-05
Rules Amended: 170-061-0015

Subject: Defines fees charged by the Debt Management Division of the Oregon State Treasury as staff to the Municipal Debt Advisory Commission for services rendered to local government units. This updates various provisions primarily fees to be charged for the review and approval of an executed interest rate exchange agreement.
Rules Coordinator: Judy-Whaley Fultz—(503) 378-4633

170-061-0015
Fees

(1) ORS 287.020(3) and 287.036 authorizes the Oregon State Treasury, as staff to the Municipal Debt Advisory Commission (MDAC), to be reimbursed for expenses incurred in providing services to local government units. ORS 288.620(3) and 293.292 authorize the Oregon State Treasury to charge for reviewing refunding and defeasance plans and assisting state agencies and authorities in the issuance of bonds, notes or certificates of participation. Proceeds from such service charges shall be deposited in the Miscellaneous Receipts Account established in the General Fund for the State Treasurer.

(2) MDAC fees:

(a) Overlapping debt report. Report length, complexity and the time required to produce an overlapping debt report is determined by the number of districts which overlap the district for which the report is generated and the number of such districts which have issued debt. A base fee of \$75 shall be charged for all overlapping debt reports regardless of the number of such overlapping districts. An additional \$5 shall be charged for each overlapping indebted district up to ten districts; then an additional \$2.50 for each overlapping indebted district up to thirty districts; then an additional \$1 for each overlapping indebted district over thirty districts. See Table 1. [Table not included. See ED. NOTE.]

(b) Other fees and charges. \$35 will be charged for the "Oregon Bond Manual." Fees for specialized reports and services shall be determined by the number of hours spent producing such specialized report or service times the rate of \$75 per hour.

(3) Oregon State Treasury fees. The expenses of the State Treasurer incurred in reviewing refunding and defeasance plans shall be charged against the bond proceeds or may be paid by the public body from such other funds as may be available:

(a) Advance refunding plan application and review. An application fee for submission of an advance-refunding plan for a public body is \$200. The fee for review and approval of an advance refunding plan is \$3,000 per issue for issue amounts of \$2 million or less, and \$5,000 per issue for issue amounts exceeding \$2 million. If the plan is not approved or the refunding not completed the review and approval fee will not be charged;

(b) Cash defeasance plan review. The fee for review and approval of a cash defeasance plan for a public body is \$3,000 per issue. If the plan is not approved or the defeasance not completed the fee will not be charged.

(4) State sales. The following fees shall be charged by Oregon State Treasury for state sales of bonds, notes or certificates of participation. In addition to any other fee, \$7,000 will be charged for the review and approval of an executed interest rate exchange agreement. These charges do not include costs such as rating agency charges and printing costs which are payable by the agency or authority for whom the cost is incurred:

(a) Agency or Authority issues of \$2 million or less — \$3,000 per issue;

(b) Agency or Authority issues of more than \$2 million:

(A) Single Agency or Authority — \$7,000 per issue or \$3,000 per series, whichever is greater;

(B) Multiple Agency — \$5,000 per issue per Agency or \$3,000 per series, whichever is greater.

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

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 287.020(3), 287.036, 288.620(3), 289.205(3) & 293.292

Stats. Implemented: ORS 287.020(3), 287.036, 288.620(3), 289.205(3) & 293.292

Adm. Order No.: OYA 10-2005
Filed with Sec. of State: 4-20-2005
Certified to be Effective: 4-20-05
Notice Publication Date: 3-1-05
Rules Adopted: 416-490-0020, 416-490-0030, 416-490-0040, 416-490-0050

Rules Amended: 416-490-0000, 416-490-0010

Subject: OAR Chapter 416, Division 490 is amended to change its title. OAR 416-490-0000 is amended to revise for clarity and remove details that are more appropriate to policy. OAR 416-490-0010 is amended to add definitions and incorporated professional standards. OAR 416-490-0020 is adopted to change the exemptions language. OAR 416-490-0030 is adopted to incorporate the language from OAR 416-490-0010. OAR 416-490-0040 and OAR 416-490-0050 are adopted to address notification and review language.

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-490-0000

Purpose

(1) The purpose of this rule is to provide guidance and direction in the use of isolation, physical intervention, and restraint by OYA staff in the performance of their duties. The rule is written to minimize the risk of injury to offenders and staff, prevent serious destruction of state property, and meet the mission of OYA.

(2) It is the policy of the OYA to authorize the use of isolation, physical intervention, and restraint in circumstances specified in this rule. In such circumstances where isolation, physical intervention, or restraint is authorized, the type, amount, and manner of use authorized are further specified in this rule and OYA policy.

(3) The use of physical intervention and restraint by OYA staff is authorized by the Director.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 8-2000(Temp), f. 9-28-00, cert. ef. 9-28-00 thru 2-26-01; OYA 2-2001, f. & cert. ef. 2-27-01; OYA 10-2005, f. & cert. ef. 4-20-05

416-490-0010

Definitions

(1) Case Plan: A case plan is a formal plan with prescribed interventions and documentation requirements and is a tool to assist staff in managing cases, setting goals and reviewing offenders' interventions and progress. A case plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System (JJIS).

(2) Chemical Restraints: The use of chemical agents, such as pepper spray, mace, etc., to prevent an out-of-control offender from injuring himself or others. **The OYA prohibits its staff from using chemical restraints.**

(3) Constant Supervision: Staff will remain in direct visual and auditory proximity to assure an offender's safety and to intervene if any problematic or self-injurious behavior is observed. The offender's activities and mental state will be documented at least every 10 minutes (day and night). Offenders may be placed in a safe room. Safe room windows may not be covered. Closed circuit television monitoring may not substitute for constant visual face-to-face supervision.

(4) Excessive Use of Force: Use of force that exceeds the reasonable and justifiable response based on the totality of the circumstances. In some instances excessive use of force is the use of a physical technique that exceeds the procedurally authorized and trained response. Examples of excessive use of force techniques: full nelson, half nelson, choke holds, punching, kicking.

(5) Failure to comply: An offender's refusal to obey facility rules or staff directions that results in an unsafe environment, and rises to the level of an incident.

(6) Hard restraints: Restraints used in movement from one place to another, including transports. Hard restraints are not used in isolation. Hard restraints are limited to handcuffs, leg irons, and belly chains.

ADMINISTRATIVE RULES

(7) Hogtie Method: The placement of an offender in a prone position with arm(s) and leg(s) controlled with a connecting cord or device behind the back. **The OYA prohibits its staff from using this restraint method.**

(8) Intervention: The means by which an offender's inappropriate behavior is redirected to a more acceptable level. Staff interventions are designed to alter the environment to allow the individual offender to gain self-control and choose the way in which to change. The type of intervention used will directly correlate to the type of behavior needing change.

(9) Isolation: Any instance when an offender because of behavior or conduct is confined alone for over 15 minutes in a room other than the room or cell in which he or she usually sleeps.

(10) Least restrictive intervention: A type of intervention that causes the least intrusion upon the offender but results in the desired behavior change. **The OYA prohibits the use of intervention techniques or devices that are designed to inflict physical pain, undue physical discomfort, or to restrict blood circulation or breathing.**

(11) Mechanical restraints: Mechanical devices used to prevent an uncontrollable offender from injuring him- or herself or others. Mechanical restraints may only be used for short periods of time and must be used under Health Services staff supervision. Restraints should never be used as punishment for misconduct. Examples of mechanical restraints: handcuffs, ankle chains, padded or soft restraints, including four-point untethered leathers.

(12) Peer-assisted restraint: Facility authorized and trained restraint techniques applied by offenders in conjunction with staff and/or under the direct supervision of staff to subdue an otherwise uncontrollable offender in order to prevent the offender from injuring him- or herself, or others. **The OYA prohibits its staff from using this restraint method.**

(13) Physical Intervention: Direct physical contact where reasonable force is applied against resistance, either to restrict movement or mobility or to disengage from harmful behavior displayed by an offender. Examples of harmful behavior and the need for this approach include significant destruction of property, violence directed toward others, violence that arises from panic, distress or confusion, self-directed violence or self-injury. Harmful behavior extends to situations where staff believes that an offender may have a realistic chance or success to escape.

(14) Physical restraints: Agency authorized and trained holds used by staff to subdue an otherwise uncontrollable offender in order to prevent the offender from injuring him- or herself, or others. Restraints should never be used as punishment for misconduct.

(15) Positional Asphyxia: Death resulting from the positional placement of the body that interferes with the ability to breathe. Breathing can be restricted by compression of the chest or abdomen (i.e. lying on top of an offender to control behavior) as well as restriction or blocking of the airway.

(16) Prone: Lying with the front or face downward.

(17) Prone containment: The emergency physical holding of a prone individual, usually on the floor, for the purpose of gaining quick control of an aggressive and/or out of control offender. After quickly containing an individual, staff will move the offender onto his/her side or into a seated position as quickly and safely as possible. OYA policy and current OYA training support this.

(18) Prone restraint: The extended detaining (either physical or mechanical) of an individual. **The OYA prohibits its staff from using this restraint method.**

(19) Restraint Bed: Any application of full-body mechanical restraints is considered equivalent to the use of a restraint chair or bed.

(20) Room confinement: Instances in which an offender is confined for behavior or conduct in the room or cell in which he or she usually sleeps, rather than being confined in an isolation cell or room. The offender may be transferred to a designated unit for confinement (e.g., a segregation or program separation unit). Room confinement may occur in locked or unlocked rooms but cannot occur in large dormitories.

(21) Segregation dorm: Designated dormitory for placing offenders with special (disciplinary, medical, handicap, or protective) reasons, based on facility policy or practice. This practice usually occurs in facilities without individual rooms for offenders and/or where policy dictates that offenders be transferred in order to not affect, disrupt, or interfere with the programming needs of other offenders.

(22) Soft restraints: Approved rip devices specifically designed to prevent movement. Only soft restraints may be used within isolation rooms. The use of soft restraints requires additional training.

(23) Special program placement: The removal of an offender from his/her typical housing unit or program to a more restricted program until

the offender is able to manage his/her behavior and safely interact in the general population.

(24) Supine: Lying on the back or having the face upward.

(25) Temporary or disposable restraint devices: Temporary or disposable restraint devices will not be used in everyday practice. Such devices will only be used as an alternative to hard restraints in emergency situations when it is necessary to supplement supplies of hard restraints such as during movement of a large number of offenders at one time, or in medical situations on the recommendation of Health Services staff. Emergency situations are those in which significant numbers of offenders must be evacuated from the facility or moved, such as during an environmental situation or major disturbance, and the available supply of hard restraints cannot meet the demand. If temporary or disposable restraint devices are used, staff will stay in the presence of offenders and closely monitor their safety until the devices are removed.

(26) Time-out: The short-term separation of an individual offender from the general population for the purpose of resolving minor offender misbehaviors. Such practice includes the placement of an offender at a day room location (chair or table), open-door room, or sleeping area until an offender is able to manage his/her behavior.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 3-2000(Temp), f. 5-26-00, cert. ef. 5-26-00 thru 9-15-00; OYA 7-2000, f. & cert. ef. 9-22-00; OYA 8-2000(Temp), f. & cert. ef. 9-28-00 thru 2-26-01; OYA 2-2001, f. & cert. ef. 2-27-01; OYA 7-2001(Temp), f. & cert. ef. 11-16-01 thru 5-15-02; OYA 10-2002, f. & cert. ef. 5-16-02; OYA 10-2005, f. & cert. ef. 4-20-05

416-490-0020

Exemptions

The following types of procedures are part of ordinary and customary supervision of offenders and are not subject to this rule:

(1) Hard restraints used to escort offenders between units within a facility or to transport outside the secure perimeter of the facility.

(2) Administrative detention that separates an offender from the general population for reasons other than behavioral intervention. Examples include protective custody, intake processes, investigation or area searches, medical purposes, or because of offender behavior related to OAR chapter 416, division 470. However, whenever offenders are placed in administrative detention, staff will follow facility procedures to ensure the safety and well-being of offenders, including the conditions in isolation identified in this rule.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 10-2005, f. & cert. ef. 4-20-05

416-490-0030

Isolation, Physical Intervention, and Restraint

(1) General provisions:

(a) Isolation, restraint, or physical intervention may only be used when an offender is a danger to him- or herself or others or an immediate threat to safety, security, and order (e.g. to prevent an escape, imminent danger of significant property destruction).

(b) Isolation, restraint, or physical intervention is viewed as an exceptional or extreme practice.

(c) Once initiated, it will be as limited in time as possible.

(d) All staff expected to have a role in restraint and physical intervention must be trained and demonstrate competency.

(e) Supervisors/Managers are held accountable at all times for the initiation, usage, and termination of isolation, restraint, or physical intervention procedures. Accountability is a component of performance improvement efforts and staff competency evaluations.

(f) The case plan will address specific interventions to be used to avoid isolation, restraint, or physical intervention procedures and will address offender strengths and cultural issues.

(g) All decisions to initiate isolation, restraint, or physical intervention procedures are based on assessment of history of sexual or physical abuse, violence history, developmental disability, and medical/psychiatric issues pertinent to isolation or restraint practices.

(h) Offenders and staff are involved in a clinically timed post procedure debriefing to determine how future situations can be prevented.

(i) Offender dignity is maintained to the extent possible.

(j) Isolation, restraint, or physical intervention are not initiated or maintained as a substitute for treatment, as punishment, or for the convenience of staff.

(k) Isolation, physical intervention, and restraint are emergency safety interventions, not therapeutic techniques and are implemented in a man-

ADMINISTRATIVE RULES

ner designed to protect the offender's safety, dignity, and emotional well-being.

(1) Staff will use the positive strengths of the offender and remain sensitive to the issues of cultural competence.

(2) Isolation:

(a) The goal of this intervention is to give the offender an opportunity to self-regulate his/her behavior and return to the group as soon as possible. Isolation will not be used as punishment, as a convenience or substitute for staff supervision, or a substitute for individualized treatment.

(b) When staff assess that isolation is necessary to control a situation, they will use only the least restrictive type of isolation for only so long as necessary for the offender to regain self control and return to a less restrictive setting in accordance with OYA policy.

(c) In some situations, staff may assess that the appropriate level of intervention requires the placement of the offender in restraint devices. Only soft restraints may be used within isolation pursuant to OAR 416-490-0010.

(d) Offenders will be afforded the same opportunity to maintain health and dignity as afforded offenders in the general population consistent with requirements for the program and in accordance with OYA policy.

(e) Searches: Upon entering isolation, the offender will be subject to search. All contraband will be turned in to facility security.

(A) Every item of material or equipment (books, magazines, etc.) will be inspected.

(B) All rooms will be searched upon staff assessment that a search is warranted, and before and after each occupancy; unauthorized items will be removed.

(f) Exceptions:

(A) Offenders may be denied an article of clothing, bedding, hygiene supplies, mail, or reading material only under the following conditions.

(i) It is abused or misused; or

(ii) There exists a substantial threat of imminent misuse; or

(iii) It is considered by staff to pose a threat to the offender.

(B) Staff have a continued obligation to assure basic hygiene, sanitation, and offender dignity despite the removal of items.

(3) Physical intervention:

(a) The following types of physical intervention are prohibited:

(A) The use of intervention as coercion, punishment, or retaliation; and

(B) Physical intervention techniques that are applied for the purpose of inflicting physical pain, undue physical discomfort, or to restrict blood circulation or breathing.

(b)(A) Recognizing that out-of-control behavior generally escalates, staff will identify offenders who are having difficulty and provide early interventions.

(B) Before using physical intervention, OYA staff shall attempt to gain control of the offender using verbal de-escalation techniques. Unless there is imminent danger to him- or herself, other offenders, or staff, staff will delay the use of physical intervention until another staff is able to assist.

(c) If staff apply physical intervention, staff shall ensure that:

(A) Offenders are examined by a medically trained person as soon as safely practical, whether or not injury is visible. Health Services staff will immediately provide a written summary and photograph, in color, of any visible injury.

(B)(i) A report is immediately made by each staff member using the intervention, including staff witnessing the situation.

(ii) The facility Superintendent/Camp Director and Health Services personnel will review all reports. If there are any incidents that appear to violate OYA training, rules and/or policy, administrative staff will further investigate or cause an investigation to be completed.

(4) Restraint:

(a) In all instances the following restraint devices are prohibited within OYA facilities:

(A) The placement of an offender in a prone position with arm(s) and leg(s) restrained behind the back ("hogtie" position);

(B) Body positions or techniques that are designed to inflict physical pain, undue physical discomfort, or to restrict blood circulation or breathing.

(C) Restraint in unnatural positions;

(D) The use of restraint to punish offenders, or as a convenience to or substitute for staff supervision.

(E) The application of hard restraints in isolation.

(b) The OYA must approve all restraint devices or techniques prior to their use within OYA facilities.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 10-2005, f. & cert. ef. 4-20-05

416-490-0040

Notifications

(1) The Special Incident Report will be used as the primary document to report all use of isolation, restraint, or physical intervention situations.

(2) Any staff witnessing or directly involved in a use of restraint or a physical intervention incident will prepare and submit a Special Incident Report no later than the conclusion of his/her shift.

(3) Supervisory notification and authorization of the use of physical intervention will occur concurrently, or as soon as possible following the intervention in an emergency situation.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 10-2005, f. & cert. ef. 4-20-05

416-490-0050

Reviews

(1) Preliminary Review:

(a) All use of physical intervention and restraint incidents require a preliminary review within 48 hours of the incident and may include facility administration, Security and Health Services staff.

(b) A preliminary review will require the accumulation of all relevant information, such as reports and documents of involved persons and witnesses, with a review for complete information and compliance of administrative directives. An interview(s) may be necessary to clarify or obtain relevant information.

(c) The preliminary review with relevant information will be submitted to the Superintendent/Camp Director by facility Security as follows:

(A) Recommending only a preliminary review and that the action was in compliance with this rule; or

(B) Recommending a full review and that the action was in compliance with this rule; or

(C) Recommending a full review and that the action was not in compliance with this rule.

(d) A copy of the preliminary review, recommendations, and relevant information will be sent by the Superintendent/Camp Director to the Director's Office.

(2) Full Review:

(a) A full review will be required when any offender or staff has been significantly injured. Examples of significant injury include, but are not limited to, sprains, fractures, significant bruises; any injury requiring professional medical treatment, time off from work.

(b) The Director will make the decision regarding the need for a full review.

(c) The Deputy Director, or designee, will convene a Review Committee.

(A) Individuals may be selected from external and internal stakeholders and experts as indicated by the incident to be reviewed.

(B) This process will not take the place of any legal investigation process or any judicial procedures or remedies.

(C) The Review Committee will prepare a final report with recommendations for the Director and include:

(i) The degree to which the action taken was in compliance with OYA rules and policies.

(ii) Evidence of noncompliance, if found, and will specify these findings and the rationale upon which these findings have been based.

(d) A full review will be required by an impartial (no personal involvement in the intervention incident) review team no later than ten (10) working days of the incident when any offender or staff has been significantly injured;

(e) The Review Committee will submit an evaluation report to the Director, the Superintendent/Camp Director, and the living unit manager within ten (10) days following completion of the review.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Hist.: OYA 10-2005, f. & cert. ef. 4-20-05

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Adm. Order No.: OYA 11-2005

Filed with Sec. of State: 4-20-2005

Certified to be Effective: 4-20-05

Notice Publication Date: 3-1-05

Rules Amended: 416-800-0000, 416-800-0010, 416-800-0050

ADMINISTRATIVE RULES

Subject: OAR 416-800-0000 is amended to delete “reduce or” since it is the intent of the OYA to ensure no offender in OYA custody is exploited or abused. OAR 416-800-0010 is amended to reformat definitions and delete the term “youth offender.” OAR 416-800-0050 is amended to add language that OYA staff are subject to criminal history checks at the time of promotion or lateral transfers, to delete the term “youth offender,” and to correct grammatical errors.

Rules Coordinator: Kimberly Walker—(503) 378-6834

416-800-0000

Purpose

(1) The OYA seeks to ensure the security and safety of its close custody facilities, and eliminate the risk of exploitation and/or abuse of offenders placed in its custody. In keeping with these values, the OYA will screen the criminal histories of persons who seek access to OYA facilities and/or offenders.

(2) The purpose of the criminal history check will be to determine whether a subject individual has been convicted of, or adjudicated delinquent on, a crime that is substantially related to the qualifications, functions, duties or responsibilities of the position for which the person is applying.

(3) These rules detail how the OYA accesses criminal offender information and uses it in the screening process for persons seeking to become:

- (a) OYA employees, volunteers, or offender foster parents;
- (b) Contracted service providers who work with offenders; or
- (c) Community work project employers.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97; OYA 8-2002, f. & cert. ef. 1-18-02; OYA 8-2003, f. & cert. ef. 9-23-03; OYA 11-2005, f. & cert. ef. 4-20-05

416-800-0010

Definitions

(1) Agency agreement: A written agreement between the Oregon State Police (OSP) and a criminal justice designated agency authorized to receive criminal offender information, as defined by Oregon statute and administrative rule. The agreement specifies the terms and conditions of accessing and receiving Oregon computerized criminal history information to assure compliance with state and federal regulations.

(2) Community work project: Links offenders with short-term or project oriented work assignments in the community. Offenders are supervised by a community member during the work assignment or project.

(3) Contracted service providers: Persons who have specialized skills, knowledge and resources in the application of highly technical or scientific expertise, or exercise professional, artistic or management discretion or judgment while working with offenders, including the following.

(a) Licensed residential treatment provider: A private child-caring agency that has been given the legal authority through a license issued by the Department of Human Services (DHS) to provide residential care or other similar services for offenders.

(b) Personal services contractor: An individual or business entity with whom the OYA enters into a contract for the provision of services to offenders, such as a licensed psychologist, a professional social worker, etc. It also includes employees of such individual or business entity.

(4) Criminal history check: The process used by the OYA to conduct criminal records background checks on persons, including computerized and/or fingerprint-based processes.

(a) Computerized criminal history checks: The access and use of automated or manual files, or associated systems available to the OYA as a criminal justice agency, through the Law Enforcement Data Systems (LEDS) including on-line information from the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC), and the National Law Enforcement Telecommunications System (NLETS).

(b) Fingerprint-based criminal offender information: Criminal offender information compiled and maintained by the Bureau of Criminal Identification regarding persons who have been arrested for crimes where law enforcement agencies have submitted fingerprints and other identifying data as required by state and/or federal statutes, or as deemed appropriate by the submitting law enforcement agency, for the purpose of identification.

(5) Criminal offender information: Records, including fingerprints and photographs, received, compiled, and disseminated 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.

(6) Employee: An individual who holds a paid position with the OYA.

(7) Information required: All information requested by the OYA for processing applications, including fingerprints.

(8) Subject individual: A person who seeks to become an OYA employee, volunteer, or foster parent; contracted service provider working with offenders; or a community work project employer.

(9) Visitors: Persons who have limited access to OYA facilities or programs, including one-time access or as persons involved in group projects and performances. These persons are not allowed contact with OYA offenders outside the sight and hearing of OYA staff, and are, therefore, exempt from these criminal history check rules.

(10) Volunteers: Persons who, on a non-paid basis, provide service to the OYA. The provisions of OAR chapter 416, divisions 450 and 480 also apply.

(11) Foster parents: Persons who are issued a certificate of approval by the OYA to operate a foster home (OAR chapter 416, division 530). For the purpose of this rule, foster parent applicants also include members of the household, as discussed in OAR chapter 416, division 530.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97; OYA 8-2002, f. & cert. ef. 1-18-02; OYA 8-2003, f. & cert. ef. 9-23-03; OYA 11-2005, f. & cert. ef. 4-20-05

416-800-0050

Criminal History Review Process

(1) The OYA has determined that persons whose backgrounds contain convictions or adjudications of certain offenses increase the risk of exploitation and/or abuse of offenders in its custody, or compromise the safety and security of its close custody facilities. The OYA will deny access to offenders and/or facilities to persons with such backgrounds, as follows.

(a) Employment with the OYA.

(A) Applicants are subject to computerized and fingerprint-based criminal history checks conducted at the time of hire and promotion.

(B) Subject individuals whose criminal backgrounds include items noted in sections 3(a) and 3(b) of this rule will be denied opportunity for employment with the OYA.

(b) OYA volunteers or foster parents.

(A) Applicants are subject to computerized and fingerprint-based criminal history checks at initial application; followed by annual computerized checks.

(B) Subject individuals whose backgrounds include items from sections 3(a), 3(b) and 3(c) of this rule are prohibited from serving as a foster parent or volunteer.

(c) Personal service contractors.

(A) Applicants are subject to a computerized criminal history check prior to execution of a contract. If a contract is extended beyond a two-year period, the OYA may require a new computerized criminal history check.

(B) Subject individuals whose backgrounds include items from sections 3(a) and 3(b) of this rule are prohibited from serving as a personal service contractor.

(C) In addition, subject individuals who are licensed to provide a service to offenders must comply with all professional licensing and ethical standards of that profession.

(d) Contracted residential treatment providers. Employees of licensed residential treatment programs are subject to the licensing agency's criminal history check rules, and must comply with all professional licensing or ethical standards of that profession.

(e) Community work project employers.

(A) Applicants are subject to a computerized criminal history check at the time of initial contact with the OYA and annually thereafter. Additional criminal history checks may be requested as deemed appropriate by OYA.

(B) Subject individuals whose backgrounds include items noted in sections 3(a) and 3(b) of this rule are prohibited from employing offenders.

(C) In addition, employers of offenders must agree to conditions of supervision supplied by the OYA.

(2) The OYA may limit any person's scope of access or duties based on information contained within the background check. Such limits will be documented in writing and signed by the subject individual, the person responsible to supervise or oversee the person, and an Assistant Director, or designee.

(3) Crimes to be considered:

(a) Convictions or adjudicated delinquent on serious person-to-person crimes within any jurisdiction, including juvenile court, and other crimes, including but not limited to:

ADMINISTRATIVE RULES

(A) Murder, including aggravated murder or manslaughter, and solicitation to commit;

(B) Unauthorized sexual conduct, including but not limited to bigamy, incest, abuse, neglect, abandonment of a child, sale or purchase of a child, or solicitation to commit; any conviction of offenses for which registration as a sex offender is required under federal or state statute; or any admission to a hospital or other facility in lieu of conviction for an offense for which registration as a sex offender is required under statute;

(C) Persons who are a perpetrator of sexual abuse as evidenced by a child protective service complaint, which was determined to be valid even if there was no successful criminal prosecution;

(D) Persons who have been convicted of or adjudicated delinquent in any jurisdiction, including juvenile court, of any felony conviction or any drug- or alcohol-related charge within five years of application;

(E) Persons whose criminal histories include charges upon which no disposition has been made. Where possible, the OYA will seek further information to assess current status of the pending charges, and may require the subject individual to resolve such situations.

(b) Additionally, the OYA will assess the suitability of the subject individual to meet the qualifications of the position, as well as make a determination of the subject individual's moral fitness by reviewing the following.

(A) The severity and nature of the action of the entries on the subject individual's criminal history report, including:

(i) The number of arrests in the subject individual's history;

(ii) The time elapsed since the arrest(s);

(iii) The circumstances surrounding the arrest(s);

(iv) Whether the subject individual was charged or indicted for a crime related to the arrest;

(v) If applicable, whether the subject individual has participated in counseling, therapy, educational or employment opportunities since the arrest(s);

(vi) The relationship between the circumstances of the arrest and the subject individual's ability to meet the qualifications of the position; and

(vii) The person's age at the time of the offense.

(B) Moral fitness extends to conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or nation. The following are indicators of a lack of moral fitness.

(i) Illegal conduct involving moral turpitude.

(ii) Conduct involving dishonesty, fraud, deceit or misrepresentation.

(iii) Intentional deception or fraud in any application, examination, or other document.

(iv) Conduct that is prejudicial to the administration of justice.

(v) Conduct that adversely reflects on the person's fitness to perform in the position.

(vi) Persons who make a false statement about a conviction, including by act of omission on an application.

(vii) Dishonorable discharge from the armed forces.

(C) The subject individual's current status on probation or parole in the community.

(c) The OYA has determined that a history of arrests or restraining orders for the following activities may raise concerns about a subject individual's suitability to serve as a foster parent or volunteer.

(A) Spousal abuse or domestic violence.

(B) A crime against children, including abuse, neglect, or pornography.

(C) A crime involving violence, including rape, sexual abuse, manslaughter or homicide.

(D) Physical assault.

(E) Battery.

(F) Drug or alcohol offenses.

(G) Weapons-related offenses.

(H) Animal abuse.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 5-1997, f. & cert. ef. 10-13-97; OYA 8-2002, f. & cert. ef. 1-18-02; OYA 8-2003, f. & cert. ef. 9-23-03; OYA 11-2005, f. & cert. ef. 4-20-05

Parks and Recreation Department Chapter 736

Adm. Order No.: PRD 3-2005

Filed with Sec. of State: 5-4-2005

Certified to be Effective: 5-4-05

Notice Publication Date: 12-1-04

Rules Amended: 736-018-0045

Subject: ORS 390.180(1)(c) requires the Director of the Oregon Parks and Recreation Department (OPRD) to adopt administrative rules that establish a master plan for each state park. Accordingly, OPRD is adopting a master plan for Fort Yamhill State Heritage Area. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the new master plan as a state rule. The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The plan was formulated through OPRD's mandated master planning process involving meetings with the general public, a steering committee, affected state and federal agencies and Polk County.

Rules Coordinator: Jo Bell—(503) 986-0719

736-018-0045

Adopted State Park Master Plan Documents

(1) The following state park master plan documents have been adopted and incorporated by reference into this division:

(a) Fort Stevens State Park Master Plan, as amended in 2001;

(b) Cape Lookout State Park;

(c) Cape Kiwanda State Park, renamed as Cape Kiwanda State Natural Area;

(d) Nestucca Spit State Park, renamed as Robert Straub State Park;

(e) Jessie M. Honeyman State Park;

(f) Columbia Gorge Management Unit Master Plan, including: Rocky Butte State Scenic Corridor, Lewis and Clark State Recreation Site, Dabney State Recreation Area, Portland Womens' Forum State Scenic Viewpoint, Crown Point State Scenic Corridor, Guy W. Talbot State Park, George W. Joseph State Natural Area, Rooster Rock State Park, Shepperd's Dell State Natural Area, Bridal Veil Falls State Scenic Viewpoint, Dalton Point State Recreation Site, Benson State Recreation Area, Ainsworth State Park, McLoughlin State Natural Area, John B. Yeon State Scenic Corridor, Bonneville State Scenic Corridor, Sheridan State Scenic Corridor, Lang Forest State Scenic Corridor, Lindsey Creek State Scenic Corridor, Starvation Creek State Park, Viento State Park, Wygant State Natural Area, Vinzenz Lausman Memorial State Natural Area, Seneca Fouts Memorial State Natural Area, Koberg Beach State Recreation Site, Memaloose State Park, and Mayer State Park;

(g) Molalla River State Park;

(h) Champoeg State Park;

(i) Willamette Mission State Park;

(j) Cascadia State Park;

(k) Elijah Bristow State Park;

(l) Cove Palisades State Park Master Plan, as amended in 2002;

(m) Silver Falls State Park Master Plan, as amended in 1999;

(n) Curry County State Parks Master Plan, including: Floras Lake State Park, renamed as Floras Lake State Natural Area; Cape Blanco State Park; Paradise Point Ocean Wayside, renamed as Paradise Point State Recreation Site; Port Orford Heads Wayside, renamed as Port Orford Heads State Park; Humbug Mountain State Park; Otter Point Wayside, renamed as Otter Point State Recreation Site; Cape Sebastian State Park, renamed as Cape Sebastian State Scenic Corridor; Otter Point Wayside; Port Orford Cedar Forest Wayside, renamed as Port Orford Cedar Forest State Scenic Corridor; and Buena Vista Ocean Wayside; Pistol River State Scenic Viewpoint; Samuel H. Boardman State Scenic Corridor; Harris Beach State Recreation Area; McVay State Recreation Site; Winchuck State Recreation Site; Crissey Field State Recreation Site; Alfred A. Loeb State Park;

(o) Hat Rock State Park Master Plan, renamed as Hat Rock State Recreation Area;

(p) Deschutes County State Parks, including: La Pine and Tumalo State Parks; Cline Falls, renamed as Cline Falls State Scenic Viewpoint; and Pilot Butte, renamed as Pilot Butte State Scenic Viewpoint;

(q) Sunset Bay District Parks, including: Umpqua Lighthouse State Park (this chapter was replaced by the Umpqua Lighthouse State Park Master Plan, 2004); William M. Tugman State Park; Yoakam Point State Park, renamed as Yoakum Point State Natural Site; Sunset Bay State Park; Shore Acres State Park; and Cape Arago State Park;

(r) Bullards Beach District Parks, including: Seven Devils State Wayside, renamed as Seven Devils State Recreation Site; Bullards Beach State Park; Bandon Ocean Wayside, renamed as Face Rock State Scenic Viewpoint; and Bandon State Park, renamed as Bandon State Natural Area;

ADMINISTRATIVE RULES

(s) Tillamook County Coastal State Parks, including: Oswald West State Park; Nehalem Bay State Park; Cape Meares State Park, renamed as Cape Meares State Scenic Viewpoint; Neahkanie-Manzanita State Wayside, renamed as Neahkanie-Manzanita State Recreation Site; Manhattan Beach State Wayside, renamed as Manhattan Beach State Recreation Site; Rockaway Beach State Wayside, renamed as Rockaway Beach State Recreation Site; Twin Rocks State Wayside, renamed as Twin Rocks State Natural Site; Oceanside Beach State Wayside, renamed as Oceanside Beach State Recreation Site; and Neskowin Beach State Wayside, renamed as Neskowin Beach State Recreation Site;

(t) Beverly Beach District Parks South, including: Boiler Bay State Park, renamed as Boiler Bay State Scenic Viewpoint; Rocky Creek State Wayside, renamed as Rocky Creek State Scenic Viewpoint; Otter Crest State Wayside, renamed as Otter Crest State Scenic Viewpoint; Devil's Punchbowl State Park, renamed as Devil's Punchbowl State Natural Area; Beverly Beach State Park; Agate Beach State Wayside, renamed as Agate Beach State Recreation Site; and Ellmaker State Park, renamed as Ellmaker State Wayside;

(u) Smith Rock State Park;

(v) Collier District Parks, including: Booth State Wayside, renamed as Booth State Scenic Corridor; Chandler State Wayside; Collier Memorial State Park; Goose Lake State Recreation Area; Jackson F. Kimball State Park, renamed as Jackson F. Kimball State Recreation Site; and Klamath Falls-Lakeview Forest Wayside, renamed as Klamath Falls-Lakeview Forest State Scenic Corridor;

(w) Banks-Vernonia State Park, renamed as Banks-Vernonia State Trail;

(x) Sumpter Valley Dredge State Park, renamed as Sumpter Valley Dredge State Heritage Area;

(y) Illinois River Forks State Park;

(z) Wallowa County State Parks Master Plan, 2000;

(aa) L.L. "Stub" Stewart Memorial State Park Master Plan, 2005;

(bb) Master Plan for Clay Myers State Natural Area at Whalen Island, 2003;

(cc) South Beach State Park Master Plan, 2003;

(dd) Prineville Reservoir Resource Management Plan/Master Plan, 2003;

(ee) Detroit Lake State Park Master Plan, 2002;

(ff) Umpqua Lighthouse State Park Master Plan, 2004; and

(gg) Fort Yamhill State Heritage Area Master Plan, 2004.

(2) The master plan documents which have been incorporated by reference into this division are available from the State Parks and Recreation Department, 725 Summer Street NE, Suite C, Salem OR 97301.

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

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

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

Hist.: PRD 9-1998, f. 7-29-98, cert. ef. 7-31-98; PRD 4-1999, f. & cert. ef. 5-14-99; PRD 9-2000, f. 6-14-00, cert. ef. 7-1-00; PRD 1-2001, f. & cert. ef. 2-1-01; PRD 5-2001, f. & cert. ef. 6-29-01; PRD 6-2001, f. & cert. ef. 9-6-01; PRD 3-2002, f. & cert. ef. 3-22-02; PRD 2-2003, f. & cert. ef. 2-27-03; PRD 3-2003, f. & cert. ef. 2-27-03; PRD 5-2003, f. & cert. ef. 7-8-03; PRD 9-2003, f. & cert. ef. 10-13-03; PRD 11-2003, f. & cert. ef. 11-7-03; PRD 7-2004, f. & cert. ef. 5-14-04; PRD 9-2004, f. & cert. ef. 6-14-04; PRD 1-2005, f. & cert. ef. 2-4-05; PRD 3-2005, f. & cert. ef. 5-4-05

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Adm. Order No.: PRD 4-2005

Filed with Sec. of State: 5-5-2005

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Notice Publication Date: 12-1-04

Rules Adopted: 736-015-0006

Rules Amended: 736-010-0005, 736-010-0010, 736-010-0015, 736-010-0020, 736-010-0022, 736-010-0025, 736-010-0026, 736-010-0027, 736-010-0030, 736-010-0035, 736-010-0040, 736-010-0050, 736-010-0055, 736-010-0060, 736-010-0065, 736-015-0010, 736-015-0015, 736-015-0020, 736-015-0030, 736-015-0035

Rules Repealed: 736-010-0075, 736-010-0080, 736-010-0085, 736-015-0055, 736-015-0060, 736-015-0075, 736-015-0085, 736-015-0093, 736-015-0102, 736-015-0105, 736-015-0115, 736-015-0120, 736-015-0125, 736-015-0140, 736-015-0155

Rules Ren. & Amended: 736-010-0045 to 736-010-0040, 736-010-0070 to 736-010-0040, 736-010-0098 to 736-015-0010, 736-010-0099 to 736-015-0015, 736-010-0100 to 736-015-0020, 736-010-0115 to 736-015-0026, 736-010-0120 to 736-015-0035, 736-010-0125 to 736-015-0040, 736-015-0045 to 736-010-0040, 736-015-0050 to 736-010-0030, 736-015-0058 to 736-010-0060, 736-015-0063 to 736-010-0060, 736-015-0065 to 736-010-0055,

736-015-0067 to 736-010-0040, 736-015-0070 to 736-010-0060, 736-015-0072 to 736-010-0055, 736-015-0080 to 736-010-0055, 736-015-0090 to 736-010-0055, 736-015-0095 to 736-010-0055, 736-015-0097 to 736-010-0060, 736-015-0100 to 736-010-0055, 736-015-0110 to 736-010-0065, 736-015-0130 to 736-010-0055, 736-015-0135 to 736-010-0055, 736-015-0144 to 736-010-0060, 736-015-0146 to 736-010-0060, 736-015-0148 to 736-010-0060, 736-015-0150 to 736-010-0055, 736-015-0160 to 736-010-0055

Subject: This is a reorganization of the rules governing the operation of State Park facilities, properties and the ocean shore adjacent to any park area boundary. All rules dealing with park operations have been consolidated into Division 10 and the rules dealing with revenue and rates have been consolidated into Division 15. Rules that deal with regulating activity or fees at specific parks have been repealed where possible in favor of a general rule that can be applied across the system. Rules have also been consolidated where possible.

Rules Coordinator: Jo Bell—(503) 986-0719

736-010-0005

Purpose and Scope of Rules, Statutory Authority

(1) This division governs the operation of park areas under the jurisdiction of the department pursuant to ORS 390.111, which provides the department complete jurisdiction and authority over all park areas acquired by the state for scenic, historic, natural, cultural or recreational purposes.

(2) This division is adopted pursuant to the commission's authority to manage, operate and maintain park areas provided in ORS 390.121; the commission's authority to adopt rules necessary for the use and administration of park areas provided in ORS 390.124; and the authority of the director and park employees specifically designated by the director to enforce park area rules by citation provided in ORS 390.050.

Stat. Auth.: ORS 390.050, 390.111, 390.121, & 390.124

Stats. Implemented: ORS 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0010

Statutory Authority and Procedures

The text of this rule, 736-010-0010, was combined with rule 736-010-0005 above.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.050, 390.111, 390.121, 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0015

Definitions

As used in this division, unless the context requires otherwise:

(1) "Area Manager" means the immediate supervisor of park managers within a specified geographic region of the state.

(2) "Commission" means the Oregon State Parks and Recreation Commission.

(3) "Department" means the Oregon State Parks and Recreation Department.

(4) "Director" means the department director.

(5) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(6) "Park Area" means any state park, wayside, corridor, monument, historic, trail, or recreation area, including the ocean shore adjacent to any park area boundary, under the jurisdiction of the department.

(7) "Park Employee" means an employee of the department.

(8) "Park Manager" means the supervisor or designated employee in charge of a park area.

(9) "Park Resources" means any natural, cultural, or human-made structure or feature of a park area.

(10) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(11) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality, or a non-profit entity.

(12) "Violate" includes failure to comply.

ADMINISTRATIVE RULES

Stat. Auth.: ORS 390.124
Stats. Implemented: ORS 390.050, 390.111 & 390.124
Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0020

General Regulations

(1) The director may establish seasons, overnight length of stay, camper checkout times and procedures to adjust daily park area opening and closing times.

(2) The director, by written agreement, may cooperatively exercise jurisdiction and authority over a park area with a county, city, or political subdivision thereof for the purposes of enforcing park rules, and applicable state, county or city laws.

(3) A park manager or park employee may seek compliance from the public with any park area rule.

(4) A park manager or designated park employee may order any person that violates any park area rule to leave a park area.

(5) A park manager or an enforcement officer may exclude a person that violates any park area rule from the park area for a specified period of time.

(6) A peace officer, pursuant to a written agreement with the department, may seek compliance from the public with any park area rule and may order a person who violates this division to leave the park area.

(7) A peace officer, pursuant to a written agreement with the department, may exclude a person who violates any park area rule; federal, state, county, or city law; or court order from a park area for a specified period of time.

(8) A park manager or designated park employee may protect the safety or health of the public or protect park resources. This authority includes actions that may temporarily:

(a) Permit or limit specific activities or uses in designated portions of a park area;

(b) Designate a location within a park for a single use to avoid conflicts between users;

(c) Restrict access to or close an entire park area;

(d) Restrict access to or close a portion of a park area; or

(e) Exclude a person from a park area.

(9) A person excluded from a park area may appeal the exclusion notice by filing an appeal to the area manager within seven days of the exclusion date.

(a) A person may request an appeal hearing.

(b) Unless the person requests the presence of the issuing person at the appeal hearing, the issuing person's sworn statement may be used as evidence at the hearing in lieu of that person's testimony.

Stat. Auth.: ORS 390.050, 390.121, 390.124

Stats. Implemented: ORS 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 9-1982(Temp), f. & ef. 6-28-82; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1998, f. 1-15-98, cert. ef. 1-20-98; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0022

Fines

(1) A person that violates any park rule commits either a Class A, B, C, or D violation punishable, upon conviction, by a fine as provided in ORS 153.018(2).

(2) Each occurrence of a violation of a park area rule shall be considered a separate offense.

Stat. Auth.: ORS 153 & 390

Stats. Implemented: ORS 153.018, 390.050, 390.111 & 390.990

Hist.: PR 5-1983, f. & ef. 3-30-83; PRD 2-2000(Temp), f. & cert. ef. 1-14-00 thru 7-12-00; PRD 6-2000, f. & cert. ef. 5-9-00; PRD 1-2004(Temp), f. & cert. ef. 1-15-04 thru 3-31-04; PRD 4-2004, f. 3-15-04 cert. ef. 4-15-04; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0025

Motor Vehicles

(1) All park area roadways are considered public roadways and all provisions of motor vehicle laws of the State of Oregon are applicable and enforceable. Motorists must comply with motor vehicle regulatory signs posted in park areas.

(2) Motor vehicles shall be operated only on roads and in parking areas constructed or designated for motor vehicle use.

(3) Where not otherwise posted, motor vehicles may not be operated within a park area at speeds in excess of 25 miles per hour.

(4) Automobiles, trailers, or other vehicles shall be parked only in designated parking areas.

(5) The department may impound or have a vehicle towed at the owner's expense if a vehicle is parked in a fire lane, roadway, entry way or driveway that prevents the safe continued flow of pedestrian or vehicle traffic or causes imminent danger.

(6) Abandoned vehicles exceeding 72 hours or vehicles owned by a person who has been excluded or who is in violation of criminal trespass may be towed at the owner's expense.

(7) All motor vehicles and trailers parking overnight in day use areas must obtain a permit. Motor vehicles and trailers without a permit are subject to towing at the owner's expense.

(8) Unlicensed motorized vehicles, except park area service vehicles, may not be operated in park areas unless otherwise posted, with the exception of the operation of motor assisted scooters by disabled persons on bicycle lanes or paths.

(9) A person may operate an Off-Highway Vehicle (OHV) only in designated off-highway riding areas or on park roadways which are signed for OHV use.

(10) A person may operate an OHV in park areas only during those seasons and hours of operation which are established by the park manager.

(11) A person shall operate an OHV below the maximum permissible decibel level.

(12) A person may not operate a motor assisted scooter in a park area, including on a bicycle lane or bicycle path.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.330, 819.110, 819.120, 811 et seq, 814.500, 814.516, 814.550 & 814.554

Hist.: 1 OTC 17, 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 1-1994, f. & cert. ef. 2-9-94; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0026

Non-Motorized Vehicles, Cycles or Similar Devices

(1) A person operating a bicycle, skateboard, scooter, roller- or inline skate, or other wheeled, operator-propelled equipment that transports the operator on land, except devices utilized by persons with disabilities, must comply with the following:

(a) Motor vehicle and bicycle regulatory signs posted in park areas,

(b) Persons under 16 years of age are required to wear protective headgear,

(A) In the event that a person under 11 years of age violates this subsection, the notice of violation shall be issued to the person's parent, legal guardian or person with legal responsibility.

(B) In the event that a person between 11 and 16 years of age violates this subsection, the notice of violation may be issued to the violator or that person's parent, legal guardian or person with legal responsibility.

(c) Restrict speed and manner of operation to a reasonable and prudent practice relative to terrain, prevailing conditions, equipment, personal capabilities, personal safety and the safety of all other park users. This includes:

(A) Yielding the right-of-way to pedestrians and animals;

(B) Dismounting and walking in congested areas and posted walk zones;

(C) Slowing down and making presence well known in advance and using caution when overtaking other persons or animals;

(D) Displaying adequate lighting during the hours of darkness, in compliance with ORS chapters 814 to 816;

(E) Using caution when approaching turns or areas of limited sight distance;

(F) Not disturbing or harassing wildlife as provided in OAR 736-010-0055; and

(G) Operating in compliance with any additional requirements identified in ORS 814.488 when on public roads accessible by motor vehicles.

(2) A person may operate non-motorized cycles or similar devices on roads and trails in any park area, except where posted to specifically prohibit or conditionally restrict such activity.

(3) The director or designee may open or close roads and trails to the operation of non-motorized cycles or similar devices, based on an evaluation of factors related to the use of these devices including, but not limited to, the degree of conflict with other users, public safety, or damage to park resources.

(4) A person may not operate non-motorized cycles, scooters, or similar devices in any park area listed below, except where authorized by the director and posted specifically or conditionally to allow such activities:

(a) Off roads or trails;

ADMINISTRATIVE RULES

(b) Within designated natural areas, natural forest areas, or natural area preserves except on roads open for motor vehicles; and

(c) On docks, piers, floats and connecting ramps.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 814.400 – 814.489, 814.600

Hist.: PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0027

Boats and Moorages

(1) The park manager may post restrictions or prohibitions on the use of motorboats or other watercraft in park areas.

(2) Boaters must comply with regulatory signs posted in boat launching, moorage and beach areas.

(3) Boaters shall moor or secure their boat in a manner that will not cause personal injury or damage to private property or park resources.

(4) Boaters shall vacate moorages by the designated checkout time on the last day of the rental date unless otherwise posted.

(5) If a person has failed to pay moorage rental rates for two consecutive days, has exceeded the moorage stay limit, or is occupying a moorage slip reserved by another, the department may have all possessions, including the watercraft, removed at the owner's expense. The department is not responsible for any loss or damage to possessions or watercraft.

(6) The park manager may permit fishing from boat moorage docks.

(7) A person may not swim or water ski within 200 feet of or from boat moorage docks or facilities.

(8) Motorized boats and all other watercraft are prohibited from entering established swimming areas except for the protection or rescue of human life.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 830.912 & 830.914

Hist.: PR 5-1983, f. & ef. 3-30-83; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0030

Domestic Animals

(1) Domestic animals means those animals whose food and shelter are provided by a human custodian. Handler means any person who either brings a domestic animal into a park area or keeps a domestic animal in a park area.

(2) A handler shall either confine the domestic animal in a vehicle or on a leash not more than six feet long and keep the animal under physical control at all times.

(3) A handler is responsible for the animal's behavior and containment and for the removal of the animal's wastes while in the park area.

(4) With the exception of certified human service animals, domestic animals are prohibited in the following locations:

(a) Park area buildings and structures;

(b) Bodies of water, except hunting dogs are allowed in those areas described in OAR 736-010-0055;

(c) Beaches adjacent to designated for swimming areas; and

(d) Other areas where posted.

(5) The park manager or an enforcement officer may take any measure deemed necessary (including the removal of the animal from the park area) to protect park resources or to prevent interference by the animal with the safety, comfort, or well being of any person in the park area.

(6) Park employees may seize any domestic animal running at large in a park area and release to an animal pound or animal control officer.

(7) The park manager may designate a portion of a park area as open to dogs off leash for the purposes of training dogs, open field trials, or exercising dogs, when the handler is in control of the dog.

(8) A person may not ride, drive, lead, or keep a horse or other large animal in any park area, except on such roads, trails, or areas designated for that purpose. A handler may not hitch or confine a horse or other large animal in a manner that may cause damage to any tree, shrub, improvement or structure.

Stat. Auth. ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1990, f. & cert. ef. 5-14-90; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; Renumbered from 736-015-0050, PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0035

Livestock and Farming

(1) A person may not harass livestock or interfere with lawfully permitted farming activities or facilities, including fencing.

(2) A person may not conduct non-permitted farming activities in park areas.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0040

Visitor Conduct

(1) Fires in park areas shall be confined to:

(a) Park camp stoves or fireplaces provided for such purpose;

(b) Portions of beach areas designated as permissible for fires; or

(c) Portable stoves used in established campsites, picnic areas, or beach areas where fires are permitted.

(2) Every fire shall be extinguished before its users leave the park area. No fire shall be permitted to cause personal injury or damage to private property or park resources.

(3) The park manager may restrict or prohibit fires due to high fire hazard conditions.

(4) A person may not mutilate, deface, damage, or remove any property, structure or facility of any kind in a park area, except as provided in OAR 736-010-0055.

(5) A person shall leave garbage, recyclables, sewage or waste in a park area only in the designated containers provided.

(6) A person may not dispose of garbage, recyclables, sewage, or waste generated by activities conducted outside a park area in a park area, with the exception of recreational vehicle sewage and gray water holding tank contents to be disposed of in designated dump stations.

(7) A person may not remove items from containers designated for recyclables, garbage, sewage or waste without authorization of the park manager.

(8) A person may not engage in the following activities in park areas:

(a) Use or operation of any noise producing machine, vehicle, device or instrument in a manner that may disturb other park area visitors;

(b) Use of a public address system or similar device without written permission of the park manager;

(c) Possessing, discharging, or causing to be discharged, any firecracker, explosives, torpedoes, rockets, fireworks or other substances without the written permission of the park manager;

(d) Use of a metal detector or similar device without a permit from the department;

(e) Blocking, obstructing or interfering with vehicular or pedestrian traffic on any road, parking area, trail, walkway, pathway or common area;

(f) Occupying or interfering with access to any structure, office, lavatory or other facility in a manner which interferes with the intended use of such a structure or facility;

(g) Fighting; or promoting, instigating or encouraging fighting or similar violent conduct which would threaten the physical well being of any person in the park area;

(h) Smoking in any areas where the Oregon Indoor Clean Air Act, ORS 433.835 to 433.875; prohibits smoking;

(i) Activities or conduct which constitutes a public nuisance or hazard;

(j) Public indecency as defined in ORS 163.465;

(k) Base-jumping, hang gliding, paragliding or similar activities are not permitted in park areas without a permit from the park manager. The use of hang gliders is permitted at Cape Kiwanda State Natural Area.

(l) Discharging any firearm, bow and arrow, slingshot, pellet gun, or other weapon capable of injuring humans or wildlife or damaging property, except in those park area locations and for those purposes specified in OAR 736-010-0055(7).

(m) Place a sign, marker or inscription of any kind except in designated areas within a park area without written permission from the park manager.

(9) A person may not distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park area unless they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(10) A person may not operate a concession, solicit, sell or offer for sale, peddle, hawk or vend any goods, wares, merchandise, food, liquids or services in a park area without prior written authorization from the park director.

(11) All money or goods found by the public in park areas having a value of \$20 or more must be turned over to the park manager. All money or goods will be disposed of according to department policy adopted in accordance with ORS 98.005.

(12) The director or designee may close rock formations and cliffs within a park area to descending, scaling or technical rock climbing.

Stat. Auth.: OAR 390.124

ADMINISTRATIVE RULES

Stats. Implemented: ORS 390.111, 163.465, 433.835-433.875 & 498.006
Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 8-1993, f. & cert. ef. 5-11-93; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1996, f. 8-14-96, cert. ef. 8-15-96; PRD 4-2000, f. & cert. ef. 4-5-00; Renumbered from 736-010-0045, 736-010-0070, 736-015-0045, 736-015-0050, 736-015-0067, PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0050

Overnight Use

(1) Overnight use is not permitted on the ocean shore abutting park areas, or in any park area not designated for camping.

(2) A person must comply with seasons, overnight length of stay, and camper checkout times.

(3) Overnight facilities shall be occupied by paid customers or permitted visitors only.

(4) Owners of vehicles in a campground later than 10:00 PM are subject to overnight use fees.

(5) A park employee may authorize more than one vehicle to occupy an individual campsite. Individual campsites shall be occupied by no more than one recreational vehicle at the same time, unless authorized by a park employee.

(6) A maximum of eight individuals may occupy one campsite unless otherwise specified by the park manager.

(7) Quiet hours are 10:00 P.M. to 7:00 A.M.

(8) Campsites must be occupied the first night after any belongings are left in the site. If a person has failed to pay camping rental rates for two consecutive days or has exceeded the length of stay time limit the department may have all possessions removed from the campsite at the owner's expense. The department will not be responsible for any loss or damage to possessions.

(9) Campers must be 18 years of age or older to reserve and register for campsites, cabins, yurts, and other overnight facilities in parks areas.

(10) The registered camper will be responsible for the activities of all users of the site.

(11) The park manager may require that all food, garbage and equipment used to cook or store food, when not attended, be placed in a vehicle or hard sided camping unit.

Stat. Auth: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 1-1990, f. & cert. ef. 5-14-90; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 4-2001, f. 2-28-01, cert. ef. 3-1-01; PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0055

Cultural, Historic, Natural and Wildlife Resources

(1) A person may not disturb or remove any archaeological, cultural, or historical material from a park area, unless authorized by the director as defined in ORS 390.235.

(2) A person may not, except with the written permission of the park director or park manager:

(a) Dig up, or remove any soil, rock, or fossil materials;

(b) Roll any stones, logs or other objects that may endanger a person or damage park resources; or

(c) Pick, cut, mutilate or remove plants or natural resources of any type from any park area, except as allowed by sections (3) to (5) and (7) of this rule.

(3) A person may collect limited-souvenirs of agate and gem stone rock materials within the boundaries of Succor Creek State Recreation Area away from the developed public use areas and roadways of the park under the following conditions:

(a) No commercial digging, quarrying, or removal of rock is allowed;

(b) No excavating or rock collecting is permitted within a distance of 500 feet from any developed public use picnic area or campground, or 200 feet from an improved highway or park road within the park area; or within the area of an archeological site;

(c) Excavation is restricted to standard hand tools including a hand pick, shovel, or hammer;

(d) The use of mechanical excavators including, but not limited to bulldozers, backhoes, scoops, tractors, or the use of other power tools to excavate or remove materials is prohibited;

(e) Excavation of rock or soil materials around the root zone of trees and shrubs is prohibited.

(4) Notwithstanding section (2) or (3), a person must comply with existing state and federal rules and regulations concerning mining or the protection of public archeological features or artifacts on the state and federal lands of this area.

(5) A person may gather for personal consumption berries, fruits, mushrooms, or similar edibles. A person may not uproot living plants and roots, tubers, flowers, and stems may not be collected except with a permit and only for scientific collection or research purposes, or by a Native American for personal consumption as part of their traditional cultural heritage. Driftwood may be taken in small amounts in accordance with OAR 736-026-0010.

(6) A person may not give or offer food items to any wildlife within a park area except when authorized by the park manager.

(7) A person may not hunt, pursue, trap, kill, injure, or molest any wildlife or disturb their habitats within a park area, except under the following provisions:

(a) In those park areas where hunting and trapping is permitted, a person must comply with the rules and regulations of the Oregon Department of Fish and Wildlife.

(b) In those park areas where hunting is permitted, dogs being used for hunting game birds or unprotected wildlife or being trained for hunting or tracking shall be in the handler's control at all times.

(c) Seasonal hunting of waterfowl is permitted in the following park areas:

(A) Bowers Rock State Park;

(B) That portion of Elijah Bristow State Park located north of the main channel of the Middle Fork of the Willamette River;

(C) Portions of Fort Stevens State Park adjacent to Trestle Bay as posted;

(D) That portion of La Pine State Park located on the northeast boundary, beginning 4,135 feet down river from the Deschutes River Home Sites #6 bridge (survey point at N43 46.989, W121 31.015) to a point 950 feet up river of the Fall River confluence (survey point at N43 47.204, W121 30.705);

(E) That portion of Willamette Mission State Park located on Grand Island in Yamhill County;

(F) That portion of Government Island State Recreation Area including the perimeter of both Government and Lemon Islands, not above the mean high water mark as posted;

(G) That portion of Rooster Rock State Park which includes Sand Island as well as the bank which runs parallel to the south of the island. Hunting will not be allowed during the special waterfowl hunting season which starts in September as posted;

(H) That portion of Benson State Recreation Area at Dalton Point, north of I-84, starting 300' east of the boat ramp running to the eastern most tip of the property at river mile 134 as posted;

(I) That portion of Starvation Creek State Park, north of I-84, river mile 159.6 to 160.2 as posted;

(J) That portion of Mayer State Park including the entire Salisbury Slough area and the pond 800' Northwest of the boat ramp as posted.

(d) Seasonal hunting of game wildlife is permitted within Deschutes River State Recreational Area south of the stream gauge cable crossing line and parallel extensions of the cable crossing line to the east and west park boundaries.

(e) Seasonal hunting of deer is permitted in portions of La Pine State Recreation Area north of the east-west power line road, approximately one mile north of the campground booth.

(f) Seasonal hunting of upland game birds is permitted in Succor Creek State Park, except within 500 feet of camping areas located near the Succor Creek Bridge and posted Safety Zones.

(g) Trapping is allowed only by permit from the department in Bowers Rock State Park, Deschutes State Recreation Area, Elijah Bristow State Park, and Willamette Mission State Park.

(h) Hunting is permitted with shotguns or bows and arrows only, during authorized seasons in all Willamette River Greenway Corridor parcels, except in those parcels described below, where all hunting is prohibited:

(A) Wapato Access (Virginia Lake), River Mile 17.6-18, Multnomah Channel, Right bank when facing downstream;

(B) Crown Zellerbach, River Mile 21.3, Main Channel, Left Bank when facing downstream;

(C) Merrell (Mary S. Young State Park), River Mile 23.6, Main Channel, Left Bank when facing downstream;

(D) Willamette Shores, Inc. (Mary S. Young State Park), Main Channel, River Mile 24.0, Main Channel, Left Bank when facing downstream;

ADMINISTRATIVE RULES

(E) Meldrum Bar Park (City of Gladstone) River Mile 24.2-24.4, Main Channel, Right Bank when facing downstream;

(F) Hattan-Fisher, River Mile 24.3, Main Channel, Left Bank when facing downstream;

(G) Dahl Park (City of Gladstone) River Mile 24.7, Main Channel, Right Bank when facing downstream;

(H) Coalca Landing, River Mile 30.7, Main Channel, Right Bank when facing downstream;

(I) Lang, River Mile 30.7, Main Channel, Left Bank when facing downstream;

(J) Pete's Mountain Landing, River Mile 30.8, Main Channel, Left Bank when facing downstream;

(K) Peach Cove Landing, River Mile 31.5, Main Channel, Left Bank when facing downstream;

(L) Brandborg, River Mile 32.0, Main Channel, Left Bank when facing downstream;

(M) Asche, River Mile 34.1, Main Channel, Left Bank when facing downstream;

(N) Molalla River State Park, River mile 34.6-36.1, Main Channel, Right Bank when facing downstream;

(O) Willamette Meridian Landing, River Mile 37, Main Channel, Left Bank when facing downstream;

(P) French Prairie Access, River Mile 41.0, Main Channel, Right Bank when facing downstream;

(Q) Parrett Mountain Access, River Mile 45.5-46.0, Main Channel, Left Bank when facing downstream;

(R) Hess Creek Landing, River Mile 53, Main Channel, Left Bank when facing downstream;

(S) San Salvador Access, River Mile 56.7, Main Channel, Right Bank when facing downstream;

(T) Lincoln Access, River Mile 76.2-77.0, Main Channel, Left Bank when facing downstream;

(U) Lincoln Access (Doak's Ferry) River Mile 77.6, Main Channel, Left Bank when facing downstream;

(V) Darrow Rocks Access, River Mile 78.1, Main Channel, Left Bank when facing downstream;

(W) Ross Island Sand & Gravel (Salem Waterfront), River Mile 82.8, Main Channel, Right Bank when facing downstream;

(X) Hall's Ferry Access, River Mile 91.3, Main Channel, Right Bank when facing downstream;

(Y) Springfill Access, River Mile 113.8, Main Channel, Left Bank when facing downstream;

(Z) Takenah Landing (City of Albany), River Mile 118.5, Main Channel, Left Bank when facing downstream (Closed only for 500 feet west of parking area);

(AA) Jasper Bridge, River Mile 195.2, Middle Fork, Right Bank when facing downstream;

(BB) Minshall, Eller, River Mile 119.9, Main Channel, Left Bank when facing downstream;

(CC) Jones, Lanham, River Mile 120.1, Main Channel, Left Bank when facing downstream;

(DD) F. Schmidt, P. Schmidt, River Mile 120.3, Main Channel, Left Bank when facing downstream;

(EE) Truax Island Access, River Mile 168.7, Main Channel, Left Bank when facing downstream (closed only for 500 feet west of parking area);

(FF) Marshall Island Access (Banton), River Mile 168.7, Main Channel, Left Bank when facing downstream;

(GG) Log Jam Access, River Mile 194.4-194.8, Middle Fork, Left Bank when facing downstream;

(HH) Pengra Access, River Mile 195.2, Middle Fork, Right Bank when facing downstream;

(II) Cougar Mountain Access, River Mile 15.5, Coast Fork, Right Bank when facing downstream; and

(JJ) Lynx Hollow Access, River Mile 17.2, Coast Fork, Left Bank when facing downstream (Closed except for 100 foot strip along river-bank);

(i) Trapping in the Willamette River Greenway Corridor parcels closed to hunting, as listed above, is permitted only with written authorization from the department. Trapping is permitted in all other Willamette River Greenway Corridor parcels.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 498.002 & 498.006

Hist.: 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 10-1991, f. & cert. ef. 6-18-91; Renumbered from 736-015-0065, 736-015-0072, 736-015-0080, 736-015-0090, 736-015-0095, 736-015-0100, 736-015-0130, 736-015-0135, 736-015-0150, PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0060

Alcoholic Beverages

(1) A person under 21 years of age may not possess or use alcoholic beverage(s) in any park area.

(2) A person may not possess or use alcoholic beverages in the following areas except by permit from the park manager:

(a) Bald Peak State Scenic Viewpoint;

(b) That portion of Dabney State Recreation Area downstream from the Stark Street bridge;

(c) Lewis and Clark State Recreation Site between the east bank river frontage road and the Sandy River from I-84 upstream to the park boundary;

(d) TouVelle State Recreation Site;

(e) Tumalo State Park day use area;

(f) Bonnie Lure State Recreation Area;

(g) Warm Springs boat launch access, Deschutes River, Jefferson County; and

(h) Other park areas as signed.

(3) A person may not use an Oregon Liquor Control Commission licensed server to dispense any alcoholic beverage including malt beverages from kegs without a permit from the park manager.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91PR 16-1992, f. & cert. ef. 12-1-92; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96; Renumbered from 736-015-0058, 736-015-0063, 736-015-0070, 736-015-0097, 736-015-0144, 736-015-0146, 736-015-0148, PRD 4-2005, f. & cert. ef. 5-5-05

736-010-0065

Rooster Rock State Park – Nudity

(1) Except in designated areas, no sign, marker or inscription of any kind shall be placed within a park area without written permission from the park manager.

(2) No person may distribute circulars, notices, leaflets, pamphlets or written or printed information of any kind within a park area unless they have first obtained permission from the park manager and reported their name, address and number of leaflets to be distributed.

(3) The following activities are prohibited in a park area without prior authorization from the park director:

(a) Operating a concession, soliciting, selling, or offering for sale, peddling, hawking or vending any goods, wares, merchandise, food, liquids or services;

(b) Advertising any goods or services by any means whatsoever.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 34(Temp), f. & ef. 8-7-74; 1 OTC 39, f. 10-1-74; 1 OTC 40, f. 11-1-74; OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1990(Temp), f. & cert. ef. 8-1-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91PR 16-1992, f. & cert. ef. 12-1-92; PR 8-1996, f. 8-14-96, cert. ef. 8-15-96; Renumbered from 736-015-0058, 736-015-0063, 736-015-0070, 736-015-0097, 736-015-0144, 736-015-0146, 736-015-0148, PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0006

Definitions

As used in this division, unless the context requires otherwise:

(1) "Commission" means the Oregon State Parks and Recreation Commission.

(2) "Department" means the Oregon State Parks and Recreation Department.

(3) "Director" means the director of the department.

(4) "Enforcement Officer" means a peace officer or park employee specifically designated by the director under ORS 390.050 to investigate observed or reported violations, and to issue oral or written warnings or citations to enforce park area rules.

(5) "Foster Families" means persons certified to maintain a Foster Home, a Relative Home for Children or a Foster Home for Children with Developmental Disabilities, as described in ORS 418.625 and 443.830, with their foster children.

(6) "In Kind Services" means a group or person who provides, at the direction of park staff, materials or services whose value to the park area equals or is greater than the normal fees.

(7) "Marketing and Promotion" generally are agency-sponsored events that are of regional or statewide significance promoting tourism or partnerships with local communities, other agencies or economic development.

ADMINISTRATIVE RULES

(8) "Non-Profit Entity" means a group having a 5012 exempt status filed with the US Department of Internal Revenue Service.

(9) "Park Area" means any state park, wayside, corridor, monument, historic, or recreation area, except portions of ocean shore recreation areas not abutting a state park or wayside, under the jurisdiction of the department.

(10) "Park Employee" means an employee of the department.

(11) "Park Facility" includes but is not limited to individual and group campsites, day use areas and shelters, cabins, yurts, tepees, camper wagons, meeting halls, lodges, pavilions, and other amenities of the department.

(12) "Park Manager" means the supervisor or designated park employee in charge of a park area.

(13) "Peace Officer" means a sheriff, constable, marshal, municipal police officer, member of the Oregon State Police, and other persons as may be designated by law.

(14) "Person" includes individuals, a public or private corporation, an unincorporated association, a partnership, a government or a governmental instrumentality.

(15) "Reduced Service Level" means a reduction in the normal level of service that a person may reasonably expect due to the department's action/inaction or park facility failure lasting longer than 24 hours.

(16) "Reservation Cancellation" means the person requests to end the reservation and not create a new one.

(17) "Reservation Change" means a modification to an existing reservation by a person that changes the arrival or departure dates, a complete change to reservation dates, or changes the type of site from the original request.

(18) "Special Events" may be an activity sponsored or co-sponsored by the department, an event that provides entertainment to park visitors, or other activities that promote the mission of the department or Oregon tourism.

(19) "Split Reservation" means a stay at a park area for one person for one continuous date range that requires a mid-stay move from one site to another.

(20) "Traditional Tribal Activities" generally means traditional, spiritual, natural and cultural resource practices that would have been or which still are conducted by a federally recognized tribe or its members.

Stat. Auth.: ORS 390.050, 390.111, 390.121, 390.124

Stats. Implemented: ORS 390.124

Hist.: PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0010

General Regulations

(1) The commission shall establish fees through rule to promote department financial self-sufficiency and based on the following criteria:

- (a) Prevailing rates for comparable facilities;
- (b) Day of week;
- (c) Season of year;
- (d) Amenities of the park area and site;
- (e) Marketing opportunities to encourage use and revenues.

(2) A person using a park area shall pay rates established in this division for use of selected facilities or the purchase of services or products.

(3) Unless posted otherwise, a person shall pay established rates prior to use.

(4) A person who does not pay the established rates shall be subject to a citation issued by an enforcement officer or by a peace officer.

(5) The director may establish rates and rental charges for services, facilities and products that are optional, nonessential or complement the basic services described in this division. The director shall establish rates that take into consideration comparable services by other providers and marketing opportunities to encourage use and revenues.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 5-1983, f. & ef. 3-30-83; PR 10-1983(Temp), f. & ef. 12-28-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 13-1993, f. 7-12-93, cert. ef. 8-2-93; PR 7-1994, f. & cert. ef. 7-11-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0098, PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0015

Reservations

(1) Purpose: Based on the department's goal to promote outdoor recreation in Oregon, the department established a reservation program known as Reservations Northwest to increase use of park areas and facilities.

The director may designate specific park facilities to offer for reservation through a centralized call center and through the Internet.

(2) General Regulations:

(a) Reservations will be accepted and processed for designated park facilities through Reservations Northwest.

(b) A person may make a reservation a minimum of two days and a maximum of nine months prior to the arrival date.

(c) A person must be 18 years of age or older to make a reservation.

(d) A person who qualifies under the Americans with Disabilities Act (ADA) may reserve accessible campsites.

(e) A person may not make reservations for multiple park areas for the same date range.

(f) A person reserving a boat slip (where available) must also reserve another facility at the same park area.

(g) Split reservations are allowed to accommodate persons. Only one split reservation shall be allowed per reservation.

(h) Only the person whose name appears on the original reservation or their designee (as documented in the original reservation) may change or cancel an existing reservation or access information associated with a reservation.

(i) Customer information may be made available upon written request in compliance with ORS Chapter 192 and department policy.

(j) Specific information regarding a confirmed reservation will not be released to the public as provided in ORS 192.501 and 192.502.

(3) Transaction Fees and Deposits:

(a) The department will charge a \$6 non-refundable transaction fee for each reservation made through the centralized call center or the Internet.

(b) Reservations require a facility deposit equal to the rate charged for one night or day use of the facility.

(c) All fees are due at the time the person makes the reservation.

(4) Payment Methods:

(a) A person may use a valid credit card (VISA or MasterCard) or bank debit card with a VISA or MasterCard logo.

(b) A person may pay by personal check, money order, certified check, or travelers check (in U.S. funds).

(c) The department must receive payment within five calendar days of the date the person makes the reservation. If payment is not received within this time frame, the department will cancel the reservation. The person remains responsible for the \$6 transaction fee for each reservation request.

(d) If a banking institution returns a check to the department for any reason or if a credit or debit card is declined, the department will attempt to contact the person. Inability to resolve the payment dispute will result in a reservation cancellation. The person will remain responsible for the \$6 transaction fee for each reservation.

(e) Government agencies and non-profit entities may request to be invoiced for services. Reservations should be made at least 30 days prior to arrival. The department must receive payment within 25 days of the date the reservation is made. If payment is not received the department will cancel the reservation. The department will bill for the \$6 transaction fee for each reservation.

(f) A person must pay all outstanding account balances prior to making future reservations.

(5) Reservation Cancellations:

(a) A person may cancel a reservation three calendar days or more prior to their arrival date by calling Reservations Northwest. An automated reservation cancellation voice mail system is available seven days a week, 24 hours a day.

(b) A person may also cancel a reservation three calendar days or more prior to their arrival date through E-mail by accessing the department's web site and following the posted cancellation procedures. The web site is available seven days a week, 24 hours a day.

(c) A person must contact the specific park to cancel reservations with an arrival date that is two calendar days or less from the current date.

(d) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(e) In order to receive a refund of the facility deposit, a person must cancel the reservation for individual campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more calendar days prior to arrival. If the cancellation is not received three or more days in advance of the arrival date, the facility deposit fee will be forfeited.

(f) In order to receive a refund of the facility deposit for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas and other special facilities as designated by the department, a person must cancel the reservation at least

ADMINISTRATIVE RULES

one month prior to arrival. If the cancellation is not received one month or more in advance of the arrival date, the facility deposit fee will be forfeited.

(6) Reservation Changes:

(a) The department will charge a \$6 non-refundable transaction fee for each reservation change.

(b) A person may request to change a confirmed reservation by calling Reservations Northwest during normal business hours Monday through Friday.

(c) A person may also request to change a reservation through Email by accessing the department's web site and following the posted reservation change procedures. The web site is available seven days a week, 24 hours a day.

(d) A person may not make changes to reservations with an arrival date greater than eight months.

(e) The park area may only cancel reservations with an arrival date that is two days or less from the current date.

(f) A person must request a reservation change for campsites, rustic cabins and yurts, tepees, camper wagons, and boat moorages three or more days in advance of the arrival date. The department will treat reservation change requests with an arrival date of three days or less from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(g) A person requesting a reservation change for deluxe cabins and yurts, group camps, day use areas, meeting halls, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, Shore Acres Garden House, Pavilions, RV Group Areas, and other special facilities as designated by the department must request the change at least one month prior to arrival date. The department will treat reservation change requests with an arrival date of less than one month from the current date as a cancellation and cancellation rules will apply. A person may request a new reservation once the existing reservation has been cancelled.

(7) Reservations to Accommodate Organized Groups:

(a) General: To promote the use of facilities by groups and to bring efficiencies to the group reservation process, the director may offer group camping to persons reserving multiple tent, electrical or full hook-up campsites.

(b) The department will charge only one transaction fee for the group when the sites are reserved together. The department will require a facility deposit fee equal to the first night's site fee for each campsite at the time the reservation is made.

(c) A person must reserve a minimum of five individual campsites during Discovery Season (October 1 to April 30) or ten individual campsites during the Prime Season (May 1 to September 30) to qualify for group camping benefits.

(d) The department will charge a transaction fee of \$6 for each site cancellation or change made to the group reservation.

(e) A person must pay all remaining campsite fees 30 calendar days before the reservation arrival date. Reservations made less than 30 calendar days prior to the arrival date must be paid in full at the time the reservation is made.

(f) Reservations made on the Internet for a group of sites are not eligible.

(g) A person may reserve a meeting hall (where available) for one day's free use when the minimum number of sites are reserved and used. The person may reserve the meeting hall for additional days at the normal rental rate.

(h) Special facilities such as deluxe cabins and yurts, rustic cabins and yurts, horse camps, lodges, Silver Falls Youth Camp, Silver Falls Ranch House, and other special facilities as designated by the department are not included in the group camping program.

(i) A person must make reservations at least 10 days prior to arrival date to qualify for group camping benefits.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 2-1994, f. & cert. ef. 2-9-94; PR 2-1995, f. & cert. ef. 1-23-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 10-2003, f. & cert. ef. 10-17-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0099. PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0020

Overnight Rentals

The director may designate a Type I campsite rental schedule at selected high use campgrounds. All remaining campgrounds will be set at the Type II campsite rental schedule. The director is authorized by the com-

mission to include transient lodging taxes in the nightly rental rate and to increase the rental rate to the nearest whole dollar. The department shall retain the additional revenue. Campsite Rental rates (per night per site before tax):

(1) Full Hookup Campsite: Provides campsite with individual water supply, electrical and sewage hookups, table, stove, and access to a restroom.

(a) Type I: \$20

(b) Type II: \$16

(2) Electrical Hookup Campsite: Provides campsite with individual water supply and electrical hookups, table, stove, and access to a restroom.

(a) Type I: \$20

(b) Type II: \$16

(3) Tent Campsite: Provides campsite with water supply nearby but does not have electricity or sewage hookup. Provides table, stove, and access to a restroom.

(a) Type I: \$16

(b) Type II: \$14

(4) Primitive Campsite: Provides campsite with table and stove; water and sanitary facilities may be some distance away.

(a) All sites: \$8

(5) Hikers/Bicyclist Campsite: Provides cleared area for camping; water and sanitary facilities may be some distance away.

(a) All sites: \$4 per camper per night

(6) Extra Vehicle in Campground: An additional rental rate of \$5 per vehicle is charged when an extra vehicle is driven into the campground and remains overnight.

(7) Extra Motorcycle in Campground: If the initial campsite rental is to a person riding a motorcycle, and the first extra vehicle is a motorcycle, the second motorcycle will not be charged. Each additional motorcycle will be charged \$5 as an extra vehicle.

(8) Express Check-In (where available): The department allows a person with a reservation that has prepaid in full for the duration of their stay for individual tent, electrical or full hook-up campsites to expedite the check-in process upon arrival at the park area.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124, 183.310 -183.550

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23(Temp), f. 2-19-74; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 86(Temp), f. 7-21-77, ef. 7-25-77; 1 OTC 90, f. & ef. 9-26-77; 1 OTC 1-1978, f. & ef. 2-23-78; 1 OTC 4-1979, f. & ef. 2-9-79; 1 OTC 6-1979, f. & ef. 3-29-79; 1 OTC 8-1979 (Temp), f. & ef. 5-17-79; 1 OTC 14-1979(Temp), f. & ef. 6-21-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 1-1981(Temp), f. 1-8-81, f. 1-12-81; PR 9-1981, f. & ef. 4-6-81; PR 14-1981, f. & ef. 10-23-81; PR 5-1983, f. & ef. 3-30-83; PR 3-1984, f. & ef. 3-5-84; PR 11-1986, f. & ef. 7-9-86; PR 2-1987, f. & ef. 3-27-87; PR 1-1988, f. & cert. ef. 3-25-88; PR 6-1989(Temp), f. 12-29-89, cert. ef. 1-8-90; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 1-1992, f. & cert. ef. 2-14-92; PR 16-1992, f. & cert. ef. 12-1-92; PR 2-1994, f. & cert. 2-9-94; PR 6-1995, f. & cert. ef. 7-14-95; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0100. PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0026

Group Day Use

(1) At designated park areas, a person may reserve a group picnic area(s) by calling Reservations Northwest during normal business hours. The park manager will determine the maximum group size for each park facility.

(2) The department will charge group picnic rental rates to offset additional park administration and maintenance costs:

(a) Base rate (0-50 people) — \$35;

(b) Charges for persons in excess of the 50 person base rate will be 80 cents per person

(3) The park manager may make advance arrangements with the group leader for parking, supervision, cleanup, checkout time, and other pertinent details.

(4) Upon arrival, the group leader will check in with the park manager who will direct the group to the reserved area.

(5) The group must have adult supervision at all times.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121 & 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 23, f. 2-19-74; 1 OTC 56 (Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 83(Temp), f. 5-19-77, ef. 6-1-77; 1 OTC 85, f. & ef. 7-20-77; 1 OTC 3-1979, f. & ef. 2-9-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1992, f. & cert. ef. 2-14-92; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0115. PRD 4-2005, f. & cert. ef. 5-5-05

ADMINISTRATIVE RULES

736-015-0030

Day Use Parking Permit

(1) Purpose: Based on the department's goal to manage increased use of park areas, the director may require a motor vehicle day use parking permit at selected park areas.

(2) General Regulations:

(a) Parking permits are to be affixed and clearly displayed in the lower left corner of the windshield.

(b) Permits are not transferable.

(3) Day Use Parking Permit Fees:

(a) Daily Vehicle — \$3;

(b) 12-month Permit — \$25;

(c) 24-month Permit — \$40;

(d) A person may purchase up to two additional parking permits in combination with the purchase of a 12- or 24-month permit for vehicles registered to the person. A 12-month Permit — \$5 each; 24-month Permit — \$10 each.

(4) The department may enter into a written agreement with privately owned commercial vendors and non-profit cooperative associations affiliated with the department under ORS 390.143 to sell 12-month and 24-month permits.

(a) The director shall establish a minimum allowable fee of \$1 for vendors who sell the 12-month and 24-month permits.

(b) Non-profit cooperative associations affiliated with the department may by agreement retain fees in excess of the minimum vendor fee for use in funding interpretive programs in park areas.

(c) The vendor's fee will be included in the price of the permit; no vendor fee shall be collected on extra vehicle permits.

(d) Only department staff may issue duplicate permits in the event an original permit is lost, stolen, mutilated or is attached to an automobile upon its sale by the permit-holder.

(5) Daily Access Exceptions: The director may grant exceptions to the day-use permit requirement under the following circumstances:

(a) Emergency vehicles;

(b) Government vehicles on official business;

(c) Business and delivery vehicles on official business;

(d) A person who is currently a registered camper at a park area and clearly displays the overnight rental receipt;

(e) Park concessionaires and their employees;

(f) A person entering the park to engage in specially permitted non-recreation activities;

(g) Park volunteers on duty in the park;

(h) A person with a permit issued by another entity with which the department has a written agreement to honor their passes;

(i) Other persons as designated by the director.

(6) Park Areas Subject to Day-Use Fees: Park areas at which a day use fee shall be charged include: Fort Stevens State Park, Cape Lookout State Park, Nehalem Bay State Park, Honeyman Memorial State Park (West side), Fogarty Creek State Recreation Area, Heceta Head Lighthouse, Shore Acres State Park, Milo McIver State Park, Viento State Park, Benson State Recreation Area, Dabney State Recreation Area, Historic Columbia River Highway State Trail, Mayer State Park, Rooster Rock State Park, Champoege State Heritage Area, Detroit Lake State Recreation Area, Fall Creek State Recreation Site, Silver Falls State Park, Jasper State Recreation Site, Mongold Day-use Area, Willamette Mission State Park, Tou Velle State Recreation Site, The Cove Palisades State Park, Tumalo State Park, Smith Rock State Park, Farewell Bend State Recreation Area.

Stat. Auth.: ORS 390

Stats. Implemented: ORS 390.111 & 390.121

Hist.: 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PRD 4-2005, f. & cert. ef. 5-5-05

736-015-0035

Fee Waivers and Refunds

(1) The director, at the direction of the commission, may waive, reduce or exempt fees established in this division under the following conditions:

(a) A person or group provides in-kind services or materials equal to or greater than the value of the applicable rate, as determined by criteria approved by the director;

(b) Marketing or promotional considerations, including but not limited to special events and commercial filming, that promote the use of park areas and Oregon tourism;

(c) Traditional tribal activities in accordance with policy adopted by the Commission;

(d) Reduced service levels at a park, campsite or other facility as determined by the Park Manager.

(2) Reservation Facility Deposit Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The facility deposit fee is waived for all persons with reservations commencing on State Parks Day (first Saturday of June). All other fees apply.

(b) The facility deposit fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present with the foster children. All other fees apply.

(c) The facility deposit fee is waived for disabled veterans or active duty military personnel on leave as provided in ORS 390.124 for reservations commencing on Memorial Day (the last Monday in May), Independence Day (July 4th) or Veterans Day (November 11th). All other fees apply.

(d) The person making the reservation must pay the \$6 non-refundable transaction fee at the time the reservation is made. This fee is not included in the fee waiver.

(e) Reservations made on the Internet are not eligible for fee waivers.

(3) Overnight Rental Fee Waivers for individual primitive, tent, electric or full hook-up campsites only:

(a) The overnight rental fee is waived for all persons on the night of State Parks Day (first Saturday of June). All other fees apply.

(b) The overnight rental fee is waived for foster families as defined in OAR 736-015-0005. The fee waiver is limited to the first two campsites and an adult care provider must be present. All other fees apply.

(c) The overnight rental fee is waived for disabled veterans or active duty military personnel on leave as provided in ORS 390.124 for the nights of Memorial Day (the last Monday in May), Independence Day (July 4th) or Veterans Day (November 11th). All other fees apply.

(d) The director may waive the overnight rental fee for volunteer hosts traveling to an assignment at a park area.

(4) Day Use Parking Fee Waivers

(a) The day use parking fee is waived for all persons on State Parks Day (first Saturday of June).

(b) The day use parking fee is waived for disabled veterans or active duty military personnel on leave as provided in ORS 390.124 for the days of Memorial Day (the last Monday in May), Independence Day (July 4th) or Veterans Day (November 11th).

(c) Only department staff may issue a free 12-month day use parking permit to a foster family, as defined in OAR 736-015-0005, if the foster care provider has a valid Certificate of Approval to Provide Foster Care in Oregon issued by the Oregon Department of Human Services. The permit shall be valid for 12 months or until the expiration date of the Certificate of Approval to Provide Foster Care, whichever date is sooner.

(d) All other fees apply.

(5) A person may request a refund under the following circumstances.

(a) Reservations Northwest may refund a reservation fee when the department has made a reservation error.

(b) Reservations Northwest may refund a facility deposit and may waive the cancellation/change rules when requested by the person due to the following emergency situations:

(A) Emergency vehicle repair created a late arrival or complete reservation cancellation;

(B) A medical emergency created a late arrival or complete reservation cancellation; or

(C) Acts of Nature that create dangerous travel conditions.

(c) The director or his/her designee may approve a refund under other special circumstances.

(d) All requests for refunds listed above must be sent in writing to Reservations Northwest via email, fax or surface mail to be considered for a refund.

(e) The department will issue refunds for specific site or park area closures and no written request is required.

(f) The park manager may only issue a refund at the park due to the person leaving earlier than expected, and while the person is present and has signed for the refund. Once the person has left the park, refund requests must be sent to Reservations Northwest for processing.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 5-1979, f. & ef. 2-9-79; 1 OTC 22-1979 (Temp), f. & ef. 9-24-79; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 7-2002, f. & cert. ef. 7-1-02; PRD 6-2003, f. 10-3-03 cert. ef. 11-1-03; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0120, PRD 4-2005, f. & cert. ef. 5-5-05

ADMINISTRATIVE RULES

736-015-0040

Miscellaneous Rentals and Products

- (1) Firewood: Where conditions permit, firewood will be sold.
- (2) Boat Moorage Facilities — \$7 per day per boat: Where boat moorage facilities are provided they may only be reserved with other campsite reservations.
- (3) Showers — \$2 per person: Charged where showers are available to non-campers in a campground.
- (4) Horse Camping Area
 - (a) Type I: \$16 per day per camper unit.
 - (b) Type II: \$14 per day per camper unit.
 - (c) A camper unit consists of a motorhome, trailer, tent or camper.
- (5) Group Camps: \$60 per group area per night. Small group areas are available in some park areas and are designed to accommodate approximately 25 people. Water and toilet facilities are provided nearby, but shower facilities may be some distance away.

Stat. Auth.: ORS 390.124

Stats. Implemented: ORS 390.111, 390.121, 390.124

Hist.: 1 OTC 17, f. 12-20-73; 1 OTC 56(Temp), f. & ef. 4-4-75; 1 OTC 59, f. 8-1-75, ef. 8-25-75; 1 OTC 74, f. & ef. 4-30-76; 1 OTC 82, f. 5-11-77, ef. 5-14-77; 1 OTC 2-1980, f. & ef. 1-4-80; PR 9-1981, f. & ef. 4-6-81; PR 11-1986, f. & ef. 7-9-86; PR 1-1988, f. & cert. ef. 3-25-88; PR 1-1990, f. & cert. ef. 5-14-90; PR 4-1991, f. 4-30-91, cert. ef. 5-13-91; PR 3-1996, f. & cert. ef. 5-13-96; PRD 8-2004, f. & cert. ef. 6-3-04; Renumbered from 736-010-0125, PRD 4-2005, f. & cert. ef. 5-5-05

**Real Estate Agency
Chapter 863**

Adm. Order No.: REA 1-2005

Filed with Sec. of State: 5-5-2005

Certified to be Effective: 5-6-05

Notice Publication Date: 4-1-05

Rules Adopted: 863-015-0061, 863-015-0062, 863-015-0076

Rules Amended: 863-010-0610, 863-010-0640, 863-015-0015, 863-015-0020, 863-015-0030, 863-015-0035, 863-015-0045, 863-015-0050, 863-015-0060, 863-015-0065, 863-015-0075, 863-015-0080, 863-015-0125, 863-015-0175, 863-015-0195, 863-015-0215, 863-015-0260, 863-025-0015, 863-025-0020, 863-025-0025, 863-025-0030, 863-025-0035, 863-025-0040, 863-025-0045, 863-025-0050, 863-025-0055, 863-025-0070

Subject: The proposed rule changes include three new rules: defining affiliated and subsidiary organizations (OAR 863-015-0061), requiring that a current mailing address be maintained at the Agency (OAR 863-015-0062), and allowing facsimile signatures on licensing documents (OAR 863-015-0076). OAR 863-010-0610, OAR 863-010-0640 and OAR 863-015-0015 - OAR 863-015-0080 were amended with minor "housekeeping" changes - clarifying license status effective dates and fixing inconsistencies. These amendments correct errors, duplication, references, and unnecessary verbiage, without significantly altering the meaning of the rules. The proposed rule revisions also include a change to OAR 863-015-0125 (Advertising) to streamline that rule. OAR 863-015-0175 (Report of Litigation Involving Licensees) was amended to include other administrative and Oregon state Bar proceedings in the reporting requirements. OAR 863-015-0195 (Licensed Personal Assistants) was amended as provided by 2001's Senate Bill 446. OAR 863-015-0215 (Disclosure Pamphlet) was amended to conform to statutory requirements. OAR 863-015-0260 (Records Retention) was amended changing the requirement of maintaining records at the broker's office from two years to six years. However, exception language is provided.

Rules Coordinator: Brian DeMarco—(503) 378-4170, ext. 237

863-010-0610

Application for Licensing

(1) Prior to being issued a real estate marketing organization license, a real estate marketing organization shall file with the Real Estate Commissioner, on a form provided by the Real Estate Commissioner or otherwise in written form, the following information:

- (a) The name of the organization and any and all names under which the organization will engage in real estate marketing activity;
- (b) The address and telephone number of the main office of the organization and the address or addresses and telephone numbers of all locations at which the organization will engage in real estate marketing activity;

(c) The names and addresses of all owners of the real estate marketing organization and the percentage of ownership for each owner if it is 10% or greater;

(d) If the organization is a partnership, L.L.C. or corporation, the names and addresses of the members and/or officers;

(e) The names of all on-site managers acting on behalf of the real estate marketing organization; and

(f) The name and address of all land developments or other clients for whom real estate marketing will be conducted; and

(g) The executed independent contractor agreements for any telemarketing independent contractor employees.

(2) The following information shall be provided for each and every principal person of the organization:

(a) Have you ever made application for, or ever been issued a real estate license in the State of Oregon? If yes, provide license type and date of application;

(b) Have you ever held a license or registration in this or any other state or in a foreign country to engage in any regulated occupation, trade or profession? If so, identify each such license or registration, state whether it is current and in what state or foreign country;

(c) Have you ever used any name other than the one herein given, either initials, surname, maiden name or alias? If so, please list;

(d) Are you the subject of any current investigation, administrative sanction proceeding, hearing, trial or similar action in progress at this time by any agency that has granted you a license or registration to engage in a regulated occupation, trade or profession? If so, explain and submit copies of documentation that describes the charges against you;

(e) Have you or any partnership or corporation in which you were a participant ever been reprimanded, fined, had any license or registration suspended or revoked, surrendered or resigned the license or registration, or in any way been sanctioned or penalized by the agency issuing the license or registration? If so, explain fully and submit a copy of the final order of the agency imposing or accepting the action taken;

(f) Have you ever entered a plea of nolo contendere, or been found guilty of, or been convicted of a felony or misdemeanor, or other criminal offense or offenses? Are you now awaiting trial or sentencing in any criminal proceeding? If so, explain fully and submit a copy of all legal documentation describing the charges and sanctions imposed for any and all offenses.

(3) In addition to the information set forth in sections (1) and (2) of this rule, the real estate organization shall submit the following with its license application:

(a) A full and complete list of the true names of all real estate marketing employees whom it will be employing at the time of license issuance;

(b) One completed fingerprint card for each principal person of the real estate marketing organization;

(c) Documentation to satisfy the bonding requirements of ORS 696.606(3) including, but not limited to, completion of the Agency's Bond form or Assignment of Security form and any supporting documentation required by the Real Estate Commissioner; and

(d) If the real estate marketing organization is a nonresident real estate marketing organization, a completed and executed irrevocable Consent to Service form; and

(e) The appropriate fee required by OAR 863-010-0640; and

(f) Any other information the Real Estate Commissioner may determine is necessary.

(4) The documentation providing the information required by sections (1), (2), and (3) of this rule shall be accompanied by the following verification executed by the owner of a sole proprietorship, the partners of a partnership or an officer of a corporation: "I acknowledge that the information contained in this application for a real estate marketing organization license is true, correct, and complete to the best of my knowledge."

(5) Notification of any changes in the information required by sections (1), (2) and (3) of this rule must be filed immediately with the Real Estate Commissioner.

Stat. Auth.: Section 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 4-1997, f. 11-24-97, cert. ef. 12-1-97; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-010-0640 Fees

The following fees shall apply to filings made pursuant to Chapter 217, Oregon Laws 1995:

ADMINISTRATIVE RULES

(1) Issuance or renewal of a real estate marketing organization license: \$500.00;

(2) Filing of change of information required by OAR 863-010-0610(5): \$75.00; and

(3) Processing of each fingerprint card and criminal history check: \$40.00.

Stat. Auth.: Sec. 4(1), Ch. 217, OL 1995

Stats. Implemented: ORS 696.606

Hist.: REA 1-1995(Temp), f. & cert. ef. 6-5-95; REA 2-1995, f. 11-27-95, cert. ef. 12-3-95; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0015

Application; Background Check Application and Fingerprint Cards

(1) Applicants for real estate broker, principal real estate broker or real estate property manager licenses shall submit to a background check, except applicants who are currently licensed as a real estate broker, principal real estate broker or real estate property manager or who are eligible for renewal of such licenses. The background check application shall be made in writing on a form prescribed by the Commissioner with all information provided by the applicant and verified by the applicant.

(2) The background check application shall include, but is not limited to, the following information:

(a) The name, residence address and telephone number for the applicant;

(b) The date and place of birth of the applicant;

(c) The Social Security Number of the applicant ;

(d) Whether the applicant has ever been convicted of or is under arrest, investigation or indictment for a felony or misdemeanor; and

(e) Whether the applicant has ever been refused a real estate license or any other occupational or professional license in any other state or country, or whether any real estate license or other occupational or professional license held by the applicant has ever been revoked or suspended or the licensee fined or reprimanded; and

(f) Any other information considered necessary by the Commissioner to evaluate the applicant's trustworthiness and competency to engage in professional real estate activity in a manner that protects the public interest.

(3) As part of any application submitted under section (2) of this rule, the applicant shall submit one completed fingerprint card on the form prescribed by the Oregon State Police and FBI and an additional fee sufficient to recover the costs of processing the applicant's fingerprint information and securing any criminal offender information pertaining to the applicant.

(4) The background check application, fingerprint card and processing fee shall be submitted to the Agency prior to issuance of a license.

(5) As provided in ORS 181.540, all fingerprint cards, photographs, records, reports and criminal offender information obtained or compiled by the Agency are confidential and exempt from public inspection. The Commissioner shall keep such information segregated from other information on the applicant or licensee and maintain such information in a secure place.

(6) If the information developed by the Agency on an applicant indicates that additional information should be obtained from the applicant, it will be the duty of the applicant, upon notice and request by the Agency, to provide the requested information in order to complete the application. Failure to comply may result in a determination that the application is incomplete which will result in termination of the application.

(7) An applicant who has otherwise qualified for licensing, may not be considered for licensing as a real estate broker, principal real estate broker, or property manager until the background check process and review has been completed including but not limited to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. If an individual who has had a successfully completed background check process and review does not successfully complete the remaining portions of the entire licensing application process within twelve months from the date of the successfully completed background check process and review, the successfully completed background check process and review is no longer valid.

(8) An applicant for a license pursuant to OAR 863-015-0080(2) may be issued a license following submission of a background check application and fingerprint card and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thur 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0020

Licensing; Examinations

(1) All applicants for a real estate broker's license shall be required to pass a basic written real estate examination to be conducted by the Real Estate Board. The examination shall include subject matter determined by the Board and published in the Agency's *Real Estate License and Examination Information booklet*.

(2) Those applicants licensed as salespersons as of June 30, 2002 shall be required to pass a written real estate examination to be conducted by the Real Estate Board, after July 1, 2002, to be licensed as a principal real estate broker or to engage in professional real estate activity as a sole practitioner. The examination shall include subject matter determined by the Board and published in the Agency's Real Estate License and Examination Information booklet.

(3) All applicants for a real estate property manager's license shall be required to pass a written property management examination to be conducted by the Real Estate Board. The examination shall include subject matter determined by the Board and published in the Agency's Real Estate License and Examination Information booklet.

(4) To be considered eligible to sit for a licensing examination, the applicant shall apply for the examination on a form prescribed by the Commissioner. The completed application form shall be filed with the Agency on or before the fifth day of the month in which the examination is scheduled. The examination application fee prescribed in ORS 696.270 shall accompany every application for a licensing examination.

(5) An applicant may be scheduled for the requested examination even if the Agency has not completed the processing of the applicant's fingerprint card, has not received and reviewed all the criminal offender information on the applicant, or has not received documentation that all required education has been completed by the applicant. However, an applicant may not be considered for licensing until the Agency has completed such processing and review.

(6) The Real Estate Board shall hold licensing examinations at such times and places as it may determine, except that the board shall hold the examinations no less frequently than every 120 days and shall hold not fewer than four examinations in each calendar year.

(7) An applicant who fails to appear for a scheduled examination, who fails to pass an examination or who changes an examination date after the scheduling deadline is not entitled to the return of any examination fees previously paid.

(8) If any individual who has completed successfully both the national portion and the state-specific portion of the examination for any real estate license category does not become licensed in that category within one year from the date of the examination, the individual is no longer eligible for the license on the basis of the examination. In order to again qualify, the individual must resubmit to the entire examination. If any individual who has successfully completed one portion of a license examination does not successfully complete the remaining portion within twelve months from the date of the examination of the completed portion, the successfully completed portion of the examination is no longer valid.

(9) The successful passing of the national portion of a broker examination taken in another state may be accepted by the board in lieu of the national portion of the examination required in this rule, under the following circumstances:

(a) The broker exam was taken since November 1, 1973 and the license issued as a result of that examination has not been expired for more than one year; or

(b) The broker exam was taken within the 12 months prior to the date the application and required forms and fees are received in the Agency's office.

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

Stat. Auth.: ORS 696.385, 696.425 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04, cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0030

Licensing; Issuance, Terms, Form and Display

(1) Upon satisfactorily passing the examination and upon complying with all other applicable provisions of law and conditions of ORS 696.022 and OAR 863-015-0005 to 863-015-0060, the Commissioner shall grant a license to the successful applicant. The applicant, upon being granted the license, is authorized to conduct the business of a real estate broker, principal real estate broker or real estate property manager, as the case may be, between the issue date of the license and the expiration date of the license, unless the license is inactive or is revoked, surrendered or suspended. No more than one license shall be issued to any licensee at any one time.

ADMINISTRATIVE RULES

(2) A new license or renewal issued on or after July 1, 2002, shall be for the term of not more than 24 months plus the number of days between the actual license issuance date or renewal date and the end of the month of the birth date of the licensee and expires at the end of the licensee's birth month.

(3) The transfer of a license from one principal broker to another principal broker or the change in license is effective for licensing purposes on the first business day after all required forms and fees are received in the Agency's office.

(4) The license shall show the name of the licensee, the name in which the licensee conducts business or the registered business name, and the business address. Each license shall have imprinted thereon the seal of the Real Estate Agency and shall contain such other matter as shall be prescribed by the Commissioner.

(5) Each license shall be available for inspection in the licensee's principal place of business. Principal real estate brokers shall make available for inspection in the principal real estate broker's principal place of business the licenses of the real estate licensees who are associated with the principal real estate broker or in the branch office location for real estate licensees who are working at a branch office location.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0035

Licensing; Real Estate Broker

(1) To be eligible for issuance of a real estate broker's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the application requirements of OAR 863-015-010 and 863-015-015;

(d) Successfully complete the licensing examination prescribed by the Commissioner under OAR 863-015-0020;

(e) Pay the licensing fees required under ORS 696.270; and

(f) Demonstrate satisfactory evidence of competence in and shall have successfully completed the required courses of study for real estate broker licensing as prescribed by the Commissioner.

(2) If the qualifications of an applicant for a real estate broker's license are based wholly or partially upon an active real estate license held in another state, the applicant shall furnish with the application a certification of active licensing from the licensing agency of the other state.

(3) A temporary associate broker licensee qualified under the provisions of Sec. 2, subsection(5), Chapter 300 Oregon Laws 2001 shall successfully complete the Associate Broker Transition Course (the "ABTC") prior to June 30, 2005. Proof of successful completion shall be received by the Agency no later than July 15, 2005. Failure to comply with this subsection shall result in cancellation of the license through administrative action. At the Commissioner's discretion, the Commissioner may vacate an administrative action for failure to comply with this subsection, if a licensee who successfully completed the course prior to June 30, 2005, submits the proof of completion before the Commissioner issues a final order.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0045

Licensing; Property Manager

(1) To be eligible for issuance of a real estate property manager's license, an individual shall:

(a) Be capable of entering into lawful contracts;

(b) Be trustworthy and competent to engage in professional real estate activity to safeguard the interests of the public;

(c) Furnish proof of compliance with the requirements of OAR 863-015-010 and 863-015-0015;

(d) Successfully complete the licensing examination prescribed by the Commissioner under OAR 863-015-0020;

(e) Pay the licensing fees required under ORS 696.270; and

(f) Demonstrate satisfactory evidence of competence in and shall have successfully completed the course of study for real estate property manager licensing as prescribed by the Commissioner.

(2) A real estate property manager's license may not be issued to an individual holding an outstanding real estate license unless the individual first surrenders all rights to the outstanding real estate license.

(3) An individual licensed as a real estate property manager may engage only in real estate property management activity. The individual may not offer to, negotiate, attempt to, or engage in the sale, purchase, lease-option, appraisal or exchange of real estate for another individual for compensation. The individual may not charge, pay, receive or accept a referral fee, finder's fee or compensation from or share in a commission paid to a real estate broker for any activity involving the sale, purchase, lease-option, appraisal or exchange of real estate. However, the individual may charge, pay, receive and accept a referral fee or finder's fee from or to a real estate broker or another real estate property manager for finding or referring an owner, renter or lessee in real estate property management activity.

(4) A real estate property manager licensed as a sole practitioner in the individual's own name or under a business name registered with the Commissioner, is responsible for all property management activity conducted under the property manager's license and for the actions of the property manager's nonlicensed property management employees. A licensed real estate property manager may not authorize an unlicensed individual to supervise that property manager's licensed activity in the manager's absence. Except as provided for in OAR 863-015-0085(1), a property manager may not authorize another real estate licensee to supervise that property manager's licensed activity in the property manager's absence.

(5) A real estate property manager may be associated with another real estate property manager in property management activity, if the property manager applicant submits, as part of the application for licensing, an agreement that the applicant will engage in property management activity only as the agent of another real estate property manager with whom the applicant intends to be associated. The applicant and the real estate property manager with whom the applicant will be associated shall sign the agreement.

(6) A real estate property manager may be associated with a principal real estate broker to engage in property management activity on behalf of the principal real estate broker and under the supervision of that principal real estate broker. However, a principal real estate broker may not authorize a real estate property manager licensee to act in the broker's absence under OAR 863-015-0085.

Stat. Auth.: ORS 696.385 & 183.335

Stat. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0050

Licensing; Renewal

(1) Each real estate broker's license, principal real estate broker's license and real estate property manager's license may be renewed by the Commissioner upon payment of the renewal fee specified in ORS 696.270 and completion of the renewal application form provided by the Commissioner.

(2) If a licensee fails to renew the licensee's license in the manner set forth in section (1) on or before the expiration date of the license, the license expires. Following such expiration and for a period of one calendar year following such expiration the licensee may renew the license late by paying a late fee in addition to the requirements for renewal in section (1). However, between the day following the expiration date of the license and the effective date of the late renewal of the license, the licensee is considered expired and the licensee may not engage in any professional real estate activity. Any such activity during this time period is unlawful and subject to sanction by the Commissioner under ORS 696.301.

(3) Any real estate licensee whose license has not been renewed within one year from the expiration date of such license shall not be eligible for renewal of such license. In order for former licensee to be relicensed, the former licensee shall be considered an original applicant and shall apply, meet license qualifications, and be examined as prescribed for other original applicants under ORS chapter 696 and OAR chapter 863.

(4) To reactivate a license that has been renewed as an inactive license, 30 hours of continuing education are required during the preceding two license years. Only inactive licenses may be renewed on inactive status without completion of continuing education.

(5) The renewal or reactivation of a license under subsections (1) through (4) is effective for licensing purposes on the first business day after all required forms and fees are received in the Agency's office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

ADMINISTRATIVE RULES

863-015-0060

Licensing; Limited Licenses

(1) If the Commissioner issues a limited license, the limited license issued may be limited:

- (a) By term;
- (b) To serve as the agent of a particular principal real estate broker, if a real estate broker; or
- (c) By conditions to be observed in the exercise of the privileges granted.

(2) A limited license issued under sections (1) and (2) does not confer any property right in the privileges to be exercised thereunder, and the holder of a limited license may not have the right to renewal of such license. A limited license may be suspended or revoked, or the Commissioner, on the grounds set out in ORS 696.301, may reprimand the licensee.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0061

Affiliated and Subsidiary Organizations

(1) Affiliated organizations are two or more organizations whose controlling ownership interests are owned by the same licensee, licensees, entity or entities.

(2) A subsidiary organization is one in which the majority of the voting stock or controlling ownership interest is owned by another organization.

(3) Affiliated or subsidiary business organizations may use the same principal broker, provided that proof is submitted satisfactory to the commissioner that the principal real estate broker or brokers involved actually manages and controls each affiliated and subsidiary organization.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0062

Mailing Address; Address Change; Service of Notice

(1) Each real estate licensee shall maintain on file with the agency a current mailing address. The agency shall send all forms of written communication, including notices, to the current mailing address.

(2) Each real estate licensee shall notify the agency of a change in current mailing address. Change of address notification must be in writing within 10 calendar days from the change of address. A forwarding address shall be effective as a "current mailing address" when the agency receives notice of the forwarding address by the United States Postal Service.

(3) Notice by mail, whether registered, certified or regular, to the real estate licensee's current mailing address on file with the agency shall constitute service.

(4) Subsections (1) through (3) of this section apply regardless of license status including, but not limited to all licenses on active, inactive, expired and suspended status.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0065

Return of License; Inactive License

(1) Under ORS 696.221, an active real estate license remains outstanding and on active status until received by the Agency. Except as provided in section (2) of this rule, the principal real estate broker with whom the licensee is associated, remains responsible for the professional real estate activity of the licensee until the licensee's real estate license is received in the Agency's office. If a principal real estate broker voluntarily gives the license to the individual named in the license to return the license to the Agency's office or for any other purpose, the principal real estate broker remains responsible for any subsequent professional real estate activity of the licensee until the license is received in the Agency's office.

(2) If a real estate license has been lost or if the individual named in the license has removed the license from the principal real estate broker's possession without permission from the principal real estate broker, the principal real estate broker may terminate the relationship with the licensee by certifying in writing to the Commissioner that the license has been lost or has been removed without authority. The certification is effective for licensing purposes on the date the certification is received in the Agency's office.

(3) Upon receipt by the Commissioner of the returned license, the license is placed on inactive status. For a period of thirty calendar days following such receipt the licensee may reactivate with the same principal real estate broker, become associated with another principal real estate broker

or, if qualified, become licensed as a sole practitioner real estate broker or as a principal real estate broker. During such 30-day period, the licensee may reactivate the license by completing the forms prepared by the Commissioner and paying the transfer fee specified in ORS 696.270. After the 30-day period has elapsed, the license may only be reactivated subject to subsection (5)(b) below.

(4) When a real estate license is returned to the Commissioner for any reason, the license is held by the Commissioner as an inactive real estate license. While the licensee's license is on inactive status with the Commissioner, the licensee may not engage in any professional real estate activity.

(5) Inactive licenses may be:

(a) Renewed upon payment to the Commissioner of the renewal fee specified in ORS 696.270; or

(b) Reactivated upon application for reactivation and payment to the Commissioner of the fee specified in ORS 696.270. The inactive renewal of a license and reactivation of the same license within 60 days shall be considered an active renewal for purposes of this subsection; or

(c) Revoked or suspended by the Commissioner for reasons on which the Commissioner would have been authorized to revoke or suspend the licenses if they were active.

(6) The examination required to reactivate a license under ORS 696.235(2)(b) may be taken in the Agency's office during business hours by appointment. Reactivation examinations may also be taken on the same day license examinations are administered following the same procedures required of license examination applicants described in OAR 863-015-0020.

(7) The reactivation of a license under subsections (3) through (5) is effective for licensing purposes on the first business day after all required forms and fees are received in the Agency's office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-1991, f. & cert. ef. 11-4-91; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0081; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0075

Reissuance of Suspended License

(1) An unexpired real estate license that has been suspended by order of the Commissioner may be reissued upon request of the licensee and payment of the required fee within 30 days after the close of the suspension period. If the licensee fails to request reissuance of the license within the 30-day period, the license becomes inactive and may be reactivated only pursuant to OAR 863-015-0065. If the license has otherwise expired prior to the request for reissuance, the license may be renewed within the 30-day period only pursuant to OAR 863-015-0050.

(2) The reissuance of a license under subsection (1) is effective for licensing purposes on the first business day after all required forms and fees are received in the Agency's office.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REC 1-1981, f. 10-30-81, ef. 11-1-81; REC 5-1984, f. 6-18-84, ef. 7-1-84; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0086; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0076

Application; Signature Requirements

(1) Subject to ORS 84.001 to 84.061, the Agency may accept any electronic or facsimile signature created, generated, sent, communicated, received or stored regarding licensing documents including, but not limited to, Background Check Applications, Examination Applications, License Applications, License Change forms and License Surrender Forms.

(2) The Agency may require submission of an original signature on any document, at the Commissioner's discretion.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020 & 696.022

Hist.: REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0080

Nonresident License Recognition

(1) As used in ORS 696.265 and this rule, unless the context requires otherwise:

(a) "Nonresident real estate broker" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity and whose license authorizes that individual to employ, engage or otherwise supervise other real estate brokers or salespersons.

ADMINISTRATIVE RULES

(b) "Nonresident real estate salesperson" means an individual residing in another state or country who is licensed by that state or country to transact professional real estate activity.

(c) "Nonresident licensee" means either a nonresident real estate broker or a nonresident real estate salesperson.

(d) "State or country of residence" means, presumptively, the state or country where an individual's resident license is located.

(2) Nonresident License Recognition. An individual who is not a resident of Oregon, is actively engaged in professional real estate activity in his or her state or country of residence and has been duly licensed by that state or regulatory agency within that country, may be issued an Oregon nonresident license if:

(a) The state or country of residence of the applicant allows an Oregon real estate broker to be licensed in that state or country under terms and conditions similar to those prescribed in ORS 696.255 and 696.265; and

(b) The state or country of residence of the applicant is capable of assisting and does assist the Commissioner in the Commissioner's review of real estate transactions and management of rental real estate for enforcement to protect Oregon consumers affected by the professional real estate activity of nonresident licensees.

(3) An applicant for a nonresident license must provide fingerprints and criminal offender information in the same manner as required of a resident licensee under ORS 696.022(5)(b). The nonresident license application must be accompanied by a background check application, fingerprint card and processing fees as prescribed by OAR 863-015-0015. The applicant must furnish with the nonresident license application proof that the applicant holds an active and valid license issued by the state or country of residence.

(4) An applicant for a license under subsection (2) may be issued a license following submission of a background check application and fingerprint cards and prior to receipt by the Agency of criminal offender information from the Oregon State Police, other regulatory or law enforcement agencies, and the FBI. Such license shall be subject to successful completion of the background check process and review.

(5) An applicant for a nonresident license must sign and file with the Real Estate Agency an affidavit stating that the applicant has reviewed and is familiar with the Oregon Real Estate License Law and the rules and regulations of the Agency and agrees to be bound by those laws, rules and regulations.

(6) For a nonresident real estate salesperson who is a resident of a state requiring salespersons to work under licensed real estate brokers, the license issued by the Real Estate Agency must contain the business name and business address of the broker under whose license the salesperson works. The license issued to such a nonresident real estate salesperson will be mailed to the broker at the broker's business address.

(7) A nonresident real estate licensee who deposits or maintains funds, whether in Oregon or in the state or country of residence, shall assure that trust funds are deposited and maintained in client trust accounts in accordance with ORS 696.241(2) through (9), 696.243, 696.245 and relevant Oregon Administrative Rules Chapter 863.

(8) Upon request of the Real Estate Agency, nonresident licensees shall produce in the Agency's office any and all records of professional real estate activity conducted in Oregon. The nonresident licensee, by applying for and accepting the nonresident license, authorizes the Real Estate Agency to inspect and examine any transaction escrow records, trust account records, and other records of professional real estate activity, wherever maintained.

(9) With respect to nonresident real estate salespersons who are residents of a state or country requiring salespersons to work under licensed real estate brokers, all advertising (including business signs, business cards, agreements and other documents) used by those salespersons must contain the name and business address of the nonresident real estate broker.

(10) The Commissioner may suspend or revoke, reprimand, deny a license to or refuse to renew a license to a nonresident real estate licensee upon any of the grounds in ORS 696.301, or upon the ground that the state or country of residence has suspended, revoked, denied or refused to renew the person's license, or has limited the license in any way.

(11) Except as otherwise provided in reciprocity agreements entered into pursuant to subsection (12) below, or except as provided at the discretion of the Real Estate Commissioner, the application for nonresident licenses, fees prescribed by statute and rule, the terms of the licenses, the processing of the license application and renewal, the transfer of the licenses, and all other conditions and requirements of licensure shall be as provided for by the Oregon Real Estate License Law.

(12) **Reciprocity Agreements.** The Commissioner may enter into reciprocity agreements with other states or countries where necessary to permit Oregon real estate licensees to obtain licenses in such other states or countries.

(13) The Commissioner may include in such agreements the terms and conditions prescribed in OAR 863-015-0080(2) to (11), and additional terms and conditions at the Commissioner's discretion.

(14) Nonresident licenses granted under reciprocity agreements shall remain in force, unless suspended or revoked by the Commissioner or for failure to pay the biennial renewal fees, only so long as the reciprocity agreement remains in effect between Oregon and the other state or country. In the event the non-resident licensee subsequently becomes a resident of Oregon, such person shall be able to obtain, upon filing of the proper application and other requisite documents together with the applicable fees, the equivalent resident license in Oregon. Application must be made within one year after becoming a resident.

Stat. Auth.: ORS 696.265, 696.385 & 183.335

Stats. Implemented: ORS 696.255 & 696.265

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 4-2003(Temp), f. 12-18-03, cert. ef. 1-1-04 thru 6-29-04; REA 3-2004, f. 4-28-04 cert. ef. 5-3-04; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0125

Advertising

(1) As used in this rule, "advertising" and "advertisement" includes all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication for any purpose related to professional real estate activity, including, without limitation, advertising activity conducted by mail, telephone, the Internet, the World Wide Web, E-mail, electronic bulletin board or other similar electronic common carrier systems, business cards, signs, billboards and telephonic greetings or answering machine messages.

(2) All advertising must be done in the principal real estate broker's, sole practitioner real estate broker's or property manager's licensed or registered business name.

(3) If a real estate broker or property manager is associated with a principal real estate broker, the principal real estate broker shall be responsible for all advertising. Pursuant to written company policy, a principal real estate broker may delegate direct supervisory authority over advertising originating in a branch office to the branch office manager but the principal real estate broker shall remain responsible for all advertising done under the broker's real estate license.

(4) A licensee may advertise property owned by the licensee employee without complying with this rule if the property is not listed for sale or lease with the licensee's principal real estate broker.

(5) Advertising by a licensee, in process and in substance:

(a) Shall be truthful and not deceptive or misleading;

(b) Shall identify the licensee as a real estate broker or property manager;

(c) Shall not imply that the real estate broker or property manager associated with the principal real estate broker is the person responsible for the operation of the real estate brokerage;

(d) Shall not use any words that state or imply that he or she is qualified or has a level of expertise other than as currently maintained by the licensee; and

(e) Shall be done only with the written permission of the owner or owner(s)' authorized agent.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.020, 696.200 & 696.301(1), (6)

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0175

Report of Litigation Involving Licensees

(1) A real estate licensee shall notify the Commissioner of any adverse decision, judgment or award resulting from any suit or action or arbitration proceeding, civil or criminal, any administrative or Oregon State Bar proceeding in which the licensee was named as a party and against whom allegations concerning any conduct or professional real estate activity on the licensee's own account or on behalf of others is asserted including but not limited to those activities which reflect adversely on the trustworthy and competent requirements of ORS Chapter 696 and OAR chapter 863. Any administrative proceeding determination of the Oregon Real Estate Agency or any adverse decision, judgment or award or any settlement accepted by the Small Claims Department of any Circuit Court is not subject to the notification requirements of this section.

ADMINISTRATIVE RULES

(2) The notification required by section (1) of this rule shall be in writing and shall include a brief description of the real estate transaction involved, the names of the parties and a copy of the adverse decision, judgment or award and, in the case of a criminal conviction, a copy of the sentencing order. If any such judgment, award or decision is appealed, each subsequent decision of any appellate court is subject to the notification requirements of this section.

(3) The notification required by section (1) of this rule shall be made within twenty days after receipt of written notification of an adverse judgment, award, or decision described in section (1) of this rule. Notification shall be made under this rule whether or not the decision is appealed.

(4) Arbitration proceedings between licensees concerning the resolution of a commission payment dispute are not subject to the notification required by section (1) of this rule.

Stat. Auth.: ORS 696

Stats. Implemented: ORS 696.301(26), (31)

Hist.: REC 23, f. 7-3-69, ef. 9-1-69; REC 3-1978, f. 6-15-78, ef. 7-1-78; REC 1-1981, f. 10-30-81, ef. 11-1-81; REA 1-1997, f. 4-28-97, cert. ef. 5-5-97; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0120; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0195

Licensed Personal Assistants

(1) A real estate broker who is eligible for a principal broker's license and activates a principal broker's license under OAR 863-015-040 may enter into written agreements with one or more licensed personal assistants under the following conditions:

(a) The real estate broker enters into a written agreement with the principal real estate broker(s) with whom the broker is associated, specifying supervision and control of the licensed personal assistant(s). The written office policies of the real estate business shall specify the supervision and control of licensed personal assistants;

(b) Once the real estate broker obtains a principal real estate broker license, the licensed personal assistants, pursuant to the agreement between the real estate broker and the principal real estate broker, work under the direct supervision and control of the real estate broker; and

(c) Compensation in the form of commissions, salary or otherwise may be made by the principal real estate broker with whom the licensed personal assistant has a personal assistant agreement provided, however, the licensed personal assistant's principal real estate broker has authorized in writing such payments.

(2) A written agreement between a real estate broker and a licensed personal assistant shall include the following:

(a) The name of the real estate business;

(b) The parties to the agreement;

(c) The duration of the agreement and a provision for its termination;

(d) The employment status of the licensed personal assistant;

(e) The name of the principal real estate broker(s) with whom the licensed personal assistant is associated and reference to the written office policies and agreements establishing supervision and control of the licensed personal assistant;

(f) The duties and responsibilities of the licensed personal assistant, including any limitations on their ability to represent clients on behalf of the broker.

(g) The manner and means by which the licensed personal assistant is to be compensated, including reference to any principal real estate broker authorization necessary.

(3) A licensed personal assistant shall, in all instances, have the same agency relationships with clients as the real estate broker with whom they have a licensed personal assistant agreement.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.028

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0215

Initial Agency Disclosure Pamphlet

(1) An agent shall provide a copy of the Initial Agency Disclosure Pamphlet provided for in section (4) of this rule at first contact with each represented party to a real property transaction, including but not limited to contacts in-person, by telephone, over the Internet or World Wide Web, or by electronic mail, electronic bulletin board or a similar electronic method.

(2) An agent need not provide a copy of the Initial Agency Disclosure Pamphlet to a party who has, or may be reasonably assumed to have, already received a copy of the pamphlet from another agent.

(3) "First contact with a represented party" means contact with a person who is represented by a real estate licensee or can reasonably be

assumed from the circumstances to be represented or seeking representation.

(4) The Initial Agency Disclosure Pamphlet shall be printed in substantially the following form: [Form not included. See ED. NOTE.]

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

Stat. Auth.: ORS 696.385, 696.820 & 183.335

Stats. Implemented: ORS 696.805, 696.810 & 696.815

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-015-0260

Records: Records Retention

(1) Real estate brokers shall maintain and store complete and accurate records of professional real estate activity pursuant to ORS 696.280 and as follows:

(a) Records, including any items generated through E-mail or other electronic means, shall be maintained and stored for a period of six years following the date of the creation of the record;

(b) Pursuant to written company policy, real estate brokers associated with a principal real estate broker may maintain and store records of professional real estate activity at the main office of the principal real estate broker, and records of professional real estate activity originating at a branch office may be maintained and stored at either that branch office or at the main office of the principal real estate broker.

(c) A real estate broker may store records of professional real estate activity in a single location other than the broker's office, main office of the principal real estate broker or branch office, in which the records are readily available for inspection, if the real estate broker first:

(A) Notifies the Commissioner in writing of the intended removal of such records, includes the address of the new location for such records, and

(B) Gives written authorization to the Commissioner to inspect such records at the new location. Such authorization shall include the name of any necessary contact and the means of gaining access to the records for an inspection. The real estate broker shall notify the Commissioner of any change in the contact or means of access within ten days after such change occurs.

(2) A real estate broker shall maintain at the broker's office a means of viewing copies of documents or records. A real estate broker shall provide, at the real estate broker's expense, a paper copy of any document or record requested by the Agency.

(3) A real estate broker or property manager may use electronic image storage media to retain and store copies of all listings, deposit receipts, canceled checks, client trust account records and other documents executed by him or her or obtained by him or her in connection with any professional real estate activity transaction, when the following requirements are satisfied:

(a) The electronic image storage shall be nonerasable "write once, read many" ("WORM") that does not allow changes to the stored document or record.

(b) The stored document or record is made or preserved as part of and in the regular course of business.

(c) The original record from which the stored document or record was copied was made or prepared by the broker or property manager or the broker's or property manager's employees at or near the time of the act, condition or event reflected in the record.

(d) The custodian of the record is able to identify the stored document or record, the mode of its preparation, and the mode of storing it on the electronic image storage.

(e) The electronic image storage media contains a reliable indexing system that provides ready access to a desired document or record, appropriate quality control of the storage process to ensure the quality of imaged documents or records, and date ordered arrangement of stored documents or records to assure a consistent and logical flow of paperwork to preclude unnecessary search time.

(f) At least once each month, the real estate broker shall back up any data that is stored in the computerized system necessary to produce the records. The back up data shall be retained for no less than 60 days and shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

Stat. Auth.: ORS 696.385 & 183.335

Stats. Implemented: ORS 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0015

Agency Relationships; Disclosures; Written Company Policy

(1) A property manager owes an owner the following affirmative duties:

ADMINISTRATIVE RULES

- (a) To exercise reasonable care and diligence;
- (b) To deal honestly and in good faith;
- (c) To account in a timely manner for funds received or disbursed on behalf of the owner;
- (d) To be loyal to the owner by not taking action that is adverse or detrimental to the owner's interest;
- (e) To disclose in writing and in a timely manner to the owner any use of employees, or a business, in which the property manager has a pecuniary interest, to perform work on the owner's managed property; and
- (f) Use reasonable efforts to maintain as confidential financial information obtained from, or about, the owner, except under subpoena or court order or as otherwise required by applicable law and except as permitted by the owner, even after the termination of the property management agreement.

(2) Each property manager shall develop and maintain a written company policy. The written company policy shall include:

- (a) Provisions regarding the duties and responsibilities of the property manager, licensees of the property manager and any employees of the property manager;
- (b) Any provisions regarding the written authorizations as allowed under OAR 863-025-0020 or 863-025-0045;
- (c) Provisions to ensure the protection and confidentiality of the owner's financial information;
- (d) Provisions regarding the supervision of the property manager's employees and contractors; and
- (e) Provisions regarding the production and maintenance of all reports, records and documents required under this subsection.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0020

Property Management Agreements

(1) A property manager shall not engage in property management activity for any real estate without a prior, written, dated and signed property management agreement with the owner, or owner's agent, of the real estate. The agreement shall include, but not be limited to, the following:

- (a) The duties and responsibilities of the property manager and the owner of the real estate, including but not limited to the period of the agreement; the method for termination;
- (b) The terms and conditions of the agreement;
- (c) The management fees, rebates, discounts, overrides and any other form of compensation to be received by the property manager for property management activity;
- (d) The disposition of the required records of the property management for the owner after compliance with OAR 863-025-0070;
- (e) The authority and powers given by the owner to the property manager under the agreement;
- (f) The disclosures required pursuant to OAR 863-025-0015(1)(e); and

(g) An Identifying Code.

(2) The property manager shall promptly deliver a legible copy of the fully executed property management agreement to the owner of the real estate described in the agreement.

(3) If a principal real estate broker engaging in property management activity authorizes in writing one of the principal real estate broker's licensees to negotiate and sign a property management agreement with an owner on behalf of the principal real estate broker, the principal real estate broker must review the agreement within seven days after execution of the agreement by the owner for compliance with applicable property management laws and rules. The principal real estate broker shall initial and date the broker's agreement to memorialize the broker's approval and acceptance of the agreement.

(4) Only a property manager or a real estate broker may negotiate and sign a property management agreement made in the course of the property manager's property management activity.

(5) An employee of a property manager acting for the property manager as a resident manager or otherwise, may not negotiate or sign a property management agreement with a property owner.

(6) A copy of a signed, executed property management agreement shall be filed and maintained by the property manager pursuant to ORS 696.280 and OAR 863-025-0035.

(7) If a real estate broker engaging in property management activity for an owner is authorized to represent an owner for the purchase, sale, lease-option or exchange of the real property managed by the broker, the authorization shall be signed and dated by the owner and disclose the com-

pensation to be paid by the owner for that professional real estate activity. The authorization may be part of a property management agreement document but shall be distinguishable from the agreement and shall be signed and dated separately by the owner.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.361 & 696.280

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0025

Property Management Client Trust Account Requirements

(1) A property manager shall open and maintain at least one clients' trust account under ORS 696.241 for the deposit of funds received on behalf of owners of property managed under property management agreements. This account shall be labeled "Clients' Trust Account". A property manager, at his or her discretion, may include additional identifying language. All funds accepted by any property manager by or on behalf of tenants under a property management agreement shall be placed in a clients' trust account. A property manager shall be an authorized signer on each client's trust account utilized in the manager's licensed activity and shall control the receipts and disbursements on each account. Preprinted checks used to disburse funds from a clients' trust account shall be pre-numbered and bear the words "Clients' Trust Account" upon the face of the checks. Checks generated or filled in by a computer in use by the property manager shall be printed on prenumbered check blanks or shall be numbered consecutively as they are generated or filled in by the computer. A property manager shall account for all checks, including but not limited to voided checks, as part of the records maintained by the property manager.

(2) A property manager accepting security deposits on behalf of an owner shall establish a separate clients' trust account labeled "Clients' Trust Account — Security Deposits". A property manager, at its discretion, may include additional identifying language. When the Property Management Agreement and the applicable lease or rental agreement provide that the security deposit shall be transferred to the owner, the funds may be deposited in the Clients' Trust Account for the property (instead of the Clients' Trust Account — Security Deposits), and then disbursed to the owner in the accounting period in which they are received upon availability of funds.

(3) Financial dealings by a property manager under a property management agreement shall comply with the following:

(a) A property manager shall not execute or issue a check from the clients' trust account prior to the existence of a sufficient credit balance to cover the check in the owner's ledger or tenant's ledger account against which the check is executed or issued.

(b) When the computer fills in or generates checks and check copies, all check stock and check copies must be consecutively pre-numbered or, if unnumbered check stock is used, the computer must continually and consecutively number the checks as generated. The account number shall appear in the magnetic coding on the check face to identify the account number for reading by the bank's computerized accounting system.

(c) A property manager may transfer funds between the owners' ledger account of two or more different owners only with a prior written and dated agreement signed by the affected owners who are authorizing the transfer. The agreement shall be separate from the property management agreements of the owners and include the terms of repayment and collection and any interest to be paid by the borrowing owner. The property manager shall have a separate agreement for each transfer between owners. The transfer shall be accomplished by the writing of billings and receipts as evidence of the charging and crediting of the appropriate owners' ledger accounts. The property manager shall give to each owner a separate monthly accounting on the transfer or include the accounting in the regular monthly report to the owner. At the time of the transfer the property manager must enter the transfer information on each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(d) A property manager may only transfer funds between two or more ledger accounts maintained for the same owner with the prior written approval of the owner. The owner's prior approval may be granted as a part of the property management agreement. At the time of the transfer the property manager shall enter the transfer information in each affected owners' ledger account, including but not limited to the amount of the transfer, date of the transfer and the source of the transferred funds;

(e) A property manager shall not withdraw, pay or transfer funds for payment of generally authorized expenses from an owners' ledger account in excess of the actual credit balance of the account. This credit balance shall not include the amount of the tenant's conditionally refundable

ADMINISTRATIVE RULES

deposits being held at the time of the withdrawal, payment or transfer of funds.

(f) If sufficient funds are available, a property manager shall withdraw earned management fees from the appropriate client's trust account at least once each month, unless otherwise provided in the owner's property management agreement. The records journal or register and ledger entries for payment of fees from the client trust account shall include the date, the amount of the management fees withdrawn, the check number, the owner's ledger account number or identifying owner code. Property management fees are considered earned and may be withdrawn when the monthly or other periodic cycle represented by the fees being withdrawn has been completed. The monthly cycle can begin and end on a stipulated date every month, as long as the date is consistent from month to month.

(g) No disbursement from a clients' trust account shall be made by a property manager based upon a wire or electronic transfer deposited into the clients' trust account, until the deposit has been verified by the property manager. The property manager shall arrange with the account depository and other entities for written verification of when funds are received or disbursed by wire or electronic transfer. A property manager shall post receipt and disbursement of funds by wire or electronic transfer in the same manner as other receipts and disbursements;

(h) Upon request by the Commissioner or an authorized representative of the Commissioner, a property manager shall demonstrate that a sufficient credit balance existed in an owner's ledger account at the time of executing or issuing a check on behalf of the owner by producing financial records showing that the disbursement of these funds did not involve the use of any other client's trust funds deposited into a clients' trust account and credited to any other owner's ledger account.

(i) A property manager shall not utilize any form of debit card issued by financial institutions on Client Trust Accounts.

(4) If a property manager maintains a separate clients' trust account for a property management agreement involving one owner only, the property manager may maintain either a receipts and disbursement journal or an owner's ledger, rather than both such journal and ledger.

(5) Reconciliation — Property Management. A property manager shall prepare and reconcile all property management clients' trust accounts at least once each month. Property Managers with more than one property management Client Trust Account shall reconcile all of the property management Client Trust Account as of the same day. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual owners' ledgers shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the property management client trust account. The property manager must date and sign the reconciliation upon its completion.

(6) Reconciliation — Security Deposits. A property manager shall reconcile all tenant security deposit client trust accounts at least once each month. Property Managers with more than one tenant security deposit Client Trust Account shall reconcile all of the tenant security deposit Client Trust Accounts as of the same day. The property manager shall preserve the bank statements and monthly reconciliations and file the bank statements and monthly reconciliations in monthly sequence. The total of the balances of the individual tenant security deposit liabilities shall equal the balance as shown in the check register or record of receipts and disbursements and shall also equal the reconciled bank balance of the security deposit client trust account. The property manager must date and sign the reconciliation upon its' completion.

(7) Reconciliation — Authority. A property manager or principal real estate broker may authorize, in writing, another person to review and approve the reconciliation of the Clients' Trust Account and to sign checks authorizing disbursements from the Clients' Trust Account. In case of such authorization, the property manager or principal real estate broker remains responsible for the Clients' Trust Account. The property manager or principal real estate broker shall produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

(8) Interest Bearing Accounts. Funds received by a property manager may be placed by the property manager in a federally insured interest-bearing client trust bank account, designated as a Client Trust Account, but only with the prior written approval of all parties having an interest in the trust funds. The earnings of such interest-bearing account shall not inure to the benefit of the property manager, unless expressly approved in writing by all parties having an interest in the trust funds before deposit of the trust funds. The written approval necessary to establish an interest-bearing account shall specify to whom and under what circumstances the interest earnings

from the account will accrue and be paid. The property manager's interest in or receipt of any of the interest earnings is not a commingling of trust funds with a licensee's personal funds under ORS 696.301(10). Use of interest-bearing Clients' Trust Accounts for the deposit of funds received under a property management agreement is subject to ORS 696.241(5).

(9) Checks used to disburse funds from a Clients' Trust Account shall comply with OAR 863-025-0025(3)(b) and bear the words "Clients' Trust Account" upon the face thereof. A property manager shall account for all checks, including voided checks, as a part of the records maintained by the property manager.

(10) A property manager shall record the transfer of any funds from a clients trust account by a Clients' Trust Account check or by written proof of transmittal or receipt retained in the property manager's records. The property manager shall record the transfer of other documents by written proof of transmittal or receipt retained in the property manager's records. With the written consent of an owner, a property manager may transfer funds electronically via the Internet or Automated Clearing House (ACH) software from a client's trust account to a bank account maintained by the owner and a property manager may make payments electronically to a vendor's account for expenses relating to the owner's property. If the software program used for the transfer does not automatically update the owner's ledger, the property manager shall manually record the transfer in the owner's ledger. At the time the transfer is made, the property manager shall print and preserve a hard copy of the electronic record of the transfer.

(11) With the written consent of an owner, a property manager may use a bank lockbox process in which the bank collects payments from tenants, creates an electronic record of the transaction and deposits the payments into the appropriate account following the instructions of the property manager. The property manager is responsible for determining that the lockbox process and lockbox software program provide controls adequate to ensure the security of the funds and to provide an accurate accounting for them. For the purposes of this section, the bank will be considered an agent of the property manager. The software program for the lockbox process must permit monthly reconciliations of the accounts into which the deposits are made and printing of daily deposit records for the period of time required for retention of other records.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0030

Tenant Security Deposits

(1) Except as provided in OAR 863-025-0025, all tenants' security deposits received by a property manager shall be deposited and maintained in one or more clients' trust accounts labeled "Clients' Trust Account — Security Deposits". All tenants' security deposits shall be maintained until:

(a) The refund of any deposit to the tenant according to the terms of the tenant's rental or lease agreement or the property management agreement; or

(b) The expenditure of the tenant's security deposit for purposes authorized by the tenant's rental or lease agreement and the applicable property management agreement; or

(c) The forwarding of the tenant's security deposit by the property manager to the owner of the property according to the terms of the tenant's rental or lease agreement and the property management agreement; or

(d) The transfer of the tenant's deposit to another property manager or to an escrow agent upon the termination of the property management agreement, based upon the prior written instructions by the owner to the terminating property manager authorizing the transfer.

(2) If such security deposits are received as part of a larger check containing funds other than security deposits, the property manager may deposit the check into a non-interest bearing clients' trust account of the property manager. However, the portion of the funds constituting security deposits shall be deposited into the "Clients' Trust Account — Security Deposits" account within three (3) banking days after receipt of the check by the property manager.

(3) When a Clients' Trust Account is established for a single property and the Property Management Agreement and the applicable lease or rental agreement provide that the security deposit shall be transferred to the owner, the funds may be deposited in the Clients' Trust Account for the property and then disbursed to the owner in the accounting period in which they are received and upon availability of the funds.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.241, 696.280 & 696.361

ADMINISTRATIVE RULES

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

Stat. Auth.: ORS 183.335 & 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0035

Records; Generally

(1) A property manager shall maintain within this state records of all property management activity. A record of property management activity will be considered complete and adequate if it contains, at least, the following:

(a) A legible copy of an executed Property Management Agreement, and legible copies of all subsequently executed documents pertaining to that Agreement, maintained for each owner which shall comply with all provisions of OAR 863-025-0020.

(b) Client Trust Account records maintained for all funds handled by a property manager on behalf of an owner or owners. The Client Trust Account shall comply with ORS 696.241, OAR 863-025-0010, 863-025-0025 and 863-025-0030.

(c) An Owner's Ledger maintained for each property management agreement. The Owner's Ledger shall comply with OAR 863-025-0055.

(d) A Record of Receipts and Disbursements maintained for each property management agreement. The Record of Receipts and Disbursements shall comply with OAR 863-025-0040.

(e) A legible copy of Tenant Agreements maintained for each property management agreement. Tenant Agreements shall comply with OAR 863-025-0045.

(f) A Tenant's Ledger maintained for each tenant of real property managed by the property manager. A Tenant's Ledger shall comply with all provisions of OAR 863-025-0050.

(g) A record of cash receipts. The record of cash receipts shall comply with OAR 863-025-0060.

(h) Records of the reconciliation of each client's trust account. The record of monthly reconciliations shall comply with OAR 863-025-0025.

(i) A record of deposits. The record of deposits shall comply with OAR 863-025-0065.

(2) When a property manager uses a computerized system for the production and maintenance of records and reports required in the property manager's licensed activity:

(a) The computerized system shall comply with OAR 863-015-0260. At the time of any reconciliation, the property manager shall print out the Record of Receipts and Disbursements, owner and tenant's ledgers and all supporting data. The property manager shall preserve and file such printed documents pursuant to section (3) below.

(b) At least once each month, the property manager shall back up any data that is stored in the computerized system that was not printed out and preserved under subsection (a) of this section. The back up data shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand;

(c) Posting of owner ledgers, record of receipts and disbursements, tenant ledgers and manipulation of information and documents shall be maintained in a format that will readily enable tracing and reconciliation.

(3) A property manager shall maintain and store required records of property management activity as follows:

(a) Legible copies of all agreements, records and supporting data shall be filed and maintained by the property manager in the property manager's licensed business location for a period of six years following the date on which such agreement or document is superseded, is terminated or has expired.

(b) A property manager may store inactive records required to be maintained under OAR 863-025-0020 to 863-025-0065 in a single location other than the property manager's licensed business location if the property manager first:

(A) Notifies the Commissioner in writing of the intended removal of such records from the property manager's licensed business location, including the address of the new location for such records; and

(B) Gives written authorization to the Commissioner to inspect such records at the new location. Such authorization shall include the name of any necessary contact and the means of gaining access to the records for an inspection. The property manager shall notify the Commissioner of any change in the contact or means of access within ten days after such change occurs.

(c) As used in this rule, "inactive records" means:

(A) Materials that were received or created at least two years prior to transfer to off-site storage; and

(B) Agreements that were superseded, terminated or had expired at least two years prior to the transfer to off-site storage.

863-025-0040

Record of Receipts and Disbursements

(1) A property manager shall prepare and maintain, at least monthly, a chronological record of receipts and disbursements or a check register for each client's trust account in which the manager must record each receipt of funds and each disbursement of client trust account funds made by the manager under a property management agreement. If a property manager maintains a separate client's trust account for a property management agreement involving only one owner, the property manager may maintain either a Record of Receipts and Disbursements or an Owner's Ledger.

(2) When there is more than one property in a client trust account, each entry for a receipt or a disbursement shall be identified with the applicable owner's identifying code assigned by the property manager to the corresponding property management agreement with the owner and shall set forth the following information:

(a) Date of deposit;

(b) Amount of deposit and identify from whom deposit received;

(c) Date of each related disbursement;

(d) Check number of each related disbursement;

(e) Amount and identity of payee for each related disbursement;

(f) If applicable, the dates and amounts of interest earned and credited to the account; and

(g) A balance after posting each entry.

(h) A written record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

(3) Upon any activity, the property manager shall post the record of receipts and disbursements or the check register and each owner's ledger account showing all receipts and disbursements made by the property manager in accordance with the property management agreement for an owner since the last posting of the record, register or account.

(4) In maintaining a chronological running balance for each record of receipts and disbursements, the property manager may aggregate receipts and disbursements affecting the balance of the record on a daily basis. The property manager may adjust the balance in the record reflecting the change in the balance from the aggregated individual receipts and disbursements. If the property manager posts the record using an aggregated total of receipts and disbursements, the property manager shall maintain account detail in another report showing the nature and amount of each receipt and disbursement as otherwise required, and make such detail available to the Commissioner or the Commissioner's authorized representatives upon request. The property manager shall preserve the record detail as required records of the property manager's licensed activity.

(5) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the record of receipts and disbursements.

Stat. Auth.: ORS 183.335 & 696.385

Stats. Implemented: ORS 696.280 & 696.361

Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0045

Tenant Agreements

(1) Residential. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the time period required by these rules. Each tenant rental or lease agreement prepared by a property manager for residential real estate shall contain, in addition to and not in lieu of, any applicable requirements of the Residential Landlord and Tenant Act the following:

(a) The licensed name and business address of the property manager and the name and address of the tenant. If a real estate licensee executes the rental or lease agreement on behalf of the licensee's principal real estate broker, the name of the real estate licensee acting for the principal real estate broker in executing the agreement;

(b) The mailing address or unit number of property being rented or leased, the amount and payment conditions of the rental or lease, and the rental or lease term; and

(c) The amount of and the reason for all funds paid by the tenant to the property manager including, but not limited to, funds for rent, conditionally refundable security deposits, and any fees or other charges.

(2) Residential and Non-Residential. The property manager shall file and maintain legible copies of all tenant's rental or lease agreements for the

ADMINISTRATIVE RULES

time period required by these rules. A property manager shall review each tenant's rental or lease agreement generated by the property manager within five days after execution of the agreement by the tenant for compliance with the property management agreement covering the rented or leased property. The property manager shall initial and date the tenant's rental or lease agreement to memorialize the manager's approval and acceptance of the agreement on behalf of the owner, as permitted by the property management agreement. A property manager may authorize in writing another individual who is licensed to or employed by the property manager to review and approve and accept tenants' rental and lease agreements on behalf of the property manager. In case of such authorization, the property manager remains responsible for each tenant's rental and lease agreement approved or accepted by such real estate licensee or employee. The property manager must produce the written authorization at the request of the Commissioner or the Commissioner's authorized representative.

Stat. Auth.: ORS 183.335 & 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0050 Tenant's Ledger

(1) Except as provided in section (3), a property manager shall prepare and maintain at least one tenant's ledger for each tenant or individual from whom the property manager has received any funds under a property management agreement, whether or not the tenant has executed a written rental or lease agreement at the time of the payment of funds to the property manager. A tenant's ledger shall be identified by tenant and the property including, but not limited to, the mailing address of the rental unit or the applicable unit number or designation.

(2) The balances of tenant's security deposits in individual tenant's ledgers shall be used in the monthly reconciliation of the Clients' Trust Account — Security Deposits as described in OAR 863-025-0025.

(3) To record the receipt of funds from prospective tenants who are not tenants at the time of paying the funds to the property manager, who do not pay the funds for a particular rental unit and who do not become tenants after such payment, a property manager shall prepare and maintain a separate tenants' ledger.

(4) The property manager shall post a tenant's ledger with an entry for each receipt of the funds from the tenant and for each disbursement of a tenant's conditionally refundable deposits. Each entry shall contain the amount of the funds received, the amount and designation of any tenant's security deposits received, the date of receipt of the funds and the number of the receipt prepared for cash funds received. Each entry for a disbursement shall contain the date of disbursement, the payee of the check, the check number and the amount of the disbursement;

(5) If a property manager receives a check from a tenant or prospective tenant for rent, tenant's security deposits or fees and the tenancy fails for any reason within three banking days following receipt of the check, the property manager may return the check to the tenant or prospective tenant without first depositing and processing the check through the property manager's client trust account. The property manager shall retain a photocopy of the check and a dated receipt for the check in the required records of property management activity. The property manager shall note the amount of the check, the dates of receipt and return of the check.

Stat. Auth.: ORS 183.335 & 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2003(Temp), f. 2-27-03, cert. ef. 2-28-03 thru 8-27-03; REA 3-2003, f. 7-28-03, cert. ef. 8-1-03; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0055 Owner's Ledger

(1) A property manager shall prepare and maintain at least one separate owner's ledger for each property management agreement, for all monies received and disbursed.

(2) All owner ledgers shall be identified with the same identifying code assigned by the property manager to the corresponding property management agreement with the owner and each entry shall set forth the following information:

- (a) Date of receipt and disbursement of any funds made in accordance with the property management agreement.
- (b) Date of deposit;
- (c) Amount of deposit and identify from whom deposit received
- (d) Date of each related disbursement;
- (e) Check number of each related disbursement;
- (f) Amount and identify of payee for each related disbursement;

(g) If applicable, the dates and amounts of interest earned and credited to the account; and

(h) A balance after posting each entry.

(i) A record of the running daily balance shall be made available to the Commissioner or to the Commissioner's authorized representatives on demand.

(3) A property manager shall report in writing to each owner any change in the owner's ledger. A monthly report, showing all receipts and disbursements for the account of the owner during the prior monthly period, is sufficient under this section. A copy of each such report shall be preserved and filed in the property manager's records of licensed activity. If an annual report contains information not required to be provided by the property manager under these rules, the property manager shall set forth such information separately.

(4) A property manager shall retain all paid bills and receipts explaining the amount of and purpose for the receipt or disbursement entered in the owner's ledger.

Stat. Auth.: ORS 183.335 & 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 1-2002, f. 5-31-02, cert. ef. 7-1-02; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

863-025-0070 Termination, Transfer of Property Management

If a property management agreement is terminated for any reason, the property manager:

(1) Shall terminate the property management activity conducted pursuant to the agreement in the manner provided by the terms of the agreement;

(2) Shall notify the owner and any tenants of the property of the termination;

(3) Shall provide the owner not later than 60 days after the effective date of the termination with any unobligated funds due to the owner under the agreement and not later than 90 days after the effective date of the termination provide the owner with a final accounting of the owners' ledger account, the amount of any obligated funds held in the property manager's clients' trust account under the agreement, a statement of why the obligated funds are being held by the property manager and a statement of when and to whom the obligated funds will be disbursed by the property manager;

(4) May only disburse any unobligated funds to the owner or, with the prior written authorization of the owner, to another property manager designated in writing by the owner;

(5) Shall immediately notify each such tenant for whom the property manager holds a security deposit that the security deposit will be transferred to the owner or to a new property manager and, at the same time, the name of the owner and the name and address of the new property manager to whom these deposits will be transferred;

(6) May not expend any tenants' security deposits for payment of any expenses or fees not otherwise allowed by the tenants' rental or lease agreements; and

(7) Shall complete any final accounting, inspection or other procedures required by the tenant's rental or lease agreement, by the Residential Landlord Tenant Act, or by the property management agreement, unless the owner otherwise directs in writing, if a tenant's termination of tenancy occurs simultaneously with or prior to termination of the management of the rented or leased premises.

(8) As part of the final accounting sent to the owner under this rule, the property manager shall include a notice that the required records of the property management performed by the property manager for the owner may be destroyed after six years.

(9) Shall transfer and assign by agreement the interest of the property manager in rental or lease agreements, if any, to the owner or to a new property manager.

Stat. Auth.: ORS 183.335 & 696.385
Stats. Implemented: ORS 696.280 & 696.361
Hist.: REA 3-1987, f. 12-3-87, ef. 1-1-88; REA 3-1989, f. 12-13-89, cert. ef. 2-1-90; REA 2-1991, f. 11-5-91, cert. ef. 1-1-92; REA 1-2002, f. 5-31-02, cert. ef. 7-1-02, Renumbered from 863-010-0225; REA 1-2005, f. 5-5-05, cert. ef. 5-6-05

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**Secretary of State, Archives Division
Chapter 166**

Adm. Order No.: OSA 2-2005

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Rules Amended: 166-150-0005, 166-150-0110, 166-200-0010, 166-200-0050

ADMINISTRATIVE RULES

Subject: Deletes Administrative, General, Policy and Historical and Ephemeral correspondence categories currently found in the County General Schedule (OAR 166-150-0005) and replaces them with Correspondence. Deletes General, Program, Policy and Historical and Ephemeral correspondence categories currently found in the City General Schedule (OAR 166-200-0010) and replaces them with Correspondence. Also deletes Financial Correspondence found in both the County General Schedule (OAR 166-150-0110) and the City General Schedule (OAR 166-200-0050).

Rules Coordinator: Julie Yamaka—(503) 373-0701, ext. 240

166-150-0005

Administrative Records

Note: Inclusion of a record series in this schedule does not require the series to be created. If a record is created electronically, it can be retained in electronic format only as long as the retention period is 99 years or less.

(1) **Activity and Room Scheduling Records** Records documenting scheduling and reservations related to public participation and use of various agency activities, events, classes and facilities. Includes schedules, logs, lists, requests, and similar records. (Minimum retention: 1 year)

(2) **Activity Reports, General** Daily, weekly, monthly, or similar reports documenting the activities of employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. (Minimum retention: 2 years)

(3) **Annual Reports** Reports documenting the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. (Minimum retention: Permanent)

(4) **Audit Records, Internal** Records document the examination of the agency's fiscal condition, internal control, and compliance policies and procedures. Records may also document performance or other financially related audits by agency or contracted auditors. Records may include audit reports, supporting documentation, comments, and correspondence. (Minimum retention: 10 years)

(5) **Calendars and Scheduling Records** Records documenting and facilitating routine planning, scheduling, and similar actions related to meetings, appointments, trips, visits, and other activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records that contain significant information that is not summarized or otherwise included in reports or similar documents. *Calendar and Scheduling information written in personal day planners or recorded on handheld electronic organizers (i.e. PalmPilots) may be public records under ORS Chapter 192. Information contained in electronic organizers is subject to the same retention as the paper record unless the information is kept in another format for the duration of the retention period.* (Minimum retention: 1 year)

(6) **Citizen Awards** Awards presented by the agency to honor volunteers for civic contributions. May include award nominations, award certificates, presentation or ceremony records and photographs, lists of past recipients, and related records. Some records in this series may have historic value. *For appraisal assistance contact the Oregon State Archives.* (Minimum retention: 6 years)

(7) **Contracts, Leases, and Agreements*** Documents the duly executed and binding contractual agreements between the agency and other parties. May include contracts, exhibits, bid documents, change orders, proposals, and significant related correspondence. Types of contracts include purchase of equipment and supplies, interagency, personal service, capital construction (documenting building construction, alterations, or repair), grant funding, and others. Information in contracts usually includes contract number, certificate of required insurance, dates, terms, parties involved, period covered, and signatures. (Minimum retention: (a) Construction contract records: 10 years after substantial completion, as defined by ORS 12.135(3) (b) Collective bargaining contract records: Permanent (c) Other contracts, leases and agreements: 6 years after expiration) *Caution: Agencies who enter into contracts with the federal government must ensure that their contracts and agreements meet federal requirements specified in the Code of Federal Regulations.*

(8) **Correspondence** Records that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the County

and Special District General Records Retention Schedule (OAR 166-150) or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. (**Disposition:** File with the associated program or administrative records. Retentions for county and special district records are found in the County and Special District General Records Retention Schedule. Communications not meeting the above criteria do not need to be filed and may be retained as needed.)

(9) **Fax Reports** Records document facsimile transactions of the agency. Reports may also be used for billing purposes. Information includes date and time fax transmitted or received and recipient/sender's fax number. (Minimum retention: (a) Retain if used for billing: 3 years (b) Retain all other reports: 1 year)

(10) **Intergovernmental Agreements*** Agreements entered in-to by the agency with the state, school districts, service districts, cities, or other governmental units. Often refers to consolidating departments, jointly providing administrative officers, and sharing facilities or equipment. Major agreements usually set funding re-sponsibilities, fee apportionment, duration of agreement, rights to terminate agreement, and transfers of property, personnel, and employment benefits. Also includes intergovernmental agreements for common services, equipment, maintenance, etc. (Minimum retention: (a) Significant and historic agreements: Permanent (b) Other agreements: 6 years after expiration)

(11) **Key and Keycard Records*** Records document the issuance of keys and keycards to staff to enable access to buildings and sites. Records may include but are not limited to key inventories, key issue forms, key replacement records, and key disposal records. Minimum retention: (a) Retain access and entry logs 3 years (b) Retain other records 2 years after key is turned in)

(12) **Legislative Tracking Records** Series used to monitor legislation that may have an impact on an agency's current operations or policies. Records include concept statements, proposals, bill logs, fiscal/organizational impact analysis papers, copies of bills, testimony summaries, committee reports, agendas, and correspondence. (Minimum retention: 2 years)

(13) **Lobbyist Records** Records document lobbyist and lobbyist employer activities and are used to report to these activities to the Government Standards and Practices Commission. Records may include but are not limited to expenditure reports, registration statements, termination records, guidelines, and correspondence. (Minimum retention: (a) Retain expenditure reports 4 years (b) Retain all other records 5 years after last activity)

(14) **Mailing Lists** Lists compiled to facilitate billing, community outreach, and other functions of the agency. Information usually includes name of individual or group, address, name and title of contact person, phone number, comments, and similar data. (Minimum retention: Until superseded or obsolete)

(15) **Meeting Records, Governing Body*** Records documenting the proceedings of any regularly scheduled, special, executive session, or emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710), that is under agency jurisdiction. These typically consist of boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, meeting packets, tape recordings, and related documentation and correspondence. **SEE ALSO** Meeting Records, Staff and Meeting Records, in this section and Board, Commission, and Committee in the County Court and Commissioners Records section. (Minimum retention: (a) Minutes, agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in county records): Permanent (b) Retain executive session minutes: 10 years (c) Audio or visual recordings: 1 year after minutes prepared and approved (d) Other records and exhibits not pertinent to minutes: 5 years)

(16) **Meeting Records, Staff** Records documenting meetings within government which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.710). These routine staff meetings deal with tasks and actions within existing policies and procedures. Records may include minutes, notes, reports, and related items. Some records may merit inclusion in other record series with longer retention periods if the subject matter of the meeting adds significant information to that series. (Minimum retention: 2 years)

(17) **Mitigation Program Records*** Records document the establishment and maintenance of the agency mitigation programs, plans, and procedures. Records may include mitigation plans and strategies, policies, procedures, seismic surveys and structural upgrade records of agency facilities, project reports, hazard mitigation grant records, and related docu-

ADMINISTRATIVE RULES

mentation, which may include capital improvement records. SEE ALSO the Emergency Management section. (Minimum retention: (a) Adopted plans: Permanent (b) Other records: for the life of the structure)

(18) **News/Press Releases** Prepared statements, announcements, news conference transcripts, and similar records issued to the news media. Subjects include the adoption of new programs, termination of old programs, policy shifts, changes in the status of elected officials or senior administrative personnel, and others. Also may include news releases announcing routine events or actions carried out within the scope of existing policies. (Minimum retention: (a) Policy and historic news/press releases: Permanent (b) Routine news/press releases: 2 years)

(19) **Notary Public Log Books** Records documenting notarial transactions completed by a notary public and employed by a government agency. Agencies may retain logbooks by agreement with the notary after their separation from employment. *Agencies retaining notary public log books without notary agreements should consult their legal counsel and/or the Secretary of State, Corporation Division for retention instruction.* (Minimum retention: 7 years after date of commission expiration)

(20) **Organizational Records** Records documenting the arrangement and administrative structure of an agency. Includes charts, statements, studies, and similar records. May also include studies to determine the merit and feasibility of reorganization plans, as well as other major studies related to the administrative hierarchy. (Minimum retention: 2 years after superseded)

(21) **Passport Transmittal Records** Records document the processing of passport applications. May include but is not limited to calendars, copies of transmittals sent to the United States Passport Office. Information includes daily and weekly totals of passports processed, applicants' names, amount paid, and departure date. (Minimum retention: 1 year)

(22) **Permit and License Records, Agency-Issued*** Records documenting agency review, background investigations, recommendations and other actions related to permits and licenses issued for various activities not specified elsewhere in this general schedule. Permits may include but are not limited to those for taxi cab drivers, dances, parades, rocket launching, second hand dealers, alarm system dealers, liquor licenses, keeping livestock, and solicitors. Usually includes applications, background investigation reports, permits, licenses, and related records. *(If a specific permitting function is included in another records series under a program or functional area such as public works or law enforcement in this general schedule, the retention period specified in that program or functional area supersedes the retention period listed in this series.)* (Minimum retention: (a) Retain fee permits of license records: 3 years after expiration, revocation, or denial (b) Retain free permits or license records: 2 years after expiration, revocation, or denial)

(23) **Planning Records** Series documents long-range plans and the development of an agency's mission statement and work objectives. Records include strategic plans, mission statements, preliminary drafts, work notes, and related correspondence. (Minimum retention: (a) Mission Statements and plans: 20 years (b) Other records: 5 years)

(24) **Policy and Procedure Guidelines and Manuals*** Written instructions, rules, and guidelines in manual form documenting current and past authorized agency policies and procedures. Used for new employee orientation and for ongoing reference. Also useful in establishing past policies or procedures in liability cases, personnel disputes, and other instances. Includes manuals documenting the procedures of departments with higher risk or exposure to liability such as police, fire, emergency medical services, public works, etc. This series also includes routine documentation and basic clerical instructional procedures covering such subjects as formatting letters, data entry, telephone etiquette, and others. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. The minimum retention periods refer only to agency-generated manuals. Manuals from other sources should be retained as needed or as mandated by a specific regulating body (federal or state agency, etc.), usually until superseded or obsolete. SEE ALSO Policy Statements and Directives; and Correspondence, Policy and Historical in this section. SEE ALSO Technical Manuals, Specifications, and Warranties in the Public Works-Operations and Maintenance section for published technical manuals and related materials. (Minimum retention: (a) Routine clerical manuals: 2 years after superseded or obsolete (b) Manuals relating to specific construction and/or engineering projects: 10 years after substantial completion, as defined by ORS 12.135(3) (c) One copy of all other manuals: Permanent)

(25) **Policy Statements and Directives*** Series documents review, assessment, development, and authorization of an agency's formal policies

and procedures that have been approved by a governing body. Records may include authorizing bulletins and advisories, mission and goal statements, manuals, and final policy statements and directives. Information often includes policy and procedure numbers, revision dates, subject identification, narrative description, authorization information, and effective date. SEE ALSO Policy and Procedure Guidelines and Manuals in this section. (Minimum retention: 20 years after superseded or obsolete)

(26) **Polygraph Examiners Licensing Records** Documents statutory requirement that each polygraph examiner shall register with the County Clerk and that the Clerk shall maintain a list of examiners. Includes name of examiner and business address. (Minimum retention: 60 years)

(27) **Postal Records** Records documenting transactions with the U.S. Postal Service and private carriers. Includes postage meter records, receipts for registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and related items. (Minimum retention: 3 years)

(28) **Professional Membership Records** Records documenting institutional or agency-paid individual memberships and activities in professional organizations. (Minimum retention: 3 years)

(29) **Public Notice Records*** Records documenting compliance with laws requiring public notice of government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. SEE ALSO Competitive Bid Records in the Financial section for public notices related to bid openings and awards. (Minimum retention: 3 years)

(30) **Publications** Published records produced by or for the agency or any of its departments or programs and made available to the public. Includes newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. Does not include publications received from federal, state, private, or other sources — these publications and extra copies of agency-produced publications should be retained as needed. (Minimum retention: (a) Policy and historic publications: Permanent (b) All others: Until superseded or obsolete)

(31) **Reports and Studies** Records document special reports or studies conducted on non-fiscal aspects of an agency's programs, services, or projects, compiled by agency personnel, or by consultants under contract that are *not* noted elsewhere in this schedule. Includes final report distributed either internally or to other entities and the work papers used to compile the report or study. (Minimum retention: 5 years)

(32) **Requests and Complaints** Records documenting complaints or requests concerning a variety of agency responsibilities not specified elsewhere in this general schedule. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. *(If a specific request or complaint is listed in another records series under a functional area such as law enforcement in this general schedule, the retention period specified in that functional area supersedes the retention period listed in this series.)* SEE ALSO Correspondence, General in this section for routine requests for information or publications and Liability Claims Records in the Risk Management section. (Minimum retention: 2 years after last action)

(33) **Resolutions*** Formal statements of decisions or expressions of opinions adopted by the agency. Information includes date, number, and text. SEE ALSO Meeting Records, Governing Body in the County Court and County Commissioners Records section. (Minimum retention: Permanent)

(34) **Routing and Job Control Records** Records used to control the routine flow of documents and other items and actions in and between offices in the agency. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. (Minimum retention: 1 year)

(35) **Security Records*** Series documents security provided for agency buildings and grounds. Records include surveillance records, security logs, sign-in sheets, security reports, incident reports, and related records. SEE ALSO Fire and Security Alarm System Records in the Fire and Emergency Medical Services section; Computer System Security Records in the Information and Records Management section; or Alarm Records and Surveillance Tapes in the Law Enforcement section. (Minimum retention: 2 years)

(36) **Seminar and Conference Records, Agency-Sponsored** Records documenting the design and implementation of agency sponsored seminars, conferences, workshops, conventions, and similar gatherings. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. For records documenting registration billings and

ADMINISTRATIVE RULES

related fiscal actions, see the Financial Records section. (Minimum retention: (a) Significant program records: 5 years (b) Class enrollment and attendance records: 2 years (c) Other records: 1 year)

(37) **Seminar and Conference Records, Non-Agency Sponsored** Records documenting activities of seminars, conferences, workshops, conventions, and similar gatherings not sponsored by the agency but attended by agency officials or personnel. May include staff reports, instructional materials, recommendations, related correspondence and memoranda, and similar records. (Minimum retention: 2 years)

(38) **Special District Charters*** Constitution, bylaws, and all amendments to agency charters approved by voters or the State Legislature. Generally includes original charter, amendments, and related significant records. (Minimum retention: Permanent)

(39) **Special District Codes*** Codified ordinances passed by a special district. Provides reference to all laws for both information and enforcement. Information may include ordinance numbers, amending ordinance numbers, code numbers, and text. (Minimum retention: Permanent)

(40) **Special District Ordinances*** Legislative action of a special district to regulate, require, prohibit, govern, control, or supervise any activity, business, conduct, or condition authorized by Oregon Revised Statutes. Ordinances typically include a title, preamble, ordaining clause, subject clause, penalty for violation (when applicable), effective date, authorizing signature and seal. May also include indexes calendars, and documentation presented to support action. (Minimum retention: Permanent)

(41) **Special Event and Celebration Records** Records documenting agency-sponsored celebrations of special and historic occasions such as centennials, pioneer days, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other significant aspects of the celebration. These significant records may include studies, publications, photographs, attendance summaries, final reports, and other significant documents. This series also includes routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, memoranda, volunteer information, and related records. Records may also include scrapbooks, but does not include newsclippings. Newsclippings are not public records and may be discarded. (Minimum retention: (a) Records documenting significant aspects of the event: Permanent (b) Other records: 2 years after event)

(42) **Surveys, Polls, and Questionnaires** Records documenting the measurement of public opinion by or for the agency related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and significant related records. Examples of summaries include studies which incorporate the significant results of public opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for agency service, and other records which distill survey data into summary form. (Minimum retention: (a) Summary reports and abstracts: 3 years (b) Other records: Until summary report is completed or 3 years, whichever is sooner)

(43) **Telecommunications Logs** Records document the tracking and status of telephone, voice mail, and facsimile (FAX) communications called or received. Information may include time and date of call, name of caller, phone number called or received, nature of call, and actions taken and results of the call. (Minimum retention: 1 year)

(44) **Visitor Logs** Records document visitors to county buildings. Records name include visitors' names, visitor badges issued, and entrance and exit times. (Minimum retention: 1 year)

(45) **Work Orders** Records documenting requests and authorizations, according to existing contracts or agreements, for needed services and repairs to agency property and equipment. May include copy center work orders, printing orders, telephone service and installation requests, repair authorizations, and similar records. (Minimum retention: (a) Retain work completed by county personnel: 1 year (b) Retain work completed by outside vendors: 3 years)

(46) **Work Schedules and Assignments** Records documenting the scheduling and assigning of shifts, tasks, projects, or other work to agency employees. Useful for budget and personnel planning and review, assessing employee work performance, and other purposes. May include calendars, schedules, lists, charts, rosters, and related records. (Minimum retention: 5 years)

(47) **Year 2000 (Y2K) Planning Records** Records document the planning and development of agency Y2K contingency plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information includes type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. (Minimum retention: 5 years)

Stat. Auth.: ORS 192 & 357

Stats. Implemented: ORS 192.005 - 192.170 & 357.805 - 357.895
Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 2-2005, f. & cert. ef. 5-10-05

166-150-0110 Financial Records

Note: Inclusion of a record series in this schedule does not require the series to be created. If a record is created electronically, it can be retained in electronic format only as long as the retention period is 99 years or less.

(1) **Accounts Payable Records** Records documenting payment of agency bills for general accounts excluding grants. Includes reports, invoices, statements, vouchers, purchase orders, payment authorizations, receipt records, canceled checks or warrants, and similar records. SEE ALSO Grant Records in this section for records documenting expenditure of grant funds. (Minimum retention: 3 years)

(2) **Accounts Receivable Records*** Records documenting revenues owed to the agency by vendors, citizens, organizations, governments, and others to be credited to general accounts excluding grants. Also documents billing and collection of moneys. May include reports, receipts, invoices, awards, logs, lists, summaries, statements, and similar records. Information often includes, receipt amount, date, invoice number, name, account number, account balance, adjustments, and similar data. SEE ALSO Grant Records in this section for records documenting receipt of grant funds. (Minimum retention: 3 years after collected or deemed uncollectible)

(3) **Administrative and Financial Improvement Records*** Records documenting the non-technical and financial administration of assessable and non-assessable county improvements including capital improvements, local improvement districts (LID), urban renewal, and economic improvement districts. Records often include affidavits of posting, notices or proposed assessment, certificates of mailing, interested party letters, bid quotes, reports, and awards, expense reports, purchase orders, requisitions, cost analyses, construction and maintenance bonds and insurance, and related administrative and financial records not located elsewhere in this schedule. SEE ALSO Assessment Dockets, Ledgers, and Registers; Bond Authorization Records; and other record series in the Financial section for records documenting legislative actions such as resolutions of intent to assess and ordinances for improvements. (Minimum retention: (a) Retain records of project cost: 3 years after disposal or replacement of facility, structure, or system (b) Retain all other improvements 10 years after substantial completion (as defined by ORS 12.135(3))

(4) **Audit Reports, External** Records documenting annual audits of the financial position of the agency conducted by external auditors in accordance with statutory requirements described in ORS 297.405 through 297.555. Subjects include accounting principles and methods, the accuracy and legality of transactions, accounts, etc., and compliance with requirements, orders, and regulations of other public bodies pertaining to the financial condition or operation of the agency. Information includes accountant's summary, combined financial statements, schedules, balance sheet details, comments, recommendations, and related data. SEE ALSO Internal Audit Records in the Administrative section. (Minimum retention: Permanent)

(5) **Balance Status and Projection Reports** Reports created for internal use documenting the status of funds, bank accounts, investments, and other accountings of agency funds. Includes budget allotment and fund reconciliation reports. Also includes projection records related to future receipts and disbursements. Reports are generated on a daily, weekly, monthly, quarterly or similar basis. Information includes date, account balances, type and summary of activity, and related data. (Minimum retention: 3 years)

(6) **Competitive Bid Records** Records documenting the publicizing, evaluation, and awarding of quoted bids to vendors and other individuals or organizations. Records may include RFP's and RFI's and provides recorded evidence of accepted and rejected bids. May include bid exemption documents, bid and quote lists, notices of bid opening and award, comparison summaries, spreadsheets, tabulation worksheets, bid advertising records, tally sheets, bid specifications, correspondence, and related records. SEE ALSO Purchasing Records in this section. (Minimum retention: (a) Retain accepted bids 10 years after substantial completion (as defined by ORS 12.135(3)) (b) Retain other accepted bids: 6 years after bid awarded or canceled (c) Retain rejected bids and bid exemptions: 2 years)

(7) **Bond Records (Employee)*** Records documenting the posting of fidelity, performance, or position bonds to guarantee the honest and faithful performance of elected officials, individual employees, or groups of employees. Details of bonds vary, however information usually includes name and position(s) of individual or group, amount of coverage, effective and expired dates, and related data. (Minimum retention: 6 years after expiration)

ADMINISTRATIVE RULES

(8) **Budget (Adopted) Records** Documenting the final annual financial plan approved by a governing body for all agency expenditures. Information may include budget message, financial summaries, revenues and expenditures, operating programs, debt service, position and wage analysis, overhead allocations, organization charts, previous actual and budgeted amounts, and related data. Duplicate copies should be retained as needed. (Minimum retention: (a) County budgets filed with the County Clerk: Permanent (b) Special district and other budgets: 2 years)

(9) **Budget Preparation Records** Records documenting the preparation of department budget requests presented to the specified governing body. May include staff reports, budget instructions, worksheets, surveys, allotment reports, spending plans, contingency plans, budget proposals, financial forecasting reports, and similar records. (Minimum retention: 2 years)

(10) **Credit Slips** Slips issued to citizens who have withdrawn from agency-sponsored classes or activities and are due credit for all or part of fees paid. Information usually includes name of class or activity, date, expiration date, name and address of citizen, and related data. (Minimum retention: 3 years after credit expired or redeemed)

(11) **Financial Impact Analysis Records** Records documenting the financial analysis of various agency practices. Useful for planning future budget proposals. Records include reports, studies, worksheets, and similar records. Subjects may include the impact of specific ballot measures, proposals to increase permit fees, sick leave use analysis, and the agency's relationship with various utilities. (Minimum retention: 3 years)

(12) **Financial Reports** Reports documenting the general financial condition and operation of the agency. Includes information on the value of all agency owned property and an accounting of all income and expenditures in relation to the final budget. Records may include monthly, quarterly, annual and similar reports. (Minimum retention: (a) Annual reports: Permanent (b) Other reports: 3 years)

(13) **General Ledgers*** Records documenting the summary of accounts reflecting the financial position of the agency. Information often includes debit, credit, and balance amounts per account, budget, fund, and department numbers, and totals for notes receivable, interest income, amounts due from other funds, federal grants received, bank loans received, cash in escrow, deferred loans received, cash, encumbrances, revenue, accounts receivable, and accounts payable, as well as other data. (Minimum retention: (a) Year end ledgers: 10 years (b) Other general ledgers: 3 years)

(14) **Gift and Contribution Records** Records documenting gifts and contributions given to the agency by sources outside of government. Records may include memorial donation records related to money to be used by the agency in the name of an individual. Often contains donor and acknowledgement letters, acquisition lists itemizing purchases with contributed money (books, art, equipment, etc.) checks, receipts, and related records. (Minimum retention: (a) For retention of conditional gift, contribution and donation records: see Contracts and Agreements in the Administrative Records section (b) Retain other records: 3 years)

(15) **Grant Records** Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the agency is the recipient, grantor, allocator, or administrator. Grants may come from federal or state governments or foundations or other funding sources. Records may include but are not limited to applications including project proposals, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations concerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation. (Minimum retention: (a) Retain final reports from significant grants to the county: Permanent (b) Retain records documenting the purchase and/or disposal of real property: 10 years after substantial completion (as defined by ORS 12.135(3)), or 3 years after final disposition, or as specified in agreement, whichever is longer (c) Retain other grant records: 3 years after annual or final expenditure report submitted and approved or, as specified in agreement, whichever is longer (d) Retain unsuccessful grant applications: 1 year after rejection or withdrawal)

(16) **Improvement Records, Administrative and Financial*** Records documenting the non-technical and financial administration of assessable and non-assessable agency improvements including local improvement districts and economic improvement districts. Records often include affidavits of posting, notices of proposed assessment, certificates of mailing, interested party letters, bid quotes, reports, and awards, expense reports, purchase orders, requisitions, cost analyses, construction and main-

tenance bonds and insurance, and related administrative and financial records not located elsewhere in this schedule. (Minimum retention: (a) Assessable improvements: 10 years after substantial completion or 3 years after final payment of assessment by property owner, whichever is longer (b) Non-assessable improvements: 10 years after substantial completion)

(17) **Inventory Records*** Inventory records documenting the capitalized assets and expendable property of the agency. Examples of capitalized assets may include but are not limited to buildings, real estate, infrastructure assets, vehicles, equipment, and furniture. Examples of expendable assets include office supplies and other small, office purchases. Information often contains asset number, description, purchase order number, location of asset, date received, purchase price, replacement cost, depreciation, and related data. This record series applies to routine control inventories. SEE ALSO Grant Records for inventories of property purchased with grant funds. For inventories documenting other special uses, see Historic Structure Inventory Records in the Planning and Development section; Bridge Inspection Records in the Public Works-Engineering section; and Property and Evidence Control and Disposition Records in the Law Enforcement section. (Minimum retention: (a) Retain records of capitalized assets: 3 years after disposal or replacement of asset (b) Retain records of expendable property: 3 years or until superseded, whichever is longer)

(18) **Petty Cash Fund Records** Records document petty cash activity for the agency. Records include requests and authorizations to establish petty cash funds, ledgers, statements, requests for disbursements, copies of receipts and invoices. (Minimum retention: 3 years)

(19) **Purchasing Records** Records documenting orders, authorizations, and evidence of receipt of the purchase of goods and services by the agency. Includes purchase orders and requests, purchase authorizations, requisitions, contract release orders, material and cost specifications, central stores or printing orders, telephone service orders, and similar records. SEE ALSO Competitive Bid Records in this section; and Grant Records in this section for records documenting expenditure of grant funds and Improvement Administrative and Financial Records in this section for related purchasing records. (Minimum retention: 3 years)

(20) **Signature Authorization Records*** Records documenting the authorization of designated employees to sign fiscal and contractual documents. Useful as an aid for management control over expenditures. Information usually includes authorization date, name, sample signature, position, remarks, conditions, and related data. (Minimum retention: 6 years after authorization superseded or expired)

(21) **Subsidiary Ledgers, Journals, and Registers** Records documenting details of transactions such as those related to receipts and expenditures on a daily, monthly, quarterly or similar basis. Includes journals, ledgers, registers, day books, and other account books that provide backup documentation to the general ledger. May include details of revenues, expenditures, encumbrances, cash receipts, warrants, and others. (Information often includes date, payee, purpose, fund credited or debited, check number, and similar or related data. SEE ALSO Grant Records in this section for records documenting transaction of grant funds. (Minimum retention: (a) Year end payroll register: 75 years (b) Trust fund ledgers: 3 years after trust fund closed (c) Other subsidiary ledgers, journals, and registers: 3 years)

(22) **Travel Records, Employee** Records documenting requests, authorizations, reimbursements, and other actions related to employee travel. Includes expense reports and receipts, vouchers, requests, authorizations, and related documents. Retention applies to private vehicle usage as well. Information often includes estimated costs, prepayments, final costs, destination, method of transportation, travel dates, approval signatures, and related data. (Minimum retention: 3 years)

(23) **Vendor Lists** Lists documenting vendors providing goods and services to the agency. Information usually includes vendor name of person or company, address, and phone number, name of contact person, as well as a description of goods or services provided. (Minimum retention: Until superseded or obsolete)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 4-2004, f. & cert. ef. 9-1-04; OSA 2-2005, f. & cert. ef. 5-10-05

166-200-0010

Administrative Records

(1) **Activity and Room Scheduling and Reservation Records** Records documenting scheduling and reservations related to public participation in and use of various city activities, events, classes, and meeting rooms. Includes schedules, logs, lists, requests, and similar records. SEE ALSO Participant Registration and Attendance Records and Park and Facility Use Permits in the Parks and Recreation section for records docu-

ADMINISTRATIVE RULES

menting public use of services or facilities for which formal registrations or permits are required. (Minimum retention: 1 year)

(2) **Activity Reports, General** Daily, weekly, monthly, or similar reports other than annual reports documenting the activities of city employees. Useful for compiling annual reports, planning and budgeting, monitoring work progress and other purposes. Usually tracks type of activity, employees and/or volunteers involved, time spent on activity, work completed, and related information in narrative or statistical form. SEE ALSO Grant Records in the Financial-General section for reports documenting activities directly related to projects funded by grants. (Minimum retention: 2 years)

(3) **Annual Reports** Reports documenting the program or primary functional activities and accomplishments of the office for the previous year. These are often compiled from monthly, quarterly, or other subsidiary activity reports. Usually includes statistics, narratives, graphs, diagrams, and similar information. SEE ALSO Activity Reports, General in this section for reports documenting shorter periods of time. (Minimum retention: Permanent)

(4) **Cemetery Records*** Records documenting the administration and management of city-owned cemeteries. Records may include lists of names and maps of grave locations, deeds, information on purchasing lots and burials, death certificates, State Mortuary and Cemetery Board licensing and reporting documentation, and related correspondence. Some records may have historic value. (Minimum retention: Permanent)

(5) **Correspondence** Records that: 1. document communications created or received by an agency AND 2. directly relate to an agency program or agency administration AND 3. are not otherwise specified in the City General Records Retention Schedule (OAR 166-200) or in ORS 192.170. Records may include but are not limited to letters, memoranda, notes and electronic messages that communicate formal approvals, directions for action, and information about contracts, purchases, grants, personnel and particular projects or programs. (**Disposition:** File with the associated program or administrative records. Retentions for city records are found in City General Records Retention Schedule. Communications not meeting the above criteria do not need to be filed and may be retained as needed.)

(6) **Desk Calendars and Notes** Records documenting and facilitating routine planning, scheduling, and similar actions related to meetings, appointments, trips, visits, and other activities. Includes calendars, appointment books, notes, telephone messages, diaries, and similar records. Depending on content, some telephone messages and similar records may merit inclusion in related program or project files. This applies to records that contain significant information, which is not summarized or otherwise included in reports or similar documents. (Minimum retention: 1 year)

(7) **Emergency and Disaster Incident Records*** Records document the extent of impact and actions taken by the city in response to disasters, emergencies, and civil disorder. Incidents may be natural or manmade such as earthquakes, wild land fires, severe storms, floods, drought, airplane crashes, utility failures, hazardous materials incidents, riots, and similar events affecting the people, property, or government of the city. Records may include logs, diaries, damage assessment reports, response reports, situation and resource status reports, incident action plans, resource ordering and tracking records, financial documentation, messages, photographs, sign-in sheets, and any other incident related documentation. SEE ALSO the Emergency Management section, the Fire and Emergency Medical Services section, the Police section, the Public Works section, and the Risk Management section for related records. (Minimum retention: Permanent)

(8) **Mailing Lists** Lists compiled to facilitate billing, community outreach, and other functions in the city. Information usually includes name of individual or group, address, name and title of contact person, phone number, comments, and similar data. (Minimum retention: Until superseded or obsolete)

(9) **Meeting Records, Board, Commission, and Committee*** Records documenting the proceedings of city boards, commissions, task forces, committees, advisory councils, and other similar groups, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710). Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, petitions, audio or visual recordings, correspondence, and related documentation. (Minimum retention: (a) Retain minutes* (except executive session minutes), agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in city records) permanently (b) Retain executive session minutes 10 years (c) Retain audio or visual recordings 1 year after minutes prepared and approved (d) Retain other records and exhibits not pertinent to minutes 5 years)

(10) **Meeting Records, Governing Body*** Records documenting the proceedings of any regularly scheduled, special, executive session, or

emergency meeting of any governing body, as described in Oregon's Public Meetings Law (ORS 192.610 to 192.710) that is under city jurisdiction. These typically consist of boards, commissions, advisory councils, task forces, and similar groups. Records may include minutes, agendas, exhibits, resolutions, staff reports, indexes, petitions, tape recordings, and related documentation and correspondence. For further description of several specific examples of meeting records, refer to the subject index. SEE ALSO Meeting Records, Staff and Meeting Records, Board, Commission, and Committee; in this section. (Minimum retention: (a) Retain minutes* (except executive session minutes), agendas, resolutions, indexes, and exhibits (not retained permanently elsewhere in city records) permanently (b) Retain executive session minutes 10 years (c) Retain audio or visual recordings 1 year after minutes prepared and approved (d) Retain other records and exhibits not pertinent to minutes 5 years)

(11) **Meeting Records, Staff** Records documenting meetings within city government, which are not subject to Oregon's Public Meetings Law (ORS 192.610 to 192.710). These routine staff meetings deal with tasks and actions within existing policies and procedures. Records may include minutes, notes, reports, and related items. Some records may merit inclusion in other record series with longer minimum retention periods if the subject matter of the meeting adds significant information to that series. (Minimum retention: 2 years)

(12) **Mitigation Program Records*** Records document the establishment and maintenance of the city mitigation program, plans, and procedures. Records may include mitigation plans and strategies, policies, procedures, seismic surveys and structural upgrade records of city facilities, project reports, hazard mitigation grant records, and related documentation which may include capital improvement records, new and revised building codes, and zoning ordinances. SEE ALSO the Risk Management section. (Minimum retention: (a) Retain adopted plans* permanently (b) Retain other records for the life of the structure)

(13) **News Releases** Prepared statements, announcements, news conference transcripts, and similar records issued to the news media by the city. Subjects include the adoption of new city programs, termination of old programs, policy shifts, changes in the status of elected officials or senior administrative personnel, and others. Also may include news releases announcing routine events or actions carried out within the scope of existing city policies. Some releases may merit inclusion in applicable related record series (e.g., Incident Case Files, Fire Investigation Records, etc.). (Minimum retention: (a) Retain policy and historic news releases permanently (b) Retain routine news releases 2 years)

(14) **Notary Public Log Book** Records documenting notarial transactions completed by a notary public employed by the city. Cities may retain log books by agreement with the notary public after their separation from city employment. *Cities retaining notary public log books without notary agreements should consult their city attorney and/or the Secretary of State, Corporation Division for retention instruction.* (Minimum retention: 7 years after date of commission expiration)

(15) **Organizational Records** Records documenting the arrangement and administrative structure of the city government. May include charts, statements, studies, and similar records. Includes studies to determine the merit and feasibility of reorganization plans, as well as other major studies related to the city's administrative hierarchy. (Minimum retention: Permanent)

(16) **Permit and License Records, City Issued*** Records documenting city review, background investigations, recommendations and other actions related to permits and licenses issued for various activities within the city. Subjects may include but are not limited to business, tree removal, temporary signs, taxi cab drivers, dances, parades, rocket launching, second hand dealers, alarm system dealers, keeping livestock in the city, and solicitors. Usually includes applications, background investigation reports, permits, licenses, and related records. This record series does not apply to several types of permit records related to construction, certain public works functions, and others. SEE ALSO the Financial sections, Building Permits in the Building section; Explosives Storage and Use Permits in the Fire and Emergency Medical Services section; Right-of-Way Permit Records in the Public Works-Engineering section; and Industrial Pretreatment Permits in the Public Works-Wastewater Treatment section. (Minimum retention: (a) Retain fee permits or license records 3 years after expiration, revocation, or denial (b) Retain free permits or license records 2 years after expiration, revocation, or denial)

(17) **Postal Records** Records documenting transactions with the U.S. Postal Service and private carriers. Includes postage meter records, receipts for registered and certified mail, insured mail, special delivery receipts and forms, loss reports, and related items. (Minimum retention: 3 years)

ADMINISTRATIVE RULES

(18) **Professional Membership Records** Records documenting institutional or agency-paid individual memberships and activities in professional organizations. Minimum retention: 3 years)

(19) **Public Notice Records*** Records documenting compliance with laws requiring public notice of city government activities. Subjects include assessments, elections, land use changes, public meetings and hearings, sale of property, and others. Records include public or legal notices, certificates, affidavits of publication, and similar documents. SEE ALSO Competitive Bid Records in the Financial-General section for public notices related to bid openings and awards. (Minimum retention: 3 years)

(20) **Publications** Published records produced by or for the city or any of its departments or programs and made available to the public. Includes newsletters, pamphlets, brochures, leaflets, reports, studies, proposals, and similar published records. Does not include publications received from federal, state, private or other sources — these publications and extra copies of city-produced publications should be retained as needed. (Minimum retention: (a) Retain brochures, pamphlets, and leaflets until superseded or obsolete (b) Retain one copy of all others permanently)

(21) **Requests and Complaints** Records documenting complaints or requests concerning a variety of city responsibilities. Information often includes name, phone number, and address of person making request or complaint, narration of request or complaint, name of person responding to request or complaint, dates of related activities, and other data. SEE ALSO Equal Employment Opportunity Complaint Records, and Grievance and Complaint Records in the Personnel Records section; Water Quality Complaint Records in the Public Works-Water Treatment Records section; and Incident Case Files, which contain law enforcement complaints in the Police Records section. SEE ALSO Correspondence, General in this section for routine requests for information or publications and Liability Claims Records in the Risk Management section. (Minimum retention: 2 years after last action)

(22) **Routing and Job Control Records** Records used to control the routine flow of documents and other items and actions in and between offices in the city. Includes routing slips, job control records, status cards, receipts for records charged-out, batch slips, and similar records. (Minimum retention: 1 year)

(23) **Scrapbooks** Books documenting a chronological or similar record of the city. May contain photographs, newspaper or magazine clippings, commentaries, and other items pertaining to the activities, actions, and reactions of the city officials, personnel, and citizens. Scrapbooks vary greatly in their content and value. Some may have historic value. *For appraisal assistance, contact the Oregon State Archives.* (Minimum retention: Retain as needed)

(24) **Seminar and Conference Records, City-Sponsored** Records documenting the design and implementation of city-sponsored seminars, conferences, workshops, conventions, and similar gatherings. Often includes class descriptions, instructional materials, course outlines, enrollment and attendance records, reports, speeches, planning documentation, and related records. For records documenting registration billings and related fiscal actions, see the Financial-General section. (Minimum retention: (a) Retain significant program and fee records 3 years (b) Retain class enrollment and attendance records 2 years (c) Retain other records 1 year)

(25) **Seminar and Conference Records, Non-City Sponsored** Records documenting activities of seminars, conferences, workshops, conventions, and similar gatherings not sponsored by the city but attended by city officials or personnel. May include staff reports, instructional materials, recommendations, related correspondence and memoranda, and similar records. (Minimum retention: 2 years)

(26) **Special Event and Celebration Records** Records documenting city-sponsored celebrations of special and historic occasions such as pioneer days, centennials, and similar events. Provides a record of planning and promotional efforts, public attendance and response, major speeches and dedications, and other aspects of the celebration. These records may include studies, publications, photographs, attendance summaries, final reports, and other documents. Records may also include routine documentation related to implementing the promotion and organization of the event. These often include lists, rosters, correspondence, volunteer information, and related records. SEE ALSO Special Event Records, Traffic in the Public Works-Traffic Engineering section for related records. (Minimum retention: (a) Retain records documenting significant aspects of the event permanently (b) Retain other records 2 years after event)

(27) **Surveys, Polls, and Questionnaires** Records documenting the measurement of public opinion by or for the city related to various issues, actions, and concerns. May include surveys, polls, questionnaires, summaries, abstracts and related records. Examples of summaries include stud-

ies, which incorporate the significant results of public opinion surveys, abstracts of questionnaires designed to determine the skills and interests of citizens volunteering for city service, and other records, which distill survey data into summary form. (Minimum retention: (a) Retain summary reports and abstracts 3 years (b) Retain other records until summary report is completed or 3 years, whichever is sooner)

(28) **Technical Manuals, Specifications, and Warranties*** Owners manuals and warranties for city-owned vehicles and equipment. Manuals often include specifications, operating instructions, and safety information. Warranties include terms of coverage for repair or replacement of equipment. (Minimum retention: (a) Retain manuals until disposition of vehicle or equipment (b) Retain warranties until expiration)

(29) **Work Orders** Records documenting requests and authorizations for needed services and repairs to city property and equipment. May include copy center work orders, printing orders, telephone service and installation requests, repair authorizations, and similar records. (Minimum retention: (a) Retain work completed by city personnel 1 year (b) Retain work completed by outside vendors 3 years)

(30) **Work Schedules and Assignments** Records documenting the scheduling and assigning of shifts, tasks, projects, or other work to city employees. Useful for budget and personnel planning and review, and other purposes. May include calendars, schedules, lists, charts, rosters, employee time surveys, and related records. Also includes rosters and similar records documenting vacation schedules. SEE ALSO the Personnel section for related records. (Minimum retention: 2 years)

(31) **Fax Reports** Records document facsimile transactions of the city. Reports may also be used for billing purposes. Information includes date and time fax transmitted or received and recipient/sender fax number. (Minimum retention: (a) Retain if used for billing 3 years (b) Retain if not used for billing 1 year)

(32) **Internal Audit Records** Records document an examination of the city's fiscal condition, internal control, and compliance policies and procedures. Records may also document performance or other financially related audits by city or contracted auditors. Records may include audit reports, supporting documentation, comments, and correspondence. (Minimum retention: 10 years)

(33) **Key and Keycard Records*** Records document the issuance of keys and keycards to agency staff to enable access to agency buildings and sites. Records may include but are not limited to key inventories, key issue forms, key replacement records, and key disposal records. (Minimum retention: 2 years after key is turned in)

(34) **Vehicle Maintenance and Repair Records** Records document the maintenance and repair history of all city-owned vehicles. Records may include reports, summaries, and similar records usually compiled from daily work records on a monthly, or quarterly basis. Information often includes a description of work completed, parts and supplies used, date of service, date purchased, price, vehicle number, make and model, and other data. SEE ALSO Contracts and Agreements in Recorder-General section for contract records related to private companies maintaining and repairing city-owned vehicles. SEE ALSO Daily Work Records in the Public Works-Operations and Maintenance section and Work Orders in this section. (Minimum retention: 2 years after disposition of vehicle)

(35) **Visitor Logs** Records document visitors to city buildings. Records may include visitors' names, visitor badges issued, and entrance and exit times. (Minimum retention: 1 year)

(36) **Year 2000 (Y2K) Planning Records** Records document the planning and development of city Y2K Contingency Plans. Records may include but are not limited to meeting minutes, correspondence, draft plans, work notes, plan test results, and final plan. Information includes type of systems vulnerable to Y2K, level of priority, and party responsible for system solution or troubleshooting. (Minimum retention: 5 years)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 1-1998, f. & cert. ef. 1-7-98; OSA 3-2002, f. & cert. ef. 7-2-02; OSA 2-2005, f. & cert. ef. 5-10-05

166-200-0050

Financial-General Records

(1) **Accounts Payable Records** Records documenting payment of city bills for general accounts. Includes reports, invoices, statements, vouchers, purchase orders, payment authorizations, receipt records, canceled checks or warrants, and similar records. For other accounts, see City Improvement Administrative and Financial Records in Financial-Assessment and Bonds section for documents related to assessable and non-assessable city improvements. SEE ALSO Grant Records in this sec-

ADMINISTRATIVE RULES

tion for records documenting expenditure of grant funds. (Minimum retention: 3 years after annual audit report issued)

(2) **Accounts Receivable Records*** Records documenting revenues owed to the city by vendors, citizens, organizations, governments, and others to be credited to general accounts. Also documents billing and collection of moneys. May include reports, receipts, invoices, awards, logs, lists, summaries, statements, and similar records. Information often includes, receipt amount, date, invoice number, name, account number, account balance, adjustments, and similar data. For other accounts, see City Improvement Administrative and Financial Records in the Financial-Assessment and Bonds section for documents related to assessable and non-assessable city improvements. SEE ALSO Grant Records in this section for records documenting receipt of grant funds. (Minimum retention: 3 years after collected or deemed uncollectible)

(3) **Audit Reports, External** Records documenting annual audits of the financial position of the city conducted by external auditors in accordance with statutory requirements described in ORS 297.405 through 297.555. Subjects include accounting principles and methods, the accuracy and legality of transactions, accounts, etc., and compliance with requirements, orders, and regulations of other public bodies pertaining to the financial condition or operation of the city. Information includes accountant's summary, combined financial statements, schedules, balance sheet details, comments, recommendations, and related data. SEE ALSO Internal Audit Records in the Administrative section. (Minimum retention: Permanent)

(4) **Balance Status and Projection Reports** Reports created for internal use documenting the status of funds, bank accounts, investments, and other accountings of city funds. Includes budget allotment and fund reconciliation reports. Also includes projection records related to future receipts and disbursements. Reports are generated on a daily, weekly, monthly, quarterly or similar basis. Information includes date, account balances, type and summary of activity, and related data. (Minimum retention: 3 years after annual audit report issued)

(5) **Bank Transaction Records*** Records documenting the current status and transaction activity of city funds held at banks. May include account statements, deposit and withdrawal slips, checks, and related records. Information includes bank and account numbers, transaction dates, beginning balance, check or deposit amount, document numbers, adjustments, description of transaction, ending balance, and related data. (Minimum retention: (a) For retention of records documenting grant transactions, see Grant Records in this section (b) Retain other records 3 years after annual audit report issued)

(6) **Bankruptcy Notices*** Records documenting the notification to the city that certain individuals have filed for bankruptcy. Used to determine if the individual owes money to the city and to file notice or claim with the court. Records may include notices of bankruptcy filings from U.S. Bankruptcy Court. Information may include debtors name, accounts information, prepared repayment plan, and related documentation. (Minimum retention: 3 years from discharge of debt or 3 years from last action, whichever is shorter)

(7) **City Improvement Administrative and Financial Records*** Records documenting the non-technical and financial administration of assessable and non-assessable city improvements including capital improvements, local improvement districts (LID), urban renewal, and economic improvement districts. Records often include affidavits of posting, notices of proposed assessment, certificates of mailing, interested party letters, bid quotes, reports, and awards, expense reports, purchase orders, requisitions, cost analyses, construction and maintenance bonds and insurance, and related administrative and financial records not located elsewhere in this schedule. SEE ALSO Assessment Dockets, Ledgers, and Registers; Bond Authorization Records; and other record series in the Financial-Assessment and Bonds section, and the Public Works-Engineering section for related information. Refer to the Recorder-General section for records documenting legislative actions such as resolutions of intent to assess and ordinances for improvements. (Minimum retention: (a) Retain records of project cost 3 years after disposal or replacement of facility, structure, or system (b) Retain all other improvements 10 years after substantial completion (as defined by ORS 12.135(3)))

(8) **Competitive Bid Records** Records documenting the publicizing, evaluation, and awarding of quoted bids to vendors and other individuals or organizations. Provides recorded evidence of accepted and rejected bids. May include requests for proposals (RFP), bid exemption documents, bid and quote lists, notices of bid opening and award, comparison summaries, spreadsheets, tabulation worksheets, bid advertising records, tally sheets, bid specifications, correspondence, and related records. SEE ALSO

Purchasing Records in this section. (Minimum retention: (a) Retain accepted city improvement bids 10 years after substantial completion (as defined by ORS 12.135(3)) (b) Retain other accepted bids 6 years after bid awarded or canceled (c) Retain rejected bids and bid exemptions 2 years)

(9) **Employee Bond Records*** Records documenting the posting of fidelity, performance, or position bonds to guarantee the honest and faithful performance of elected officials, individual employees, or groups of employees. Details of bonds vary, however information usually includes name and position(s) of individual or group, amount of coverage, effective and expired dates, and related data. (Minimum retention: 6 years after expiration)

(10) **Employee Travel Records** Records documenting requests, authorizations, reimbursements, and other actions related to employee travel. Includes expense reports and receipts, vouchers, requests, authorizations, and related documents. Minimum retention applies to private vehicle usage as well. Information often includes estimated costs, prepayments, final costs, destination, method of transportation, travel dates, approval signatures, and related data. (Minimum retention: 3 years)

(11) **Financial Reports** Reports documenting the general financial condition and operation of the city. Includes information on the value of all city owned property and an accounting of all income and expenditures in relation to the final budget. Records may include monthly, quarterly, annual, and similar reports. (Minimum retention: (a) Retain annual reports permanently (b) Retain other financial reports 3 years)

(12) **General Ledgers*** Records documenting the summary of accounts reflecting the financial position of the city. Information often includes debit, credit, and balance amounts per account, budget, fund, and department numbers, and totals for notes receivable, interest income, amounts due from other funds, federal grants received, bank loans received, cash in escrow, deferred loans received, cash, encumbrances, revenue, accounts receivable, and accounts payable, and other data. (Minimum retention: (a) Retain year-end ledgers* 10 years (b) Retain other general ledgers 5 years)

(13) **Gift and Contribution Records** Records documenting gifts and contributions to the city. May include memorial donation records related to money to be used by the city in the name of an individual. Often contains donor and acknowledgment letters, acquisition lists itemizing purchases made with contributed money (books, art, equipment, etc.), checks, receipts, and related records. (Minimum retention: (a) For retention of conditional gift, contribution and donation records, see Contracts and Agreements in the Recorder-General section (b) Retain other records 3 years)

(14) **Grant Records** Records document the application, evaluation, awarding, administration, monitoring, and status of grants in which the city is the recipient, grantor, allocator, or administrator. Grants may come from federal or state governments or foundation and other private funding sources. Records may include but are not limited to applications including project proposals, summaries, objectives, activities, budgets, exhibits, and award notification; grant evaluation records and recommendations concerning grant applications; grant administration records including progress reports, budgets, project objectives, proposals, and summaries; records documenting allocation of funds; contracts; records monitoring project plans and measuring achievement; equipment inventories; financial reports, accounting records, audit reports, expenditure reports, and related correspondence and documentation. SEE ALSO the other Financial sections. (Minimum retention: (a) Retain final reports from significant grants to the city permanently (b) Retain records documenting the purchase and/or disposal of real property 10 years after substantial completion (as defined by ORS 12.135(3)), or 3 years after final disposition, or as specified in agreement, whichever is longer (c) Retain other grant records 3 years after annual or final expenditure report submitted and approved or, as specified in agreement, whichever is longer (d) Retain unsuccessful grant applications 1 year after rejection or withdrawal)

(15) **Inventory Records*** Inventory records documenting the capitalized assets and expendable property of the city. Examples of capitalized assets may include but are not limited to buildings, real estate, infrastructure assets, vehicles, equipment, and furniture. Examples of expendable assets include office supplies and other small, office purchases. Information often contains asset number, description, purchase order number, location of asset, date received, purchase price, replacement cost, depreciation, and related data. This record series applies to routine property control inventories. SEE ALSO Grant Records for inventories of property purchased with grant funds. For inventories documenting other special uses, see Historic Structure Inventory Records in the Planning and Development section; Bridge Inspection Records in the Public Works-Engineering section; and

ADMINISTRATIVE RULES

Property and Evidence Control, and Disposition Records in the Police section. (Minimum retention: (a) Retain records of capitalized assets 3 years after disposal or replacement of asset (b) Retain records of expendable property 3 years or until superseded, whichever is longer)

(16) **Investment Records** Records documenting and tracking various investments made by the city. Often contains bank statements documenting investment information, journal entries, confirmations of purchase of U.S. Treasury Bills, confirmations of deposit in local investment pool, and deposit slips, correspondence, and memoranda related to specific investments. (Minimum retention: 3 years after investment ends)

(17) **Lien Search Records** Records documenting requests from title companies searching for liens against property within the city, which may include street improvements, water, storm sewer, and sewer. Information may include property owner, tax map and lot number, description of property, total assessment, and payments made. SEE ALSO Bancroft Bond Receipts in the Financial-Assessment and Bonds section and Lien Records in the Recorder-General section. (Minimum retention: 2 years after date of search)

(18) **Property Disposition Records** Records documenting disposition of city-owned non-real property, usually through public auction, competitive bidding, or destruction. Information often includes date, department, description of item, value, disposition, reason for disposition, condition, and authorization. SEE ALSO Real Property Transaction Records and Grant Records in this section for documents related to the disposition of real property. (Minimum retention: 3 years after disposition of property)

(19) **Purchasing Records** Records documenting orders, authorizations, and evidence of receipt of the purchase of goods and services by the city. Includes purchase orders and requests, purchase authorizations, requisitions, contract release orders, material and cost specifications, central stores or printing orders, telephone service orders, and similar records. SEE ALSO Grant Records in this section for records documenting the expenditure of grant funds and City Improvement Administrative and Financial Records and Competitive Bid Records in this section for related purchasing records. (Minimum retention: 3 years after annual audit report issued)

(20) **Real Property Transaction Records*** Records documenting acquisitions, dispositions, and relocations of real property and right-of-ways by the city for urban renewal projects, parks, sewers, streets, water lines, traffic signals, and other reasons. Records may include offer letters, options, agreements of short duration, staff reports, appraisal reports and reviews, inspection reports, letters of transmittal, summaries, and related records. For records documenting transactions involving grant funds, see Grant Records in this section. SEE ALSO Deeds To City-Owned Land in the Recorder-General section. (Minimum retention: 10 years after substantial completion (as defined by ORS 12.135(3))

(21) **Revenue Sharing Records*** Evidence of receipt and administration of federal and/or state revenue sharing funds including those from state liquor and cigarette taxes. Used to track how funds are spent, for budgeting future funds and for other uses. May include transmittals, affidavits of publication, planned and actual use reports, supporting documentation used to qualify for revenue sharing funds, and related records. (Minimum retention: 3 years)

(22) **Signature Authorization Records*** Records documenting the authorization of designated employees to sign fiscal and contractual documents. Useful as an aid for management control over expenditures. Information usually includes authorization date, name, sample signature, position, remarks, conditions, and related data. (Minimum retention: 6 years after authorization superseded or expired)

(23) **Subsidiary Ledgers, Journals, and Registers** Records documenting details of transactions such as those related to receipts and expenditures on a daily, monthly, quarterly or similar basis. Includes journals, ledgers, registers, day books, and other account books that provide backup documentation to the general ledger. May include details of revenues, expenditures, encumbrances, cash receipts, warrants, and others. Information often includes date, payee, purpose, fund credited or debited, check number, and similar or related data. Refer to Grant Records in this section for records documenting transactions of grant funds. SEE ALSO the Financial-Assessment and Bonds section for related records. (Minimum retention: (a) Retain year-end payroll register 75 years (b) Retain trust fund ledgers 3 years after trust fund closed (c) Retain other subsidiary ledgers, journals, and registers 3 years)

(24) **Trust Fund Records** Records documenting bequests to the city. Used to determine trust fund spending for reporting to trustees. May include wills, other legal documents, expenditure records, chronologies, resolutions establishing trust funds by the city, records documenting subject matter approved for purchase, acquisition lists, and related records. Some

records may have historic value. (Minimum retention: Retain records not duplicated elsewhere in city records 3 years after trust fund closed)

(25) **Vendor Lists** Lists documenting vendors providing goods and services to the city. Information usually includes vendor name of person or company, address, and phone number, name of contact person, as well as a description of goods or services provided. (Minimum retention: Until superseded or obsolete)

(26) **Credit Slips** Slips issued to citizens who have withdrawn from city-sponsored classes or activities and are due credit for all or part of fees paid. Information usually includes name of class or activity, date, expiration date, name and address of citizen, and related data. (Minimum retention: 3 years after credit expired or redeemed)

(27) **Vehicle Usage and Expense Records** Records documenting usage and expense associated with city-owned vehicles. Used for maintenance, budgeting, and planning. Information can include vehicle number, make and model, beginning and ending mileage, driver's name and signature, fuel used, repairs needed, and other data. (Minimum retention: 3 years)

Stat. Auth.: ORS 192 & 357

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

Hist.: OSA 1-1998, f. & cert. ef. 1-7-98; OSA 3-2001, f. & cert. ef. 2-15-01; OSA 3-2002, f. & cert. ef. 7-2-02; OSA 2-2005, f. & cert. ef. 5-10-05

Teacher Standards and Practices Commission Chapter 584

Adm. Order No.: TSPC 4-2005(Temp)

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Notice Publication Date:

Rules Amended: 584-017-0130, 584-017-0140, 584-036-0015, 584-060-0051

Subject: 584-017-0130 Middle Level Authorization: Adds middle-level endorsements in Language Arts, Social Science and Science to Initial and Continuing Teaching Licenses.

584-017-0140 High School Authorization: Clarifies scope of middle-level endorsement on a high school authorization.

584-036-0015 Basic and Standard Teaching License with Authorizations and Endorsements: Adds middle school endorsement to Basic or Standards Teaching License, removes obsolete language, rennumbers sections.

584-060-0051 Levels of Teaching Authorized: Clarifies addition of middle-level endorsement requirements in licensure sections of the administrative rules.

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-017-0130

Middle Level Authorization

(1) The unit assures that candidates for a Middle Level authorization demonstrate knowledge, skills, and competencies in the middle level setting.

(2) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in middle level education within the cultural and community context of the teacher education institution and cooperating school districts.

(3) Candidates articulate and apply a philosophy of education which is appropriate to the students in middle level education and which ensures that students learn to think critically and integrate subject matter across disciplines.

(4) Candidates document broad knowledge of the subject matter, curriculum and methods needed to enable students to meet state and district standards by passing the Commission-approved multiple subjects examination.

(5) Candidates document in-depth knowledge of one subject matter or specialty endorsement appropriate to middle level teaching assignments by one or more of the following:

(a) Completing a college major in the subject matter or specialty endorsement;

(b) Passing the PRAXIS test, including the middle school tests in Language Arts, Social Studies or Science in the subject-matter endorsement; or

(c) Presenting evidence satisfactory to the Commission of specialized education.

ADMINISTRATIVE RULES

(6) Candidates who have also passed the commission-approved multiple subjects examination, may add subject-matter endorsements to the Initial Teaching License with middle-level authorizations by:

(a) Passing the high school level subject-mastery test, including Basic math; These endorsements authorize the candidate to teach the subjects through grade 12 so long as the candidate holds the high school authorization; or

(b) Passing the middle school PRAXIS test in Language Arts, Social Studies or Science. These endorsements are only valid to teach the subject up through grade 9 in an elementary, middle or junior high school regardless if the candidate holds a high school authorization.

(7) Candidates who have not passed the commission-approved multiple subjects examination, but hold middle-level authorizations in art; English for Speakers of Other Languages (ESOL); bilingual education/ESOL; music, physical education, adaptive physical education; reading and special education may add an endorsement by:

(a) Passing the PRAXIS test, including the middle school tests in Language Arts, Social Studies or Science in the subject-matter endorsement; and

(b) Complete one of the following practical experiences:

(A) A practicum of 2 semester hours or 3 quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement;

(B) One year of experience teaching the new subject-area at least one hour each day or the equivalent on an approved conditional assignment permit (CAP) pursuant to OAR 584-060-0081. Only an approved CAP will be accepted to document the teaching of the subject for which the endorsement is being sought, therefore, assignments that are allowed under OAR 584-060-0081, but undocumented by an approved CAP will not be accepted to add the endorsement; or

(C) Five years of experience teaching the subject area in a public school or regionally accredited private school within a U.S. jurisdiction on a license appropriate for the assignment before holding any Oregon license.

(8) Candidates complete student teaching or internship with students in grades 5-9 in an elementary, middle, or junior high school. A practicum may substitute for student teaching if this is an additional authorization on an Initial or Continuing Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 6-1998, f. & cert. ef. 7-13-98; TSPC 7-1998, f. 9-28-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05

584-017-0140

High School Authorizations

(1) The unit assures that candidates for a High School Authorization demonstrate knowledge, skills, and competencies in a high school setting.

(2) Candidates document understanding and apply knowledge of developmental psychology and learning, appropriate to students in grades 7-12 within the cultural and community context of the teacher education institution and cooperating school districts.

(3) Candidates articulate and apply a philosophy of education which is appropriate to the students in grades 7-12 and which ensures that students learn to think critically and integrate subject matter across disciplines.

(4) Candidates document in-depth knowledge of one subject matter or specialty area, curriculum, and methods needed to enable students to meet state and district standards by passing the PRAXIS in the specific subject area(s). Candidates holding middle-level endorsements in language arts, social studies or science are not eligible to teach these subjects on the high school authorization.

(5) Candidates complete student teaching or internship with students in grades 7-12. A practicum may substitute for student teaching if this is an additional authorization on an Initial or Continuing Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 7-1998, f. 9-28-98, cert. ef. 1-15-99; TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05

584-036-0015

Basic and Standard Teaching Licenses with Authorizations and Endorsements

(1) A Basic Teaching License is issued to an applicant who meets the requirements set forth in OAR 584-038-0005.

(a) It is valid for three years and may be renewed under conditions set forth in division 048.

(b) The endorsements are valid only for departmental assignments in elementary, middle, or junior high schools through grade nine if requirements leading to standard licensure are not met. To retain authorization for teaching in a high school, holders of subject matter endorsements must meet renewal requirements leading to standard licensure (See, Division 40 for further information).

(2) A Standard Teaching License is issued to an applicant who meets the requirements set forth in OAR 584-040-0005. The Standard Teaching License is valid for five years and may be renewed. A Standard Teaching License is valid for the same assignments as a Basic Teaching License with similar authorizations and endorsements. In addition, the Standard Teaching License authorizes assignments in grades five through twelve or in preprimary through grade twelve for which a renewed Basic Teaching License may not provide authorization. These authorizations and endorsements are explained in the following sections.

(3) Grade level authorizations are stated on a Basic or Standard Teaching License as follows:

(a) Preprimary through nine;

(b) Preprimary through twelve;

(c) Grades five through nine in an elementary, middle, or junior high school; or

(d) Grades five through twelve.

(4) Assignments: Assignments which are permitted on Basic and Standard Teaching Licenses are stated as endorsements as follows:

(a) Elementary: An elementary subject matter endorsement issued after January 14, 1987 is valid for the self-contained classroom and for departmental assignments in preprimary through grade nine of an elementary, middle, or junior high school except assignments of .51 percent or more in:

(A) Art;

(B) Educational media;

(C) Foreign language;

(D) Health;

(E) Home economics;

(F) Technology education;

(G) Mathematics;

(H) Music;

(I) Physical education; and

(J) Reading.

(b) An elementary endorsement issued on or before January 14, 1987, is valid for departmental assignments in mathematics in preprimary through grade nine of an elementary, middle, or junior high school regardless of the percentage of the mathematics assignment.

(c) The elementary endorsement is also valid for assignments in the high school in which the holder is teaching elementary basic skills as it relates to more than one of the following high school subject areas:

(A) Language arts;

(B) Social studies;

(C) Mathematics; or

(D) Reading.

(d) An elementary endorsement issued after January 15, 2001 in assignments of .51 FTE or more in English for Speakers of Other Languages requires the ESOL endorsement.

(e) Middle School endorsements: Middle school endorsements in language arts, social studies or science may be added to a Basic or Standard teaching license. These endorsements are valid to teach the subject in grades 5 through 9 in an elementary, middle or junior high school only.

(f) Subject matter endorsements valid in preK through 12: The following subject matter endorsements are valid for teaching in the subject area in grades preprimary through grade twelve:

(A) Art;

(B) ESOL;

(C) Foreign language;

(D) Health;

(E) Home economics;

(F) Technology education;

(G) Library or educational media;

(H) Mathematics;

(I) Music;

(J) Physical education; or

(K) Reading.

(6) Special Education Assignments: The appropriate special education endorsement is required for a special education assignment in a state-reimbursed or state-approved program. Special education endorsements are

ADMINISTRATIVE RULES

valid in preprimary through grade twelve, but are limited to teaching in the special education endorsement area only.

(a) The Handicapped Learner I and II endorsements are valid for teaching handicapped learners and severely handicapped learners (including multi-handicapped), except hearing impaired, speech impaired, and visually impaired, which require the specific endorsement.

(b) The Severely Handicapped Learner endorsement is valid for teaching those defined in OAR 584-036-0005.

(7) Basic special education license must qualify for standard: Upon expiration of the second Basic Teaching License, the holder of a special education endorsement must qualify for a Standard Teaching License with a standard special education endorsement. The severely handicapped learner endorsement is an exception to this rule; it may be renewed without completion of a Standard Teaching License. [See OAR 584-048-0030 regarding renewal of the severely handicapped learner endorsement.]

(8) Professional technical endorsements: A professional technical endorsement is valid for teaching in professional technical programs approved by the Oregon Department of Education and as noted on the license. Any professional technical endorsement is valid for assignments in diversified occupations or as work experience coordinators.

(9) Assignments in areas where the Commission does not issue an endorsement: Any Oregon teaching license is valid for assignment in areas in which the Commission has no endorsements, including but not limited to:

- (a) Computer education;
- (b) Personal finance; or
- (c) Outdoor education.

(10) Coaching assignments: Any Oregon teaching license is also valid for assignment as an athletic coach.

(11) Assignments in "subjects" contained within an endorsement: Assignments in subjects which are a component of a broader endorsement (such as history, which is subsumed in the social studies endorsement) necessitate the broader endorsement.

(a) Resource room, special teacher assignments: Teachers whose titles are broad (such as resource center, enrichment, learning center, or special teacher, etc.) shall hold the subject matter and grade level endorsements that are most compatible with the curriculum being taught.

(b) Teachers On Special Assignments (TOSA): Any Oregon teaching license is valid for an assignment involving leadership responsibilities, such as planning and development of curriculum, organization and maintenance of professional growth programs for licensed personnel, or improvement of instructional practices, if evaluation of licensed personnel is not required by the position.

(c) Counseling assignments: Any Oregon basic or standard teaching license is valid for .49 or less time as a counselor at the grade levels valid for the teaching license.

(d) Drivers education assignments: A teacher holding a Basic, Standard, or Five-Year Regular Teaching License and the appropriate Oregon motor vehicle operator's license may serve as a driver education instructor for the classroom portion of the course. An instructor who provides the behind-the-wheel portion of the course shall meet requirements established by the Oregon Department of Transportation.

(e) Alternative Education: Any Oregon teaching license is valid to teach any subject or grade level in a public alternative education program. A teaching license is not required to teach in a private alternative education program.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-200, 342.400 & 342.985

Hist.: TS 15, f. 12-20-76, ef. 1-1-77; TS 17, f. 12-19-77, ef. 1-1-78; TS 2-1979, f. 8-21-79, ef. 1-1-80; TS 2-1981(Temp), f. & ef. 8-17-81; TS 1-1982, f. & ef. 1-5-82; TS 6-1982, f. & ef. 12-9-82; TS 3-1983, f. & ef. 5-16-83; TS 6-1984, f. 12-27-84, ef. 1-15-85; TS 7-1986, f. 10-15-86, ef. 1-15-87; TS 1-1987, f. & ef. 3-3-87; TS 1-1988, f. 1-14-88, cert. ef. 1-15-88; TS 3-1988, f. & cert. ef. 4-7-88; TS 2-1989, f. & cert. ef. 2-16-89; TS 3-1989, f. & cert. ef. 7-31-89; TS 5-1989(Temp), f. & cert. ef. 10-6-89; TS 7-1989, f. & cert. ef. 12-13-89; TS 2-1990, f. 6-1-90, cert. ef. 6-14-90; TS 1-1992, f. & cert. ef. 1-15-92; TS 4-1992, f. & cert. ef. 10-1-92; TS 6-1997, f. 9-25-97, cert. ef. 1-15-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05

584-060-0051

Levels of Teaching Authorized

(1)(a) Teachers must prepare for one or more authorization levels at the early childhood, elementary, middle or high school levels in addition to satisfying the Objectives for Initial Teaching License in OAR 584-017-0100.

(b) The teacher must know, understand, and apply developmental psychology and learning theory appropriate to student age and grade within cultural and community contexts, and apply an articulated philosophy of education capable of ensuring that students at a particular authorization level will learn to think critically and integrate knowledge across disciplines.

(c) A first Transitional or Initial Teaching License is authorized for levels on the basis of professional education, experience, previous licensure, and specialized academic course work.

(2)(a) The early childhood authorization level is valid for any teaching assignment in pre-kindergarten through grade four (4) in a school designated as a pre-primary school, a primary school, or an elementary school; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The early childhood authorization level requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more age groups or grades between age three and grade four.

(3)(a) The elementary authorization is valid for any teaching assignment, in grades three (3) through eight (8) in a school designated as an elementary school with the Oregon Department of Education; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The elementary authorization is also valid for any teaching assignment in a self-contained 5th or 6th grade classroom in a middle school.

(c) The elementary authorization level requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more grades between grades three (3) through eight (8) in an elementary classroom or in a self-contained 5th or 6th grade classroom in a middle school.

(4)(a) The middle level authorization is valid for any teaching assignment, in grades five (5) through nine (9) of a school designated as an elementary, middle, or junior high school; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The middle-level authorization requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more grades between grades five (5) through nine (9).

(c) The middle-level authorization also requires candidates to document in-depth knowledge of one subject matter or specialty endorsement appropriate to middle level teaching assignments by one or more of the following:

- (A) Completing a college major in the subject matter or specialty endorsement;
- (B) Passing the PRAXIS test in the subject or specialty endorsement;
- or
- (C) Presenting evidence satisfactory to the Commission of specialized education.

(d) Subject-matter endorsement on the middle-level Initial Teaching License requires passing the high-school level subject mastery test. However, a middle-level endorsement in language arts, social studies or science may be added to the license upon passage of the approved middle school PRAXIS test, but is limited to teaching up through grade 9 in an elementary, middle or junior high school.

(5)(a) The high school authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed unless a conditional assignment permit is approved by the commission, in grades seven (7) through twelve (12) of a school designated as a high school.

(b) The high school authorization level requires qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the corresponding test of subject mastery approved by the commission, together with completion of student teaching or an internship experience with students in one or more grades between grades nine (9) through twelve (12).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05; TSPC 4-2005(Temp), f. & cert. ef. 5-6-05 thru 9-30-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
101-020-0020	4-14-05	Amend	5-1-05	123-065-1500	2-25-05	Amend	4-1-05
101-040-0080	4-14-05	Amend	5-1-05	123-065-1510	2-25-05	Amend	4-1-05
101-050-0015	4-14-05	Amend	5-1-05	123-065-1520	2-25-05	Amend	4-1-05
115-045-0005	1-24-05	Amend	3-1-05	123-065-1530	2-25-05	Amend	4-1-05
115-045-0010	1-24-05	Amend	3-1-05	123-065-1540	2-25-05	Amend	4-1-05
115-045-0020	1-24-05	Amend	3-1-05	123-065-1550	2-25-05	Amend	4-1-05
115-045-0021	1-24-05	Amend	3-1-05	123-065-1553	2-25-05	Adopt	4-1-05
115-045-0023	1-24-05	Amend	3-1-05	123-065-1557	2-25-05	Adopt	4-1-05
115-045-0025	1-24-05	Amend	3-1-05	123-065-1560	2-25-05	Amend	4-1-05
123-011-0020	5-5-05	Amend	6-1-05	123-065-1570	2-25-05	Amend	4-1-05
123-011-0021	5-5-05	Amend	6-1-05	123-065-1580	2-25-05	Amend	4-1-05
123-011-0025	5-5-05	Amend	6-1-05	123-065-1590	2-25-05	Amend	4-1-05
123-011-0027	5-5-05	Amend	6-1-05	123-065-1600	2-25-05	Amend	4-1-05
123-011-0030	5-5-05	Amend	6-1-05	123-065-1610	2-25-05	Amend	4-1-05
123-011-0035	5-5-05	Amend	6-1-05	123-065-1620	2-25-05	Amend	4-1-05
123-011-0040	5-5-05	Amend	6-1-05	123-065-1650	2-25-05	Amend	4-1-05
123-011-0045	5-5-05	Amend	6-1-05	123-065-1670	2-25-05	Adopt	4-1-05
123-011-0050	5-5-05	Amend	6-1-05	123-065-1700	2-25-05	Amend	4-1-05
123-017-0007	5-11-05	Amend	6-1-05	123-065-1710	2-25-05	Amend	4-1-05
123-017-0020	5-11-05	Amend	6-1-05	123-065-1720	2-25-05	Amend	4-1-05
123-017-0025	5-11-05	Amend	6-1-05	123-065-1730	2-25-05	Amend	4-1-05
123-017-0030	5-11-05	Amend	6-1-05	123-065-1740	2-25-05	Amend	4-1-05
123-017-0035	5-11-05	Amend	6-1-05	123-065-1750	2-25-05	Amend	4-1-05
123-017-0037	5-11-05	Amend	6-1-05	123-065-1920	2-25-05	Adopt	4-1-05
123-018-0055	4-21-05	Amend(T)	6-1-05	123-065-2000	2-25-05	Repeal	4-1-05
123-024-0031	4-21-05	Amend(T)	6-1-05	123-065-2500	2-25-05	Amend	4-1-05
123-065-0000	2-25-05	Amend	4-1-05	123-065-2510	2-25-05	Amend	4-1-05
123-065-0005	2-25-05	Adopt	4-1-05	123-065-2520	2-25-05	Amend	4-1-05
123-065-0010	2-25-05	Amend	4-1-05	123-065-2530	2-25-05	Amend	4-1-05
123-065-0048	2-25-05	Am. & Ren.	4-1-05	123-065-2540	2-25-05	Amend	4-1-05
123-065-0080	2-25-05	Amend	4-1-05	123-065-2550	2-25-05	Amend	4-1-05
123-065-0090	2-25-05	Amend	4-1-05	123-065-2700	2-25-05	Amend	4-1-05
123-065-0095	2-25-05	Adopt	4-1-05	123-065-3000	2-25-05	Amend	4-1-05
123-065-0100	2-25-05	Amend	4-1-05	123-065-3030	2-25-05	Amend	4-1-05
123-065-0140	2-25-05	Amend	4-1-05	123-065-3110	2-25-05	Amend	4-1-05
123-065-0150	2-25-05	Amend	4-1-05	123-065-3130	2-25-05	Amend	4-1-05
123-065-0200	2-25-05	Amend	4-1-05	123-065-3140	2-25-05	Amend	4-1-05
123-065-0210	2-25-05	Amend	4-1-05	123-065-3170	2-25-05	Amend	4-1-05
123-065-0220	2-25-05	Amend	4-1-05	123-065-3200	2-25-05	Amend	4-1-05
123-065-0230	2-25-05	Amend	4-1-05	123-065-3230	2-25-05	Amend	4-1-05
123-065-0240	2-25-05	Amend	4-1-05	123-065-3300	2-25-05	Amend	4-1-05
123-065-0255	2-25-05	Adopt	4-1-05	123-065-3330	2-25-05	Amend	4-1-05
123-065-0300	2-25-05	Amend	4-1-05	123-065-3360	2-25-05	Amend	4-1-05
123-065-0310	2-25-05	Amend	4-1-05	123-065-3400	2-25-05	Amend	4-1-05
123-065-0320	2-25-05	Amend	4-1-05	123-065-3430	2-25-05	Amend	4-1-05
123-065-0330	2-25-05	Amend	4-1-05	123-065-3445	2-25-05	Adopt	4-1-05
123-065-0350	2-25-05	Amend	4-1-05	123-065-3460	2-25-05	Amend	4-1-05
123-065-0360	2-25-05	Repeal	4-1-05	123-065-3480	2-25-05	Amend	4-1-05
123-065-0365	2-25-05	Adopt	4-1-05	123-065-3500	2-25-05	Amend	4-1-05
123-065-0400	2-25-05	Am. & Ren.	4-1-05	123-065-3530	2-25-05	Amend	4-1-05
123-065-0410	2-25-05	Am. & Ren.	4-1-05	123-065-3545	2-25-05	Adopt	4-1-05
123-065-0420	2-25-05	Am. & Ren.	4-1-05	123-065-3560	2-25-05	Amend	4-1-05
123-065-0430	2-25-05	Am. & Ren.	4-1-05	123-065-3600	2-25-05	Amend	4-1-05
123-065-0440	2-25-05	Am. & Ren.	4-1-05	123-065-3800	2-25-05	Amend	4-1-05
123-065-1000	2-25-05	Adopt	4-1-05	123-065-3830	2-25-05	Amend	4-1-05
123-065-1050	2-25-05	Adopt	4-1-05	123-065-3850	2-25-05	Amend	4-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
123-065-4000	2-25-05	Amend	4-1-05	123-065-4560	2-25-05	Amend	4-1-05
123-065-4010	2-25-05	Amend	4-1-05	123-065-4570	2-25-05	Amend	4-1-05
123-065-4020	2-25-05	Amend	4-1-05	123-065-4580	2-25-05	Amend	4-1-05
123-065-4050	2-25-05	Amend	4-1-05	123-065-4590	2-25-05	Amend	4-1-05
123-065-4060	2-25-05	Amend	4-1-05	123-065-4600	2-25-05	Adopt	4-1-05
123-065-4070	2-25-05	Amend	4-1-05	123-065-4690	2-25-05	Am. & Ren.	4-1-05
123-065-4100	2-25-05	Amend	4-1-05	123-065-4700	2-25-05	Amend	4-1-05
123-065-4110	2-25-05	Amend	4-1-05	123-065-4710	2-25-05	Amend	4-1-05
123-065-4120	2-25-05	Amend	4-1-05	123-065-4720	2-25-05	Amend	4-1-05
123-065-4130	2-25-05	Amend	4-1-05	123-065-4730	2-25-05	Amend	4-1-05
123-065-4140	2-25-05	Amend	4-1-05	123-065-4740	2-25-05	Amend	4-1-05
123-065-4150	2-25-05	Repeal	4-1-05	123-065-4750	2-25-05	Amend	4-1-05
123-065-4160	2-25-05	Repeal	4-1-05	123-065-4760	2-25-05	Amend	4-1-05
123-065-4200	2-25-05	Amend	4-1-05	123-065-4800	2-25-05	Adopt	4-1-05
123-065-4220	2-25-05	Amend	4-1-05	123-065-4950	2-25-05	Amend	4-1-05
123-065-4230	2-25-05	Amend	4-1-05	123-065-4960	2-25-05	Amend	4-1-05
123-065-4240	2-25-05	Amend	4-1-05	123-065-4970	2-25-05	Amend	4-1-05
123-065-4250	2-25-05	Amend	4-1-05	123-065-4980	2-25-05	Amend	4-1-05
123-065-4260	2-25-05	Amend	4-1-05	123-065-4990	2-25-05	Amend	4-1-05
123-065-4270	2-25-05	Amend	4-1-05	123-065-7000	2-25-05	Amend	4-1-05
123-065-4280	2-25-05	Amend	4-1-05	123-065-7100	2-25-05	Amend	4-1-05
123-065-4300	2-25-05	Amend	4-1-05	123-065-7200	2-25-05	Amend	4-1-05
123-065-4310	2-25-05	Amend	4-1-05	123-065-7300	2-25-05	Amend	4-1-05
123-065-4313	2-25-05	Adopt	4-1-05	123-065-7400	2-25-05	Amend	4-1-05
123-065-4315	2-25-05	Amend	4-1-05	123-065-7500	2-25-05	Amend	4-1-05
123-065-4318	2-25-05	Adopt	4-1-05	123-065-7600	2-25-05	Amend	4-1-05
123-065-4320	2-25-05	Amend	4-1-05	123-065-7700	2-25-05	Amend	4-1-05
123-065-4323	2-25-05	Adopt	4-1-05	123-065-8000	2-25-05	Adopt	4-1-05
123-065-4325	2-25-05	Adopt	4-1-05	123-065-8100	2-25-05	Adopt	4-1-05
123-065-4328	2-25-05	Adopt	4-1-05	123-065-8200	2-25-05	Adopt	4-1-05
123-065-4330	2-25-05	Amend	4-1-05	123-065-8300	2-25-05	Adopt	4-1-05
123-065-4340	2-25-05	Amend	4-1-05	123-065-8400	2-25-05	Adopt	4-1-05
123-065-4343	2-25-05	Repeal	4-1-05	123-070-1000	2-25-05	Amend	4-1-05
123-065-4345	2-25-05	Adopt	4-1-05	123-070-1100	2-25-05	Amend	4-1-05
123-065-4355	2-25-05	Adopt	4-1-05	123-070-1150	2-25-05	Amend	4-1-05
123-065-4360	2-25-05	Repeal	4-1-05	123-070-1200	2-25-05	Amend	4-1-05
123-065-4365	2-25-05	Adopt	4-1-05	123-070-1300	2-25-05	Amend	4-1-05
123-065-4370	2-25-05	Repeal	4-1-05	123-070-1500	2-25-05	Amend	4-1-05
123-065-4375	2-25-05	Adopt	4-1-05	123-070-1600	2-25-05	Amend	4-1-05
123-065-4380	2-25-05	Amend	4-1-05	123-070-1700	2-25-05	Amend	4-1-05
123-065-4390	2-25-05	Am. & Ren.	4-1-05	123-070-1800	2-25-05	Amend	4-1-05
123-065-4400	2-25-05	Amend	4-1-05	123-070-1900	2-25-05	Amend	4-1-05
123-065-4410	2-25-05	Amend	4-1-05	123-070-2000	2-25-05	Amend	4-1-05
123-065-4420	2-25-05	Amend	4-1-05	123-070-2100	2-25-05	Amend	4-1-05
123-065-4430	2-25-05	Amend	4-1-05	123-070-2200	2-25-05	Amend	4-1-05
123-065-4440	2-25-05	Amend	4-1-05	123-070-2300	2-25-05	Amend	4-1-05
123-065-4450	2-25-05	Amend	4-1-05	123-070-2400	2-25-05	Amend	4-1-05
123-065-4460	2-25-05	Amend	4-1-05	125-020-0100	3-1-05	Repeal	3-1-05
123-065-4470	2-25-05	Amend	4-1-05	125-020-0110	3-1-05	Repeal	3-1-05
123-065-4480	2-25-05	Amend	4-1-05	125-020-0120	3-1-05	Repeal	3-1-05
123-065-4500	2-25-05	Amend	4-1-05	125-020-0130	3-1-05	Repeal	3-1-05
123-065-4510	2-25-05	Amend	4-1-05	125-020-0140	3-1-05	Repeal	3-1-05
123-065-4520	2-25-05	Amend	4-1-05	125-020-0200	3-1-05	Repeal	3-1-05
123-065-4530	2-25-05	Amend	4-1-05	125-020-0210	3-1-05	Repeal	3-1-05
123-065-4540	2-25-05	Amend	4-1-05	125-020-0220	3-1-05	Repeal	3-1-05
123-065-4550	2-25-05	Amend	4-1-05	125-020-0225	3-1-05	Repeal	3-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
125-020-0300	3-1-05	Repeal	3-1-05	125-031-0005	3-1-05	Repeal	3-1-05
125-020-0310	3-1-05	Repeal	3-1-05	125-031-0006	3-1-05	Repeal	3-1-05
125-020-0320	3-1-05	Repeal	3-1-05	125-031-0010	3-1-05	Repeal	3-1-05
125-020-0330	3-1-05	Repeal	3-1-05	125-050-0000	3-1-05	Repeal	3-1-05
125-020-0335	3-1-05	Repeal	3-1-05	125-050-0020	3-1-05	Repeal	3-1-05
125-020-0340	3-1-05	Repeal	3-1-05	125-050-0040	3-1-05	Repeal	3-1-05
125-020-0350	3-1-05	Repeal	3-1-05	125-050-0060	3-1-05	Repeal	3-1-05
125-020-0360	3-1-05	Repeal	3-1-05	125-055-0005	12-28-04	Amend(T)	2-1-05
125-020-0400	3-1-05	Repeal	3-1-05	125-055-0010	12-28-04	Amend(T)	2-1-05
125-020-0410	3-1-05	Repeal	3-1-05	125-055-0015	12-28-04	Amend(T)	2-1-05
125-020-0430	3-1-05	Repeal	3-1-05	125-055-0020	12-28-04	Amend(T)	2-1-05
125-020-0440	3-1-05	Repeal	3-1-05	125-055-0025	12-28-04	Amend(T)	2-1-05
125-020-0500	3-1-05	Repeal	3-1-05	125-055-0030	12-28-04	Amend(T)	2-1-05
125-020-0510	3-1-05	Repeal	3-1-05	125-055-0035	12-28-04	Amend(T)	2-1-05
125-020-0520	3-1-05	Repeal	3-1-05	125-055-0040	12-28-04	Amend(T)	2-1-05
125-020-0530	3-1-05	Repeal	3-1-05	125-055-0045	12-28-04	Amend(T)	2-1-05
125-020-0540	3-1-05	Repeal	3-1-05	125-055-0100	4-20-05	Amend(T)	6-1-05
125-020-0550	3-1-05	Repeal	3-1-05	125-055-0105	4-20-05	Amend(T)	6-1-05
125-020-0600	3-1-05	Repeal	3-1-05	125-055-0110	4-20-05	Suspend	6-1-05
125-020-0610	3-1-05	Repeal	3-1-05	125-055-0115	4-20-05	Amend(T)	6-1-05
125-020-0620	3-1-05	Repeal	3-1-05	125-055-0120	4-20-05	Amend(T)	6-1-05
125-020-0700	3-1-05	Repeal	3-1-05	125-055-0125	4-20-05	Amend(T)	6-1-05
125-025-0000	3-1-05	Repeal	3-1-05	125-055-0130	4-20-05	Amend(T)	6-1-05
125-025-0010	3-1-05	Repeal	3-1-05	125-145-0010	12-1-04	Adopt(T)	1-1-05
125-025-0030	3-1-05	Repeal	3-1-05	125-145-0010	2-24-05	Amend(T)	4-1-05
125-025-0040	3-1-05	Repeal	3-1-05	125-145-0010(T)	2-24-05	Suspend	4-1-05
125-025-0050	3-1-05	Repeal	3-1-05	125-145-0020	12-1-04	Adopt(T)	1-1-05
125-025-0060	3-1-05	Repeal	3-1-05	125-145-0020	2-24-05	Amend(T)	4-1-05
125-025-0070	3-1-05	Repeal	3-1-05	125-145-0020(T)	2-24-05	Suspend	4-1-05
125-025-0080	3-1-05	Repeal	3-1-05	125-145-0030	12-1-04	Adopt(T)	1-1-05
125-025-0082	3-1-05	Repeal	3-1-05	125-145-0030	2-24-05	Amend(T)	4-1-05
125-025-0085	3-1-05	Repeal	3-1-05	125-145-0030(T)	2-24-05	Suspend	4-1-05
125-025-0087	3-1-05	Repeal	3-1-05	125-145-0040	12-1-04	Adopt(T)	1-1-05
125-025-0090	3-1-05	Repeal	3-1-05	125-145-0040	2-24-05	Amend(T)	4-1-05
125-025-0100	3-1-05	Repeal	3-1-05	125-145-0040(T)	2-24-05	Suspend	4-1-05
125-025-0110	3-1-05	Repeal	3-1-05	125-145-0045	12-1-04	Adopt(T)	1-1-05
125-030-0000	3-1-05	Repeal	3-1-05	125-145-0045	2-24-05	Amend(T)	4-1-05
125-030-0001	3-1-05	Repeal	3-1-05	125-145-0045(T)	2-24-05	Suspend	4-1-05
125-030-0002	3-1-05	Repeal	3-1-05	125-145-0050	12-1-04	Adopt(T)	1-1-05
125-030-0003	3-1-05	Repeal	3-1-05	125-145-0050	2-24-05	Suspend	4-1-05
125-030-0004	3-1-05	Repeal	3-1-05	125-145-0060	12-1-04	Adopt(T)	1-1-05
125-030-0005	3-1-05	Repeal	3-1-05	125-145-0060	2-24-05	Amend(T)	4-1-05
125-030-0007	3-1-05	Repeal	3-1-05	125-145-0060(T)	2-24-05	Suspend	4-1-05
125-030-0009	3-1-05	Repeal	3-1-05	125-145-0080	12-1-04	Adopt(T)	1-1-05
125-030-0014	3-1-05	Repeal	3-1-05	125-145-0080	2-24-05	Amend(T)	4-1-05
125-030-0028	3-1-05	Repeal	3-1-05	125-145-0080(T)	2-24-05	Suspend	4-1-05
125-030-0029	3-1-05	Repeal	3-1-05	125-145-0090	12-1-04	Adopt(T)	1-1-05
125-030-0030	3-1-05	Repeal	3-1-05	125-145-0090	2-24-05	Amend(T)	4-1-05
125-030-0033	3-1-05	Repeal	3-1-05	125-145-0090(T)	2-24-05	Suspend	4-1-05
125-030-0060	3-1-05	Repeal	3-1-05	125-145-0100	12-1-04	Adopt(T)	1-1-05
125-030-0070	3-1-05	Repeal	3-1-05	125-145-0100	2-24-05	Amend(T)	4-1-05
125-030-0080	3-1-05	Repeal	3-1-05	125-145-0100(T)	2-24-05	Suspend	4-1-05
125-030-0081	3-1-05	Repeal	3-1-05	125-145-0105	12-1-04	Adopt(T)	1-1-05
125-030-0082	3-1-05	Repeal	3-1-05	125-145-0105	2-24-05	Amend(T)	4-1-05
125-030-0100	3-1-05	Repeal	3-1-05	125-145-0105(T)	2-24-05	Suspend	4-1-05
125-031-0000	3-1-05	Repeal	3-1-05	125-145-0110	12-1-04	Adopt(T)	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
125-145-0110	2-24-05	Suspend	4-1-05	125-246-0710	3-1-05	Adopt	1-1-05
125-145-0120	12-1-04	Adopt(T)	1-1-05	125-246-0720	3-1-05	Adopt	1-1-05
125-145-0120	2-24-05	Suspend	4-1-05	125-246-0730	3-1-05	Adopt	1-1-05
125-145-0130	2-24-05	Adopt(T)	4-1-05	125-246-0800	3-1-05	Adopt	1-1-05
125-246-0100	3-1-05	Adopt	1-1-05	125-246-0900	3-1-05	Adopt	1-1-05
125-246-0100	6-6-05	Amend	5-1-05	125-247-0005	3-1-05	Adopt	1-1-05
125-246-0110	3-1-05	Adopt	1-1-05	125-247-0010	3-1-05	Adopt	1-1-05
125-246-0120	3-1-05	Adopt	1-1-05	125-247-0100	3-1-05	Adopt	1-1-05
125-246-0130	3-1-05	Adopt	1-1-05	125-247-0165	3-1-05	Adopt	1-1-05
125-246-0140	3-1-05	Adopt	1-1-05	125-247-0170	3-1-05	Adopt	1-1-05
125-246-0150	3-1-05	Adopt	1-1-05	125-247-0170	3-1-05	Adopt	1-1-05
125-246-0170	3-1-05	Adopt	1-1-05	125-247-0200	3-1-05	Adopt	1-1-05
125-246-0200	3-1-05	Adopt	1-1-05	125-247-0255	3-1-05	Adopt	1-1-05
125-246-0210	3-1-05	Adopt	1-1-05	125-247-0256	3-1-05	Adopt	1-1-05
125-246-0220	3-1-05	Adopt	1-1-05	125-247-0260	3-1-05	Adopt	1-1-05
125-246-0300	3-1-05	Adopt	1-1-05	125-247-0261	3-1-05	Adopt	1-1-05
125-246-0310	3-1-05	Adopt	1-1-05	125-247-0265	3-1-05	Adopt	1-1-05
125-246-0320	3-1-05	Adopt	1-1-05	125-247-0270	3-1-05	Adopt	1-1-05
125-246-0321	3-1-05	Adopt	1-1-05	125-247-0275	3-1-05	Adopt	1-1-05
125-246-0322	3-1-05	Adopt	1-1-05	125-247-0280	3-1-05	Adopt	1-1-05
125-246-0323	3-1-05	Adopt	1-1-05	125-247-0285	3-1-05	Adopt	1-1-05
125-246-0324	3-1-05	Adopt	1-1-05	125-247-0286	3-1-05	Adopt	1-1-05
125-246-0330	3-1-05	Adopt	1-1-05	125-247-0287	3-1-05	Adopt	1-1-05
125-246-0335	3-1-05	Adopt	1-1-05	125-247-0288	3-1-05	Adopt	1-1-05
125-246-0345	3-1-05	Adopt	1-1-05	125-247-0296	3-1-05	Adopt	1-1-05
125-246-0350	3-1-05	Adopt	1-1-05	125-247-0300	3-1-05	Adopt	1-1-05
125-246-0351	3-1-05	Adopt	1-1-05	125-247-0305	3-1-05	Adopt	1-1-05
125-246-0352	3-1-05	Adopt	1-1-05	125-247-0310	3-1-05	Adopt	1-1-05
125-246-0353	3-1-05	Adopt	1-1-05	125-247-0320	3-1-05	Adopt	1-1-05
125-246-0355	3-1-05	Adopt	1-1-05	125-247-0330	3-1-05	Adopt	1-1-05
125-246-0360	3-1-05	Adopt	1-1-05	125-247-0400	3-1-05	Adopt	1-1-05
125-246-0400	3-1-05	Adopt	1-1-05	125-247-0410	3-1-05	Adopt	1-1-05
125-246-0410	3-1-05	Adopt	1-1-05	125-247-0420	3-1-05	Adopt	1-1-05
125-246-0420	3-1-05	Adopt	1-1-05	125-247-0430	3-1-05	Adopt	1-1-05
125-246-0430	3-1-05	Adopt	1-1-05	125-247-0440	3-1-05	Adopt	1-1-05
125-246-0440	3-1-05	Adopt	1-1-05	125-247-0450	3-1-05	Adopt	1-1-05
125-246-0450	3-1-05	Adopt	1-1-05	125-247-0460	3-1-05	Adopt	1-1-05
125-246-0460	3-1-05	Adopt	1-1-05	125-247-0470	3-1-05	Adopt	1-1-05
125-246-0470	3-1-05	Adopt	1-1-05	125-247-0480	3-1-05	Adopt	1-1-05
125-246-0500	3-1-05	Adopt	1-1-05	125-247-0490	3-1-05	Adopt	1-1-05
125-246-0550	3-1-05	Adopt	1-1-05	125-247-0500	3-1-05	Adopt	1-1-05
125-246-0555	3-1-05	Adopt	1-1-05	125-247-0525	3-1-05	Adopt	1-1-05
125-246-0560	3-1-05	Adopt	1-1-05	125-247-0550	3-1-05	Adopt	1-1-05
125-246-0560	6-6-05	Amend	5-1-05	125-247-0575	3-1-05	Adopt	1-1-05
125-246-0570	3-1-05	Adopt	1-1-05	125-247-0600	3-1-05	Adopt	1-1-05
125-246-0575	3-1-05	Adopt	1-1-05	125-247-0610	3-1-05	Adopt	1-1-05
125-246-0580	3-1-05	Adopt	1-1-05	125-247-0620	3-1-05	Adopt	1-1-05
125-246-0600	3-1-05	Adopt	1-1-05	125-247-0630	3-1-05	Adopt	1-1-05
125-246-0605	3-1-05	Adopt	1-1-05	125-247-0640	3-1-05	Adopt	1-1-05
125-246-0610	3-1-05	Adopt	1-1-05	125-247-0650	3-1-05	Adopt	1-1-05
125-246-0615	3-1-05	Adopt	1-1-05	125-247-0660	3-1-05	Adopt	1-1-05
125-246-0620	3-1-05	Adopt	1-1-05	125-247-0670	3-1-05	Adopt	1-1-05
125-246-0625	3-1-05	Adopt	1-1-05	125-247-0700	3-1-05	Adopt	1-1-05
125-246-0630	3-1-05	Adopt	1-1-05	125-247-0710	3-1-05	Adopt	1-1-05
125-246-0635	3-1-05	Adopt	1-1-05	125-247-0720	3-1-05	Adopt	1-1-05
125-246-0700	3-1-05	Adopt	1-1-05	125-247-0730	3-1-05	Adopt	1-1-05
				125-247-0740	3-1-05	Adopt	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
125-247-0750	3-1-05	Adopt	1-1-05	125-249-0610	3-1-05	Adopt	1-1-05
125-247-0760	3-1-05	Adopt	1-1-05	125-249-0620	3-1-05	Adopt	1-1-05
125-247-0770	3-1-05	Adopt	1-1-05	125-249-0630	3-1-05	Adopt	1-1-05
125-247-0800	3-1-05	Adopt	1-1-05	125-249-0640	3-1-05	Adopt	1-1-05
125-248-0100	3-1-05	Adopt	1-1-05	125-249-0650	3-1-05	Adopt	1-1-05
125-248-0110	3-1-05	Adopt	1-1-05	125-249-0660	3-1-05	Adopt	1-1-05
125-248-0120	3-1-05	Adopt	1-1-05	125-249-0670	3-1-05	Adopt	1-1-05
125-248-0130	3-1-05	Adopt	1-1-05	125-249-0680	3-1-05	Adopt	1-1-05
125-248-0200	3-1-05	Adopt	1-1-05	125-249-0690	3-1-05	Adopt	1-1-05
125-248-0210	3-1-05	Adopt	1-1-05	125-249-0800	3-1-05	Adopt	1-1-05
125-248-0220	3-1-05	Adopt	1-1-05	125-249-0810	3-1-05	Adopt	1-1-05
125-248-0230	3-1-05	Adopt	1-1-05	125-249-0820	3-1-05	Adopt	1-1-05
125-248-0240	3-1-05	Adopt	1-1-05	125-249-0830	3-1-05	Adopt	1-1-05
125-248-0250	3-1-05	Adopt	1-1-05	125-249-0840	3-1-05	Adopt	1-1-05
125-248-0260	3-1-05	Adopt	1-1-05	125-249-0850	3-1-05	Adopt	1-1-05
125-248-0300	3-1-05	Adopt	1-1-05	125-249-0860	3-1-05	Adopt	1-1-05
125-248-0310	3-1-05	Adopt	1-1-05	125-249-0870	3-1-05	Adopt	1-1-05
125-248-0330	3-1-05	Adopt	1-1-05	125-249-0880	3-1-05	Adopt	1-1-05
125-248-0340	3-1-05	Adopt	1-1-05	125-249-0890	3-1-05	Adopt	1-1-05
125-249-0100	3-1-05	Adopt	1-1-05	125-249-0900	3-1-05	Adopt	1-1-05
125-249-0110	3-1-05	Adopt	1-1-05	125-249-0910	3-1-05	Adopt	1-1-05
125-249-0120	3-1-05	Adopt	1-1-05	125-300-0000	3-1-05	Repeal	3-1-05
125-249-0130	3-1-05	Adopt	1-1-05	125-300-0010	3-1-05	Repeal	3-1-05
125-249-0140	3-1-05	Adopt	1-1-05	125-300-0050	3-1-05	Repeal	3-1-05
125-249-0150	3-1-05	Adopt	1-1-05	125-300-0100	3-1-05	Repeal	3-1-05
125-249-0160	3-1-05	Adopt	1-1-05	125-310-0005	3-1-05	Repeal	3-1-05
125-249-0200	3-1-05	Adopt	1-1-05	125-310-0010	3-1-05	Repeal	3-1-05
125-249-0210	3-1-05	Adopt	1-1-05	125-310-0012	3-1-05	Repeal	3-1-05
125-249-0220	3-1-05	Adopt	1-1-05	125-310-0030	3-1-05	Repeal	3-1-05
125-249-0230	3-1-05	Adopt	1-1-05	125-310-0035	3-1-05	Repeal	3-1-05
125-249-0240	3-1-05	Adopt	1-1-05	125-310-0040	3-1-05	Repeal	3-1-05
125-249-0250	3-1-05	Adopt	1-1-05	125-310-0044	3-1-05	Repeal	3-1-05
125-249-0260	3-1-05	Adopt	1-1-05	125-310-0060	3-1-05	Repeal	3-1-05
125-249-0270	3-1-05	Adopt	1-1-05	125-310-0090	3-1-05	Repeal	3-1-05
125-249-0280	3-1-05	Adopt	1-1-05	125-310-0135	3-1-05	Repeal	3-1-05
125-249-0290	3-1-05	Adopt	1-1-05	125-310-0180	3-1-05	Repeal	3-1-05
125-249-0300	3-1-05	Adopt	1-1-05	125-310-0200	3-1-05	Repeal	3-1-05
125-249-0310	3-1-05	Adopt	1-1-05	125-310-0220	3-1-05	Repeal	3-1-05
125-249-0320	3-1-05	Adopt	1-1-05	125-310-0300	3-1-05	Repeal	3-1-05
125-249-0330	3-1-05	Adopt	1-1-05	125-310-0400	3-1-05	Repeal	3-1-05
125-249-0340	3-1-05	Adopt	1-1-05	125-310-0500	3-1-05	Repeal	3-1-05
125-249-0350	3-1-05	Adopt	1-1-05	125-320-0010	3-1-05	Repeal	3-1-05
125-249-0360	3-1-05	Adopt	1-1-05	125-320-0020	3-1-05	Repeal	3-1-05
125-249-0370	3-1-05	Adopt	1-1-05	125-320-0025	3-1-05	Repeal	3-1-05
125-249-0380	3-1-05	Adopt	1-1-05	125-330-0030	3-1-05	Repeal	3-1-05
125-249-0390	3-1-05	Adopt	1-1-05	125-330-0140	3-1-05	Repeal	3-1-05
125-249-0400	3-1-05	Adopt	1-1-05	125-330-0200	3-1-05	Repeal	3-1-05
125-249-0410	3-1-05	Adopt	1-1-05	125-330-0260	3-1-05	Repeal	3-1-05
125-249-0420	3-1-05	Adopt	1-1-05	125-330-0330	3-1-05	Repeal	3-1-05
125-249-0430	3-1-05	Adopt	1-1-05	125-330-0340	3-1-05	Repeal	3-1-05
125-249-0440	3-1-05	Adopt	1-1-05	125-330-0450	3-1-05	Repeal	3-1-05
125-249-0450	3-1-05	Adopt	1-1-05	125-330-0500	3-1-05	Repeal	3-1-05
125-249-0460	3-1-05	Adopt	1-1-05	125-330-0600	3-1-05	Repeal	3-1-05
125-249-0470	3-1-05	Adopt	1-1-05	125-330-0700	3-1-05	Repeal	3-1-05
125-249-0490	3-1-05	Adopt	1-1-05	125-360-0010	3-1-05	Repeal	3-1-05
125-249-0600	3-1-05	Adopt	1-1-05	125-360-0020	3-1-05	Repeal	3-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
125-360-0030	3-1-05	Repeal	3-1-05	141-073-0125	2-28-05	Amend	3-1-05
125-600-0000	3-25-05	Adopt(T)	5-1-05	141-073-0130	2-28-05	Repeal	3-1-05
137-008-0010	1-13-05	Amend	2-1-05	141-073-0150	2-28-05	Repeal	3-1-05
137-008-0010	2-1-05	Amend	3-1-05	141-073-0155	2-28-05	Repeal	3-1-05
137-009-0000	3-18-05	Suspend	5-1-05	141-073-0160	2-28-05	Repeal	3-1-05
137-009-0005	3-18-05	Suspend	5-1-05	141-073-0165	2-28-05	Repeal	3-1-05
137-009-0010	3-18-05	Suspend	5-1-05	141-073-0170	2-28-05	Repeal	3-1-05
137-009-0045	3-18-05	Suspend	5-1-05	141-073-0175	2-28-05	Repeal	3-1-05
137-009-0060	3-18-05	Suspend	5-1-05	141-073-0180	2-28-05	Repeal	3-1-05
137-009-0065	3-18-05	Suspend	5-1-05	141-073-0185	2-28-05	Repeal	3-1-05
137-009-0100	3-18-05	Suspend	5-1-05	141-073-0190	2-28-05	Repeal	3-1-05
137-009-0120	3-18-05	Suspend	5-1-05	141-073-0195	2-28-05	Repeal	3-1-05
137-009-0125	3-18-05	Adopt(T)	5-1-05	141-073-0205	2-28-05	Repeal	3-1-05
137-009-0130	3-18-05	Adopt(T)	5-1-05	141-073-0210	2-28-05	Repeal	3-1-05
137-009-0135	3-18-05	Adopt(T)	5-1-05	141-073-0215	2-28-05	Amend	3-1-05
137-009-0140	3-18-05	Adopt(T)	5-1-05	141-073-0220	2-28-05	Repeal	3-1-05
137-009-0145	3-18-05	Adopt(T)	5-1-05	141-073-0225	2-28-05	Am. & Ren.	3-1-05
137-009-0150	3-18-05	Adopt(T)	5-1-05	141-073-0230	2-28-05	Am. & Ren.	3-1-05
137-009-0155	3-18-05	Adopt(T)	5-1-05	141-073-0235	2-28-05	Repeal	3-1-05
137-009-0160	3-18-05	Adopt(T)	5-1-05	141-073-0240	2-28-05	Am. & Ren.	3-1-05
137-009-0165	3-18-05	Adopt(T)	5-1-05	141-073-0245	2-28-05	Repeal	3-1-05
137-055-1090	4-1-05	Adopt	5-1-05	141-073-0250	2-28-05	Am. & Ren.	3-1-05
137-055-1100	4-1-05	Amend	5-1-05	141-073-0255	2-28-05	Repeal	3-1-05
137-055-1120	4-1-05	Amend	5-1-05	141-073-0260	2-28-05	Repeal	3-1-05
137-055-1320	1-3-05	Amend	2-1-05	141-073-0265	2-28-05	Repeal	3-1-05
137-055-2140	1-3-05	Amend	2-1-05	141-073-0270	2-28-05	Repeal	3-1-05
137-055-2165	1-3-05	Adopt	2-1-05	141-073-0275	2-28-05	Repeal	3-1-05
137-055-3420	4-1-05	Amend	5-1-05	141-073-0280	2-28-05	Repeal	3-1-05
137-055-3430	1-3-05	Amend	2-1-05	141-130-0010	4-15-05	Adopt	5-1-05
137-055-3430	4-1-05	Amend	5-1-05	141-130-0020	4-15-05	Adopt	5-1-05
137-055-4130	1-3-05	Amend	2-1-05	141-130-0030	4-15-05	Adopt	5-1-05
137-055-4340	4-1-05	Amend	5-1-05	141-130-0040	4-15-05	Adopt	5-1-05
137-055-5020	1-3-05	Amend	2-1-05	150-23.186	12-31-04	Am. & Ren.	2-1-05
137-055-5120	4-1-05	Amend	5-1-05	150-23.186-(A)	12-31-04	Am. & Ren.	2-1-05
137-055-6210	1-3-05	Amend	2-1-05	150-285B.713	12-31-04	Am. & Ren.	2-1-05
137-055-6220	1-3-05	Amend	2-1-05	150-285B.719(8)	12-31-04	Am. & Ren.	2-1-05
137-055-6240	1-3-05	Amend	2-1-05	150-285B.722	12-31-04	Repeal	2-1-05
137-076-0010	11-22-04	Amend	1-1-05	150-285B.728	12-31-04	Repeal	2-1-05
137-076-0016	11-22-04	Adopt	1-1-05	150-285C.170	12-31-04	Adopt	2-1-05
137-076-0018	11-22-04	Adopt	1-1-05	150-29.375(2)(c)	12-31-04	Am. & Ren.	2-1-05
137-076-0020	11-22-04	Amend	1-1-05	150-293.525(1)(b)	12-31-04	Adopt	2-1-05
137-076-0025	11-22-04	Amend	1-1-05	150-305.220(1)	12-31-04	Amend	2-1-05
137-084-0001	11-22-04	Amend	1-1-05	150-305.220(2)	12-31-04	Amend	2-1-05
137-086-0000	11-22-04	Adopt	1-1-05	150-307.262(2)	12-31-04	Adopt	2-1-05
137-086-0010	11-22-04	Adopt	1-1-05	150-308.010-(A)	12-31-04	Am. & Ren.	2-1-05
137-086-0020	11-22-04	Adopt	1-1-05	150-308.010-(B)	12-31-04	Repeal	2-1-05
137-086-0030	11-22-04	Adopt	1-1-05	150-308.010-(C)	12-31-04	Repeal	2-1-05
137-086-0040	11-22-04	Adopt	1-1-05	150-308.205-(A)	12-31-04	Amend	2-1-05
137-086-0050	11-22-04	Adopt	1-1-05	150-308.205-(D)	12-31-04	Amend	2-1-05
141-073-0100	2-28-05	Amend	3-1-05	150-308A.718	12-31-04	Amend	2-1-05
141-073-0105	2-28-05	Amend	3-1-05	150-309.024	12-31-04	Amend	2-1-05
141-073-0110	2-28-05	Amend	3-1-05	150-309.100(2)-(B)	12-31-04	Amend	2-1-05
141-073-0115	2-28-05	Amend	3-1-05	150-309.100(3)-(B)	12-31-04	Amend	2-1-05
141-073-0118	2-28-05	Adopt	3-1-05	150-309.100(5)	12-31-04	Adopt	2-1-05
141-073-0119	2-28-05	Adopt	3-1-05	150-309.110(1)	12-31-04	Amend	2-1-05
141-073-0120	2-28-05	Repeal	3-1-05	150-309.110(1)-(A)	12-31-04	Amend	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
150-311.688	12-31-04	Adopt	2-1-05	167-001-0085	3-1-05	Adopt(T)	4-1-05
150-311.690(4)	12-31-04	Amend	2-1-05	167-001-0300	3-1-05	Adopt(T)	4-1-05
150-311.723	12-31-04	Repeal	2-1-05	167-001-0360	3-1-05	Adopt(T)	4-1-05
150-311.806-(A)	12-31-04	Amend	2-1-05	167-001-0600	3-1-05	Adopt(T)	4-1-05
150-314.363-(A)	12-31-04	Repeal	2-1-05	167-001-0605	3-1-05	Adopt(T)	4-1-05
150-314.363-(B)	12-31-04	Repeal	2-1-05	167-001-0620	3-1-05	Adopt(T)	4-1-05
150-314.363-(C)	12-31-04	Repeal	2-1-05	167-001-0625	3-1-05	Adopt(T)	4-1-05
150-314.415(6)	12-31-04	Amend	2-1-05	167-001-0630	3-1-05	Adopt(T)	4-1-05
150-314.650	12-31-04	Amend	2-1-05	167-001-0635	3-1-05	Adopt(T)	4-1-05
150-314.665(2)-(A)	12-31-04	Amend	2-1-05	170-060-1010	11-18-04	Amend	1-1-05
150-314.670-(A)	12-31-04	Adopt	2-1-05	170-061-0015	4-22-05	Amend	6-1-05
150-314.748(2)	12-31-04	Repeal	2-1-05	177-040-0026	5-10-05	Amend(T)	6-1-05
150-315.262	12-31-04	Amend	2-1-05	177-040-0026	7-31-05	Amend	5-1-05
150-315.304(2)	12-31-04	Amend	2-1-05	177-040-0027	7-31-05	Adopt	5-1-05
150-316.014	12-31-04	Amend	2-1-05	177-040-0028	7-31-05	Adopt	5-1-05
150-316.587(1)	12-31-04	Amend	2-1-05	177-040-0029	7-31-05	Adopt	5-1-05
150-316.587(5)(b)	12-31-04	Amend	2-1-05	177-050-0027	11-29-04	Amend(T)	1-1-05
150-316.587(5)(c)	12-31-04	Amend	2-1-05	177-050-0027	4-28-05	Amend	6-1-05
150-317.715(3)(b)	12-31-04	Amend	2-1-05	177-200-0000	5-1-05	Repeal	5-1-05
150-321.207(1)	12-31-04	Amend	2-1-05	177-200-0065	5-1-05	Amend	5-1-05
150-321.307(4)	12-31-04	Amend	2-1-05	177-200-0075	5-1-05	Adopt	5-1-05
150-321.348(2)	12-31-04	Adopt	2-1-05	250-010-0057	1-20-05	Amend	3-1-05
150-321.358(2)	12-31-04	Am. & Ren.	2-1-05	250-015-0010	1-24-05	Amend	3-1-05
150-321.485(3)	12-31-04	Am. & Ren.	2-1-05	250-015-0011	1-24-05	Adopt	3-1-05
150-321.741(2)	12-31-04	Adopt	2-1-05	250-015-0016	1-24-05	Amend	3-1-05
150-321.751(3)	12-31-04	Adopt	2-1-05	250-015-0019	1-24-05	Amend	3-1-05
150-321.754(3)	12-31-04	Adopt	2-1-05	250-015-0024	1-24-05	Amend	3-1-05
150-321.805	12-31-04	Am. & Ren.	2-1-05	250-015-0025	1-24-05	Adopt	3-1-05
150-321.805(4)	12-31-04	Adopt	2-1-05	250-015-0026	1-24-05	Adopt	3-1-05
150-OL 1997, Ch. 835, Sec. 38	12-31-04	Am. & Ren.	2-1-05	250-015-0027	1-24-05	Adopt	3-1-05
150-OL 1997, Ch. 835, Sec. 39	12-31-04	Am. & Ren.	2-1-05	250-015-0028	1-24-05	Adopt	3-1-05
160-010-0500	3-1-05	Adopt	4-1-05	250-015-0029	1-24-05	Adopt	3-1-05
160-040-0103	2-1-05	Amend	3-1-05	250-015-0030	1-24-05	Repeal	3-1-05
161-002-0000	1-12-05	Amend	2-1-05	250-015-0031	1-24-05	Adopt	3-1-05
161-025-0060	1-12-05	Amend	2-1-05	250-015-0032	1-24-05	Adopt	3-1-05
165-001-0005	3-22-05	Amend	5-1-05	250-015-0033	1-24-05	Adopt	3-1-05
165-014-0030	3-22-05	Amend	5-1-05	250-020-0280	1-20-05	Amend	3-1-05
165-014-0110	3-22-05	Amend	5-1-05	250-025-0020	12-7-04	Amend(T)	1-1-05
165-014-0270	4-8-05	Adopt	5-1-05	250-025-0020(T)	12-7-04	Suspend	1-1-05
165-020-4040	3-15-05	Adopt(T)	4-1-05	255-005-0005	4-25-05	Amend	6-1-05
166-150-0005	5-10-05	Amend	6-1-05	255-094-0000	4-25-05	Amend	6-1-05
166-150-0110	5-10-05	Amend	6-1-05	255-094-0010	4-25-05	Amend	6-1-05
166-200-0010	5-10-05	Amend	6-1-05	257-010-0025	3-1-05	Amend(T)	4-1-05
166-200-0050	5-10-05	Amend	6-1-05	257-010-0035	3-1-05	Amend(T)	4-1-05
166-300-0015	2-28-05	Amend	4-1-05	259-008-0068	4-1-05	Amend(T)	5-1-05
166-300-0025	2-28-05	Amend	4-1-05	259-009-0060	1-28-05	Adopt(T)	3-1-05
167-001-0005	3-1-05	Amend(T)	4-1-05	259-060-0120	5-1-05	Amend(T)	6-1-05
167-001-0007	3-1-05	Adopt(T)	4-1-05	259-060-0500	5-1-05	Amend(T)	6-1-05
167-001-0010	3-1-05	Amend(T)	4-1-05	274-005-0040	4-22-05	Amend	6-1-05
167-001-0020	3-1-05	Amend(T)	4-1-05	274-020-0200	4-22-05	Amend	6-1-05
167-001-0030	3-1-05	Amend(T)	4-1-05	274-020-0341	4-8-05	Amend(T)	5-1-05
167-001-0065	3-1-05	Adopt(T)	4-1-05	274-020-0341	4-22-05	Amend	6-1-05
167-001-0070	3-1-05	Amend(T)	4-1-05	274-020-0341(T)	4-22-05	Repeal	6-1-05
167-001-0081	3-1-05	Adopt(T)	4-1-05	274-020-0387	4-22-05	Amend	6-1-05
				274-020-0388	4-22-05	Amend	6-1-05
				274-020-0411	4-22-05	Amend	6-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
274-020-0440	4-22-05	Amend	6-1-05	291-127-0310	3-14-05	Amend	4-1-05
274-021-0005	4-22-05	Amend	6-1-05	291-127-0320	3-14-05	Amend	4-1-05
274-028-0005	4-22-05	Amend	6-1-05	291-127-0330	3-14-05	Amend	4-1-05
274-028-0010	4-22-05	Amend	6-1-05	291-131-0015	12-28-04	Amend(T)	2-1-05
274-028-0035	4-22-05	Amend	6-1-05	291-180-0060	2-24-05	Repeal	4-1-05
274-040-0025	4-22-05	Amend	6-1-05	291-180-0065	2-24-05	Repeal	4-1-05
274-045-0001	4-22-05	Amend	6-1-05	291-180-0070	2-24-05	Repeal	4-1-05
274-045-0070	4-22-05	Amend	6-1-05	291-180-0071	2-24-05	Repeal	4-1-05
274-045-0150	4-22-05	Amend	6-1-05	291-180-0072	2-24-05	Repeal	4-1-05
274-045-0190	4-22-05	Amend	6-1-05	291-180-0073	2-24-05	Repeal	4-1-05
274-045-0220	4-22-05	Amend	6-1-05	291-180-0075	2-24-05	Repeal	4-1-05
274-045-0411	4-22-05	Amend	6-1-05	291-180-0080	2-24-05	Repeal	4-1-05
274-045-0471	4-22-05	Amend	6-1-05	291-180-0085	2-24-05	Repeal	4-1-05
291-082-0010	1-7-05	Amend(T)	2-1-05	291-180-0090	2-24-05	Repeal	4-1-05
291-082-0020	1-7-05	Amend(T)	2-1-05	291-180-0095	2-24-05	Repeal	4-1-05
291-082-0030	1-7-05	Amend(T)	2-1-05	291-180-0106	2-24-05	Adopt	4-1-05
291-082-0031	1-7-05	Adopt(T)	2-1-05	291-180-0115	2-24-05	Adopt	4-1-05
291-082-0032	1-7-05	Adopt(T)	2-1-05	291-180-0125	2-24-05	Adopt	4-1-05
291-082-0033	1-7-05	Adopt(T)	2-1-05	291-180-0135	2-24-05	Adopt	4-1-05
291-086-0010	3-21-05	Amend	5-1-05	291-180-0145	2-24-05	Adopt	4-1-05
291-086-0020	3-21-05	Amend	5-1-05	291-180-0155	2-24-05	Adopt	4-1-05
291-086-0030	3-21-05	Amend	5-1-05	291-180-0165	2-24-05	Adopt	4-1-05
291-086-0040	3-21-05	Amend	5-1-05	291-180-0175	2-24-05	Adopt	4-1-05
291-086-0045	3-21-05	Amend	5-1-05	291-180-0185	2-24-05	Adopt	4-1-05
291-086-0046	3-21-05	Adopt	5-1-05	291-180-0195	2-24-05	Adopt	4-1-05
291-086-0047	3-21-05	Adopt	5-1-05	291-180-0205	2-24-05	Adopt	4-1-05
291-086-0050	3-21-05	Amend	5-1-05	291-180-0215	2-24-05	Adopt	4-1-05
291-086-0060	3-21-05	Adopt	5-1-05	291-180-0225	2-24-05	Adopt	4-1-05
291-100-0005	4-13-05	Amend	5-1-05	291-180-0235	2-24-05	Adopt	4-1-05
291-100-0008	4-13-05	Amend	5-1-05	291-180-0245	2-24-05	Adopt	4-1-05
291-100-0013	4-13-05	Amend	5-1-05	291-180-0255	2-24-05	Adopt	4-1-05
291-100-0070	4-13-05	Amend	5-1-05	291-180-0265	2-24-05	Adopt	4-1-05
291-100-0080	4-13-05	Amend	5-1-05	291-180-0275	2-24-05	Adopt	4-1-05
291-100-0085	4-13-05	Adopt	5-1-05	291-180-0285	2-24-05	Adopt	4-1-05
291-100-0090	4-13-05	Amend	5-1-05	291-180-0295	2-24-05	Adopt	4-1-05
291-100-0100	4-13-05	Amend	5-1-05	291-180-0305	2-24-05	Adopt	4-1-05
291-100-0105	4-13-05	Adopt	5-1-05	291-180-0315	2-24-05	Adopt	4-1-05
291-100-0110	4-13-05	Amend	5-1-05	291-180-0325	2-24-05	Adopt	4-1-05
291-100-0115	4-13-05	Adopt	5-1-05	291-180-0335	2-24-05	Adopt	4-1-05
291-100-0120	4-13-05	Amend	5-1-05	291-180-0345	2-24-05	Adopt	4-1-05
291-100-0130	4-13-05	Amend	5-1-05	291-180-0355	2-24-05	Adopt	4-1-05
291-100-0140	4-13-05	Amend	5-1-05	291-180-0365	2-24-05	Adopt	4-1-05
291-100-0150	4-13-05	Amend	5-1-05	291-180-0375	2-24-05	Adopt	4-1-05
291-100-0160	4-13-05	Adopt	5-1-05	291-180-0385	2-24-05	Adopt	4-1-05
291-127-0200	3-14-05	Amend	4-1-05	291-180-0395	2-24-05	Adopt	4-1-05
291-127-0210	3-14-05	Amend	4-1-05	291-180-0405	2-24-05	Adopt	4-1-05
291-127-0220	3-14-05	Amend	4-1-05	291-180-0415	2-24-05	Adopt	4-1-05
291-127-0230	3-14-05	Amend	4-1-05	291-180-0425	2-24-05	Adopt	4-1-05
291-127-0240	3-14-05	Amend	4-1-05	291-180-0435	2-24-05	Adopt	4-1-05
291-127-0250	3-14-05	Amend	4-1-05	291-180-0445	2-24-05	Adopt	4-1-05
291-127-0260	3-14-05	Amend	4-1-05	291-180-0455	2-24-05	Adopt	4-1-05
291-127-0270	3-14-05	Repeal	4-1-05	291-180-0465	2-24-05	Adopt	4-1-05
291-127-0280	3-14-05	Amend	4-1-05	291-180-0475	2-24-05	Adopt	4-1-05
291-127-0285	3-14-05	Adopt	4-1-05	291-180-0485	2-24-05	Adopt	4-1-05
291-127-0290	3-14-05	Amend	4-1-05	291-180-0495	2-24-05	Adopt	4-1-05
291-127-0300	3-14-05	Amend	4-1-05	291-180-0505	2-24-05	Adopt	4-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
291-180-0515	2-24-05	Adopt	4-1-05	309-035-0170	4-1-05	Amend	5-1-05
291-180-0525	2-24-05	Adopt	4-1-05	309-035-0175	4-1-05	Amend	5-1-05
291-180-0535	2-24-05	Adopt	4-1-05	309-035-0185	4-1-05	Amend	5-1-05
291-180-0545	2-24-05	Adopt	4-1-05	309-035-0190	4-1-05	Amend	5-1-05
291-180-0555	2-24-05	Adopt	4-1-05	309-035-0250	4-1-05	Amend	5-1-05
291-180-0565	2-24-05	Adopt	4-1-05	309-035-0260	4-1-05	Amend	5-1-05
291-180-0575	2-24-05	Adopt	4-1-05	309-035-0270	4-1-05	Amend	5-1-05
291-180-0585	2-24-05	Adopt	4-1-05	309-035-0280	4-1-05	Amend	5-1-05
291-180-0595	2-24-05	Adopt	4-1-05	309-035-0290	4-1-05	Amend	5-1-05
291-180-0605	2-24-05	Adopt	4-1-05	309-035-0300	4-1-05	Amend	5-1-05
291-180-0615	2-24-05	Adopt	4-1-05	309-035-0310	4-1-05	Amend	5-1-05
291-180-0625	2-24-05	Adopt	4-1-05	309-035-0320	4-1-05	Amend	5-1-05
291-180-0635	2-24-05	Adopt	4-1-05	309-035-0330	4-1-05	Amend	5-1-05
291-180-0645	2-24-05	Adopt	4-1-05	309-035-0340	4-1-05	Amend	5-1-05
291-180-0655	2-24-05	Adopt	4-1-05	309-035-0350	4-1-05	Amend	5-1-05
291-180-0665	2-24-05	Adopt	4-1-05	309-035-0360	4-1-05	Amend	5-1-05
304-012-0047	6-1-05	Am. & Ren.	6-1-05	309-035-0370	4-1-05	Amend	5-1-05
309-018-0000	3-29-05	Repeal	5-1-05	309-035-0380	4-1-05	Amend	5-1-05
309-018-0010	3-29-05	Repeal	5-1-05	309-035-0390	4-1-05	Amend	5-1-05
309-018-0020	3-29-05	Repeal	5-1-05	309-035-0400	4-1-05	Amend	5-1-05
309-018-0030	3-29-05	Repeal	5-1-05	309-035-0410	4-1-05	Amend	5-1-05
309-018-0040	3-29-05	Repeal	5-1-05	309-035-0420	4-1-05	Amend	5-1-05
309-018-0050	3-29-05	Repeal	5-1-05	309-035-0430	4-1-05	Amend	5-1-05
309-018-0060	3-29-05	Repeal	5-1-05	309-035-0440	4-1-05	Amend	5-1-05
309-032-1240	1-3-05	Adopt(T)	2-1-05	309-035-0450	4-1-05	Amend	5-1-05
309-032-1245	1-3-05	Adopt(T)	2-1-05	309-035-0460	4-1-05	Amend	5-1-05
309-032-1250	1-3-05	Adopt(T)	2-1-05	309-040-0000	4-1-05	Am. & Ren.	5-1-05
309-032-1255	1-3-05	Adopt(T)	2-1-05	309-040-0005	4-1-05	Am. & Ren.	5-1-05
309-032-1260	1-3-05	Adopt(T)	2-1-05	309-040-0010	4-1-05	Am. & Ren.	5-1-05
309-032-1265	1-3-05	Adopt(T)	2-1-05	309-040-0011	4-1-05	Am. & Ren.	5-1-05
309-032-1270	1-3-05	Adopt(T)	2-1-05	309-040-0012	4-1-05	Am. & Ren.	5-1-05
309-032-1275	1-3-05	Adopt(T)	2-1-05	309-040-0015	4-1-05	Am. & Ren.	5-1-05
309-032-1280	1-3-05	Adopt(T)	2-1-05	309-040-0020	4-1-05	Am. & Ren.	5-1-05
309-032-1285	1-3-05	Adopt(T)	2-1-05	309-040-0025	4-1-05	Am. & Ren.	5-1-05
309-032-1290	1-3-05	Adopt(T)	2-1-05	309-040-0030	4-1-05	Am. & Ren.	5-1-05
309-032-1295	1-3-05	Adopt(T)	2-1-05	309-040-0035	4-1-05	Am. & Ren.	5-1-05
309-032-1300	1-3-05	Adopt(T)	2-1-05	309-040-0040	4-1-05	Am. & Ren.	5-1-05
309-032-1305	1-3-05	Adopt(T)	2-1-05	309-040-0045	4-1-05	Am. & Ren.	5-1-05
309-035-0100	4-1-05	Amend	5-1-05	309-040-0050	4-1-05	Am. & Ren.	5-1-05
309-035-0105	4-1-05	Amend	5-1-05	309-040-0052	4-1-05	Am. & Ren.	5-1-05
309-035-0110	4-1-05	Amend	5-1-05	309-040-0055	4-1-05	Am. & Ren.	5-1-05
309-035-0113	4-1-05	Amend	5-1-05	309-040-0057	4-1-05	Am. & Ren.	5-1-05
309-035-0115	4-1-05	Amend	5-1-05	309-040-0060	4-1-05	Am. & Ren.	5-1-05
309-035-0117	4-1-05	Amend	5-1-05	309-040-0065	4-1-05	Am. & Ren.	5-1-05
309-035-0120	4-1-05	Amend	5-1-05	309-040-0070	4-1-05	Am. & Ren.	5-1-05
309-035-0125	4-1-05	Amend	5-1-05	309-040-0075	4-1-05	Am. & Ren.	5-1-05
309-035-0130	4-1-05	Amend	5-1-05	309-040-0090	4-1-05	Am. & Ren.	5-1-05
309-035-0135	4-1-05	Amend	5-1-05	309-040-0092	4-1-05	Am. & Ren.	5-1-05
309-035-0140	4-1-05	Amend	5-1-05	309-040-0093	4-1-05	Am. & Ren.	5-1-05
309-035-0145	4-1-05	Amend	5-1-05	309-040-0095	4-1-05	Am. & Ren.	5-1-05
309-035-0150	4-1-05	Amend	5-1-05	309-040-0097	4-1-05	Am. & Ren.	5-1-05
309-035-0155	4-1-05	Amend	5-1-05	309-040-0098	4-1-05	Am. & Ren.	5-1-05
309-035-0157	4-1-05	Amend	5-1-05	309-040-0099	4-1-05	Am. & Ren.	5-1-05
309-035-0159	4-1-05	Amend	5-1-05	309-040-0100	4-1-05	Am. & Ren.	5-1-05
309-035-0165	4-1-05	Amend	5-1-05	309-040-0370	4-1-05	Adopt	5-1-05
309-035-0167	4-1-05	Amend	5-1-05	309-040-0375	4-1-05	Adopt	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
309-040-0380	4-1-05	Adopt	5-1-05	333-004-0100	2-18-05	Adopt	4-1-05
309-040-0385	4-1-05	Adopt	5-1-05	333-004-0110	2-18-05	Adopt	4-1-05
309-046-0100	1-1-05	Am. & Ren.	1-1-05	333-004-0120	2-18-05	Adopt	4-1-05
309-046-0110	1-1-05	Am. & Ren.	1-1-05	333-004-0130	2-18-05	Adopt	4-1-05
309-046-0120	1-1-05	Am. & Ren.	1-1-05	333-004-0140	2-18-05	Adopt	4-1-05
309-046-0130	1-1-05	Am. & Ren.	1-1-05	333-004-0150	2-18-05	Adopt	4-1-05
309-046-0140	1-1-05	Am. & Ren.	1-1-05	333-004-0160	2-18-05	Adopt	4-1-05
309-046-0150	1-1-05	Am. & Ren.	1-1-05	333-004-0170	2-18-05	Adopt	4-1-05
309-046-0160	1-1-05	Am. & Ren.	1-1-05	333-004-0180	2-18-05	Adopt	4-1-05
309-046-0170	1-1-05	Am. & Ren.	1-1-05	333-004-0190	2-18-05	Adopt	4-1-05
309-046-0180	1-1-05	Am. & Ren.	1-1-05	333-008-0020	1-1-05	Amend	2-1-05
309-046-0190	1-1-05	Am. & Ren.	1-1-05	333-024-0210	12-7-04	Amend	1-1-05
309-046-0200	1-1-05	Am. & Ren.	1-1-05	333-024-0210(T)	12-7-04	Repeal	1-1-05
309-046-0210	1-1-05	Am. & Ren.	1-1-05	333-024-0215	12-7-04	Amend	1-1-05
309-046-0220	1-1-05	Am. & Ren.	1-1-05	333-024-0215(T)	12-7-04	Repeal	1-1-05
309-046-0230	1-1-05	Repeal	1-1-05	333-024-0220	12-7-04	Amend	1-1-05
309-046-0240	1-1-05	Am. & Ren.	1-1-05	333-024-0220(T)	12-7-04	Repeal	1-1-05
330-100-0000	12-20-04	Amend	2-1-05	333-024-0225	12-7-04	Amend	1-1-05
330-100-0005	12-20-04	Amend	2-1-05	333-024-0225(T)	12-7-04	Repeal	1-1-05
330-105-0005	12-20-04	Amend	2-1-05	333-024-0230	12-7-04	Amend	1-1-05
330-105-0007	12-20-04	Amend	2-1-05	333-024-0230(T)	12-7-04	Repeal	1-1-05
330-105-0008	12-20-04	Amend	2-1-05	333-024-0231	12-7-04	Amend	1-1-05
330-105-0015	12-20-04	Amend	2-1-05	333-024-0231(T)	12-7-04	Repeal	1-1-05
330-105-0020	12-20-04	Amend	2-1-05	333-024-0232	12-7-04	Amend	1-1-05
330-105-0025	12-20-04	Amend	2-1-05	333-024-0232(T)	12-7-04	Repeal	1-1-05
330-105-0030	12-20-04	Amend	2-1-05	333-024-0235	12-7-04	Amend	1-1-05
330-105-0035	12-20-04	Amend	2-1-05	333-024-0235(T)	12-7-04	Repeal	1-1-05
330-105-0040	12-20-04	Amend	2-1-05	333-024-0240	12-7-04	Amend	1-1-05
330-105-0045	12-20-04	Amend	2-1-05	333-024-0240(T)	12-7-04	Repeal	1-1-05
330-110-0005	12-20-04	Amend	2-1-05	333-024-0241	12-7-04	Adopt	1-1-05
330-110-0010	12-20-04	Amend	2-1-05	333-024-0241(T)	12-7-04	Repeal	1-1-05
330-110-0015	12-20-04	Amend	2-1-05	333-029-0015	1-14-05	Amend	2-1-05
330-110-0016	12-20-04	Amend	2-1-05	333-029-0050	1-14-05	Amend	2-1-05
330-110-0020	12-20-04	Amend	2-1-05	333-029-0075	1-14-05	Amend	2-1-05
330-110-0025	12-20-04	Amend	2-1-05	333-030-0015	1-14-05	Amend	2-1-05
330-110-0030	12-20-04	Amend	2-1-05	333-030-0040	1-14-05	Amend	2-1-05
330-110-0035	12-20-04	Amend	2-1-05	333-030-0045	1-14-05	Amend	2-1-05
330-110-0036	12-20-04	Amend	2-1-05	333-030-0050	1-14-05	Amend	2-1-05
330-110-0040	12-20-04	Amend	2-1-05	333-030-0080	1-14-05	Amend	2-1-05
330-110-0042	12-20-04	Amend	2-1-05	333-030-0085	1-14-05	Amend	2-1-05
330-110-0045	12-20-04	Amend	2-1-05	333-030-0120	1-14-05	Amend	2-1-05
330-110-0050	12-20-04	Amend	2-1-05	333-031-0002	1-14-05	Amend	2-1-05
330-110-0055	12-20-04	Amend	2-1-05	333-031-0004	1-14-05	Amend	2-1-05
331-710-0010	3-1-05	Amend	4-1-05	333-031-0006	1-14-05	Amend	2-1-05
331-715-0010	3-1-05	Amend	4-1-05	333-031-0010	1-14-05	Amend	2-1-05
331-720-0010	3-1-05	Amend	4-1-05	333-031-0012	1-14-05	Amend	2-1-05
333-004-0000	2-18-05	Adopt	4-1-05	333-031-0018	1-14-05	Amend	2-1-05
333-004-0010	2-18-05	Adopt	4-1-05	333-031-0066	1-14-05	Amend	2-1-05
333-004-0020	2-18-05	Adopt	4-1-05	333-049-0065	4-13-05	Adopt	5-1-05
333-004-0030	2-18-05	Adopt	4-1-05	333-050-0010	2-3-05	Amend	3-1-05
333-004-0040	2-18-05	Adopt	4-1-05	333-050-0010(T)	2-3-05	Repeal	3-1-05
333-004-0050	2-18-05	Adopt	4-1-05	333-050-0020	2-3-05	Amend	3-1-05
333-004-0060	2-18-05	Adopt	4-1-05	333-050-0020(T)	2-3-05	Repeal	3-1-05
333-004-0070	2-18-05	Adopt	4-1-05	333-050-0030	2-3-05	Amend	3-1-05
333-004-0080	2-18-05	Adopt	4-1-05	333-050-0030(T)	2-3-05	Repeal	3-1-05
333-004-0090	2-18-05	Adopt	4-1-05	333-050-0040	2-3-05	Amend	3-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-050-0040(T)	2-3-05	Repeal	3-1-05	333-102-0030(T)	12-1-04	Repeal	1-1-05
333-050-0050	2-3-05	Amend	3-1-05	333-102-0035	12-1-04	Amend	1-1-05
333-050-0050(T)	2-3-05	Repeal	3-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-050-0060	2-3-05	Amend	3-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-050-0060(T)	2-3-05	Repeal	3-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
333-050-0080	2-3-05	Amend	3-1-05	333-102-0075	12-1-04	Amend	1-1-05
333-050-0080(T)	2-3-05	Repeal	3-1-05	333-102-0075(T)	12-1-04	Repeal	1-1-05
333-050-0090	2-3-05	Amend	3-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-050-0090(T)	2-3-05	Repeal	3-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-050-0100	2-3-05	Amend	3-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-050-0100(T)	2-3-05	Repeal	3-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-050-0130	2-3-05	Amend	3-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-050-0130(T)	2-3-05	Repeal	3-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-050-0140	2-3-05	Amend	3-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-050-0140(T)	2-3-05	Repeal	3-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-050-0141(T)	2-3-05	Repeal	3-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-054-0010	5-2-05	Amend(T)	6-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-054-0020	5-2-05	Amend(T)	6-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-054-0030	5-2-05	Amend(T)	6-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-054-0050	5-2-05	Amend(T)	6-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-054-0060	5-2-05	Amend(T)	6-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-054-0100	5-2-05	Amend(T)	6-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-100-0001	12-1-04	Amend	1-1-05	333-102-0135(T)	12-1-04	Repeal	1-1-05
333-100-0001(T)	12-1-04	Repeal	1-1-05	333-102-0190	12-1-04	Adopt	1-1-05
333-100-0005	12-1-04	Amend	1-1-05	333-102-0190(T)	12-1-04	Repeal	1-1-05
333-100-0005(T)	12-1-04	Repeal	1-1-05	333-102-0200	12-1-04	Amend	1-1-05
333-100-0057	12-1-04	Adopt	1-1-05	333-102-0200(T)	12-1-04	Repeal	1-1-05
333-100-0057(T)	12-1-04	Repeal	1-1-05	333-102-0203	12-1-04	Amend	1-1-05
333-100-0060	12-1-04	Amend	1-1-05	333-102-0203(T)	12-1-04	Repeal	1-1-05
333-100-0060(T)	12-1-04	Repeal	1-1-05	333-102-0225	12-1-04	Repeal	1-1-05
333-100-0065	12-1-04	Amend	1-1-05	333-102-0235	12-1-04	Amend	1-1-05
333-100-0065(T)	12-1-04	Repeal	1-1-05	333-102-0235(T)	12-1-04	Repeal	1-1-05
333-100-0070	12-1-04	Amend	1-1-05	333-102-0240	12-1-04	Repeal	1-1-05
333-100-0070(T)	12-1-04	Repeal	1-1-05	333-102-0245	12-1-04	Amend	1-1-05
333-100-0080	12-1-04	Adopt	1-1-05	333-102-0245(T)	12-1-04	Repeal	1-1-05
333-100-0080(T)	12-1-04	Repeal	1-1-05	333-102-0247	12-1-04	Adopt	1-1-05
333-101-0001	12-1-04	Amend	1-1-05	333-102-0247(T)	12-1-04	Repeal	1-1-05
333-101-0001(T)	12-1-04	Repeal	1-1-05	333-102-0250	12-1-04	Amend	1-1-05
333-101-0003	12-1-04	Adopt	1-1-05	333-102-0250(T)	12-1-04	Repeal	1-1-05
333-101-0003(T)	12-1-04	Repeal	1-1-05	333-102-0255	12-1-04	Amend	1-1-05
333-101-0010	12-1-04	Amend	1-1-05	333-102-0255(T)	12-1-04	Repeal	1-1-05
333-101-0010(T)	12-1-04	Repeal	1-1-05	333-102-0260	12-1-04	Amend	1-1-05
333-101-0020	4-11-05	Amend	5-1-05	333-102-0260(T)	12-1-04	Repeal	1-1-05
333-102-0001	12-1-04	Amend	1-1-05	333-102-0265	12-1-04	Amend	1-1-05
333-102-0001(T)	12-1-04	Repeal	1-1-05	333-102-0265(T)	12-1-04	Repeal	1-1-05
333-102-0005	12-1-04	Amend	1-1-05	333-102-0270	12-1-04	Amend	1-1-05
333-102-0005(T)	12-1-04	Repeal	1-1-05	333-102-0270(T)	12-1-04	Repeal	1-1-05
333-102-0010	12-1-04	Amend	1-1-05	333-102-0275	12-1-04	Amend	1-1-05
333-102-0010(T)	12-1-04	Repeal	1-1-05	333-102-0275(T)	12-1-04	Repeal	1-1-05
333-102-0015	12-1-04	Amend	1-1-05	333-102-0285	12-1-04	Amend	1-1-05
333-102-0015(T)	12-1-04	Repeal	1-1-05	333-102-0285(T)	12-1-04	Repeal	1-1-05
333-102-0020	12-1-04	Amend	1-1-05	333-102-0287	12-1-04	Repeal	1-1-05
333-102-0020(T)	12-1-04	Repeal	1-1-05	333-102-0290	12-1-04	Amend	1-1-05
333-102-0025	12-1-04	Amend	1-1-05	333-102-0290(T)	12-1-04	Repeal	1-1-05
333-102-0025(T)	12-1-04	Repeal	1-1-05	333-102-0293	12-1-04	Amend	1-1-05
333-102-0030	12-1-04	Amend	1-1-05	333-102-0293(T)	12-1-04	Repeal	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-102-0295	12-1-04	Repeal	1-1-05	333-105-0330	12-1-04	Repeal	1-1-05
333-102-0300	12-1-04	Amend	1-1-05	333-105-0335	12-1-04	Repeal	1-1-05
333-102-0300(T)	12-1-04	Repeal	1-1-05	333-105-0420	12-1-04	Adopt	1-1-05
333-102-0305	12-1-04	Amend	1-1-05	333-105-0420(T)	12-1-04	Repeal	1-1-05
333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05
333-102-0315	12-1-04	Amend	1-1-05	333-105-0440(T)	12-1-04	Repeal	1-1-05
333-102-0315(T)	12-1-04	Repeal	1-1-05	333-105-0450	12-1-04	Adopt	1-1-05
333-102-0327	12-1-04	Amend	1-1-05	333-105-0450(T)	12-1-04	Repeal	1-1-05
333-102-0327(T)	12-1-04	Repeal	1-1-05	333-105-0460	12-1-04	Adopt	1-1-05
333-102-0330	12-1-04	Amend	1-1-05	333-105-0460(T)	12-1-04	Repeal	1-1-05
333-102-0330(T)	12-1-04	Repeal	1-1-05	333-105-0470	12-1-04	Adopt	1-1-05
333-102-0335	12-1-04	Amend	1-1-05	333-105-0470(T)	12-1-04	Repeal	1-1-05
333-102-0335(T)	12-1-04	Repeal	1-1-05	333-105-0480	12-1-04	Adopt	1-1-05
333-102-0340	12-1-04	Amend	1-1-05	333-105-0480(T)	12-1-04	Repeal	1-1-05
333-102-0340(T)	12-1-04	Repeal	1-1-05	333-105-0490	12-1-04	Adopt	1-1-05
333-102-0350	12-1-04	Adopt	1-1-05	333-105-0490(T)	12-1-04	Repeal	1-1-05
333-102-0350(T)	12-1-04	Repeal	1-1-05	333-105-0500	12-1-04	Adopt	1-1-05
333-102-0355	12-1-04	Adopt	1-1-05	333-105-0500(T)	12-1-04	Repeal	1-1-05
333-102-0355(T)	12-1-04	Repeal	1-1-05	333-105-0510	12-1-04	Adopt	1-1-05
333-102-0360	12-1-04	Adopt	1-1-05	333-105-0510(T)	12-1-04	Repeal	1-1-05
333-102-0360(T)	12-1-04	Repeal	1-1-05	333-105-0520	12-1-04	Adopt	1-1-05
333-102-0365	12-1-04	Adopt	1-1-05	333-105-0520(T)	12-1-04	Repeal	1-1-05
333-102-0365(T)	12-1-04	Repeal	1-1-05	333-105-0530	12-1-04	Adopt	1-1-05
333-103-0015	12-1-04	Amend	1-1-05	333-105-0530(T)	12-1-04	Repeal	1-1-05
333-103-0015(T)	12-1-04	Repeal	1-1-05	333-105-0540	12-1-04	Adopt	1-1-05
333-105-0001	12-1-04	Amend	1-1-05	333-105-0540(T)	12-1-04	Repeal	1-1-05
333-105-0001(T)	12-1-04	Repeal	1-1-05	333-105-0550	12-1-04	Adopt	1-1-05
333-105-0003	12-1-04	Adopt	1-1-05	333-105-0550(T)	12-1-04	Repeal	1-1-05
333-105-0003(T)	12-1-04	Repeal	1-1-05	333-105-0560	12-1-04	Adopt	1-1-05
333-105-0005	12-1-04	Amend	1-1-05	333-105-0560(T)	12-1-04	Repeal	1-1-05
333-105-0005(T)	12-1-04	Repeal	1-1-05	333-105-0570	12-1-04	Adopt	1-1-05
333-105-0050	12-1-04	Adopt	1-1-05	333-105-0570(T)	12-1-04	Repeal	1-1-05
333-105-0050(T)	12-1-04	Repeal	1-1-05	333-105-0580	12-1-04	Adopt	1-1-05
333-105-0075	12-1-04	Adopt	1-1-05	333-105-0580(T)	12-1-04	Repeal	1-1-05
333-105-0075(T)	12-1-04	Repeal	1-1-05	333-105-0590	12-1-04	Adopt	1-1-05
333-105-0101	12-1-04	Repeal	1-1-05	333-105-0590(T)	12-1-04	Repeal	1-1-05
333-105-0105	12-1-04	Repeal	1-1-05	333-105-0600	12-1-04	Adopt	1-1-05
333-105-0110	12-1-04	Repeal	1-1-05	333-105-0600(T)	12-1-04	Repeal	1-1-05
333-105-0115	12-1-04	Repeal	1-1-05	333-105-0610	12-1-04	Adopt	1-1-05
333-105-0120	12-1-04	Repeal	1-1-05	333-105-0610(T)	12-1-04	Repeal	1-1-05
333-105-0125	12-1-04	Repeal	1-1-05	333-105-0620	12-1-04	Adopt	1-1-05
333-105-0130	12-1-04	Repeal	1-1-05	333-105-0620(T)	12-1-04	Repeal	1-1-05
333-105-0135	12-1-04	Repeal	1-1-05	333-105-0630	12-1-04	Adopt	1-1-05
333-105-0140	12-1-04	Repeal	1-1-05	333-105-0630(T)	12-1-04	Repeal	1-1-05
333-105-0201	12-1-04	Repeal	1-1-05	333-105-0640	12-1-04	Adopt	1-1-05
333-105-0202	12-1-04	Repeal	1-1-05	333-105-0640(T)	12-1-04	Repeal	1-1-05
333-105-0205	12-1-04	Repeal	1-1-05	333-105-0650	12-1-04	Adopt	1-1-05
333-105-0210	12-1-04	Repeal	1-1-05	333-105-0650(T)	12-1-04	Repeal	1-1-05
333-105-0301	12-1-04	Repeal	1-1-05	333-105-0660	12-1-04	Adopt	1-1-05
333-105-0305	12-1-04	Repeal	1-1-05	333-105-0660(T)	12-1-04	Repeal	1-1-05
333-105-0310	12-1-04	Repeal	1-1-05	333-105-0670	12-1-04	Adopt	1-1-05
333-105-0315	12-1-04	Repeal	1-1-05	333-105-0670(T)	12-1-04	Repeal	1-1-05
333-105-0320	12-1-04	Repeal	1-1-05	333-105-0680	12-1-04	Adopt	1-1-05
333-105-0325	12-1-04	Repeal	1-1-05	333-105-0680(T)	12-1-04	Repeal	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-105-0690	12-1-04	Adopt	1-1-05	333-111-0010(T)	12-1-04	Repeal	1-1-05
333-105-0690(T)	12-1-04	Repeal	1-1-05	333-116-0010	12-1-04	Amend	1-1-05
333-105-0700	12-1-04	Adopt	1-1-05	333-116-0010(T)	12-1-04	Repeal	1-1-05
333-105-0700(T)	12-1-04	Repeal	1-1-05	333-116-0020	12-1-04	Amend	1-1-05
333-105-0710	12-1-04	Adopt	1-1-05	333-116-0020(T)	12-1-04	Repeal	1-1-05
333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0025	12-1-04	Adopt	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0025(T)	12-1-04	Repeal	1-1-05
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0035	12-1-04	Adopt	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0035(T)	12-1-04	Repeal	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0040	12-1-04	Amend	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0040(T)	12-1-04	Repeal	1-1-05
333-105-0740(T)	12-1-04	Repeal	1-1-05	333-116-0050	12-1-04	Amend	1-1-05
333-105-0750	12-1-04	Adopt	1-1-05	333-116-0050(T)	12-1-04	Repeal	1-1-05
333-105-0750(T)	12-1-04	Repeal	1-1-05	333-116-0055	12-1-04	Adopt	1-1-05
333-105-0760	12-1-04	Adopt	1-1-05	333-116-0055(T)	12-1-04	Repeal	1-1-05
333-105-0760(T)	12-1-04	Repeal	1-1-05	333-116-0057	12-1-04	Adopt	1-1-05
333-106-0005	12-1-04	Amend	1-1-05	333-116-0057(T)	12-1-04	Repeal	1-1-05
333-106-0005	4-11-05	Amend	5-1-05	333-116-0059	12-1-04	Adopt	1-1-05
333-106-0005(T)	12-1-04	Repeal	1-1-05	333-116-0059(T)	12-1-04	Repeal	1-1-05
333-106-0035	12-1-04	Amend	1-1-05	333-116-0070	12-1-04	Amend	1-1-05
333-106-0035(T)	12-1-04	Repeal	1-1-05	333-116-0070(T)	12-1-04	Repeal	1-1-05
333-106-0045	12-1-04	Amend	1-1-05	333-116-0080	12-1-04	Amend	1-1-05
333-106-0045	4-11-05	Amend	5-1-05	333-116-0080(T)	12-1-04	Repeal	1-1-05
333-106-0045(T)	12-1-04	Repeal	1-1-05	333-116-0090	12-1-04	Amend	1-1-05
333-106-0055	12-1-04	Amend	1-1-05	333-116-0090(T)	12-1-04	Repeal	1-1-05
333-106-0055	4-11-05	Amend	5-1-05	333-116-0100	12-1-04	Amend	1-1-05
333-106-0055(T)	12-1-04	Repeal	1-1-05	333-116-0100(T)	12-1-04	Repeal	1-1-05
333-106-0101	12-1-04	Amend	1-1-05	333-116-0105	12-1-04	Adopt	1-1-05
333-106-0101	4-11-05	Amend	5-1-05	333-116-0105(T)	12-1-04	Repeal	1-1-05
333-106-0101(T)	12-1-04	Repeal	1-1-05	333-116-0107	12-1-04	Adopt	1-1-05
333-106-0105	12-1-04	Amend	1-1-05	333-116-0107(T)	12-1-04	Repeal	1-1-05
333-106-0105(T)	12-1-04	Repeal	1-1-05	333-116-0120	12-1-04	Amend	1-1-05
333-106-0210	12-1-04	Amend	1-1-05	333-116-0120(T)	12-1-04	Repeal	1-1-05
333-106-0210(T)	12-1-04	Repeal	1-1-05	333-116-0125	12-1-04	Amend	1-1-05
333-106-0220	12-1-04	Amend	1-1-05	333-116-0125(T)	12-1-04	Repeal	1-1-05
333-106-0220(T)	12-1-04	Repeal	1-1-05	333-116-0140	12-1-04	Amend	1-1-05
333-106-0325	12-1-04	Amend	1-1-05	333-116-0140(T)	12-1-04	Repeal	1-1-05
333-106-0325(T)	12-1-04	Repeal	1-1-05	333-116-0150	12-1-04	Amend	1-1-05
333-106-0370	4-11-05	Amend	5-1-05	333-116-0150(T)	12-1-04	Repeal	1-1-05
333-106-0512	4-11-05	Amend	5-1-05	333-116-0160	12-1-04	Amend	1-1-05
333-106-0575	12-1-04	Amend	1-1-05	333-116-0160(T)	12-1-04	Repeal	1-1-05
333-106-0575(T)	12-1-04	Repeal	1-1-05	333-116-0165	12-1-04	Adopt	1-1-05
333-106-0700	12-1-04	Amend	1-1-05	333-116-0165(T)	12-1-04	Repeal	1-1-05
333-106-0700(T)	12-1-04	Repeal	1-1-05	333-116-0170	12-1-04	Amend	1-1-05
333-106-0710	12-1-04	Amend	1-1-05	333-116-0170(T)	12-1-04	Repeal	1-1-05
333-106-0710	4-11-05	Amend	5-1-05	333-116-0180	12-1-04	Amend	1-1-05
333-106-0710(T)	12-1-04	Repeal	1-1-05	333-116-0180(T)	12-1-04	Repeal	1-1-05
333-106-0720	12-1-04	Amend	1-1-05	333-116-0190	12-1-04	Amend	1-1-05
333-106-0720	4-11-05	Amend	5-1-05	333-116-0190(T)	12-1-04	Repeal	1-1-05
333-106-0720(T)	12-1-04	Repeal	1-1-05	333-116-0200	12-1-04	Amend	1-1-05
333-106-0730	12-1-04	Amend	1-1-05	333-116-0200(T)	12-1-04	Repeal	1-1-05
333-106-0730	4-11-05	Amend	5-1-05	333-116-0250	12-1-04	Amend	1-1-05
333-106-0730(T)	12-1-04	Repeal	1-1-05	333-116-0250(T)	12-1-04	Repeal	1-1-05
333-106-0750	12-1-04	Adopt	1-1-05	333-116-0260	12-1-04	Amend	1-1-05
333-106-0750(T)	12-1-04	Repeal	1-1-05	333-116-0260(T)	12-1-04	Repeal	1-1-05
333-111-0010	12-1-04	Amend	1-1-05	333-116-0265	12-1-04	Adopt	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-116-0265(T)	12-1-04	Repeal	1-1-05	333-116-0570	12-1-04	Amend	1-1-05
333-116-0290	12-1-04	Amend	1-1-05	333-116-0570(T)	12-1-04	Repeal	1-1-05
333-116-0290(T)	12-1-04	Repeal	1-1-05	333-116-0573	12-1-04	Adopt	1-1-05
333-116-0300	12-1-04	Amend	1-1-05	333-116-0573(T)	12-1-04	Repeal	1-1-05
333-116-0300(T)	12-1-04	Repeal	1-1-05	333-116-0577	12-1-04	Adopt	1-1-05
333-116-0310	12-1-04	Amend	1-1-05	333-116-0577(T)	12-1-04	Repeal	1-1-05
333-116-0310(T)	12-1-04	Repeal	1-1-05	333-116-0580	12-1-04	Amend	1-1-05
333-116-0320	12-1-04	Amend	1-1-05	333-116-0580(T)	12-1-04	Repeal	1-1-05
333-116-0320(T)	12-1-04	Repeal	1-1-05	333-116-0583	12-1-04	Adopt	1-1-05
333-116-0330	12-1-04	Amend	1-1-05	333-116-0583(T)	12-1-04	Repeal	1-1-05
333-116-0330(T)	12-1-04	Repeal	1-1-05	333-116-0585	12-1-04	Adopt	1-1-05
333-116-0340	12-1-04	Amend	1-1-05	333-116-0585(T)	12-1-04	Repeal	1-1-05
333-116-0340(T)	12-1-04	Repeal	1-1-05	333-116-0587	12-1-04	Adopt	1-1-05
333-116-0350	12-1-04	Amend	1-1-05	333-116-0587(T)	12-1-04	Repeal	1-1-05
333-116-0350(T)	12-1-04	Repeal	1-1-05	333-116-0590	12-1-04	Amend	1-1-05
333-116-0360	12-1-04	Amend	1-1-05	333-116-0590(T)	12-1-04	Repeal	1-1-05
333-116-0360(T)	12-1-04	Repeal	1-1-05	333-116-0600	12-1-04	Amend	1-1-05
333-116-0370	12-1-04	Amend	1-1-05	333-116-0600(T)	12-1-04	Repeal	1-1-05
333-116-0370(T)	12-1-04	Repeal	1-1-05	333-116-0605	12-1-04	Adopt	1-1-05
333-116-0380	12-1-04	Amend	1-1-05	333-116-0605(T)	12-1-04	Repeal	1-1-05
333-116-0380(T)	12-1-04	Repeal	1-1-05	333-116-0610	12-1-04	Amend	1-1-05
333-116-0390	12-1-04	Amend	1-1-05	333-116-0610(T)	12-1-04	Repeal	1-1-05
333-116-0390(T)	12-1-04	Repeal	1-1-05	333-116-0640	12-1-04	Amend	1-1-05
333-116-0410	12-1-04	Amend	1-1-05	333-116-0640(T)	12-1-04	Repeal	1-1-05
333-116-0410(T)	12-1-04	Repeal	1-1-05	333-116-0660	12-1-04	Amend	1-1-05
333-116-0420	12-1-04	Amend	1-1-05	333-116-0660	4-11-05	Amend	5-1-05
333-116-0420(T)	12-1-04	Repeal	1-1-05	333-116-0660(T)	12-1-04	Repeal	1-1-05
333-116-0430	12-1-04	Amend	1-1-05	333-116-0670	12-1-04	Amend	1-1-05
333-116-0430(T)	12-1-04	Repeal	1-1-05	333-116-0670(T)	12-1-04	Repeal	1-1-05
333-116-0440	12-1-04	Amend	1-1-05	333-116-0680	12-1-04	Amend	1-1-05
333-116-0440(T)	12-1-04	Repeal	1-1-05	333-116-0680	4-11-05	Amend	5-1-05
333-116-0450	12-1-04	Amend	1-1-05	333-116-0680(T)	12-1-04	Repeal	1-1-05
333-116-0450(T)	12-1-04	Repeal	1-1-05	333-116-0720	12-1-04	Amend	1-1-05
333-116-0460	12-1-04	Amend	1-1-05	333-116-0720(T)	12-1-04	Repeal	1-1-05
333-116-0460(T)	12-1-04	Repeal	1-1-05	333-116-0730	12-1-04	Amend	1-1-05
333-116-0470	12-1-04	Amend	1-1-05	333-116-0730(T)	12-1-04	Repeal	1-1-05
333-116-0470(T)	12-1-04	Repeal	1-1-05	333-116-0830	12-1-04	Amend	1-1-05
333-116-0480	12-1-04	Amend	1-1-05	333-116-0830(T)	12-1-04	Repeal	1-1-05
333-116-0480(T)	12-1-04	Repeal	1-1-05	333-116-0860	4-11-05	Amend	5-1-05
333-116-0490	12-1-04	Amend	1-1-05	333-116-0880	4-11-05	Amend	5-1-05
333-116-0490	4-11-05	Amend	5-1-05	333-116-0905	12-1-04	Adopt	1-1-05
333-116-0490(T)	12-1-04	Repeal	1-1-05	333-116-0905(T)	12-1-04	Repeal	1-1-05
333-116-0495	12-1-04	Adopt	1-1-05	333-116-0910	12-1-04	Adopt	1-1-05
333-116-0495(T)	12-1-04	Repeal	1-1-05	333-116-0910(T)	12-1-04	Repeal	1-1-05
333-116-0510	12-1-04	Repeal	1-1-05	333-116-0915	12-1-04	Adopt	1-1-05
333-116-0515	12-1-04	Adopt	1-1-05	333-116-0915(T)	12-1-04	Repeal	1-1-05
333-116-0515(T)	12-1-04	Repeal	1-1-05	333-118-0020	12-1-04	Amend	1-1-05
333-116-0525	12-1-04	Adopt	1-1-05	333-118-0020(T)	12-1-04	Repeal	1-1-05
333-116-0525(T)	12-1-04	Repeal	1-1-05	333-118-0040	12-1-04	Amend	1-1-05
333-116-0530	12-1-04	Amend	1-1-05	333-118-0040(T)	12-1-04	Repeal	1-1-05
333-116-0530(T)	12-1-04	Repeal	1-1-05	333-118-0050	12-1-04	Amend	1-1-05
333-116-0540	12-1-04	Amend	1-1-05	333-118-0050(T)	12-1-04	Repeal	1-1-05
333-116-0540	4-11-05	Amend	5-1-05	333-118-0060	12-1-04	Amend	1-1-05
333-116-0540(T)	12-1-04	Repeal	1-1-05	333-118-0060(T)	12-1-04	Repeal	1-1-05
333-116-0560	12-1-04	Amend	1-1-05	333-118-0070	12-1-04	Amend	1-1-05
333-116-0560(T)	12-1-04	Repeal	1-1-05	333-118-0070(T)	12-1-04	Repeal	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-118-0080	12-1-04	Amend	1-1-05	333-120-0200	12-1-04	Amend	1-1-05
333-118-0080(T)	12-1-04	Repeal	1-1-05	333-120-0200(T)	12-1-04	Repeal	1-1-05
333-118-0090	12-1-04	Amend	1-1-05	333-120-0210	12-1-04	Amend	1-1-05
333-118-0090(T)	12-1-04	Repeal	1-1-05	333-120-0210(T)	12-1-04	Repeal	1-1-05
333-118-0100	12-1-04	Amend	1-1-05	333-120-0215	12-1-04	Adopt	1-1-05
333-118-0100(T)	12-1-04	Repeal	1-1-05	333-120-0215(T)	12-1-04	Repeal	1-1-05
333-118-0110	12-1-04	Amend	1-1-05	333-120-0220	12-1-04	Amend	1-1-05
333-118-0110(T)	12-1-04	Repeal	1-1-05	333-120-0220(T)	12-1-04	Repeal	1-1-05
333-118-0120	12-1-04	Amend	1-1-05	333-120-0230	12-1-04	Amend	1-1-05
333-118-0120(T)	12-1-04	Repeal	1-1-05	333-120-0230(T)	12-1-04	Repeal	1-1-05
333-118-0130	12-1-04	Amend	1-1-05	333-120-0240	12-1-04	Amend	1-1-05
333-118-0130(T)	12-1-04	Repeal	1-1-05	333-120-0240(T)	12-1-04	Repeal	1-1-05
333-118-0140	12-1-04	Amend	1-1-05	333-120-0250	12-1-04	Amend	1-1-05
333-118-0140(T)	12-1-04	Repeal	1-1-05	333-120-0250(T)	12-1-04	Repeal	1-1-05
333-118-0150	12-1-04	Amend	1-1-05	333-120-0320	12-1-04	Amend	1-1-05
333-118-0150(T)	12-1-04	Repeal	1-1-05	333-120-0320(T)	12-1-04	Repeal	1-1-05
333-118-0160	12-1-04	Amend	1-1-05	333-120-0400	12-1-04	Amend	1-1-05
333-118-0160(T)	12-1-04	Repeal	1-1-05	333-120-0400(T)	12-1-04	Repeal	1-1-05
333-118-0170	12-1-04	Amend	1-1-05	333-120-0420	12-1-04	Amend	1-1-05
333-118-0170(T)	12-1-04	Repeal	1-1-05	333-120-0420(T)	12-1-04	Repeal	1-1-05
333-118-0180	12-1-04	Amend	1-1-05	333-120-0430	12-1-04	Amend	1-1-05
333-118-0180(T)	12-1-04	Repeal	1-1-05	333-120-0430(T)	12-1-04	Repeal	1-1-05
333-118-0190	12-1-04	Amend	1-1-05	333-120-0450	12-1-04	Amend	1-1-05
333-118-0190(T)	12-1-04	Repeal	1-1-05	333-120-0450(T)	12-1-04	Repeal	1-1-05
333-118-0200	12-1-04	Amend	1-1-05	333-120-0460	12-1-04	Amend	1-1-05
333-118-0200(T)	12-1-04	Repeal	1-1-05	333-120-0460(T)	12-1-04	Repeal	1-1-05
333-118-0800	12-1-04	Adopt	1-1-05	333-120-0520	12-1-04	Amend	1-1-05
333-118-0800(T)	12-1-04	Repeal	1-1-05	333-120-0520(T)	12-1-04	Repeal	1-1-05
333-119-0030	12-1-04	Amend	1-1-05	333-120-0540	12-1-04	Amend	1-1-05
333-119-0030(T)	12-1-04	Repeal	1-1-05	333-120-0540(T)	12-1-04	Repeal	1-1-05
333-119-0040	12-1-04	Amend	1-1-05	333-120-0550	12-1-04	Amend	1-1-05
333-119-0040(T)	12-1-04	Repeal	1-1-05	333-120-0550(T)	12-1-04	Repeal	1-1-05
333-119-0080	12-1-04	Amend	1-1-05	333-120-0560	12-1-04	Amend	1-1-05
333-119-0080(T)	12-1-04	Repeal	1-1-05	333-120-0560(T)	12-1-04	Repeal	1-1-05
333-119-0090	12-1-04	Amend	1-1-05	333-120-0600	12-1-04	Amend	1-1-05
333-119-0090(T)	12-1-04	Repeal	1-1-05	333-120-0600(T)	12-1-04	Repeal	1-1-05
333-119-0100	12-1-04	Amend	1-1-05	333-120-0610	12-1-04	Amend	1-1-05
333-119-0100(T)	12-1-04	Repeal	1-1-05	333-120-0610(T)	12-1-04	Repeal	1-1-05
333-119-0120	12-1-04	Amend	1-1-05	333-120-0640	12-1-04	Amend	1-1-05
333-119-0120(T)	12-1-04	Repeal	1-1-05	333-120-0640(T)	12-1-04	Repeal	1-1-05
333-120-0015	12-1-04	Adopt	1-1-05	333-120-0650	12-1-04	Amend	1-1-05
333-120-0015(T)	12-1-04	Repeal	1-1-05	333-120-0650(T)	12-1-04	Repeal	1-1-05
333-120-0017	12-1-04	Adopt	1-1-05	333-120-0660	12-1-04	Amend	1-1-05
333-120-0017(T)	12-1-04	Repeal	1-1-05	333-120-0660(T)	12-1-04	Repeal	1-1-05
333-120-0100	12-1-04	Amend	1-1-05	333-120-0670	12-1-04	Amend	1-1-05
333-120-0100(T)	12-1-04	Repeal	1-1-05	333-120-0670(T)	12-1-04	Repeal	1-1-05
333-120-0110	12-1-04	Amend	1-1-05	333-120-0680	12-1-04	Amend	1-1-05
333-120-0110(T)	12-1-04	Repeal	1-1-05	333-120-0680(T)	12-1-04	Repeal	1-1-05
333-120-0130	12-1-04	Amend	1-1-05	333-120-0700	12-1-04	Amend	1-1-05
333-120-0130(T)	12-1-04	Repeal	1-1-05	333-120-0700(T)	12-1-04	Repeal	1-1-05
333-120-0170	12-1-04	Amend	1-1-05	333-120-0710	12-1-04	Amend	1-1-05
333-120-0170(T)	12-1-04	Repeal	1-1-05	333-120-0710(T)	12-1-04	Repeal	1-1-05
333-120-0180	12-1-04	Amend	1-1-05	333-120-0720	12-1-04	Amend	1-1-05
333-120-0180(T)	12-1-04	Repeal	1-1-05	333-120-0720(T)	12-1-04	Repeal	1-1-05
333-120-0190	12-1-04	Amend	1-1-05	333-121-0001	4-11-05	Adopt	5-1-05
333-120-0190(T)	12-1-04	Repeal	1-1-05	333-121-0010	4-11-05	Adopt	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-121-0020	4-11-05	Adopt	5-1-05	340-012-0081	6-1-05	Amend	6-1-05
333-121-0030	4-11-05	Adopt	5-1-05	340-012-0082	6-1-05	Amend	6-1-05
333-121-0040	4-11-05	Adopt	5-1-05	340-012-0083	6-1-05	Amend	6-1-05
333-121-0050	4-11-05	Adopt	5-1-05	340-012-0090	6-1-05	Am. & Ren.	6-1-05
333-121-0060	4-11-05	Adopt	5-1-05	340-012-0097	6-1-05	Adopt	6-1-05
333-121-0100	4-11-05	Adopt	5-1-05	340-012-0130	6-1-05	Adopt	6-1-05
333-121-0110	4-11-05	Adopt	5-1-05	340-012-0145	6-1-05	Adopt	6-1-05
333-121-0120	4-11-05	Adopt	5-1-05	340-012-0150	6-1-05	Adopt	6-1-05
333-121-0130	4-11-05	Adopt	5-1-05	340-012-0160	6-1-05	Adopt	6-1-05
333-121-0140	4-11-05	Adopt	5-1-05	340-012-0162	6-1-05	Adopt	6-1-05
333-121-0150	4-11-05	Adopt	5-1-05	340-016-0055	11-19-04	Amend	1-1-05
333-121-0160	4-11-05	Adopt	5-1-05	340-071-0100	3-1-05	Amend	2-1-05
333-121-0170	4-11-05	Adopt	5-1-05	340-071-0110	3-1-05	Amend	2-1-05
333-121-0180	4-11-05	Adopt	5-1-05	340-071-0115	3-1-05	Amend	2-1-05
333-121-0190	4-11-05	Adopt	5-1-05	340-071-0116	3-1-05	Am. & Ren.	2-1-05
333-121-0200	4-11-05	Adopt	5-1-05	340-071-0117	3-1-05	Am. & Ren.	2-1-05
333-121-0300	4-11-05	Adopt	5-1-05	340-071-0120	3-1-05	Amend	2-1-05
333-121-0310	4-11-05	Adopt	5-1-05	340-071-0130	3-1-05	Amend	2-1-05
333-121-0320	4-11-05	Adopt	5-1-05	340-071-0131	3-1-05	Adopt	2-1-05
333-121-0330	4-11-05	Adopt	5-1-05	340-071-0140	3-1-05	Amend	2-1-05
333-121-0340	4-11-05	Adopt	5-1-05	340-071-0150	3-1-05	Amend	2-1-05
333-121-0350	4-11-05	Adopt	5-1-05	340-071-0155	3-1-05	Amend	2-1-05
333-121-0360	4-11-05	Adopt	5-1-05	340-071-0160	3-1-05	Amend	2-1-05
333-121-0370	4-11-05	Adopt	5-1-05	340-071-0162	3-1-05	Amend	2-1-05
333-121-0380	4-11-05	Adopt	5-1-05	340-071-0165	3-1-05	Amend	2-1-05
333-121-0390	4-11-05	Adopt	5-1-05	340-071-0170	3-1-05	Amend	2-1-05
333-121-0500	4-11-05	Adopt	5-1-05	340-071-0175	3-1-05	Amend	2-1-05
333-121-0510	4-11-05	Adopt	5-1-05	340-071-0185	3-1-05	Amend	2-1-05
333-150-0000	1-14-05	Amend	2-1-05	340-071-0195	3-1-05	Repeal	2-1-05
333-505-0007	2-4-05	Amend	3-1-05	340-071-0200	3-1-05	Amend	2-1-05
334-010-0050	2-23-05	Amend	4-1-05	340-071-0205	3-1-05	Amend	2-1-05
340-012-0026	6-1-05	Amend	6-1-05	340-071-0210	3-1-05	Amend	2-1-05
340-012-0027	6-1-05	Adopt	6-1-05	340-071-0215	3-1-05	Amend	2-1-05
340-012-0028	6-1-05	Amend	6-1-05	340-071-0220	3-1-05	Amend	2-1-05
340-012-0030	6-1-05	Amend	6-1-05	340-071-0260	3-1-05	Amend	2-1-05
340-012-0040	6-1-05	Am. & Ren.	6-1-05	340-071-0265	3-1-05	Amend	2-1-05
340-012-0041	6-1-05	Amend	6-1-05	340-071-0270	3-1-05	Amend	2-1-05
340-012-0042	6-1-05	Am. & Ren.	6-1-05	340-071-0275	3-1-05	Amend	2-1-05
340-012-0045	6-1-05	Amend	6-1-05	340-071-0280	3-1-05	Amend	2-1-05
340-012-0046	6-1-05	Repeal	6-1-05	340-071-0285	3-1-05	Amend	2-1-05
340-012-0048	6-1-05	Am. & Ren.	6-1-05	340-071-0295	3-1-05	Amend	2-1-05
340-012-0049	6-1-05	Am. & Ren.	6-1-05	340-071-0300	3-1-05	Repeal	2-1-05
340-012-0050	6-1-05	Am. & Ren.	6-1-05	340-071-0302	3-1-05	Amend	2-1-05
340-012-0052	6-1-05	Repeal	6-1-05	340-071-0305	3-1-05	Am. & Ren.	2-1-05
340-012-0053	6-1-05	Adopt	6-1-05	340-071-0310	3-1-05	Amend	2-1-05
340-012-0055	6-1-05	Amend	6-1-05	340-071-0315	3-1-05	Amend	2-1-05
340-012-0060	3-1-05	Amend	3-1-05	340-071-0320	3-1-05	Amend	2-1-05
340-012-0065	6-1-05	Amend	6-1-05	340-071-0325	3-1-05	Amend	2-1-05
340-012-0066	6-1-05	Amend	6-1-05	340-071-0330	3-1-05	Amend	2-1-05
340-012-0067	6-1-05	Amend	6-1-05	340-071-0335	3-1-05	Amend	2-1-05
340-012-0068	6-1-05	Amend	6-1-05	340-071-0340	3-1-05	Amend	2-1-05
340-012-0071	6-1-05	Amend	6-1-05	340-071-0345	3-1-05	Amend	2-1-05
340-012-0072	6-1-05	Amend	6-1-05	340-071-0360	3-1-05	Amend	2-1-05
340-012-0073	6-1-05	Amend	6-1-05	340-071-0400	3-1-05	Amend	2-1-05
340-012-0074	6-1-05	Adopt	6-1-05	340-071-0401	3-1-05	Repeal	2-1-05
340-012-0079	6-1-05	Adopt	6-1-05	340-071-0410	3-1-05	Amend	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
340-071-0415	3-1-05	Amend	2-1-05	340-240-0180	1-4-05	Amend	2-1-05
340-071-0420	3-1-05	Amend	2-1-05	340-240-0190	1-4-05	Amend	2-1-05
340-071-0425	3-1-05	Amend	2-1-05	340-240-0200	1-4-05	Repeal	2-1-05
340-071-0430	3-1-05	Amend	2-1-05	340-240-0210	1-4-05	Amend	2-1-05
340-071-0435	3-1-05	Amend	2-1-05	340-240-0220	1-4-05	Amend	2-1-05
340-071-0440	3-1-05	Amend	2-1-05	340-240-0230	1-4-05	Amend	2-1-05
340-071-0445	3-1-05	Amend	2-1-05	340-240-0240	1-4-05	Repeal	2-1-05
340-071-0450	3-1-05	Repeal	2-1-05	340-240-0270	1-4-05	Repeal	2-1-05
340-071-0460	3-1-05	Amend	2-1-05	340-242-0440	12-15-04	Amend	1-1-05
340-071-0500	3-1-05	Amend	2-1-05	340-244-0030	2-10-05	Amend	3-1-05
340-071-0520	3-1-05	Amend	2-1-05	340-244-0040	2-10-05	Amend	3-1-05
340-071-0600	3-1-05	Amend	2-1-05	340-244-0120	2-10-05	Amend	3-1-05
340-071-0650	3-1-05	Adopt	2-1-05	340-244-0210	2-10-05	Amend	3-1-05
340-073-0025	3-1-05	Amend	2-1-05	340-244-0220	2-10-05	Amend	3-1-05
340-073-0026	3-1-05	Amend	2-1-05	340-244-0230	2-10-05	Amend	3-1-05
340-073-0030	3-1-05	Amend	2-1-05	410-003-0010	3-1-05	Adopt(T)	4-1-05
340-073-0035	3-1-05	Amend	2-1-05	410-003-0020	3-1-05	Adopt(T)	4-1-05
340-073-0040	3-1-05	Amend	2-1-05	410-007-0210	3-29-05	Amend	5-1-05
340-073-0041	3-1-05	Amend	2-1-05	410-007-0220	3-29-05	Amend	5-1-05
340-073-0045	3-1-05	Amend	2-1-05	410-007-0230	3-29-05	Amend	5-1-05
340-073-0050	3-1-05	Amend	2-1-05	410-007-0240	3-29-05	Amend	5-1-05
340-073-0055	3-1-05	Amend	2-1-05	410-007-0250	3-29-05	Amend	5-1-05
340-073-0056	3-1-05	Amend	2-1-05	410-007-0260	3-29-05	Amend	5-1-05
340-073-0060	3-1-05	Amend	2-1-05	410-007-0270	3-29-05	Amend	5-1-05
340-073-0065	3-1-05	Amend	2-1-05	410-007-0280	3-29-05	Amend	5-1-05
340-073-0070	3-1-05	Amend	2-1-05	410-007-0290	3-29-05	Amend	5-1-05
340-073-0075	3-1-05	Amend	2-1-05	410-007-0300	3-29-05	Amend	5-1-05
340-073-0080	3-1-05	Amend	2-1-05	410-007-0310	3-29-05	Amend	5-1-05
340-073-0085	3-1-05	Amend	2-1-05	410-007-0320	3-29-05	Amend	5-1-05
340-150-0250	12-27-04	Amend	2-1-05	410-007-0330	3-29-05	Amend	5-1-05
340-200-0020	2-10-05	Amend	3-1-05	410-007-0340	3-29-05	Amend	5-1-05
340-200-0040	12-15-04	Amend	1-1-05	410-007-0370	3-29-05	Amend	5-1-05
340-200-0040	1-4-05	Amend	2-1-05	410-007-0380	3-29-05	Amend	5-1-05
340-200-0040	2-10-05	Amend	3-1-05	410-050-0401	2-1-05	Adopt	3-1-05
340-200-0040	6-1-05	Amend	6-1-05	410-050-0411	2-1-05	Adopt	3-1-05
340-204-0010	1-4-05	Amend	2-1-05	410-050-0421	2-1-05	Adopt	3-1-05
340-204-0030	1-4-05	Amend	2-1-05	410-050-0431	2-1-05	Adopt	3-1-05
340-204-0040	1-4-05	Amend	2-1-05	410-050-0441	2-1-05	Adopt	3-1-05
340-204-0090	12-15-04	Amend	1-1-05	410-050-0451	2-1-05	Adopt	3-1-05
340-218-0080	2-10-05	Amend	3-1-05	410-050-0461	2-1-05	Adopt	3-1-05
340-224-0060	1-4-05	Amend	2-1-05	410-050-0471	2-1-05	Adopt	3-1-05
340-224-0070	1-4-05	Amend	2-1-05	410-050-0481	2-1-05	Adopt	3-1-05
340-225-0020	1-4-05	Amend	2-1-05	410-050-0491	2-1-05	Adopt	3-1-05
340-225-0045	1-4-05	Amend	2-1-05	410-050-0501	2-1-05	Adopt	3-1-05
340-225-0090	1-4-05	Amend	2-1-05	410-050-0511	2-1-05	Adopt	3-1-05
340-230-0030	2-10-05	Amend	3-1-05	410-050-0521	2-1-05	Adopt	3-1-05
340-230-0410	2-10-05	Amend	3-1-05	410-050-0531	2-1-05	Adopt	3-1-05
340-238-0040	2-10-05	Amend	3-1-05	410-050-0541	2-1-05	Adopt	3-1-05
340-238-0060	2-10-05	Amend	3-1-05	410-050-0551	2-1-05	Adopt	3-1-05
340-240-0030	1-4-05	Amend	2-1-05	410-050-0561	2-1-05	Adopt	3-1-05
340-240-0100	1-4-05	Amend	2-1-05	410-050-0571	2-1-05	Adopt	3-1-05
340-240-0110	1-4-05	Amend	2-1-05	410-050-0581	2-1-05	Adopt	3-1-05
340-240-0120	1-4-05	Amend	2-1-05	410-050-0591	2-1-05	Adopt	3-1-05
340-240-0130	1-4-05	Amend	2-1-05	410-050-0700	5-7-05	Adopt	5-1-05
340-240-0140	1-4-05	Amend	2-1-05	410-050-0710	5-7-05	Adopt	5-1-05
340-240-0150	1-4-05	Amend	2-1-05	410-050-0720	5-7-05	Adopt	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
410-050-0730	5-7-05	Adopt	5-1-05	410-122-0208	1-1-05	Amend	2-1-05
410-050-0740	5-7-05	Adopt	5-1-05	410-122-0208	4-1-05	Amend	4-1-05
410-050-0750	5-7-05	Adopt	5-1-05	410-122-0209	4-1-05	Amend	4-1-05
410-050-0760	5-7-05	Adopt	5-1-05	410-122-0210	4-1-05	Amend	4-1-05
410-050-0770	5-7-05	Adopt	5-1-05	410-122-0340	1-1-05	Amend	2-1-05
410-050-0780	5-7-05	Adopt	5-1-05	410-122-0365	1-1-05	Amend	2-1-05
410-050-0790	5-7-05	Adopt	5-1-05	410-122-0375	4-1-05	Amend	4-1-05
410-050-0800	5-7-05	Adopt	5-1-05	410-122-0400	1-1-05	Amend	2-1-05
410-050-0810	5-7-05	Adopt	5-1-05	410-122-0420	4-1-05	Amend	4-1-05
410-050-0820	5-7-05	Adopt	5-1-05	410-122-0475	1-1-05	Amend	2-1-05
410-050-0830	5-7-05	Adopt	5-1-05	410-122-0560	1-1-05	Amend	2-1-05
410-050-0840	5-7-05	Adopt	5-1-05	410-122-0580	1-1-05	Amend	2-1-05
410-050-0850	5-7-05	Adopt	5-1-05	410-122-0590	4-1-05	Amend	4-1-05
410-050-0860	12-3-04	Amend(T)	1-1-05	410-122-0625	4-1-05	Amend	4-1-05
410-050-0860	5-7-05	Adopt	5-1-05	410-122-0630	1-1-05	Amend	2-1-05
410-050-0860	5-10-05	Amend(T)	6-1-05	410-122-0660	4-1-05	Amend	4-1-05
410-050-0861	5-10-05	Adopt(T)	6-1-05	410-122-0720	1-1-05	Amend	2-1-05
410-050-0870	5-7-05	Adopt	5-1-05	410-123-1085	4-1-05	Amend	4-1-05
410-120-0000	4-1-05	Amend	4-1-05	410-123-1260	4-1-05	Amend	4-1-05
410-120-1200	4-1-05	Amend	4-1-05	410-123-1670	4-1-05	Amend	4-1-05
410-120-1260	4-1-05	Amend	4-1-05	410-124-0000	12-10-04	Amend(T)	1-1-05
410-120-1280	4-1-05	Amend	4-1-05	410-124-0000	12-30-04	Amend(T)	2-1-05
410-120-1295	2-9-05	Amend(T)	3-1-05	410-124-0000(T)	12-10-04	Suspend	1-1-05
410-120-1295(T)	2-9-05	Suspend	3-1-05	410-124-0000(T)	12-30-04	Suspend	2-1-05
410-120-1320	4-1-05	Amend	4-1-05	410-124-0105	4-1-05	Adopt	5-1-05
410-121-0021	4-1-05	Amend	4-1-05	410-125-0141	4-1-05	Amend	5-1-05
410-121-0030	12-1-04	Amend	1-1-05	410-125-0195	4-1-05	Amend	5-1-05
410-121-0030	4-1-05	Amend	5-1-05	410-125-0220	4-1-05	Amend	4-1-05
410-121-0032	1-1-05	Adopt	2-1-05	410-125-0410	4-1-05	Amend	4-1-05
410-121-0040	12-1-04	Amend	1-1-05	410-129-0070	4-1-05	Amend	4-1-05
410-121-0135	4-1-05	Amend	4-1-05	410-129-0200	4-1-05	Amend	4-1-05
410-121-0150	4-1-05	Amend	4-1-05	410-129-0240	4-1-05	Amend	4-1-05
410-121-0155	4-1-05	Amend	5-1-05	410-130-0010	4-1-05	Repeal	4-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	410-130-0020	4-1-05	Repeal	4-1-05
410-121-0157	3-31-05	Amend	4-1-05	410-130-0040	4-1-05	Repeal	4-1-05
410-121-0157	4-1-05	Amend(T)	4-1-05	410-130-0160	4-1-05	Amend	4-1-05
410-121-0157(T)	3-31-05	Repeal	4-1-05	410-130-0180	4-1-05	Amend	4-1-05
410-121-0160	4-1-05	Amend	5-1-05	410-130-0200	4-1-05	Amend	4-1-05
410-121-0185	4-1-05	Amend	4-1-05	410-130-0220	4-1-05	Amend	4-1-05
410-121-0190	4-1-05	Amend	4-1-05	410-130-0240	12-1-04	Amend	1-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	410-130-0240	4-1-05	Amend	4-1-05
410-121-0300	2-1-05	Amend	3-1-05	410-130-0368	4-1-05	Adopt	4-1-05
410-121-0300	4-1-05	Amend(T)	5-1-05	410-130-0587	4-1-05	Amend	4-1-05
410-121-0320	1-1-05	Amend	2-1-05	410-130-0610	4-1-05	Adopt	4-1-05
410-122-0010	4-1-05	Amend	4-1-05	410-130-0680	4-1-05	Amend	4-1-05
410-122-0020	4-1-05	Amend	4-1-05	410-130-0700	4-1-05	Amend	4-1-05
410-122-0040	4-1-05	Amend	4-1-05	410-131-0120	4-1-05	Amend	4-1-05
410-122-0055	4-1-05	Amend	4-1-05	410-131-0280	4-1-05	Amend	4-1-05
410-122-0190	1-1-05	Amend	2-1-05	410-133-0000	4-5-05	Amend(T)	5-1-05
410-122-0200	4-1-05	Amend	4-1-05	410-133-0040	4-5-05	Amend(T)	5-1-05
410-122-0202	1-1-05	Amend	2-1-05	410-133-0060	4-5-05	Amend(T)	5-1-05
410-122-0202	4-1-05	Amend	4-1-05	410-133-0080	4-5-05	Amend(T)	5-1-05
410-122-0203	4-1-05	Amend	4-1-05	410-133-0090	4-5-05	Amend(T)	5-1-05
410-122-0204	1-1-05	Amend	2-1-05	410-133-0100	4-5-05	Amend(T)	5-1-05
410-122-0204	4-1-05	Amend	4-1-05	410-133-0120	4-5-05	Amend(T)	5-1-05
410-122-0207	1-1-05	Amend	2-1-05	410-133-0140	4-5-05	Amend(T)	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
410-133-0160	4-5-05	Amend(T)	5-1-05	411-031-0040	1-1-05	Amend(T)	2-1-05
410-133-0180	4-5-05	Amend(T)	5-1-05	411-031-0050	1-1-05	Amend(T)	2-1-05
410-133-0200	4-5-05	Amend(T)	5-1-05	411-034-0000	12-1-04	Amend	1-1-05
410-133-0220	4-5-05	Amend(T)	5-1-05	411-034-0010	12-1-04	Amend	1-1-05
410-133-0245	4-5-05	Adopt(T)	5-1-05	411-034-0020	12-1-04	Amend	1-1-05
410-133-0280	4-5-05	Amend(T)	5-1-05	411-034-0030	12-1-04	Amend	1-1-05
410-133-0300	4-5-05	Amend(T)	5-1-05	411-034-0035	12-1-04	Adopt	1-1-05
410-133-0320	4-5-05	Amend(T)	5-1-05	411-034-0040	12-1-04	Adopt	1-1-05
410-133-0340	4-5-05	Amend(T)	5-1-05	411-034-0050	12-1-04	Amend	1-1-05
410-141-0000	5-1-05	Amend	6-1-05	411-034-0055	12-1-04	Adopt	1-1-05
410-141-0060	5-1-05	Amend	6-1-05	411-034-0070	12-1-04	Amend	1-1-05
410-141-0065	4-1-05	Repeal	4-1-05	411-034-0090	12-1-04	Amend	1-1-05
410-141-0070	5-1-05	Amend	6-1-05	411-045-0000	1-4-05	Amend	2-1-05
410-141-0080	5-1-05	Amend	6-1-05	411-045-0010	1-4-05	Amend	2-1-05
410-141-0110	5-1-05	Amend	6-1-05	411-045-0020	1-4-05	Amend	2-1-05
410-141-0120	5-1-05	Amend	6-1-05	411-045-0030	1-4-05	Amend	2-1-05
410-141-0140	5-1-05	Amend	6-1-05	411-045-0040	1-4-05	Amend	2-1-05
410-141-0160	5-1-05	Amend	6-1-05	411-045-0050	1-4-05	Amend	2-1-05
410-141-0180	5-1-05	Amend	6-1-05	411-045-0060	1-4-05	Amend	2-1-05
410-141-0200	5-1-05	Amend	6-1-05	411-045-0070	1-4-05	Amend	2-1-05
410-141-0220	5-1-05	Amend	6-1-05	411-045-0080	1-4-05	Amend	2-1-05
410-141-0280	5-1-05	Amend	6-1-05	411-045-0090	1-4-05	Amend	2-1-05
410-141-0300	5-1-05	Amend	6-1-05	411-045-0100	1-4-05	Amend	2-1-05
410-141-0320	5-1-05	Amend	6-1-05	411-045-0110	1-4-05	Amend	2-1-05
410-141-0340	5-1-05	Amend	6-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-141-0400	5-1-05	Amend	6-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-141-0405	5-1-05	Amend	6-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-141-0420	5-1-05	Amend	6-1-05	411-070-0033	4-19-05	Adopt	6-1-05
410-141-0440	5-1-05	Amend	6-1-05	411-070-0359	12-28-04	Amend	2-1-05
410-141-0480	5-1-05	Amend	6-1-05	411-070-0428	12-28-04	Amend	2-1-05
410-141-0520	5-1-05	Amend	6-1-05	411-070-0440	12-28-04	Repeal	2-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-070-0442	12-28-04	Adopt	2-1-05
410-146-0080	4-1-05	Amend	4-1-05	411-070-0446	12-28-04	Repeal	2-1-05
410-147-0365	3-18-05	Adopt(T)	4-1-05	411-070-0465	12-28-04	Amend	2-1-05
410-147-0365	6-1-05	Adopt	6-1-05	411-335-0010	1-1-05	Adopt	1-1-05
410-148-0090	4-1-05	Amend	4-1-05	411-335-0020	1-1-05	Adopt	1-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-335-0030	1-1-05	Adopt	1-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-335-0040	1-1-05	Adopt	1-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-335-0050	1-1-05	Adopt	1-1-05
411-020-0000	7-1-05	Amend	6-1-05	411-335-0060	1-1-05	Adopt	1-1-05
411-020-0002	7-1-05	Amend	6-1-05	411-335-0070	1-1-05	Adopt	1-1-05
411-020-0010	7-1-05	Amend	6-1-05	411-335-0080	1-1-05	Adopt	1-1-05
411-020-0015	7-1-05	Amend	6-1-05	411-335-0090	1-1-05	Adopt	1-1-05
411-020-0020	7-1-05	Amend	6-1-05	411-335-0100	1-1-05	Adopt	1-1-05
411-020-0030	7-1-05	Amend	6-1-05	411-335-0110	1-1-05	Adopt	1-1-05
411-020-0040	7-1-05	Amend	6-1-05	411-335-0120	1-1-05	Adopt	1-1-05
411-020-0050	7-1-05	Am. & Ren.	6-1-05	411-335-0130	1-1-05	Adopt	1-1-05
411-020-0060	7-1-05	Adopt	6-1-05	411-335-0140	1-1-05	Adopt	1-1-05
411-020-0070	7-1-05	Adopt	6-1-05	411-335-0150	1-1-05	Adopt	1-1-05
411-020-0080	7-1-05	Adopt	6-1-05	411-335-0160	1-1-05	Adopt	1-1-05
411-020-0090	7-1-05	Adopt	6-1-05	411-335-0170	1-1-05	Adopt	1-1-05
411-020-0100	7-1-05	Adopt	6-1-05	411-335-0180	1-1-05	Adopt	1-1-05
411-020-0110	7-1-05	Adopt	6-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-020-0130	7-1-05	Adopt	6-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0220	1-1-05	Adopt	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
411-335-0230	1-1-05	Adopt	1-1-05	413-010-0714	2-1-05	Amend	3-1-05
411-335-0240	1-1-05	Adopt	1-1-05	413-010-0715	2-1-05	Amend	3-1-05
411-335-0250	1-1-05	Adopt	1-1-05	413-010-0716	2-1-05	Amend	3-1-05
411-335-0260	1-1-05	Adopt	1-1-05	413-010-0717	2-1-05	Amend	3-1-05
411-335-0270	1-1-05	Adopt	1-1-05	413-010-0718	2-1-05	Amend	3-1-05
411-335-0280	1-1-05	Adopt	1-1-05	413-010-0720	2-1-05	Amend	3-1-05
411-335-0290	1-1-05	Adopt	1-1-05	413-010-0721	2-1-05	Amend	3-1-05
411-335-0300	1-1-05	Adopt	1-1-05	413-010-0722	2-1-05	Amend	3-1-05
411-335-0310	1-1-05	Adopt	1-1-05	413-010-0723	2-1-05	Amend	3-1-05
411-335-0320	1-1-05	Adopt	1-1-05	413-010-0732	2-1-05	Amend	3-1-05
411-335-0330	1-1-05	Adopt	1-1-05	413-010-0735	2-1-05	Amend	3-1-05
411-335-0340	1-1-05	Adopt	1-1-05	413-010-0738	2-1-05	Amend	3-1-05
411-335-0350	1-1-05	Adopt	1-1-05	413-010-0740	2-1-05	Amend	3-1-05
411-335-0360	1-1-05	Adopt	1-1-05	413-010-0743	2-1-05	Amend	3-1-05
411-335-0370	1-1-05	Adopt	1-1-05	413-010-0745	2-1-05	Amend	3-1-05
411-335-0380	1-1-05	Adopt	1-1-05	413-010-0746	2-1-05	Amend	3-1-05
411-335-0390	1-1-05	Adopt	1-1-05	413-010-0748	2-1-05	Amend	3-1-05
411-340-0020	1-1-05	Amend(T)	2-1-05	413-010-0750	2-1-05	Amend	3-1-05
411-340-0130	1-1-05	Amend(T)	2-1-05	413-015-0115	2-1-05	Amend	3-1-05
411-346-0165	1-1-05	Adopt	1-1-05	413-015-0205	2-1-05	Amend	3-1-05
411-360-0010	2-1-05	Adopt	2-1-05	413-015-0210	2-1-05	Amend	3-1-05
411-360-0020	2-1-05	Adopt	2-1-05	413-015-0215	2-1-05	Amend	3-1-05
411-360-0030	2-1-05	Adopt	2-1-05	413-015-0305	2-1-05	Amend	3-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-015-0505	2-1-05	Amend	3-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-015-0511	2-1-05	Amend	3-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-015-0725	2-1-05	Amend	3-1-05
411-360-0070	2-1-05	Adopt	2-1-05	413-015-1000	4-1-05	Amend	5-1-05
411-360-0080	2-1-05	Adopt	2-1-05	413-015-1100	1-28-05	Adopt(T)	3-1-05
411-360-0090	2-1-05	Adopt	2-1-05	413-015-1105	1-28-05	Adopt(T)	3-1-05
411-360-0100	2-1-05	Adopt	2-1-05	413-015-1110	1-28-05	Adopt(T)	3-1-05
411-360-0110	2-1-05	Adopt	2-1-05	413-015-1115	1-28-05	Adopt(T)	3-1-05
411-360-0120	2-1-05	Adopt	2-1-05	413-015-1120	1-28-05	Adopt(T)	3-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-015-1125	1-28-05	Adopt(T)	3-1-05
411-360-0140	2-1-05	Adopt	2-1-05	413-050-0500	1-1-05	Amend	2-1-05
411-360-0150	2-1-05	Adopt	2-1-05	413-050-0510	1-1-05	Amend	2-1-05
411-360-0160	2-1-05	Adopt	2-1-05	413-050-0515	1-1-05	Amend	2-1-05
411-360-0170	2-1-05	Adopt	2-1-05	413-050-0525	1-1-05	Repeal	2-1-05
411-360-0180	2-1-05	Adopt	2-1-05	413-050-0530	1-1-05	Amend	2-1-05
411-360-0190	2-1-05	Adopt	2-1-05	413-050-0535	1-1-05	Amend	2-1-05
411-360-0200	2-1-05	Adopt	2-1-05	413-050-0540	1-1-05	Repeal	2-1-05
411-360-0210	2-1-05	Adopt	2-1-05	413-050-0545	1-1-05	Repeal	2-1-05
411-360-0220	2-1-05	Adopt	2-1-05	413-050-0550	1-1-05	Repeal	2-1-05
411-360-0230	2-1-05	Adopt	2-1-05	413-050-0555	1-1-05	Amend	2-1-05
411-360-0240	2-1-05	Adopt	2-1-05	413-050-0560	1-1-05	Amend	2-1-05
411-360-0250	2-1-05	Adopt	2-1-05	413-050-0565	1-1-05	Amend	2-1-05
411-360-0260	2-1-05	Adopt	2-1-05	413-050-0570	1-1-05	Amend	2-1-05
411-360-0270	2-1-05	Adopt	2-1-05	413-050-0575	1-1-05	Amend	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	413-050-0580	1-1-05	Repeal	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-050-0585	1-1-05	Amend	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	413-055-0100	1-1-05	Amend	2-1-05
411-360-0300	2-1-05	Adopt	2-1-05	413-055-0105	1-1-05	Amend	2-1-05
411-360-0310	2-1-05	Adopt	2-1-05	413-055-0110	1-1-05	Amend	2-1-05
411-999-0025	6-1-05	Adopt(T)	6-1-05	413-055-0115	1-1-05	Repeal	2-1-05
413-010-0705	2-1-05	Amend	3-1-05	413-055-0120	1-1-05	Amend	2-1-05
413-010-0710	2-1-05	Adopt	3-1-05	413-055-0125	1-1-05	Repeal	2-1-05
413-010-0712	2-1-05	Amend	3-1-05	413-055-0130	1-1-05	Repeal	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
413-055-0135	1-1-05	Repeal	2-1-05	416-550-0050	3-25-05	Amend	5-1-05
413-055-0140	1-1-05	Amend	2-1-05	416-550-0060	3-25-05	Amend	5-1-05
413-055-0145	1-1-05	Amend	2-1-05	416-550-0070	3-25-05	Amend	5-1-05
413-055-0150	1-1-05	Amend	2-1-05	416-550-0080	3-25-05	Amend	5-1-05
413-055-0155	1-1-05	Repeal	2-1-05	416-630-0000	3-25-05	Repeal	5-1-05
413-055-0160	1-1-05	Amend	2-1-05	416-630-0010	3-25-05	Repeal	5-1-05
413-055-0165	1-1-05	Amend	2-1-05	416-630-0020	3-25-05	Repeal	5-1-05
413-120-0440	1-28-05	Amend(T)	3-1-05	416-630-0030	3-25-05	Repeal	5-1-05
413-330-0070	3-1-05	Suspend	4-1-05	416-630-0040	3-25-05	Repeal	5-1-05
414-061-0080	12-17-04	Amend	2-1-05	416-630-0050	3-25-05	Repeal	5-1-05
414-061-0100	11-16-04	Amend	1-1-05	416-800-0000	4-20-05	Amend	6-1-05
414-061-0110	11-16-04	Amend	1-1-05	416-800-0010	4-20-05	Amend	6-1-05
414-205-0170	11-16-04	Amend	1-1-05	416-800-0050	4-20-05	Amend	6-1-05
414-205-0170	4-29-05	Amend	6-1-05	436-001-0005	1-14-05	Amend	2-1-05
416-170-0000	1-11-05	Amend	2-1-05	436-009-0004	4-1-05	Amend	5-1-05
416-170-0010	1-11-05	Amend	2-1-05	436-009-0008	4-1-05	Amend	5-1-05
416-170-0020	1-11-05	Amend	2-1-05	436-009-0010	4-1-05	Amend	5-1-05
416-170-0030	1-11-05	Amend	2-1-05	436-009-0015	4-1-05	Amend	5-1-05
416-170-0050	1-11-05	Adopt	2-1-05	436-009-0020	4-1-05	Amend	5-1-05
416-170-0050	1-13-05	Renumber	2-1-05	436-009-0030	4-1-05	Amend	5-1-05
416-250-0000	1-11-05	Amend	2-1-05	436-009-0040	4-1-05	Amend	5-1-05
416-250-0010	1-11-05	Amend	2-1-05	436-009-0070	4-1-05	Amend	5-1-05
416-250-0020	1-11-05	Amend	2-1-05	436-009-0080	4-1-05	Amend	5-1-05
416-250-0030	1-11-05	Amend	2-1-05	436-009-0090	4-1-05	Amend	5-1-05
416-250-0040	1-11-05	Amend	2-1-05	436-010-0005	4-1-05	Amend	5-1-05
416-250-0050	1-11-05	Amend	2-1-05	436-010-0008	4-1-05	Amend	5-1-05
416-250-0060	1-11-05	Amend	2-1-05	436-010-0200	4-1-05	Amend	5-1-05
416-250-0070	1-11-05	Amend	2-1-05	436-010-0210	4-1-05	Amend	5-1-05
416-250-0080	1-11-05	Amend	2-1-05	436-010-0220	4-1-05	Amend	5-1-05
416-250-0090	1-11-05	Amend	2-1-05	436-010-0230	4-1-05	Amend	5-1-05
416-340-0000	3-25-05	Amend	5-1-05	436-010-0240	4-1-05	Amend	5-1-05
416-340-0010	3-25-05	Amend	5-1-05	436-010-0250	4-1-05	Amend	5-1-05
416-340-0020	3-25-05	Amend	5-1-05	436-010-0260	4-1-05	Amend	5-1-05
416-340-0030	3-25-05	Amend	5-1-05	436-010-0265	4-1-05	Amend	5-1-05
416-340-0040	3-25-05	Amend	5-1-05	436-010-0270	4-1-05	Amend	5-1-05
416-340-0050	3-25-05	Amend	5-1-05	436-010-0275	4-1-05	Amend	5-1-05
416-340-0060	3-25-05	Amend	5-1-05	436-010-0280	4-1-05	Amend	5-1-05
416-340-0070	3-25-05	Amend	5-1-05	436-010-0290	4-1-05	Amend	5-1-05
416-340-0080	3-25-05	Repeal	5-1-05	436-010-0300	4-1-05	Amend	5-1-05
416-340-0090	3-25-05	Repeal	5-1-05	436-010-0330	4-1-05	Amend	5-1-05
416-340-0100	3-25-05	Repeal	5-1-05	436-010-0340	4-1-05	Amend	5-1-05
416-340-0110	3-25-05	Repeal	5-1-05	436-035-0500	5-13-05	Amend(T)	6-1-05
416-400-0000	1-11-05	Repeal	2-1-05	436-070-0001	4-1-05	Amend	5-1-05
416-430-0040	3-25-05	Repeal	5-1-05	436-070-0002	4-1-05	Amend	5-1-05
416-490-0000	4-20-05	Amend	6-1-05	436-070-0003	4-1-05	Amend	5-1-05
416-490-0010	4-20-05	Amend	6-1-05	436-070-0005	4-1-05	Amend	5-1-05
416-490-0020	4-20-05	Adopt	6-1-05	436-070-0008	4-1-05	Amend	5-1-05
416-490-0030	4-20-05	Adopt	6-1-05	436-070-0010	4-1-05	Amend	5-1-05
416-490-0040	4-20-05	Adopt	6-1-05	436-070-0020	4-1-05	Amend	5-1-05
416-490-0050	4-20-05	Adopt	6-1-05	436-070-0040	4-1-05	Amend	5-1-05
416-530-0010	3-9-05	Amend	4-1-05	436-070-0050	4-1-05	Amend	5-1-05
416-550-0000	3-25-05	Amend	5-1-05	436-070-0060	4-1-05	Repeal	5-1-05
416-550-0010	3-25-05	Amend	5-1-05	436-085-0001	4-1-05	Amend	5-1-05
416-550-0020	3-25-05	Amend	5-1-05	436-085-0002	4-1-05	Amend	5-1-05
416-550-0030	3-25-05	Amend	5-1-05	436-085-0003	4-1-05	Amend	5-1-05
416-550-0040	3-25-05	Amend	5-1-05	436-085-0005	4-1-05	Amend	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
436-085-0006	4-1-05	Repeal	5-1-05	443-002-0130	1-1-05	Adopt	2-1-05
436-085-0008	4-1-05	Amend	5-1-05	443-002-0140	1-1-05	Adopt	2-1-05
436-085-0020	4-1-05	Repeal	5-1-05	443-002-0150	1-1-05	Adopt	2-1-05
436-085-0025	4-1-05	Amend	5-1-05	443-002-0160	1-1-05	Adopt	2-1-05
436-085-0030	4-1-05	Amend	5-1-05	443-002-0170	1-1-05	Adopt	2-1-05
436-085-0035	4-1-05	Amend	5-1-05	443-002-0180	1-1-05	Adopt	2-1-05
436-085-0060	4-1-05	Amend	5-1-05	443-002-0190	1-1-05	Adopt	2-1-05
436-085-0065	4-1-05	Repeal	5-1-05	443-005-0000	1-1-05	Repeal	2-1-05
436-085-0070	4-1-05	Repeal	5-1-05	443-005-0010	1-1-05	Repeal	2-1-05
437-001-0001	12-30-04	Amend	2-1-05	443-005-0020	1-1-05	Repeal	2-1-05
437-002-0120	11-19-04	Amend	1-1-05	443-005-0040	1-1-05	Repeal	2-1-05
437-002-0161	4-12-05	Amend	5-1-05	443-005-0050	1-1-05	Repeal	2-1-05
437-002-0360	4-12-05	Amend	5-1-05	443-005-0060	1-1-05	Repeal	2-1-05
437-002-0361	4-12-05	Repeal	5-1-05	443-005-0070	1-1-05	Repeal	2-1-05
437-002-0368	4-12-05	Amend	5-1-05	443-010-0010	1-1-05	Repeal	2-1-05
437-003-0001	4-12-05	Amend	5-1-05	443-015-0010	1-1-05	Repeal	2-1-05
437-004-6000	12-30-04	Amend	2-1-05	459-001-0005	12-1-04	Amend	1-1-05
437-005-0001	12-30-04	Amend	2-1-05	459-005-0310	1-31-05	Amend	3-1-05
437-005-0001	4-12-05	Amend	5-1-05	459-005-0350	1-31-05	Amend	3-1-05
441-710-0010	3-4-05	Amend(T)	4-1-05	459-005-0370	1-31-05	Amend	3-1-05
441-710-0045	11-30-04	Adopt	1-1-05	459-005-0506	12-15-04	Amend(T)	1-1-05
441-860-0020	1-1-05	Amend	1-1-05	459-005-0506	2-22-05	Amend	4-1-05
441-860-0050	1-1-05	Amend	1-1-05	459-005-0506(T)	2-22-05	Repeal	4-1-05
441-930-0030	1-1-05	Amend	1-1-05	459-005-0525	12-15-04	Amend(T)	1-1-05
441-930-0210	1-1-05	Amend	1-1-05	459-005-0525	2-22-05	Amend	4-1-05
441-930-0270	1-1-05	Amend	1-1-05	459-005-0525(T)	2-22-05	Repeal	4-1-05
442-002-0005	3-1-05	Repeal	4-1-05	459-005-0535	12-15-04	Amend(T)	1-1-05
442-002-0010	3-1-05	Repeal	4-1-05	459-005-0535	2-22-05	Amend	4-1-05
442-002-0015	3-1-05	Repeal	4-1-05	459-005-0535(T)	2-22-05	Repeal	4-1-05
442-002-0020	3-1-05	Repeal	4-1-05	459-005-0545	12-15-04	Amend(T)	1-1-05
442-002-0025	3-1-05	Repeal	4-1-05	459-005-0545	2-22-05	Amend	4-1-05
442-002-0030	3-1-05	Repeal	4-1-05	459-005-0545(T)	2-22-05	Repeal	4-1-05
442-002-0035	3-1-05	Repeal	4-1-05	459-005-0560	12-15-04	Amend(T)	1-1-05
442-002-0040	3-1-05	Repeal	4-1-05	459-005-0560	2-22-05	Amend	4-1-05
442-002-0045	3-1-05	Repeal	4-1-05	459-005-0560(T)	2-22-05	Repeal	4-1-05
442-002-0050	3-1-05	Repeal	4-1-05	459-005-0590	12-15-04	Amend(T)	1-1-05
442-002-0055	3-1-05	Repeal	4-1-05	459-005-0590	2-22-05	Amend	4-1-05
442-006-0000	3-1-05	Adopt	4-1-05	459-005-0590(T)	2-22-05	Repeal	4-1-05
442-006-0010	3-1-05	Adopt	4-1-05	459-005-0591	12-15-04	Amend(T)	1-1-05
442-006-0020	3-1-05	Adopt	4-1-05	459-005-0591	1-31-05	Amend	3-1-05
442-006-0030	3-1-05	Adopt	4-1-05	459-005-0591	2-22-05	Amend	4-1-05
442-006-0040	3-1-05	Adopt	4-1-05	459-005-0591(T)	2-22-05	Repeal	4-1-05
443-001-0000	1-1-05	Amend	2-1-05	459-005-0595	12-15-04	Amend(T)	1-1-05
443-001-0005	1-1-05	Amend	2-1-05	459-005-0595	2-22-05	Amend	4-1-05
443-002-0010	1-1-05	Adopt	2-1-05	459-005-0595(T)	2-22-05	Repeal	4-1-05
443-002-0020	1-1-05	Adopt	2-1-05	459-007-0220	3-15-05	Amend	1-1-05
443-002-0030	1-1-05	Adopt	2-1-05	459-007-0230	3-15-05	Amend	1-1-05
443-002-0040	1-1-05	Adopt	2-1-05	459-007-0240	3-15-05	Amend	1-1-05
443-002-0050	1-1-05	Adopt	2-1-05	459-007-0250	3-15-05	Amend	1-1-05
443-002-0060	1-1-05	Adopt	2-1-05	459-007-0260	3-15-05	Amend	1-1-05
443-002-0070	1-1-05	Adopt	2-1-05	459-007-0270	3-15-05	Amend	1-1-05
443-002-0080	1-1-05	Adopt	2-1-05	459-007-0280	3-15-05	Repeal	1-1-05
443-002-0090	1-1-05	Adopt	2-1-05	459-007-0290	3-15-05	Amend	1-1-05
443-002-0100	1-1-05	Adopt	2-1-05	459-007-0530	11-23-04	Amend	1-1-05
443-002-0110	1-1-05	Adopt	2-1-05	459-010-0003	2-22-05	Adopt	4-1-05
443-002-0120	1-1-05	Adopt	2-1-05	459-010-0014	2-22-05	Adopt	4-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
459-010-0035	3-31-05	Amend	5-1-05	461-145-0130	1-1-05	Amend	2-1-05
459-030-0000	2-22-05	Repeal	4-1-05	461-145-0240	1-1-05	Amend	2-1-05
459-030-0001	2-22-05	Repeal	4-1-05	461-145-0320	1-1-05	Amend	2-1-05
459-030-0011	2-22-05	Amend	4-1-05	461-145-0330	1-1-05	Amend	2-1-05
459-030-0025	2-22-05	Amend	4-1-05	461-145-0330	4-1-05	Amend	5-1-05
459-030-0030	2-22-05	Amend	4-1-05	461-145-0345	4-1-05	Adopt	5-1-05
459-050-0040	11-23-04	Amend	1-1-05	461-145-0380	4-1-05	Amend	5-1-05
459-050-0070	11-23-04	Amend	1-1-05	461-145-0390	4-1-05	Amend	5-1-05
459-050-0072	11-23-04	Adopt	1-1-05	461-145-0410	4-1-05	Amend	5-1-05
459-050-0080	11-23-04	Amend	1-1-05	461-145-0520	4-1-05	Amend	5-1-05
459-050-0150	11-23-04	Amend	1-1-05	461-145-0570	4-1-05	Amend	5-1-05
459-070-0001	2-22-05	Amend(T)	4-1-05	461-145-0580	4-1-05	Amend	5-1-05
459-070-0050	1-31-05	Adopt	3-1-05	461-145-0910	2-1-05	Amend(T)	3-1-05
459-070-0100	11-23-04	Amend	1-1-05	461-145-0910	4-1-05	Amend	5-1-05
459-070-0110	11-23-04	Amend	1-1-05	461-145-0910	4-1-05	Amend(T)	5-1-05
459-080-0050	1-31-05	Adopt	3-1-05	461-145-0920	2-1-05	Amend(T)	3-1-05
459-080-0250	11-23-04	Adopt	1-1-05	461-150-0050	1-1-05	Amend	2-1-05
459-080-0250(T)	11-23-04	Repeal	1-1-05	461-150-0055	4-1-05	Amend	5-1-05
461-110-0110	1-1-05	Amend	2-1-05	461-150-0090	4-1-05	Amend	5-1-05
461-110-0750	1-1-05	Amend	2-1-05	461-155-0010	4-1-05	Amend	5-1-05
461-115-0050	4-1-05	Amend	5-1-05	461-155-0020	1-1-05	Amend	2-1-05
461-115-0071	4-1-05	Adopt	5-1-05	461-155-0225	2-18-05	Amend	4-1-05
461-115-0140	1-1-05	Amend	2-1-05	461-155-0235	2-18-05	Amend	4-1-05
461-115-0190	1-1-05	Amend	2-1-05	461-155-0250	1-1-05	Amend	2-1-05
461-115-0530	1-1-05	Amend	2-1-05	461-155-0250	4-1-05	Amend	5-1-05
461-115-0651	1-1-05	Amend	2-1-05	461-155-0270	1-1-05	Amend	2-1-05
461-120-0125	4-1-05	Amend	5-1-05	461-155-0290	4-1-05	Amend	5-1-05
461-135-0095	4-1-05	Amend	5-1-05	461-155-0291	4-1-05	Amend	5-1-05
461-135-0400	1-1-05	Amend	2-1-05	461-155-0295	4-1-05	Amend	5-1-05
461-135-0400	4-1-05	Amend	5-1-05	461-155-0300	1-1-05	Amend	2-1-05
461-135-0405	1-1-05	Amend	2-1-05	461-155-0530	4-1-05	Amend	5-1-05
461-135-0505	4-1-05	Amend	5-1-05	461-160-0030	1-1-05	Amend	2-1-05
461-135-0506	4-1-05	Amend	5-1-05	461-160-0040	4-1-05	Amend	5-1-05
461-135-0510	1-1-05	Amend	2-1-05	461-160-0055	1-1-05	Amend	2-1-05
461-135-0570	4-1-05	Amend	5-1-05	461-160-0540	4-1-05	Amend	5-1-05
461-135-0710	4-1-05	Amend	5-1-05	461-160-0550	1-1-05	Amend	2-1-05
461-135-0780	1-1-05	Amend	2-1-05	461-160-0560	4-1-05	Amend	5-1-05
461-135-0780	4-1-05	Amend	5-1-05	461-160-0580	1-1-05	Amend	2-1-05
461-135-0832	1-1-05	Amend	2-1-05	461-160-0620	1-1-05	Amend	2-1-05
461-135-1100	4-1-05	Amend	5-1-05	461-165-0082	1-1-05	Adopt	2-1-05
461-135-1102	4-1-05	Amend	5-1-05	461-165-0100	1-1-05	Amend	2-1-05
461-135-1110	4-1-05	Amend	5-1-05	461-165-0180	4-25-05	Amend(T)	6-1-05
461-135-1120	4-1-05	Amend	5-1-05	461-165-0410	4-1-05	Amend	5-1-05
461-140-0040	2-1-05	Amend(T)	3-1-05	461-165-0420	4-1-05	Amend	5-1-05
461-140-0040	4-1-05	Amend	5-1-05	461-165-0430	4-1-05	Amend	5-1-05
461-140-0040	4-1-05	Amend(T)	5-1-05	461-170-0010	1-1-05	Amend	2-1-05
461-140-0110	1-1-05	Amend	2-1-05	461-170-0100	1-1-05	Amend	2-1-05
461-140-0120	1-1-05	Amend	2-1-05	461-170-0101	1-1-05	Amend	2-1-05
461-140-0120	4-1-05	Amend	5-1-05	461-170-0130	1-1-05	Adopt	2-1-05
461-140-0123	4-1-05	Amend	5-1-05	461-175-0200	4-1-05	Amend	5-1-05
461-140-0125	4-1-05	Repeal	5-1-05	461-175-0210	1-1-05	Amend	2-1-05
461-140-0130	4-1-05	Repeal	5-1-05	461-175-0300	3-2-05	Amend(T)	4-1-05
461-140-0140	4-1-05	Repeal	5-1-05	461-175-0310	4-1-05	Amend	5-1-05
461-140-0150	4-1-05	Repeal	5-1-05	461-175-0340	1-1-05	Amend	2-1-05
461-140-0242	4-1-05	Amend	5-1-05	461-180-0020	1-1-05	Amend	2-1-05
461-145-0020	4-1-05	Amend	5-1-05	461-180-0040	1-1-05	Amend	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
461-180-0040	4-1-05	Amend	5-1-05	582-050-0060	1-11-05	Amend	2-1-05
461-180-0050	1-1-05	Amend	2-1-05	582-070-0040	1-11-05	Amend	2-1-05
461-180-0085	1-1-05	Adopt	2-1-05	582-100-0040	7-1-05	Amend	6-1-05
461-180-0090	1-1-05	Amend	2-1-05	583-030-0025	3-3-05	Amend	4-1-05
461-180-0095	4-1-05	Repeal	5-1-05	583-050-0011	3-3-05	Amend	4-1-05
461-180-0100	4-1-05	Amend	5-1-05	584-005-0005	1-21-05	Amend	3-1-05
461-180-0125	1-1-05	Adopt	2-1-05	584-010-0010	4-15-05	Amend	5-1-05
461-195-0521	4-1-05	Amend	5-1-05	584-017-0115	1-21-05	Adopt	3-1-05
461-195-0531	1-1-05	Amend	2-1-05	584-017-0130	5-6-05	Amend(T)	6-1-05
461-195-0541	4-1-05	Amend	5-1-05	584-017-0140	5-6-05	Amend(T)	6-1-05
471-010-0050	5-1-05	Amend	6-1-05	584-017-0175	4-15-05	Amend	5-1-05
471-010-0054	5-1-05	Amend	6-1-05	584-017-0250	1-21-05	Amend	3-1-05
471-015-0020	1-20-05	Amend	3-1-05	584-017-0251	1-21-05	Adopt	3-1-05
471-030-0017	12-19-04	Adopt	2-1-05	584-017-0260	1-21-05	Amend	3-1-05
471-030-0036	12-19-04	Amend	2-1-05	584-017-0261	1-21-05	Adopt	3-1-05
471-030-0038	12-19-04	Amend	2-1-05	584-020-0045	4-15-05	Amend	5-1-05
471-030-0048	5-1-05	Amend	6-1-05	584-036-0015	5-6-05	Amend(T)	6-1-05
471-030-0078	12-19-04	Adopt	2-1-05	584-060-0011	1-21-05	Amend	3-1-05
471-030-0095	5-1-05	Amend	6-1-05	584-060-0012	1-21-05	Adopt	3-1-05
471-030-0120	5-1-05	Amend	6-1-05	584-060-0013	1-21-05	Adopt	3-1-05
471-031-0070	12-19-04	Amend	2-1-05	584-060-0022	1-21-05	Adopt	3-1-05
471-031-0175	5-1-05	Amend	6-1-05	584-060-0051	4-15-05	Amend	5-1-05
471-040-0005	5-1-05	Amend	6-1-05	584-060-0051	5-6-05	Amend(T)	6-1-05
573-035-0020	4-11-05	Amend	5-1-05	584-060-0052	4-15-05	Adopt	5-1-05
573-040-0005	4-11-05	Amend	5-1-05	584-060-0062	4-15-05	Adopt	5-1-05
573-050-0045	4-11-05	Amend	5-1-05	584-060-0161	4-15-05	Amend	5-1-05
573-075-0000	4-11-05	Amend	5-1-05	584-060-0171	1-21-05	Amend	3-1-05
573-075-0270	4-11-05	Repeal	5-1-05	584-060-0210	1-21-05	Amend	3-1-05
573-095-0000	4-11-05	Adopt	5-1-05	584-065-0060	4-15-05	Adopt	5-1-05
573-095-0005	4-11-05	Adopt	5-1-05	584-065-0070	4-15-05	Adopt	5-1-05
573-095-0010	4-11-05	Adopt	5-1-05	584-065-0080	4-15-05	Adopt	5-1-05
574-050-0005	3-8-05	Amend	4-1-05	584-065-0090	4-15-05	Adopt	5-1-05
575-001-0015	4-4-05	Amend(T)	5-1-05	584-070-0111	1-21-05	Amend	3-1-05
575-031-0010	4-4-05	Amend(T)	5-1-05	584-080-0171	1-21-05	Adopt	3-1-05
576-020-0010	1-1-05	Amend	1-1-05	584-100-0071	1-21-05	Amend	3-1-05
580-021-0029	3-14-05	Adopt(T)	4-1-05	585-001-0000	2-11-05	Amend	3-1-05
580-040-0035	2-15-05	Amend	3-1-05	585-010-0115	2-11-05	Amend	3-1-05
580-043-0100	12-15-04	Adopt(T)	1-1-05	585-010-0120	2-11-05	Amend	3-1-05
580-043-0105	12-15-04	Adopt(T)	1-1-05	585-010-0125	2-11-05	Amend	3-1-05
580-043-0110	12-15-04	Adopt(T)	1-1-05	585-010-0130	2-11-05	Amend	3-1-05
580-050-0000	2-10-05	Amend(T)	3-1-05	585-010-0150	2-11-05	Amend	3-1-05
580-050-0020	2-10-05	Amend(T)	3-1-05	585-010-0210	2-11-05	Amend	3-1-05
580-050-0032	2-10-05	Amend(T)	3-1-05	585-010-0215	2-11-05	Amend	3-1-05
580-050-0350	2-10-05	Adopt(T)	3-1-05	585-010-0220	2-11-05	Amend	3-1-05
580-050-0360	2-10-05	Adopt(T)	3-1-05	585-010-0230	2-11-05	Amend	3-1-05
581-011-0072	12-16-04	Amend	2-1-05	585-010-0300	2-11-05	Renumber	3-1-05
581-011-0118	2-14-05	Amend	3-1-05	585-010-0310	2-11-05	Amend	3-1-05
581-021-0037	3-23-05	Amend	5-1-05	585-020-0010	2-11-05	Amend	3-1-05
581-021-0041	2-14-05	Amend	3-1-05	585-020-0020	2-11-05	Amend	3-1-05
581-022-1110	3-15-05	Amend(T)	4-1-05	585-020-0035	2-11-05	Amend	3-1-05
581-022-1111	2-14-05	Amend	3-1-05	585-020-0060	2-11-05	Amend	3-1-05
581-022-1120	3-15-05	Amend(T)	4-1-05	589-020-0225	11-30-04	Adopt	1-1-05
581-022-1210	3-15-05	Amend(T)	4-1-05	603-011-0610	2-17-05	Amend	4-1-05
581-024-0215	2-14-05	Amend(T)	3-1-05	603-011-0620	2-17-05	Amend	4-1-05
582-001-0010	7-1-05	Amend	6-1-05	603-011-0630	2-17-05	Amend	4-1-05
582-050-0050	1-11-05	Amend	2-1-05	603-040-0010	11-30-04	Repeal	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
603-040-0020	11-30-04	Repeal	1-1-05	635-003-0076	2-14-05	Repeal	3-1-05
603-040-0030	11-30-04	Repeal	1-1-05	635-003-0077	2-14-05	Adopt	3-1-05
603-040-0040	11-30-04	Repeal	1-1-05	635-003-0077	5-4-05	Amend(T)	6-1-05
603-040-0050	11-30-04	Repeal	1-1-05	635-003-0078	2-14-05	Adopt	3-1-05
603-040-0065	11-30-04	Repeal	1-1-05	635-004-0003	5-1-05	Adopt	5-1-05
603-041-0015	11-30-04	Repeal	1-1-05	635-004-0005	1-1-05	Amend	1-1-05
603-041-0030	11-30-04	Repeal	1-1-05	635-004-0005	5-1-05	Amend(T)	6-1-05
603-041-0035	11-30-04	Repeal	1-1-05	635-004-0018	1-1-05	Amend	1-1-05
603-041-0040	11-30-04	Repeal	1-1-05	635-004-0019	4-8-05	Amend(T)	5-1-05
603-041-0050	11-30-04	Repeal	1-1-05	635-004-0019	5-1-05	Amend(T)	6-1-05
603-041-0060	11-30-04	Repeal	1-1-05	635-004-0019	5-13-05	Amend(T)	6-1-05
603-041-0065	11-30-04	Repeal	1-1-05	635-004-0019(T)	5-1-05	Suspend	6-1-05
603-041-0075	11-30-04	Repeal	1-1-05	635-004-0019(T)	5-13-05	Suspend	6-1-05
603-042-0015	11-30-04	Adopt	1-1-05	635-004-0020	1-1-05	Amend	1-1-05
603-051-1050	3-11-05	Adopt	4-1-05	635-004-0020	5-1-05	Amend(T)	6-1-05
603-051-1051	3-11-05	Adopt	4-1-05	635-004-0027	1-1-05	Amend(T)	1-1-05
603-051-1052	3-11-05	Adopt	4-1-05	635-004-0029	1-1-05	Amend	1-1-05
603-051-1053	3-11-05	Adopt	4-1-05	635-004-0033	1-1-05	Amend	1-1-05
603-051-1054	3-11-05	Adopt	4-1-05	635-004-0033	1-1-05	Amend	1-1-05
603-052-0051	2-14-05	Amend	3-1-05	635-004-0033	5-1-05	Amend(T)	6-1-05
603-052-0114	2-14-05	Amend	3-1-05	635-004-0040	5-1-05	Amend(T)	6-1-05
603-052-0116	2-15-05	Amend	3-1-05	635-004-0050	1-1-05	Amend	1-1-05
603-052-0118	2-15-05	Amend	3-1-05	635-005-0045	12-1-04	Amend(T)	1-1-05
603-052-0121	2-15-05	Amend	3-1-05	635-005-0045	12-8-04	Amend(T)	1-1-05
603-052-0150	2-14-05	Amend	3-1-05	635-005-0045	12-21-04	Amend(T)	2-1-05
603-052-0348	3-11-05	Repeal	4-1-05	635-005-0045	12-30-04	Amend(T)	2-1-05
603-052-0385	2-15-05	Amend	3-1-05	635-005-0045(T)	12-8-04	Suspend	1-1-05
603-052-0450	2-15-05	Amend	3-1-05	635-005-0045(T)	12-21-04	Suspend	2-1-05
603-052-1200	12-28-04	Amend	2-1-05	635-005-0045(T)	12-30-04	Suspend	2-1-05
603-052-1230	1-24-05	Amend	3-1-05	635-006-0232	1-7-05	Amend	2-1-05
603-052-1250	3-25-05	Adopt	5-1-05	635-006-0850	12-15-04	Amend	1-1-05
603-054-0040	2-15-05	Amend	3-1-05	635-006-0910	12-15-04	Amend	1-1-05
603-054-0045	2-15-05	Amend	3-1-05	635-006-0930	12-15-04	Amend	1-1-05
603-054-0050	2-15-05	Amend	3-1-05	635-010-0020	4-1-05	Amend	3-1-05
603-054-0055	2-15-05	Amend	3-1-05	635-011-0050	1-1-05	Amend	1-1-05
603-054-0060	2-15-05	Amend	3-1-05	635-011-0066	1-1-05	Amend	1-1-05
603-054-0065	2-15-05	Amend	3-1-05	635-011-0072	5-1-05	Adopt	5-1-05
603-054-0070	2-15-05	Amend	3-1-05	635-011-0100	1-1-05	Amend	1-1-05
603-054-0075	2-15-05	Amend	3-1-05	635-011-0101	1-1-05	Repeal	1-1-05
606-040-0010	4-25-05	Adopt	6-1-05	635-013-0003	1-1-05	Amend	1-1-05
611-010-0020	1-13-05	Amend	2-1-05	635-013-0003	4-15-05	Amend	5-1-05
629-025-0040	3-1-05	Amend	4-1-05	635-013-0004	1-1-05	Amend	1-1-05
629-025-0070	3-1-05	Amend	4-1-05	635-013-0009	4-15-05	Amend	5-1-05
629-025-0080	3-1-05	Adopt	4-1-05	635-014-0080	1-1-05	Amend	1-1-05
629-041-0200	1-7-05	Amend	2-1-05	635-014-0090	11-20-04	Amend(T)	1-1-05
629-041-0515	1-7-05	Amend	2-1-05	635-014-0090	1-1-05	Amend	1-1-05
629-041-0570	1-7-05	Amend	2-1-05	635-014-0090(T)	11-20-04	Suspend	1-1-05
632-007-0000	12-10-04	Amend	1-1-05	635-016-0080	1-1-05	Amend	1-1-05
632-007-0010	12-10-04	Amend	1-1-05	635-016-0090	1-1-05	Amend	1-1-05
632-007-0020	12-10-04	Amend	1-1-05	635-016-0090	1-1-05	Amend	2-1-05
632-007-0030	12-10-04	Amend	1-1-05	635-017-0080	1-1-05	Amend	1-1-05
635-003-0003	4-15-05	Amend	5-1-05	635-017-0090	1-1-05	Amend	1-1-05
635-003-0004	3-15-05	Amend(T)	4-1-05	635-017-0090	5-1-05	Amend	5-1-05
635-003-0004	3-15-05	Amend(T)	4-1-05	635-017-0095	1-21-05	Adopt(T)	3-1-05
635-003-0004	4-15-05	Amend	5-1-05	635-018-0080	1-1-05	Amend	1-1-05
635-003-0004(T)	3-15-05	Suspend	4-1-05	635-018-0090	1-1-05	Amend	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-018-0090	4-15-05	Amend(T)	5-1-05	635-042-0022(T)	3-10-05	Suspend	4-1-05
635-018-0090	5-15-05	Amend(T)	6-1-05	635-042-0022(T)	3-15-05	Suspend	4-1-05
635-018-0090(T)	5-15-05	Suspend	6-1-05	635-042-0022(T)	3-29-05	Suspend	5-1-05
635-019-0080	1-1-05	Amend	1-1-05	635-042-0022(T)	3-31-05	Suspend	5-1-05
635-019-0090	1-1-05	Amend	1-1-05	635-042-0110	2-14-05	Amend	3-1-05
635-019-0090	5-13-05	Amend(T)	6-1-05	635-042-0110	5-10-05	Amend(T)	6-1-05
635-021-0080	1-1-05	Amend	1-1-05	635-042-0115	2-14-05	Amend	3-1-05
635-021-0090	1-1-05	Amend	1-1-05	635-042-0130	1-1-05	Amend(T)	2-1-05
635-023-0080	1-1-05	Amend	1-1-05	635-042-0130	2-24-05	Amend(T)	4-1-05
635-023-0090	1-1-05	Amend	1-1-05	635-042-0130(T)	2-24-05	Suspend	4-1-05
635-023-0090	1-1-05	Amend(T)	1-1-05	635-042-0135	1-1-05	Amend(T)	2-1-05
635-023-0090	1-1-05	Amend(T)	2-1-05	635-042-0135	2-22-05	Amend(T)	4-1-05
635-023-0090(T)	1-1-05	Suspend	2-1-05	635-042-0135(T)	2-22-05	Suspend	4-1-05
635-023-0095	1-1-05	Adopt(T)	2-1-05	635-042-0145	2-14-05	Amend	3-1-05
635-023-0095	2-14-05	Adopt	3-1-05	635-042-0145	3-10-05	Amend(T)	4-1-05
635-023-0095	4-30-05	Amend(T)	5-1-05	635-042-0145	3-15-05	Amend(T)	4-1-05
635-023-0095(T)	2-14-05	Repeal	3-1-05	635-042-0145	4-20-05	Amend(T)	6-1-05
635-023-0125	1-1-05	Amend	1-1-05	635-042-0145	4-28-05	Amend(T)	6-1-05
635-023-0125	2-14-05	Amend	3-1-05	635-042-0145	5-5-05	Amend(T)	6-1-05
635-023-0125	4-20-05	Amend(T)	6-1-05	635-042-0145	5-10-05	Amend(T)	6-1-05
635-023-0125	5-5-05	Amend(T)	6-1-05	635-042-0145(T)	3-15-05	Suspend	4-1-05
635-023-0125	5-10-05	Amend(T)	6-1-05	635-042-0145(T)	4-28-05	Suspend	6-1-05
635-023-0125(T)	5-5-05	Suspend	6-1-05	635-042-0145(T)	5-5-05	Suspend	6-1-05
635-023-0125(T)	5-10-05	Suspend	6-1-05	635-042-0145(T)	5-10-05	Suspend	6-1-05
635-023-0128	1-1-05	Adopt	1-1-05	635-042-0160	2-14-05	Amend	3-1-05
635-023-0130	1-1-05	Amend	1-1-05	635-042-0160	3-10-05	Amend(T)	4-1-05
635-023-0130	4-15-05	Amend	5-1-05	635-042-0160	3-15-05	Amend(T)	4-1-05
635-023-0134	1-1-05	Adopt	1-1-05	635-042-0160	4-20-05	Amend(T)	6-1-05
635-039-0080	1-1-05	Amend	1-1-05	635-042-0160	4-28-05	Amend(T)	6-1-05
635-039-0080	1-1-05	Amend	1-1-05	635-042-0160	5-5-05	Amend(T)	6-1-05
635-039-0080	5-1-05	Amend(T)	6-1-05	635-042-0160	5-10-05	Amend(T)	6-1-05
635-039-0090	1-1-05	Amend	1-1-05	635-042-0160(T)	3-15-05	Suspend	4-1-05
635-039-0090	1-1-05	Amend	1-1-05	635-042-0160(T)	4-28-05	Suspend	6-1-05
635-039-0090	5-1-05	Amend(T)	6-1-05	635-042-0160(T)	5-5-05	Suspend	6-1-05
635-041-0030	1-20-05	Amend(T)	3-1-05	635-042-0160(T)	5-10-05	Suspend	6-1-05
635-041-0030	2-14-05	Amend	3-1-05	635-042-0170	2-14-05	Amend	3-1-05
635-041-0030(T)	2-14-05	Repeal	3-1-05	635-042-0180	2-14-05	Amend	3-1-05
635-041-0061	1-1-05	Amend(T)	2-1-05	635-042-0180	4-20-05	Amend(T)	6-1-05
635-041-0061	2-14-05	Amend	3-1-05	635-042-0180	4-28-05	Amend(T)	6-1-05
635-041-0061(T)	2-14-05	Repeal	3-1-05	635-042-0180	5-5-05	Amend(T)	6-1-05
635-041-0065	1-1-05	Amend(T)	2-1-05	635-042-0180	5-10-05	Amend(T)	6-1-05
635-041-0065	1-31-05	Amend(T)	3-1-05	635-042-0180(T)	4-28-05	Suspend	6-1-05
635-041-0065	3-15-05	Amend(T)	4-1-05	635-042-0180(T)	5-5-05	Suspend	6-1-05
635-041-0065(T)	1-31-05	Suspend	3-1-05	635-042-0180(T)	5-10-05	Suspend	6-1-05
635-041-0065(T)	3-15-05	Suspend	4-1-05	635-042-0190	2-14-05	Amend	3-1-05
635-042-0005	2-14-05	Amend	3-1-05	635-043-0085	1-1-05	Amend	2-1-05
635-042-0022	2-14-05	Amend	3-1-05	635-043-0096	3-9-05	Amend	4-1-05
635-042-0022	3-1-05	Amend(T)	4-1-05	635-044-0130	1-1-05	Amend	2-1-05
635-042-0022	3-3-05	Amend(T)	4-1-05	635-060-0000	1-1-05	Amend	2-1-05
635-042-0022	3-7-05	Amend(T)	4-1-05	635-060-0005	1-1-05	Amend	2-1-05
635-042-0022	3-10-05	Amend(T)	4-1-05	635-060-0023	1-1-05	Amend	2-1-05
635-042-0022	3-15-05	Amend(T)	4-1-05	635-060-0046	1-1-05	Amend	2-1-05
635-042-0022	3-29-05	Amend(T)	5-1-05	635-060-0046	4-20-05	Amend	6-1-05
635-042-0022	3-31-05	Amend(T)	5-1-05	635-060-0055	4-1-05	Amend	2-1-05
635-042-0022(T)	3-3-05	Suspend	4-1-05	635-065-0001	1-1-05	Amend	2-1-05
635-042-0022(T)	3-7-05	Suspend	4-1-05	635-065-0006	1-1-05	Amend	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
635-065-0015	1-1-05	Amend	2-1-05	635-430-0330	11-26-04	Amend	1-1-05
635-065-0090	1-1-05	Amend	2-1-05	635-430-0350	11-26-04	Amend	1-1-05
635-065-0401	1-1-05	Amend	2-1-05	635-430-0360	11-26-04	Amend	1-1-05
635-065-0625	1-1-05	Amend	2-1-05	635-430-0375	11-26-04	Adopt	1-1-05
635-065-0635	1-1-05	Amend	2-1-05	647-010-0010	6-1-05	Amend	6-1-05
635-065-0720	1-1-05	Amend	2-1-05	660-002-0005	3-18-05	Amend(T)	5-1-05
635-065-0735	1-1-05	Amend	2-1-05	660-002-0010	3-18-05	Amend(T)	5-1-05
635-065-0740	1-1-05	Amend	2-1-05	660-002-0015	3-18-05	Amend(T)	5-1-05
635-065-0745	1-1-05	Amend	2-1-05	660-002-0020	3-18-05	Amend(T)	5-1-05
635-065-0760	6-1-05	Amend	2-1-05	660-011-0060	2-14-05	Amend	3-1-05
635-066-0000	1-1-05	Amend	2-1-05	660-012-0005	4-11-05	Amend	5-1-05
635-067-0000	1-1-05	Amend	2-1-05	660-012-0060	4-11-05	Amend	5-1-05
635-067-0015	1-1-05	Amend	2-1-05	660-015-0000	2-14-05	Amend	3-1-05
635-067-0028	1-1-05	Amend	2-1-05	668-010-0020	1-13-05	Amend	2-1-05
635-067-0029	1-1-05	Amend	2-1-05	669-010-0020	3-4-05	Amend	4-1-05
635-067-0034	1-1-05	Amend	2-1-05	690-021-0000	11-16-04	Am. & Ren.	1-1-05
635-067-0041	1-1-05	Amend	2-1-05	690-021-0010	11-16-04	Am. & Ren.	1-1-05
635-068-0000	3-1-05	Amend	2-1-05	690-021-0020	11-16-04	Am. & Ren.	1-1-05
635-068-0022	3-1-05	Amend	2-1-05	690-021-0030	11-16-04	Am. & Ren.	1-1-05
635-069-0000	2-1-05	Amend	2-1-05	690-021-0040	11-16-04	Am. & Ren.	1-1-05
635-069-0030	2-1-05	Amend	2-1-05	690-021-0050	11-16-04	Am. & Ren.	1-1-05
635-070-0000	4-1-05	Amend	2-1-05	690-021-0060	11-16-04	Am. & Ren.	1-1-05
635-071-0000	4-1-05	Amend	2-1-05	690-021-0070	11-16-04	Repeal	1-1-05
635-072-0000	1-1-05	Amend	2-1-05	690-021-0080	11-16-04	Repeal	1-1-05
635-073-0000	2-1-05	Amend	2-1-05	690-021-0090	11-16-04	Am. & Ren.	1-1-05
635-073-0080	1-1-05	Amend	2-1-05	690-021-0100	11-16-04	Repeal	1-1-05
635-075-0005	1-1-05	Amend	2-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
635-075-0010	1-1-05	Amend	2-1-05	690-021-0120	11-16-04	Repeal	1-1-05
635-075-0015	1-1-05	Amend	2-1-05	690-021-0130	11-16-04	Repeal	1-1-05
635-075-0026	11-23-04	Amend(T)	1-1-05	690-021-0140	11-16-04	Am. & Ren.	1-1-05
635-075-0029	1-1-05	Amend	2-1-05	690-021-0160	11-16-04	Am. & Ren.	1-1-05
635-078-0001	4-1-05	Amend	2-1-05	690-021-0170	11-16-04	Am. & Ren.	1-1-05
635-078-0005	4-1-05	Amend	2-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-078-0008	4-1-05	Amend	2-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-078-0011	4-1-05	Adopt	2-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-080-0065	1-1-05	Amend	2-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
635-110-0000	3-9-05	Adopt	4-1-05	690-021-0400	11-16-04	Repeal	1-1-05
635-110-0010	3-9-05	Adopt	4-1-05	690-021-0500	11-16-04	Repeal	1-1-05
635-110-0020	3-9-05	Adopt	4-1-05	690-021-0600	11-16-04	Am. & Ren.	1-1-05
635-110-0030	3-9-05	Adopt	4-1-05	690-021-0700	11-16-04	Am. & Ren.	1-1-05
635-110-0040	3-9-05	Adopt	4-1-05	690-385-2000	11-16-04	Adopt	1-1-05
635-412-0030	11-17-04	Amend	1-1-05	690-385-2200	11-16-04	Adopt	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-385-3110	11-16-04	Adopt	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-385-3120	11-16-04	Adopt	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-385-3130	11-16-04	Adopt	1-1-05
635-430-0025	11-26-04	Adopt	1-1-05	690-385-3140	11-16-04	Adopt	1-1-05
635-430-0030	11-26-04	Amend	1-1-05	690-385-3150	11-16-04	Adopt	1-1-05
635-430-0040	11-26-04	Amend	1-1-05	690-385-3500	11-16-04	Adopt	1-1-05
635-430-0050	11-26-04	Amend	1-1-05	690-385-3520	11-16-04	Adopt	1-1-05
635-430-0060	11-26-04	Amend	1-1-05	690-385-3600	11-16-04	Adopt	1-1-05
635-430-0070	11-26-04	Amend	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-385-4100	11-16-04	Adopt	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-385-4200	11-16-04	Adopt	1-1-05
635-430-0100	11-26-04	Amend	1-1-05	690-385-4300	11-16-04	Adopt	1-1-05
635-430-0310	11-26-04	Amend	1-1-05	690-385-4400	11-16-04	Adopt	1-1-05
635-430-0320	11-26-04	Amend	1-1-05	690-385-4500	11-16-04	Adopt	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
690-385-4580	11-16-04	Adopt	1-1-05	731-005-0075	3-1-05	Repeal	4-1-05
690-385-4600	11-16-04	Adopt	1-1-05	731-005-0085	3-1-05	Repeal	4-1-05
690-385-4700	11-16-04	Adopt	1-1-05	731-005-0095	3-1-05	Repeal	4-1-05
690-385-5600	11-16-04	Adopt	1-1-05	731-005-0105	3-1-05	Repeal	4-1-05
690-385-5680	11-16-04	Adopt	1-1-05	731-005-0115	3-1-05	Repeal	4-1-05
690-385-5700	11-16-04	Adopt	1-1-05	731-005-0125	3-1-05	Repeal	4-1-05
690-385-5800	11-16-04	Adopt	1-1-05	731-005-0135	3-1-05	Repeal	4-1-05
690-385-6000	11-16-04	Adopt	1-1-05	731-005-0145	3-1-05	Repeal	4-1-05
690-385-7000	11-16-04	Adopt	1-1-05	731-005-0155	3-1-05	Repeal	4-1-05
690-385-7100	11-16-04	Adopt	1-1-05	731-005-0165	3-1-05	Repeal	4-1-05
695-045-0010	2-1-05	Adopt	3-1-05	731-005-0175	3-1-05	Repeal	4-1-05
695-045-0020	2-1-05	Adopt	3-1-05	731-005-0185	3-1-05	Repeal	4-1-05
695-045-0025	2-1-05	Adopt	3-1-05	731-005-0195	3-1-05	Repeal	4-1-05
695-045-0030	2-1-05	Adopt	3-1-05	731-005-0205	3-1-05	Repeal	4-1-05
695-045-0035	2-1-05	Adopt	3-1-05	731-005-0215	3-1-05	Repeal	4-1-05
695-045-0040	2-1-05	Adopt	3-1-05	731-005-0225	3-1-05	Repeal	4-1-05
695-045-0045	2-1-05	Adopt	3-1-05	731-005-0235	3-1-05	Repeal	4-1-05
695-045-0050	2-1-05	Adopt	3-1-05	731-005-0245	3-1-05	Repeal	4-1-05
695-045-0055	2-1-05	Adopt	3-1-05	731-005-0255	3-1-05	Repeal	4-1-05
695-045-0060	2-1-05	Adopt	3-1-05	731-005-0265	3-1-05	Repeal	4-1-05
695-045-0065	2-1-05	Adopt	3-1-05	731-005-0275	3-1-05	Repeal	4-1-05
695-045-0070	2-1-05	Adopt	3-1-05	731-005-0285	3-1-05	Repeal	4-1-05
695-045-0080	2-1-05	Adopt	3-1-05	731-005-0295	3-1-05	Repeal	4-1-05
695-045-0090	2-1-05	Adopt	3-1-05	731-005-0305	3-1-05	Repeal	4-1-05
695-045-0100	2-1-05	Adopt	3-1-05	731-005-0315	3-1-05	Repeal	4-1-05
695-045-0110	2-1-05	Adopt	3-1-05	731-005-0325	3-1-05	Repeal	4-1-05
695-045-0120	2-1-05	Adopt	3-1-05	731-005-0335	3-1-05	Repeal	4-1-05
695-045-0130	2-1-05	Adopt	3-1-05	731-005-0345	3-1-05	Repeal	4-1-05
695-045-0140	2-1-05	Adopt	3-1-05	731-005-0355	3-1-05	Repeal	4-1-05
695-045-0150	2-1-05	Adopt	3-1-05	731-005-0365	3-1-05	Repeal	4-1-05
695-046-0010	2-1-05	Adopt	3-1-05	731-005-0400	3-1-05	Adopt	4-1-05
695-046-0020	2-1-05	Adopt	3-1-05	731-005-0410	3-1-05	Adopt	4-1-05
695-046-0025	2-1-05	Adopt	3-1-05	731-005-0420	3-1-05	Adopt	4-1-05
695-046-0030	2-1-05	Adopt	3-1-05	731-005-0430	3-1-05	Adopt	4-1-05
695-046-0040	2-1-05	Adopt	3-1-05	731-005-0440	3-1-05	Adopt	4-1-05
695-046-0050	2-1-05	Adopt	3-1-05	731-005-0450	3-1-05	Adopt	4-1-05
695-046-0060	2-1-05	Adopt	3-1-05	731-005-0460	3-1-05	Adopt	4-1-05
695-046-0070	2-1-05	Adopt	3-1-05	731-005-0470	3-1-05	Adopt	4-1-05
695-046-0080	2-1-05	Adopt	3-1-05	731-005-0480	3-1-05	Adopt	4-1-05
695-046-0090	2-1-05	Adopt	3-1-05	731-005-0490	3-1-05	Adopt	4-1-05
695-046-0100	2-1-05	Adopt	3-1-05	731-005-0500	3-1-05	Adopt	4-1-05
695-046-0110	2-1-05	Adopt	3-1-05	731-005-0510	3-1-05	Adopt	4-1-05
695-046-0120	2-1-05	Adopt	3-1-05	731-005-0520	3-1-05	Adopt	4-1-05
695-046-0130	2-1-05	Adopt	3-1-05	731-005-0530	3-1-05	Adopt	4-1-05
695-046-0140	2-1-05	Adopt	3-1-05	731-005-0540	3-1-05	Adopt	4-1-05
695-046-0150	2-1-05	Adopt	3-1-05	731-005-0550	3-1-05	Adopt	4-1-05
695-046-0160	2-1-05	Adopt	3-1-05	731-005-0560	3-1-05	Adopt	4-1-05
695-046-0170	2-1-05	Adopt	3-1-05	731-005-0570	3-1-05	Adopt	4-1-05
731-005-0001	3-1-05	Repeal	4-1-05	731-005-0580	3-1-05	Adopt	4-1-05
731-005-0005	3-1-05	Repeal	4-1-05	731-005-0590	3-1-05	Adopt	4-1-05
731-005-0015	3-1-05	Repeal	4-1-05	731-005-0600	3-1-05	Adopt	4-1-05
731-005-0025	3-1-05	Repeal	4-1-05	731-005-0610	3-1-05	Adopt	4-1-05
731-005-0035	3-1-05	Repeal	4-1-05	731-005-0620	3-1-05	Adopt	4-1-05
731-005-0045	3-1-05	Repeal	4-1-05	731-005-0630	3-1-05	Adopt	4-1-05
731-005-0055	3-1-05	Repeal	4-1-05	731-005-0640	3-1-05	Adopt	4-1-05
731-005-0065	3-1-05	Repeal	4-1-05	731-005-0650	3-1-05	Adopt	4-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
731-005-0660	3-1-05	Adopt	4-1-05	731-030-0020	11-17-04	Amend	1-1-05
731-005-0670	3-1-05	Adopt	4-1-05	731-030-0030	11-17-04	Amend	1-1-05
731-005-0680	3-1-05	Adopt	4-1-05	731-030-0040	11-17-04	Amend	1-1-05
731-005-0690	3-1-05	Adopt	4-1-05	731-030-0050	11-17-04	Amend	1-1-05
731-005-0700	3-1-05	Adopt	4-1-05	731-030-0060	11-17-04	Repeal	1-1-05
731-005-0710	3-1-05	Adopt	4-1-05	731-030-0070	11-17-04	Repeal	1-1-05
731-005-0720	3-1-05	Adopt	4-1-05	731-030-0080	11-17-04	Amend	1-1-05
731-005-0730	3-1-05	Adopt	4-1-05	731-030-0090	11-17-04	Amend	1-1-05
731-005-0740	3-1-05	Adopt	4-1-05	731-030-0100	11-17-04	Amend	1-1-05
731-005-0750	3-1-05	Adopt	4-1-05	731-030-0110	11-17-04	Amend	1-1-05
731-005-0760	3-1-05	Adopt	4-1-05	731-030-0120	11-17-04	Amend	1-1-05
731-005-0770	3-1-05	Adopt	4-1-05	731-030-0130	11-17-04	Amend	1-1-05
731-005-0780	3-1-05	Adopt	4-1-05	731-030-0140	11-17-04	Repeal	1-1-05
731-005-0790	3-1-05	Adopt	4-1-05	731-030-0150	11-17-04	Amend	1-1-05
731-007-0010	3-1-05	Repeal	4-1-05	731-030-0160	11-17-04	Amend	1-1-05
731-007-0020	3-1-05	Repeal	4-1-05	731-070-0055	1-20-05	Adopt	3-1-05
731-007-0030	3-1-05	Repeal	4-1-05	731-070-0055(T)	1-20-05	Repeal	3-1-05
731-007-0040	3-1-05	Repeal	4-1-05	731-080-0010	3-18-05	Adopt	5-1-05
731-007-0050	3-1-05	Repeal	4-1-05	731-080-0020	3-18-05	Adopt	5-1-05
731-007-0060	3-1-05	Repeal	4-1-05	731-080-0030	3-18-05	Adopt	5-1-05
731-007-0070	3-1-05	Repeal	4-1-05	731-080-0040	3-18-05	Adopt	5-1-05
731-007-0080	3-1-05	Repeal	4-1-05	731-080-0050	3-18-05	Adopt	5-1-05
731-007-0090	3-1-05	Repeal	4-1-05	731-080-0060	3-18-05	Adopt	5-1-05
731-007-0100	3-1-05	Repeal	4-1-05	731-080-0070	3-18-05	Adopt	5-1-05
731-007-0110	3-1-05	Repeal	4-1-05	731-146-0010	3-1-05	Adopt(T)	4-1-05
731-007-0120	3-1-05	Repeal	4-1-05	731-146-0015	3-1-05	Adopt(T)	4-1-05
731-007-0130	3-1-05	Repeal	4-1-05	731-146-0020	3-1-05	Adopt(T)	4-1-05
731-007-0140	3-1-05	Repeal	4-1-05	731-146-0025	3-1-05	Adopt(T)	4-1-05
731-007-0150	3-1-05	Repeal	4-1-05	731-146-0030	3-1-05	Adopt(T)	4-1-05
731-007-0160	3-1-05	Repeal	4-1-05	731-146-0040	3-1-05	Adopt(T)	4-1-05
731-007-0170	3-1-05	Repeal	4-1-05	731-146-0050	3-1-05	Adopt(T)	4-1-05
731-007-0180	3-1-05	Repeal	4-1-05	731-146-0060	3-1-05	Adopt(T)	4-1-05
731-007-0190	3-1-05	Repeal	4-1-05	731-146-0070	3-1-05	Adopt(T)	4-1-05
731-007-0200	3-1-05	Adopt	4-1-05	731-146-0080	3-1-05	Adopt(T)	4-1-05
731-007-0210	3-1-05	Adopt	4-1-05	731-146-0090	3-1-05	Adopt(T)	4-1-05
731-007-0220	3-1-05	Adopt	4-1-05	731-146-0100	3-1-05	Adopt(T)	4-1-05
731-007-0230	3-1-05	Adopt	4-1-05	731-146-0110	3-1-05	Adopt(T)	4-1-05
731-007-0240	3-1-05	Adopt	4-1-05	731-146-0120	3-1-05	Adopt(T)	4-1-05
731-007-0250	3-1-05	Adopt	4-1-05	731-146-0130	3-1-05	Adopt(T)	4-1-05
731-007-0260	3-1-05	Adopt	4-1-05	731-146-0140	3-1-05	Adopt(T)	4-1-05
731-007-0270	3-1-05	Adopt	4-1-05	731-147-0010	3-1-05	Adopt(T)	4-1-05
731-007-0280	3-1-05	Adopt	4-1-05	731-147-0020	3-1-05	Adopt(T)	4-1-05
731-007-0290	3-1-05	Adopt	4-1-05	731-147-0030	3-1-05	Adopt(T)	4-1-05
731-007-0300	3-1-05	Adopt	4-1-05	731-147-0035	3-1-05	Adopt(T)	4-1-05
731-007-0310	3-1-05	Adopt	4-1-05	731-147-0040	3-1-05	Adopt(T)	4-1-05
731-007-0320	3-1-05	Adopt	4-1-05	731-147-0050	3-1-05	Adopt(T)	4-1-05
731-007-0330	3-1-05	Adopt	4-1-05	731-147-0060	3-1-05	Adopt(T)	4-1-05
731-007-0340	3-1-05	Adopt	4-1-05	731-148-0010	3-1-05	Adopt(T)	4-1-05
731-007-0350	3-1-05	Adopt	4-1-05	731-148-0020	3-1-05	Adopt(T)	4-1-05
731-007-0360	3-1-05	Adopt	4-1-05	731-149-0010	3-1-05	Adopt(T)	4-1-05
731-007-0370	3-1-05	Adopt	4-1-05	732-005-0000	1-1-05	Amend	2-1-05
731-007-0380	3-1-05	Adopt	4-1-05	732-005-0005	1-1-05	Amend	2-1-05
731-007-0390	3-1-05	Adopt	4-1-05	732-005-0005(T)	1-1-05	Repeal	2-1-05
731-007-0400	3-1-05	Adopt	4-1-05	732-005-0010	1-1-05	Amend	2-1-05
731-010-0030	3-1-05	Suspend	4-1-05	732-005-0010(T)	1-1-05	Repeal	2-1-05
731-030-0010	11-17-04	Amend	1-1-05	732-005-0016	1-1-05	Amend	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
732-005-0021	1-1-05	Amend	2-1-05	734-010-0220	3-1-05	Adopt	4-1-05
732-005-0027	1-1-05	Amend	2-1-05	734-010-0230	3-1-05	Adopt	4-1-05
732-005-0027(T)	1-1-05	Repeal	2-1-05	734-010-0240	3-1-05	Adopt	4-1-05
732-005-0031	1-1-05	Amend	2-1-05	734-010-0250	3-1-05	Adopt	4-1-05
732-005-0031(T)	1-1-05	Repeal	2-1-05	734-010-0260	3-1-05	Adopt	4-1-05
732-005-0036	1-1-05	Amend	2-1-05	734-010-0270	3-1-05	Adopt	4-1-05
732-005-0041	1-1-05	Amend	2-1-05	734-010-0280	3-1-05	Adopt	4-1-05
732-005-0046	1-1-05	Amend	2-1-05	734-010-0290	3-1-05	Adopt	4-1-05
732-005-0051	1-1-05	Amend	2-1-05	734-010-0300	3-1-05	Adopt	4-1-05
732-005-0051(T)	1-1-05	Repeal	2-1-05	734-010-0310	3-1-05	Adopt	4-1-05
732-005-0056	1-1-05	Amend	2-1-05	734-010-0320	3-1-05	Adopt	4-1-05
732-005-0061	1-1-05	Adopt	2-1-05	734-010-0330	3-1-05	Adopt	4-1-05
732-005-0066	1-1-05	Adopt	2-1-05	734-010-0340	3-1-05	Adopt	4-1-05
732-005-0071	1-1-05	Adopt	2-1-05	734-010-0350	3-1-05	Adopt	4-1-05
732-005-0076	1-1-05	Adopt	2-1-05	734-010-0360	3-1-05	Adopt	4-1-05
732-005-0081	1-1-05	Adopt	2-1-05	734-010-0370	3-1-05	Adopt	4-1-05
732-010-0005	1-1-05	Amend	2-1-05	734-010-0380	3-1-05	Adopt	4-1-05
732-010-0010	1-1-05	Amend	2-1-05	734-035-0110	4-26-05	Amend	6-1-05
732-010-0010(T)	1-1-05	Repeal	2-1-05	734-071-0005	1-1-05	Amend	2-1-05
732-010-0015	1-1-05	Amend	2-1-05	734-071-0010	1-1-05	Amend	2-1-05
732-010-0020	1-1-05	Amend	2-1-05	734-071-0030	1-1-05	Amend	2-1-05
732-010-0025	1-1-05	Amend	2-1-05	734-071-0060	1-1-05	Adopt	2-1-05
732-010-0030	1-1-05	Amend	2-1-05	734-073-0051	3-18-05	Amend	5-1-05
732-010-0035	1-1-05	Amend	2-1-05	734-073-0056	3-18-05	Amend	5-1-05
732-010-0035(T)	1-1-05	Repeal	2-1-05	734-073-0060	3-18-05	Amend	5-1-05
732-010-0040	1-1-05	Repeal	2-1-05	734-073-0065	3-18-05	Amend	5-1-05
732-010-0045	1-1-05	Amend	2-1-05	734-073-0100	3-18-05	Amend	5-1-05
732-020-0005	1-1-05	Amend	2-1-05	734-073-0110	3-18-05	Amend	5-1-05
732-020-0010	1-1-05	Repeal	2-1-05	734-073-0120	3-18-05	Amend	5-1-05
732-020-0015	1-1-05	Repeal	2-1-05	734-073-0130	3-18-05	Amend	5-1-05
732-020-0020	1-1-05	Amend	2-1-05	734-073-0140	3-18-05	Amend	5-1-05
732-020-0025	1-1-05	Amend	2-1-05	734-074-0008	3-18-05	Amend	5-1-05
732-020-0030	1-1-05	Amend	2-1-05	734-074-0010	3-18-05	Amend	5-1-05
732-020-0035	1-1-05	Amend	2-1-05	734-074-0020	3-18-05	Amend	5-1-05
732-020-0040	1-1-05	Amend	2-1-05	734-074-0045	3-18-05	Amend	5-1-05
732-020-0045	1-1-05	Amend	2-1-05	734-074-0051	3-18-05	Amend	5-1-05
733-030-0045	3-14-05	Amend(T)	4-1-05	734-082-0005	3-18-05	Amend	5-1-05
734-010-0010	3-1-05	Repeal	4-1-05	734-082-0040	3-18-05	Amend	5-1-05
734-010-0020	3-1-05	Repeal	4-1-05	735-001-0020	11-17-04	Amend	1-1-05
734-010-0030	3-1-05	Repeal	4-1-05	735-001-0050	11-17-04	Amend	1-1-05
734-010-0040	3-1-05	Repeal	4-1-05	735-010-0008	5-1-05	Amend	6-1-05
734-010-0050	3-1-05	Repeal	4-1-05	735-010-0030	2-16-05	Amend	4-1-05
734-010-0060	3-1-05	Repeal	4-1-05	735-010-0045	5-1-05	Amend	6-1-05
734-010-0070	3-1-05	Repeal	4-1-05	735-010-0230	5-1-05	Amend	6-1-05
734-010-0080	3-1-05	Repeal	4-1-05	735-020-0010	5-1-05	Amend	6-1-05
734-010-0090	3-1-05	Repeal	4-1-05	735-022-0040	5-1-05	Amend	6-1-05
734-010-0100	3-1-05	Repeal	4-1-05	735-022-0050	5-1-05	Amend	6-1-05
734-010-0110	3-1-05	Repeal	4-1-05	735-022-0060	5-1-05	Amend	6-1-05
734-010-0120	3-1-05	Repeal	4-1-05	735-022-0120	2-16-05	Adopt	4-1-05
734-010-0130	3-1-05	Repeal	4-1-05	735-024-0025	3-18-05	Amend	5-1-05
734-010-0140	3-1-05	Repeal	4-1-05	735-024-0030	5-1-05	Amend	6-1-05
734-010-0150	3-1-05	Repeal	4-1-05	735-024-0070	5-1-05	Amend	6-1-05
734-010-0160	3-1-05	Repeal	4-1-05	735-024-0130	5-1-05	Amend	6-1-05
734-010-0170	3-1-05	Repeal	4-1-05	735-032-0000	5-1-05	Amend	6-1-05
734-010-0200	3-1-05	Adopt	4-1-05	735-034-0010	2-16-05	Amend	4-1-05
734-010-0210	3-1-05	Adopt	4-1-05	735-062-0000	1-31-05	Amend	3-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
735-062-0020	2-16-05	Amend	4-1-05	735-150-0030	5-1-05	Amend	6-1-05
735-062-0020(T)	2-16-05	Repeal	4-1-05	735-150-0040	5-1-05	Amend	6-1-05
735-062-0030	2-16-05	Amend	4-1-05	735-150-0080	2-16-05	Amend	4-1-05
735-062-0030(T)	2-16-05	Repeal	4-1-05	735-150-0090	5-1-05	Repeal	6-1-05
735-062-0085	1-31-05	Amend	3-1-05	735-150-0110	5-1-05	Amend	6-1-05
735-062-0090	1-31-05	Amend	3-1-05	735-150-0140	5-1-05	Amend	6-1-05
735-062-0090(T)	1-31-05	Repeal	3-1-05	735-150-0180	5-1-05	Repeal	6-1-05
735-062-0110	1-31-05	Amend	3-1-05	735-152-0020	11-17-04	Amend	1-1-05
735-062-0150	1-31-05	Amend	3-1-05	735-152-0050	11-17-04	Amend	1-1-05
735-062-0160	1-31-05	Amend	3-1-05	735-168-0070	2-16-05	Repeal	4-1-05
735-062-0190	1-31-05	Adopt	3-1-05	736-010-0005	5-5-05	Amend	6-1-05
735-062-0200	1-31-05	Amend	3-1-05	736-010-0010	5-5-05	Amend	6-1-05
735-070-0020	1-31-05	Amend	3-1-05	736-010-0015	5-5-05	Amend	6-1-05
735-070-0030	1-1-05	Amend	1-1-05	736-010-0020	5-5-05	Amend	6-1-05
735-070-0054	11-17-04	Amend	1-1-05	736-010-0022	5-5-05	Amend	6-1-05
735-070-0060	11-17-04	Amend	1-1-05	736-010-0025	5-5-05	Amend	6-1-05
735-070-0110	11-17-04	Amend	1-1-05	736-010-0026	5-5-05	Amend	6-1-05
735-070-0185	2-17-05	Amend(T)	4-1-05	736-010-0027	5-5-05	Amend	6-1-05
735-070-0190	11-17-04	Amend	1-1-05	736-010-0030	5-5-05	Amend	6-1-05
735-074-0005	1-20-05	Repeal	3-1-05	736-010-0035	5-5-05	Amend	6-1-05
735-074-0045	1-20-05	Repeal	3-1-05	736-010-0040	5-5-05	Amend	6-1-05
735-074-0140	1-20-05	Amend	3-1-05	736-010-0045	5-5-05	Am. & Ren.	6-1-05
735-074-0150	1-20-05	Amend	3-1-05	736-010-0050	5-5-05	Amend	6-1-05
735-074-0170	1-20-05	Amend	3-1-05	736-010-0055	5-5-05	Amend	6-1-05
735-074-0180	1-20-05	Amend	3-1-05	736-010-0060	5-5-05	Amend	6-1-05
735-074-0220	11-17-04	Amend	1-1-05	736-010-0065	5-5-05	Amend	6-1-05
735-074-0260	1-31-05	Amend	3-1-05	736-010-0070	5-5-05	Am. & Ren.	6-1-05
735-090-0000	11-17-04	Amend	1-1-05	736-010-0075	5-5-05	Repeal	6-1-05
735-090-0020	11-17-04	Amend	1-1-05	736-010-0080	5-5-05	Repeal	6-1-05
735-090-0040	11-17-04	Amend	1-1-05	736-010-0085	5-5-05	Repeal	6-1-05
735-090-0051	11-17-04	Adopt	1-1-05	736-010-0098	5-5-05	Am. & Ren.	6-1-05
735-090-0101	11-17-04	Adopt	1-1-05	736-010-0099	5-5-05	Am. & Ren.	6-1-05
735-090-0130	11-17-04	Adopt	1-1-05	736-010-0100	5-5-05	Am. & Ren.	6-1-05
735-090-0130(T)	11-17-04	Repeal	1-1-05	736-010-0115	5-5-05	Am. & Ren.	6-1-05
735-118-0000	2-16-05	Amend	4-1-05	736-010-0120	5-5-05	Am. & Ren.	6-1-05
735-118-0010	2-16-05	Amend	4-1-05	736-010-0125	5-5-05	Am. & Ren.	6-1-05
735-118-0030	2-16-05	Amend	4-1-05	736-015-0006	5-5-05	Adopt	6-1-05
735-140-0000	5-1-05	Repeal	6-1-05	736-015-0010	5-5-05	Amend	6-1-05
735-140-0010	5-1-05	Repeal	6-1-05	736-015-0015	5-5-05	Amend	6-1-05
735-140-0015	5-1-05	Repeal	6-1-05	736-015-0020	5-5-05	Amend	6-1-05
735-140-0020	5-1-05	Repeal	6-1-05	736-015-0030	5-5-05	Amend	6-1-05
735-140-0025	5-1-05	Repeal	6-1-05	736-015-0035	5-5-05	Amend	6-1-05
735-140-0030	5-1-05	Repeal	6-1-05	736-015-0045	5-5-05	Am. & Ren.	6-1-05
735-140-0040	5-1-05	Repeal	6-1-05	736-015-0050	5-5-05	Am. & Ren.	6-1-05
735-140-0060	5-1-05	Repeal	6-1-05	736-015-0055	5-5-05	Repeal	6-1-05
735-140-0070	5-1-05	Repeal	6-1-05	736-015-0058	5-5-05	Am. & Ren.	6-1-05
735-140-0080	5-1-05	Repeal	6-1-05	736-015-0060	5-5-05	Repeal	6-1-05
735-140-0090	5-1-05	Repeal	6-1-05	736-015-0063	5-5-05	Am. & Ren.	6-1-05
735-140-0100	5-1-05	Repeal	6-1-05	736-015-0065	5-5-05	Am. & Ren.	6-1-05
735-140-0110	5-1-05	Repeal	6-1-05	736-015-0067	5-5-05	Am. & Ren.	6-1-05
735-140-0120	5-1-05	Repeal	6-1-05	736-015-0070	5-5-05	Am. & Ren.	6-1-05
735-140-0130	5-1-05	Repeal	6-1-05	736-015-0072	5-5-05	Am. & Ren.	6-1-05
735-140-0135	5-1-05	Repeal	6-1-05	736-015-0075	5-5-05	Repeal	6-1-05
735-140-0140	5-1-05	Repeal	6-1-05	736-015-0080	5-5-05	Am. & Ren.	6-1-05
735-150-0010	5-1-05	Amend	6-1-05	736-015-0085	5-5-05	Repeal	6-1-05
735-150-0020	5-1-05	Amend	6-1-05	736-015-0090	5-5-05	Am. & Ren.	6-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
736-015-0093	5-5-05	Repeal	6-1-05	801-040-0010	1-1-05	Amend	2-1-05
736-015-0095	5-5-05	Am. & Ren.	6-1-05	801-040-0020	1-1-05	Amend	2-1-05
736-015-0097	5-5-05	Am. & Ren.	6-1-05	801-040-0030	1-1-05	Amend	2-1-05
736-015-0100	5-5-05	Am. & Ren.	6-1-05	801-040-0040	1-1-05	Amend	2-1-05
736-015-0102	5-5-05	Repeal	6-1-05	801-040-0050	1-1-05	Amend	2-1-05
736-015-0105	5-5-05	Repeal	6-1-05	801-040-0060	1-1-05	Repeal	2-1-05
736-015-0110	5-5-05	Am. & Ren.	6-1-05	801-040-0070	1-1-05	Amend	2-1-05
736-015-0115	5-5-05	Repeal	6-1-05	801-040-0090	1-1-05	Amend	2-1-05
736-015-0120	5-5-05	Repeal	6-1-05	801-040-0100	1-1-05	Amend	2-1-05
736-015-0125	5-5-05	Repeal	6-1-05	801-040-0150	1-1-05	Amend	2-1-05
736-015-0130	5-5-05	Am. & Ren.	6-1-05	801-040-0160	1-1-05	Amend	2-1-05
736-015-0135	5-5-05	Am. & Ren.	6-1-05	804-001-0002	2-14-05	Amend	3-1-05
736-015-0140	5-5-05	Repeal	6-1-05	804-001-0014	2-14-05	Amend	3-1-05
736-015-0144	5-5-05	Am. & Ren.	6-1-05	804-001-0015	2-14-05	Amend	3-1-05
736-015-0146	5-5-05	Am. & Ren.	6-1-05	804-003-0000	2-14-05	Amend	3-1-05
736-015-0148	5-5-05	Am. & Ren.	6-1-05	804-010-0000	2-14-05	Amend	3-1-05
736-015-0150	5-5-05	Am. & Ren.	6-1-05	804-010-0010	2-14-05	Amend	3-1-05
736-015-0155	5-5-05	Repeal	6-1-05	804-010-0010	2-14-05	Amend	3-1-05
736-015-0160	5-5-05	Am. & Ren.	6-1-05	804-020-0055	2-14-05	Amend	3-1-05
736-018-0045	2-4-05	Amend	3-1-05	804-025-0000	2-14-05	Adopt	3-1-05
736-018-0045	5-4-05	Amend	6-1-05	804-025-0010	2-14-05	Adopt	3-1-05
736-054-0000	3-23-05	Adopt	5-1-05	804-025-0020	2-14-05	Adopt	3-1-05
736-054-0005	3-23-05	Adopt	5-1-05	804-030-0011	2-14-05	Amend	3-1-05
736-054-0010	3-23-05	Adopt	5-1-05	804-030-0015	2-14-05	Amend	3-1-05
736-054-0015	3-23-05	Adopt	5-1-05	804-030-0020	2-14-05	Amend	3-1-05
736-054-0020	3-23-05	Adopt	5-1-05	804-030-0060	2-14-05	Repeal	3-1-05
736-054-0025	3-23-05	Adopt	5-1-05	804-040-0000	2-14-05	Amend	3-1-05
736-054-0030	3-23-05	Adopt	5-1-05	806-001-0003	7-1-05	Amend	4-1-05
740-045-0010	4-1-05	Amend	5-1-05	806-010-0020	5-12-05	Amend	6-1-05
740-100-0010	4-1-05	Amend	5-1-05	806-010-0050	5-12-05	Amend	6-1-05
740-100-0015	4-1-05	Amend	5-1-05	808-001-0005	2-15-05	Amend	3-1-05
740-100-0020	4-1-05	Amend	5-1-05	808-001-0030	2-15-05	Amend	3-1-05
740-100-0070	4-1-05	Amend	5-1-05	808-002-0260	2-15-05	Amend	3-1-05
740-100-0080	4-1-05	Amend	5-1-05	808-002-0325	2-15-05	Adopt	3-1-05
740-100-0090	4-1-05	Amend	5-1-05	808-002-0540	12-15-04	Amend(T)	1-1-05
740-100-0100	4-1-05	Amend	5-1-05	808-002-0540	2-15-05	Amend	3-1-05
740-110-0010	4-1-05	Amend	5-1-05	808-002-0540(T)	2-15-05	Repeal	3-1-05
740-200-0010	1-1-05	Amend	2-1-05	808-002-0725	2-15-05	Amend	3-1-05
740-200-0020	1-1-05	Amend	2-1-05	808-003-0025	4-5-05	Amend	5-1-05
740-200-0040	1-1-05	Amend	2-1-05	808-004-0195	2-15-05	Adopt	3-1-05
800-020-0015	1-5-05	Amend	2-1-05	808-004-0210	1-1-04	Adopt(T)	3-1-05
801-001-0000	1-1-05	Amend	2-1-05	808-004-0211	12-15-04	Adopt(T)	1-1-05
801-001-0020	3-1-05	Amend	4-1-05	808-004-0211	2-15-05	Adopt	3-1-05
801-001-0035	3-1-05	Amend	4-1-05	808-004-0211(T)	2-15-05	Repeal	3-1-05
801-005-0010	3-1-05	Amend	4-1-05	808-004-0250	2-15-05	Amend	3-1-05
801-010-0010	1-1-05	Amend	2-1-05	808-004-0300	2-15-05	Amend	3-1-05
801-010-0050	1-1-05	Amend	2-1-05	808-004-0440	2-15-05	Amend	3-1-05
801-010-0060	1-1-05	Amend	2-1-05	808-004-0510	2-15-05	Amend	3-1-05
801-010-0065	1-1-05	Amend	2-1-05	808-004-0520	2-15-05	Amend	3-1-05
801-010-0085	1-1-05	Amend	2-1-05	808-005-0020	4-5-05	Amend	5-1-05
801-020-0620	1-1-05	Amend	2-1-05	808-008-0020	12-15-04	Amend(T)	1-1-05
801-020-0690	1-1-05	Amend	2-1-05	808-008-0020	2-15-05	Amend	3-1-05
801-020-0700	1-1-05	Amend	2-1-05	808-008-0020(T)	2-15-05	Repeal	3-1-05
801-020-0710	1-1-05	Amend	2-1-05	808-008-0030	12-15-04	Amend(T)	1-1-05
801-020-0720	1-1-05	Amend	2-1-05	808-008-0030	2-15-05	Amend	3-1-05
801-030-0015	2-1-05	Amend	3-1-05	808-008-0030(T)	2-15-05	Repeal	3-1-05
				808-008-0050	1-1-04	Adopt(T)	3-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
808-008-0051	12-15-04	Adopt(T)	1-1-05	812-003-0000	12-10-04	Repeal	1-1-05
808-008-0051	2-15-05	Adopt	3-1-05	812-003-0002	12-10-04	Am. & Ren.	1-1-05
808-008-0051(T)	2-15-05	Repeal	3-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
808-008-0060	12-15-04	Amend(T)	1-1-05	812-003-0012	12-10-04	Repeal	1-1-05
808-008-0060	2-15-05	Amend	3-1-05	812-003-0015	12-10-04	Repeal	1-1-05
808-008-0060(T)	2-15-05	Repeal	3-1-05	812-003-0020	12-10-04	Repeal	1-1-05
808-008-0085	12-15-04	Amend(T)	1-1-05	812-003-0025	12-10-04	Repeal	1-1-05
808-008-0085	2-15-05	Amend	3-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
808-008-0085(T)	2-15-05	Repeal	3-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
808-008-0140	12-15-04	Amend(T)	1-1-05	812-003-0050	12-10-04	Repeal	1-1-05
808-008-0140	2-15-05	Amend	3-1-05	812-003-0100	12-10-04	Adopt	1-1-05
808-008-0140(T)	2-15-05	Repeal	3-1-05	812-003-0110	12-10-04	Adopt	1-1-05
808-008-0180	2-15-05	Amend	3-1-05	812-003-0120	12-10-04	Adopt	1-1-05
808-008-0240	12-15-04	Suspend	1-1-05	812-003-0130	12-10-04	Adopt	1-1-05
808-008-0240	2-15-05	Repeal	3-1-05	812-003-0140	12-10-04	Adopt	1-1-05
808-008-0280	12-15-04	Amend(T)	1-1-05	812-003-0150	12-10-04	Adopt	1-1-05
808-008-0280	2-15-05	Amend	3-1-05	812-003-0160	12-10-04	Adopt	1-1-05
808-008-0280(T)	2-15-05	Repeal	3-1-05	812-003-0170	12-10-04	Adopt	1-1-05
808-008-0291	12-15-04	Adopt(T)	1-1-05	812-003-0180	12-10-04	Adopt	1-1-05
808-008-0291	2-15-05	Adopt	3-1-05	812-003-0190	12-10-04	Adopt	1-1-05
808-008-0291(T)	2-15-05	Repeal	3-1-05	812-003-0200	12-10-04	Adopt	1-1-05
808-008-0400	12-15-04	Amend(T)	1-1-05	812-003-0210	12-10-04	Adopt	1-1-05
808-008-0400	2-15-05	Amend	3-1-05	812-003-0220	12-10-04	Adopt	1-1-05
808-008-0400(T)	2-15-05	Repeal	3-1-05	812-003-0230	12-10-04	Adopt	1-1-05
808-008-0420	12-15-04	Amend(T)	1-1-05	812-003-0240	12-10-04	Adopt	1-1-05
808-008-0420	2-15-05	Amend	3-1-05	812-003-0260	12-10-04	Adopt	1-1-05
808-008-0420(T)	2-15-05	Repeal	3-1-05	812-003-0270	12-10-04	Adopt	1-1-05
808-008-0425	12-15-04	Amend(T)	1-1-05	812-003-0280	12-10-04	Adopt	1-1-05
808-008-0425	2-15-05	Amend	3-1-05	812-003-0290	12-10-04	Adopt	1-1-05
808-008-0425(T)	2-15-05	Repeal	3-1-05	812-003-0300	12-10-04	Adopt	1-1-05
808-008-0430	12-15-04	Amend(T)	1-1-05	812-003-0310	12-10-04	Adopt	1-1-05
808-008-0430	2-15-05	Amend	3-1-05	812-003-0330	12-10-04	Adopt	1-1-05
808-008-0430(T)	2-15-05	Repeal	3-1-05	812-003-0340	12-10-04	Adopt	1-1-05
808-008-0440	12-15-04	Amend(T)	1-1-05	812-003-0350	12-10-04	Adopt	1-1-05
808-008-0440	2-15-05	Amend	3-1-05	812-003-0360	12-10-04	Adopt	1-1-05
808-008-0440(T)	2-15-05	Repeal	3-1-05	812-003-0370	12-10-04	Adopt	1-1-05
808-008-0460	12-15-04	Amend(T)	1-1-05	812-003-0380	12-10-04	Adopt	1-1-05
808-008-0460	2-15-05	Amend	3-1-05	812-003-0410	12-10-04	Adopt	1-1-05
808-008-0460(T)	2-15-05	Repeal	3-1-05	812-003-0420	12-10-04	Adopt	1-1-05
808-008-0500	12-15-04	Amend(T)	1-1-05	812-003-0430	12-10-04	Adopt	1-1-05
808-008-0500	2-15-05	Amend	3-1-05	812-004-0001	12-10-04	Amend	1-1-05
808-008-0500(T)	2-15-05	Repeal	3-1-05	812-004-0240	12-10-04	Amend	1-1-05
808-008-0511	12-15-04	Adopt(T)	1-1-05	812-004-0260	12-10-04	Amend	1-1-05
808-008-0511	2-15-05	Adopt	3-1-05	812-004-0320	12-10-04	Amend	1-1-05
808-008-0511(T)	2-15-05	Repeal	3-1-05	812-004-0470	12-10-04	Amend	1-1-05
808-008-0521	12-15-04	Adopt(T)	1-1-05	812-004-0530	12-10-04	Amend	1-1-05
808-008-0521	2-15-05	Adopt	3-1-05	812-004-0540	12-10-04	Amend	1-1-05
808-008-0521(T)	2-15-05	Repeal	3-1-05	812-004-0560	12-10-04	Amend	1-1-05
808-009-0100	2-15-05	Amend	3-1-05	812-004-0590	12-10-04	Amend	1-1-05
811-015-0010	2-1-05	Amend	3-1-05	812-004-0600	12-10-04	Amend	1-1-05
811-030-0030	12-10-04	Amend	1-1-05	812-005-0005	12-10-04	Amend	1-1-05
812-001-0015	12-10-04	Amend	1-1-05	812-006-0020	12-10-04	Amend	1-1-05
812-001-0040	12-10-04	Amend	1-1-05	812-006-0030	1-5-05	Amend(T)	2-1-05
812-002-0260	12-10-04	Amend	1-1-05	812-008-0020	12-10-04	Amend	1-1-05
812-002-0555	12-10-04	Amend	1-1-05	812-008-0070	12-10-04	Amend	1-1-05
812-002-0800	12-10-04	Amend	1-1-05	812-008-0110	12-10-04	Amend	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
812-009-0400	12-10-04	Amend	1-1-05	818-042-0120	12-1-04	Amend	1-1-05
812-010-0040	12-10-04	Amend	1-1-05	818-042-0130	12-1-04	Amend	1-1-05
812-010-0050	12-10-04	Amend	1-1-05	820-010-0010	3-16-05	Amend	5-1-05
812-010-0200	12-10-04	Amend	1-1-05	820-010-0200	3-16-05	Amend	5-1-05
812-010-0220	12-10-04	Amend	1-1-05	820-010-0600	3-16-05	Amend	5-1-05
812-010-0260	12-10-04	Amend	1-1-05	820-010-0622	3-16-05	Adopt	5-1-05
812-010-0300	12-10-04	Amend	1-1-05	820-020-0040	3-16-05	Adopt	5-1-05
812-010-0320	12-10-04	Amend	1-1-05	820-020-0045	3-16-05	Adopt	5-1-05
812-010-0340	12-10-04	Amend	1-1-05	820-040-0040	3-16-05	Amend	5-1-05
812-010-0360	12-10-04	Amend	1-1-05	836-014-0400	3-21-05	Adopt	4-1-05
812-010-0380	12-10-04	Amend	1-1-05	836-031-0410	4-21-05	Amend	6-1-05
812-010-0420	12-10-04	Amend	1-1-05	836-042-0045	4-7-05	Amend	5-1-05
812-010-0480	12-10-04	Amend	1-1-05	836-042-0085	4-7-05	Amend	5-1-05
813-003-0001	11-23-04	Adopt	1-1-05	836-052-0500	3-1-05	Amend	4-1-05
813-003-0006	11-23-04	Adopt	1-1-05	836-052-0510	3-1-05	Repeal	4-1-05
813-003-0011	11-23-04	Adopt	1-1-05	836-052-0515	3-1-05	Repeal	4-1-05
813-003-0015	11-23-04	Adopt	1-1-05	836-052-0516	3-1-05	Adopt	4-1-05
813-003-0021	11-23-04	Adopt	1-1-05	836-052-0520	3-1-05	Repeal	4-1-05
813-003-0025	11-23-04	Adopt	1-1-05	836-052-0525	3-1-05	Repeal	4-1-05
813-003-0031	11-23-04	Adopt	1-1-05	836-052-0526	3-1-05	Adopt	4-1-05
813-003-0035	11-23-04	Adopt	1-1-05	836-052-0530	3-1-05	Am. & Ren.	4-1-05
813-230-0000	12-17-04	Am. & Ren.(T)	2-1-05	836-052-0535	3-1-05	Am. & Ren.	4-1-05
813-230-0001	12-17-04	Adopt(T)	2-1-05	836-052-0536	3-1-05	Adopt	4-1-05
813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05	836-052-0540	3-1-05	Repeal	4-1-05
813-230-0010	12-17-04	Amend(T)	2-1-05	836-052-0545	3-1-05	Am. & Ren.	4-1-05
813-230-0015	12-17-04	Amend(T)	2-1-05	836-052-0546	3-1-05	Adopt	4-1-05
813-230-0020	12-17-04	Amend(T)	2-1-05	836-052-0550	3-1-05	Am. & Ren.	4-1-05
818-001-0002	2-1-05	Amend	3-1-05	836-052-0556	3-1-05	Adopt	4-1-05
818-001-0005	2-1-05	Amend	3-1-05	836-052-0565	3-1-05	Repeal	4-1-05
818-001-0087	2-1-05	Amend	3-1-05	836-052-0566	3-1-05	Adopt	4-1-05
818-021-0011	12-1-04	Amend	1-1-05	836-052-0570	3-1-05	Repeal	4-1-05
818-021-0025	12-1-04	Amend	1-1-05	836-052-0575	3-1-05	Am. & Ren.	4-1-05
818-021-0088	2-1-05	Adopt	3-1-05	836-052-0580	3-1-05	Am. & Ren.	4-1-05
818-026-0000	2-1-05	Amend	3-1-05	836-052-0583	3-1-05	Am. & Ren.	4-1-05
818-026-0010	2-1-05	Amend	3-1-05	836-052-0588	3-1-05	Am. & Ren.	4-1-05
818-026-0020	2-1-05	Amend	3-1-05	836-052-0600	3-1-05	Am. & Ren.	4-1-05
818-026-0030	2-1-05	Amend	3-1-05	836-052-0605	3-1-05	Am. & Ren.	4-1-05
818-026-0030	2-1-05	Amend	3-1-05	836-052-0607	3-1-05	Repeal	4-1-05
818-026-0035	2-1-05	Amend	3-1-05	836-052-0610	3-1-05	Am. & Ren.	4-1-05
818-026-0040	2-1-05	Amend	3-1-05	836-052-0615	3-1-05	Am. & Ren.	4-1-05
818-026-0050	2-1-05	Amend	3-1-05	836-052-0616	3-1-05	Adopt	4-1-05
818-026-0050	2-1-05	Amend	3-1-05	836-052-0620	3-1-05	Am. & Ren.	4-1-05
818-026-0055	2-1-05	Adopt	3-1-05	836-052-0636	3-1-05	Adopt	4-1-05
818-026-0060	2-1-05	Amend	3-1-05	836-052-0640	3-1-05	Am. & Ren.	4-1-05
818-026-0060	2-1-05	Amend	3-1-05	836-052-0645	3-1-05	Am. & Ren.	4-1-05
818-026-0070	2-1-05	Amend	3-1-05	836-052-0676	3-1-05	Adopt	4-1-05
818-026-0080	2-1-05	Amend	3-1-05	836-052-0700	3-1-05	Amend	4-1-05
818-026-0100	2-1-05	Amend	3-1-05	836-052-0726	3-1-05	Adopt	4-1-05
818-026-0110	2-1-05	Amend	3-1-05	836-052-0746	3-1-05	Adopt	4-1-05
818-026-0120	2-1-05	Amend	3-1-05	836-052-0756	3-1-05	Adopt	4-1-05
818-026-0130	2-1-05	Amend	3-1-05	836-052-0766	3-1-05	Adopt	4-1-05
818-035-0025	2-1-05	Amend	3-1-05	836-053-0510	11-19-04	Amend	1-1-05
818-035-0030	2-1-05	Amend	3-1-05	836-080-0600	4-1-05	Adopt	5-1-05
818-042-0050	12-1-04	Amend	1-1-05	836-080-0610	4-1-05	Adopt	5-1-05
818-042-0060	12-1-04	Amend	1-1-05	836-080-0615	4-1-05	Adopt	5-1-05
818-042-0116	2-1-05	Amend	3-1-05	836-080-0620	4-1-05	Adopt	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
836-080-0625	4-1-05	Adopt	5-1-05	839-003-0040	1-7-05	Amend	2-1-05
836-080-0630	4-1-05	Adopt	5-1-05	839-004-0021	1-19-05	Amend	2-1-05
836-080-0635	4-1-05	Adopt	5-1-05	839-009-0240	1-7-05	Amend	2-1-05
836-080-0640	4-1-05	Adopt	5-1-05	839-009-0260	1-7-05	Amend	2-1-05
836-080-0645	4-1-05	Adopt	5-1-05	839-010-0200	1-7-05	Adopt	2-1-05
836-080-0650	4-1-05	Adopt	5-1-05	839-010-0205	1-7-05	Adopt	2-1-05
836-080-0655	4-1-05	Adopt	5-1-05	839-010-0210	1-7-05	Adopt	2-1-05
836-080-0660	4-1-05	Adopt	5-1-05	839-016-0000	3-1-05	Am. & Ren.	4-1-05
836-080-0665	4-1-05	Adopt	5-1-05	839-016-0002	3-1-05	Am. & Ren.	4-1-05
836-080-0670	4-1-05	Adopt	5-1-05	839-016-0003	3-1-05	Am. & Ren.	4-1-05
836-080-0675	4-1-05	Adopt	5-1-05	839-016-0004	3-1-05	Am. & Ren.	4-1-05
836-080-0680	4-1-05	Adopt	5-1-05	839-016-0006	3-1-05	Am. & Ren.	4-1-05
836-080-0685	4-1-05	Adopt	5-1-05	839-016-0007	3-1-05	Am. & Ren.	4-1-05
836-080-0690	4-1-05	Adopt	5-1-05	839-016-0008	3-1-05	Am. & Ren.	4-1-05
836-080-0695	4-1-05	Adopt	5-1-05	839-016-0010	3-1-05	Am. & Ren.	4-1-05
836-080-0700	4-1-05	Adopt	5-1-05	839-016-0013	3-1-05	Am. & Ren.	4-1-05
836-085-0201	4-7-05	Amend	5-1-05	839-016-0020	3-1-05	Am. & Ren.	4-1-05
836-085-0220	4-7-05	Repeal	5-1-05	839-016-0025	3-1-05	Am. & Ren.	4-1-05
836-085-0225	4-7-05	Amend	5-1-05	839-016-0030	3-1-05	Am. & Ren.	4-1-05
837-012-0510	12-13-04	Amend(T)	1-1-05	839-016-0033	3-1-05	Am. & Ren.	4-1-05
837-012-0515	11-17-04	Amend(T)	1-1-05	839-016-0034	3-1-05	Am. & Ren.	4-1-05
837-012-0520	12-13-04	Amend(T)	1-1-05	839-016-0035	3-1-05	Am. & Ren.	4-1-05
837-012-0525	12-13-04	Amend(T)	1-1-05	839-016-0040	3-1-05	Am. & Ren.	4-1-05
837-012-0530	11-17-04	Amend(T)	1-1-05	839-016-0043	3-1-05	Am. & Ren.	4-1-05
837-012-0540	12-13-04	Amend(T)	1-1-05	839-016-0045	3-1-05	Am. & Ren.	4-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	839-016-0050	3-1-05	Am. & Ren.	4-1-05
837-012-0555	1-13-05	Amend(T)	2-1-05	839-016-0054	3-1-05	Am. & Ren.	4-1-05
837-012-0610	2-15-05	Amend	3-1-05	839-016-0060	3-1-05	Am. & Ren.	4-1-05
837-012-0615	2-15-05	Amend	3-1-05	839-016-0065	3-1-05	Am. & Ren.	4-1-05
837-012-0620	2-15-05	Amend	3-1-05	839-016-0080	3-1-05	Am. & Ren.	4-1-05
837-012-0625	2-15-05	Amend	3-1-05	839-016-0085	3-1-05	Am. & Ren.	4-1-05
837-012-0645	2-15-05	Amend	3-1-05	839-016-0090	3-1-05	Am. & Ren.	4-1-05
837-012-0650	2-15-05	Amend	3-1-05	839-016-0095	3-1-05	Am. & Ren.	4-1-05
837-012-0670	2-15-05	Amend	3-1-05	839-016-0100	3-1-05	Am. & Ren.	4-1-05
837-012-0750	2-15-05	Amend	3-1-05	839-016-0150	3-1-05	Am. & Ren.	4-1-05
837-012-1230	2-17-05	Amend	4-1-05	839-016-0155	3-1-05	Am. & Ren.	4-1-05
837-040-0010	1-3-05	Amend(T)	2-1-05	839-016-0200	3-1-05	Am. & Ren.	4-1-05
837-085-0020	4-1-05	Amend	5-1-05	839-016-0210	3-1-05	Am. & Ren.	4-1-05
837-085-0030	4-1-05	Amend	5-1-05	839-016-0220	3-1-05	Am. & Ren.	4-1-05
837-085-0040	4-1-05	Amend	5-1-05	839-016-0230	3-1-05	Am. & Ren.	4-1-05
837-085-0070	4-1-05	Amend	5-1-05	839-016-0240	3-1-05	Am. & Ren.	4-1-05
837-085-0080	4-1-05	Amend	5-1-05	839-016-0300	3-1-05	Am. & Ren.	4-1-05
837-085-0090	4-1-05	Amend	5-1-05	839-016-0310	3-1-05	Am. & Ren.	4-1-05
837-085-0110	4-1-05	Amend	5-1-05	839-016-0320	3-1-05	Am. & Ren.	4-1-05
837-085-0180	4-1-05	Amend	5-1-05	839-016-0330	3-1-05	Am. & Ren.	4-1-05
837-085-0210	4-1-05	Amend	5-1-05	839-016-0340	3-1-05	Am. & Ren.	4-1-05
837-085-0250	4-1-05	Amend	5-1-05	839-016-0500	3-1-05	Am. & Ren.	4-1-05
837-085-0260	4-1-05	Amend	5-1-05	839-016-0510	3-1-05	Am. & Ren.	4-1-05
837-085-0270	4-1-05	Amend	5-1-05	839-016-0520	3-1-05	Am. & Ren.	4-1-05
837-085-0280	4-1-05	Amend	5-1-05	839-016-0530	3-1-05	Am. & Ren.	4-1-05
837-085-0290	4-1-05	Amend	5-1-05	839-016-0540	3-1-05	Am. & Ren.	4-1-05
837-085-0300	4-1-05	Amend	5-1-05	839-016-0700	12-13-04	Amend	1-1-05
837-085-0305	4-1-05	Adopt	5-1-05	839-016-0700	1-1-05	Amend	2-1-05
837-085-0310	4-1-05	Amend	5-1-05	839-016-0700	3-1-05	Am. & Ren.	4-1-05
837-085-0320	4-1-05	Amend	5-1-05	839-016-0750	3-1-05	Am. & Ren.	4-1-05
837-085-0350	4-1-05	Amend	5-1-05	839-021-0106	1-3-05	Adopt	2-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
839-021-0355	1-3-05	Amend	2-1-05	848-020-0050	12-29-04	Amend	2-1-05
839-025-0700	4-1-05	Amend	5-1-05	848-020-0060	12-29-04	Amend	2-1-05
839-025-0750	4-18-05	Amend	5-1-05	848-030-0000	12-29-04	Amend	2-1-05
839-025-0750	5-2-05	Amend	6-1-05	848-030-0010	12-29-04	Amend	2-1-05
839-050-0050	2-11-05	Amend	3-1-05	848-040-0000	12-29-04	Repeal	2-1-05
839-050-0220	2-11-05	Amend	3-1-05	848-040-0010	12-29-04	Repeal	2-1-05
839-050-0360	2-11-05	Amend	3-1-05	848-040-0020	12-29-04	Repeal	2-1-05
845-001-0008	5-1-05	Amend	6-1-05	848-040-0030	12-29-04	Repeal	2-1-05
845-003-0670	5-1-05	Amend	6-1-05	848-040-0040	12-29-04	Repeal	2-1-05
845-004-0020	5-1-05	Amend	6-1-05	848-040-0050	12-29-04	Repeal	2-1-05
845-004-0101	1-1-05	Amend	1-1-05	848-040-0100	12-29-04	Adopt	2-1-05
845-005-0303	5-1-05	Amend	6-1-05	848-040-0105	12-29-04	Adopt	2-1-05
845-005-0312	1-1-05	Amend	2-1-05	848-040-0110	12-29-04	Adopt	2-1-05
845-005-0314	5-1-05	Amend	6-1-05	848-040-0115	12-29-04	Adopt	2-1-05
845-006-0434	5-1-05	Amend	6-1-05	848-040-0120	12-29-04	Adopt	2-1-05
845-006-0475	5-1-05	Amend	6-1-05	848-040-0125	12-29-04	Adopt	2-1-05
845-009-0135	5-1-05	Amend	6-1-05	848-040-0130	12-29-04	Adopt	2-1-05
845-009-0200	1-1-05	Amend	2-1-05	848-040-0135	12-29-04	Adopt	2-1-05
845-010-0905	12-1-04	Amend	1-1-05	848-040-0140	12-29-04	Adopt	2-1-05
845-010-0915	12-1-04	Amend	1-1-05	848-040-0145	12-29-04	Adopt	2-1-05
845-015-0175	1-1-05	Amend	2-1-05	848-040-0150	12-29-04	Adopt	2-1-05
847-015-0025	1-27-05	Amend	3-1-05	848-040-0155	12-29-04	Adopt	2-1-05
847-035-0030	1-27-05	Amend	3-1-05	848-040-0160	12-29-04	Adopt	2-1-05
847-035-0030	4-21-05	Amend	6-1-05	848-040-0165	12-29-04	Adopt	2-1-05
847-050-0037	4-21-05	Amend	6-1-05	848-040-0170	12-29-04	Adopt	2-1-05
847-050-0041	1-27-05	Amend	3-1-05	848-045-0010	12-29-04	Adopt	2-1-05
848-001-0000	12-29-04	Amend	2-1-05	848-045-0020	12-29-04	Adopt	2-1-05
848-001-0005	12-29-04	Amend	2-1-05	848-050-0000	12-29-04	Repeal	2-1-05
848-005-0010	4-8-05	Amend	5-1-05	848-050-0010	12-29-04	Repeal	2-1-05
848-005-0030	12-29-04	Adopt	2-1-05	848-050-0020	12-29-04	Repeal	2-1-05
848-010-0010	12-29-04	Amend	2-1-05	848-050-0030	12-29-04	Repeal	2-1-05
848-010-0015	12-29-04	Amend	2-1-05	848-050-0100	12-29-04	Adopt	2-1-05
848-010-0020	12-29-04	Amend	2-1-05	848-050-0110	12-29-04	Adopt	2-1-05
848-010-0026	12-29-04	Amend	2-1-05	848-050-0120	12-29-04	Adopt	2-1-05
848-010-0033	12-29-04	Adopt	2-1-05	850-010-0190	4-13-05	Amend	5-1-05
848-010-0035	12-29-04	Amend	2-1-05	850-010-0220	2-4-05	Amend	3-1-05
848-010-0044	12-29-04	Adopt	2-1-05	850-010-0225	2-4-05	Amend	3-1-05
848-010-0045	12-29-04	Repeal	2-1-05	850-020-0000	2-4-05	Amend	3-1-05
848-010-0050	12-29-04	Repeal	2-1-05	850-020-0005	2-4-05	Amend	3-1-05
848-010-0060	12-29-04	Repeal	2-1-05	850-020-0010	2-4-05	Repeal	3-1-05
848-010-0070	12-29-04	Repeal	2-1-05	850-020-0015	2-4-05	Repeal	3-1-05
848-010-0080	12-29-04	Repeal	2-1-05	850-020-0020	2-4-05	Amend	3-1-05
848-010-0090	12-29-04	Repeal	2-1-05	850-020-0025	2-4-05	Amend	3-1-05
848-010-0105	12-29-04	Renumber	2-1-05	850-020-0030	2-4-05	Amend	3-1-05
848-010-0110	12-29-04	Am. & Ren.	2-1-05	851-050-0002	2-17-05	Amend	4-1-05
848-010-0115	12-29-04	Renumber	2-1-05	851-050-0131	11-30-04	Amend	1-1-05
848-010-0120	12-29-04	Am. & Ren.	2-1-05	851-050-0131	2-17-05	Amend	4-1-05
848-010-0125	12-29-04	Repeal	2-1-05	851-050-0131	4-26-05	Amend	6-1-05
848-015-0010	12-29-04	Adopt	2-1-05	852-005-0010	2-23-05	Amend	4-1-05
848-015-0020	12-29-04	Adopt	2-1-05	852-010-0015	2-23-05	Amend	4-1-05
848-015-0030	12-29-04	Adopt	2-1-05	852-010-0020	2-23-05	Amend	4-1-05
848-020-0000	12-29-04	Amend	2-1-05	852-010-0023	2-23-05	Amend	4-1-05
848-020-0010	12-29-04	Amend	2-1-05	852-010-0027	2-23-05	Amend	4-1-05
848-020-0020	12-29-04	Repeal	2-1-05	852-020-0035	4-8-05	Adopt	5-1-05
848-020-0030	12-29-04	Amend	2-1-05	852-050-0018	2-23-05	Amend	4-1-05
848-020-0040	12-29-04	Amend	2-1-05	852-050-0021	4-8-05	Adopt	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
852-070-0030	2-23-05	Amend	4-1-05	860-021-0036	12-30-04	Amend	2-1-05
852-080-0040	4-8-05	Amend	5-1-05	860-021-0037	12-1-04	Amend	1-1-05
855-001-0000	2-7-05	Amend	3-1-05	860-021-0037	12-30-04	Amend	2-1-05
855-041-0040	4-14-05	Amend	5-1-05	860-021-0125	12-1-04	Amend	1-1-05
855-041-0060	4-14-05	Amend	5-1-05	860-021-0130	12-1-04	Amend	1-1-05
855-041-0600	3-1-05	Adopt	3-1-05	860-021-0200	12-1-04	Amend	1-1-05
855-041-0610	3-1-05	Adopt	3-1-05	860-021-0205	12-1-04	Amend	1-1-05
855-041-0620	3-1-05	Adopt	3-1-05	860-021-0206	12-1-04	Amend	1-1-05
855-050-0037	5-14-05	Adopt	5-1-05	860-021-0210	12-1-04	Amend	1-1-05
855-050-0038	5-14-05	Adopt	5-1-05	860-021-0420	12-1-04	Amend	1-1-05
855-050-0039	5-14-05	Adopt	5-1-05	860-022-0005	12-30-04	Amend	2-1-05
855-050-0041	5-14-05	Adopt	5-1-05	860-022-0015	12-30-04	Amend	2-1-05
855-050-0042	5-14-05	Adopt	5-1-05	860-022-0020	12-30-04	Amend	2-1-05
855-050-0043	5-14-05	Adopt	5-1-05	860-022-0038	12-30-04	Amend	2-1-05
855-110-0007	3-1-05	Amend	3-1-05	860-032-0095	12-1-04	Amend	1-1-05
855-110-0010	3-1-05	Amend	3-1-05	860-032-0095	12-30-04	Amend	2-1-05
860-011-0001	12-30-04	Amend	2-1-05	860-032-0097	12-1-04	Amend	1-1-05
860-011-0010	12-30-04	Amend	2-1-05	860-032-0097	12-30-04	Amend	2-1-05
860-011-0011	12-30-04	Adopt	2-1-05	860-032-0610	12-30-04	Amend	2-1-05
860-011-0012	12-30-04	Adopt	2-1-05	860-033-0005	12-1-04	Amend	1-1-05
860-011-0015	12-30-04	Amend	2-1-05	860-033-0006	12-1-04	Adopt	1-1-05
860-011-0020	12-30-04	Repeal	2-1-05	860-033-0006	12-30-04	Amend	2-1-05
860-011-0022	12-30-04	Am. & Ren.	2-1-05	860-033-0007	12-1-04	Adopt	1-1-05
860-011-0023	12-30-04	Repeal	2-1-05	860-033-0008	12-1-04	Adopt	1-1-05
860-011-0024	12-30-04	Repeal	2-1-05	860-033-0009	12-1-04	Adopt	1-1-05
860-011-0025	12-30-04	Repeal	2-1-05	860-033-0010	12-1-04	Amend	1-1-05
860-011-0030	12-30-04	Repeal	2-1-05	860-033-0030	12-1-04	Amend	1-1-05
860-011-0035	12-30-04	Amend	2-1-05	860-033-0045	12-1-04	Amend	1-1-05
860-011-0080	12-30-04	Amend	2-1-05	860-033-0050	12-1-04	Amend	1-1-05
860-012-0007	12-1-04	Amend	1-1-05	860-033-0505	12-1-04	Amend	1-1-05
860-012-0015	12-28-04	Amend	2-1-05	860-033-0530	12-1-04	Amend	1-1-05
860-013-0021	12-30-04	Am. & Ren.	2-1-05	860-033-0535	12-1-04	Amend	1-1-05
860-013-0036	12-30-04	Adopt	2-1-05	860-033-0536	12-1-04	Amend	1-1-05
860-013-0037	12-30-04	Adopt	2-1-05	860-033-0537	12-1-04	Amend	1-1-05
860-013-0040	12-30-04	Repeal	2-1-05	860-033-0540	12-1-04	Amend	1-1-05
860-013-0060	12-30-04	Amend	2-1-05	860-033-0545	12-1-04	Amend	1-1-05
860-013-0065	12-30-04	Amend	2-1-05	860-034-0030	12-1-04	Amend	1-1-05
860-013-0070	12-30-04	Amend	2-1-05	860-034-0090	12-1-04	Amend	1-1-05
860-013-0071	12-30-04	Amend	2-1-05	860-034-0095	12-1-04	Amend	1-1-05
860-013-0075	12-30-04	Amend	2-1-05	860-034-0095	12-30-04	Amend	2-1-05
860-014-0005	12-30-04	Amend	2-1-05	860-034-0097	12-1-04	Amend	1-1-05
860-014-0010	12-30-04	Amend	2-1-05	860-034-0097	12-30-04	Amend	2-1-05
860-014-0023	12-30-04	Amend	2-1-05	860-034-0110	12-1-04	Amend	1-1-05
860-014-0060	12-30-04	Amend	2-1-05	860-034-0140	12-1-04	Amend	1-1-05
860-014-0065	12-30-04	Amend	2-1-05	860-034-0160	12-1-04	Amend	1-1-05
860-014-0070	12-30-04	Amend	2-1-05	860-034-0300	12-30-04	Amend	2-1-05
860-014-0090	12-30-04	Amend	2-1-05	860-034-0320	12-30-04	Amend	2-1-05
860-014-0092	12-30-04	Amend	2-1-05	860-034-0440	12-30-04	Amend	2-1-05
860-016-0020	2-11-05	Amend	3-1-05	860-034-0600	12-30-04	Amend	2-1-05
860-016-0021	2-11-05	Adopt	3-1-05	860-036-0035	12-1-04	Amend	1-1-05
860-016-0050	2-2-05	Amend	3-1-05	860-036-0040	12-1-04	Amend	1-1-05
860-021-0009	12-1-04	Amend	1-1-05	860-036-0050	12-1-04	Amend	1-1-05
860-021-0021	12-1-04	Amend	1-1-05	860-036-0075	12-1-04	Amend	1-1-05
860-021-0034	12-1-04	Amend	1-1-05	860-036-0095	12-1-04	Amend	1-1-05
860-021-0034	12-30-04	Amend	2-1-05	860-036-0095	12-30-04	Amend	2-1-05
860-021-0036	12-1-04	Amend	1-1-05	860-036-0097	12-1-04	Amend	1-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
860-036-0097	12-30-04	Amend	2-1-05	918-030-0430	5-1-05	Adopt	6-1-05
860-036-0115	12-1-04	Amend	1-1-05	918-030-0490	5-1-05	Adopt	6-1-05
860-036-0125	12-1-04	Amend	1-1-05	918-282-0110	4-1-05	Amend	5-1-05
860-036-0605	12-30-04	Amend	2-1-05	918-305-0005	4-1-05	Amend	1-1-05
860-036-0615	12-30-04	Amend	2-1-05	918-305-0010	4-1-05	Amend	1-1-05
860-036-0625	12-30-04	Amend	2-1-05	918-305-0030	4-1-05	Amend	1-1-05
860-036-0645	12-30-04	Amend	2-1-05	918-305-0100	4-1-05	Amend	1-1-05
860-037-0030	12-1-04	Amend	1-1-05	918-305-0105	4-1-05	Adopt	1-1-05
860-037-0035	12-1-04	Amend	1-1-05	918-305-0110	4-1-05	Amend	1-1-05
860-037-0045	12-1-04	Amend	1-1-05	918-305-0120	4-1-05	Amend	1-1-05
860-037-0070	12-1-04	Amend	1-1-05	918-305-0130	4-1-05	Amend	1-1-05
860-037-0095	12-1-04	Amend	1-1-05	918-305-0150	4-1-05	Amend	1-1-05
860-037-0095	12-30-04	Amend	2-1-05	918-305-0160	4-1-05	Amend	1-1-05
860-037-0097	12-1-04	Amend	1-1-05	918-305-0165	4-1-05	Amend	1-1-05
860-037-0097	12-30-04	Amend	2-1-05	918-305-0180	4-1-05	Amend	1-1-05
860-037-0110	12-1-04	Amend	1-1-05	918-305-0250	4-1-05	Amend	1-1-05
860-037-0410	12-30-04	Amend	2-1-05	918-305-0270	4-1-05	Amend	1-1-05
860-037-0420	12-30-04	Amend	2-1-05	918-305-0280	4-1-05	Adopt	1-1-05
860-037-0430	12-30-04	Amend	2-1-05	918-305-0290	4-1-05	Adopt	1-1-05
860-037-0450	12-30-04	Amend	2-1-05	918-305-0300	4-1-05	Adopt	1-1-05
863-010-0610	5-6-05	Amend	6-1-05	918-305-0310	4-1-05	Adopt	1-1-05
863-010-0640	5-6-05	Amend	6-1-05	918-305-0320	4-1-05	Adopt	1-1-05
863-015-0015	5-6-05	Amend	6-1-05	918-306-0005	4-1-05	Amend	1-1-05
863-015-0020	5-6-05	Amend	6-1-05	918-400-0270	4-1-05	Amend	5-1-05
863-015-0030	5-6-05	Amend	6-1-05	918-400-0380	4-1-05	Amend	5-1-05
863-015-0035	5-6-05	Amend	6-1-05	918-400-0455	4-1-05	Amend	5-1-05
863-015-0045	5-6-05	Amend	6-1-05	918-400-0465	4-1-05	Amend	5-1-05
863-015-0050	5-6-05	Amend	6-1-05	918-400-0525	4-1-05	Amend	5-1-05
863-015-0060	5-6-05	Amend	6-1-05	918-400-0630	4-1-05	Amend	5-1-05
863-015-0061	5-6-05	Adopt	6-1-05	918-400-0630	4-1-05	Amend	5-1-05
863-015-0062	5-6-05	Adopt	6-1-05	918-400-0740	4-1-05	Amend	5-1-05
863-015-0065	5-6-05	Amend	6-1-05	918-460-0015	4-7-05	Amend(T)	5-1-05
863-015-0075	5-6-05	Amend	6-1-05	918-480-0003	3-28-05	Adopt(T)	5-1-05
863-015-0076	5-6-05	Adopt	6-1-05	918-480-0005	3-28-05	Amend	5-1-05
863-015-0080	5-6-05	Amend	6-1-05	918-480-0010	3-28-05	Amend	5-1-05
863-015-0125	5-6-05	Amend	6-1-05	918-500-0010	5-1-05	Amend	6-1-05
863-015-0175	5-6-05	Amend	6-1-05	918-500-0021	4-1-05	Adopt	5-1-05
863-015-0195	5-6-05	Amend	6-1-05	918-515-0020	4-1-05	Amend	5-1-05
863-015-0215	5-6-05	Amend	6-1-05	918-515-0110	4-1-05	Amend	5-1-05
863-015-0260	5-6-05	Amend	6-1-05	918-515-0415	4-1-05	Amend	5-1-05
863-025-0015	5-6-05	Amend	6-1-05	918-525-0065	3-1-05	Amend	4-1-05
863-025-0020	5-6-05	Amend	6-1-05	918-525-0070	3-1-05	Amend	4-1-05
863-025-0025	5-6-05	Amend	6-1-05	918-525-0080	3-1-05	Amend	4-1-05
863-025-0030	5-6-05	Amend	6-1-05	918-525-0230	3-1-05	Repeal	4-1-05
863-025-0035	5-6-05	Amend	6-1-05	918-525-0250	3-1-05	Amend	4-1-05
863-025-0040	5-6-05	Amend	6-1-05	918-525-0450	3-1-05	Amend	4-1-05
863-025-0045	5-6-05	Amend	6-1-05	918-525-0510	3-1-05	Amend	4-1-05
863-025-0050	5-6-05	Amend	6-1-05	918-550-0000	5-1-05	Adopt	6-1-05
863-025-0055	5-6-05	Amend	6-1-05	918-550-0010	5-1-05	Adopt	6-1-05
863-025-0070	5-6-05	Amend	6-1-05	918-550-0100	5-1-05	Adopt	6-1-05
918-001-0006	4-1-05	Adopt	5-1-05	918-550-0120	5-1-05	Adopt	6-1-05
918-001-0036	5-1-05	Amend	6-1-05	918-550-0140	5-1-05	Adopt	6-1-05
918-008-0030	4-1-05	Amend	5-1-05	918-550-0160	5-1-05	Adopt	6-1-05
918-030-0030	5-1-05	Amend	6-1-05	918-550-0180	5-1-05	Adopt	6-1-05
918-030-0400	5-1-05	Adopt	6-1-05	918-550-0200	5-1-05	Adopt	6-1-05
918-030-0420	5-1-05	Adopt	6-1-05	918-550-0600	5-1-05	Adopt	6-1-05
				918-674-0095	4-1-05	Amend	5-1-05

OAR REVISION CUMULATIVE INDEX

OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
918-690-0420	4-1-05	Amend	1-1-05				
918-695-0010	4-1-05	Amend	5-1-05				
918-695-0038	4-1-05	Amend	5-1-05				
918-750-0110	4-1-05	Amend	1-1-05				
951-002-0000	11-26-04	Adopt	1-1-05				
951-002-0001	11-26-04	Adopt	1-1-05				
951-002-0005	11-26-04	Adopt	1-1-05				
951-002-0010	11-26-04	Adopt	1-1-05				
951-002-0020	11-26-04	Adopt	1-1-05				
951-003-0000	11-26-04	Adopt	1-1-05				
951-003-0001	11-26-04	Adopt	1-1-05				
951-003-0005	11-26-04	Adopt	1-1-05				