

OREGON BULLETIN

Supplements the 2005 *Oregon Administrative Rules Compilation*

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For January 18, 2005–February 15, 2005



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BILL BRADBURY
Secretary of State
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INFORMATION AND PUBLICATION SCHEDULE

General Information

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

Background on Oregon Administrative Rules

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

How to Cite

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

Understanding an Administrative Rule's "History"

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

Locating the Most Recent Version of an Administrative Rule

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

Locating Administrative Rules Unit Publications

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

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

Publication Authority

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

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EXECUTIVE ORDERS

EXECUTIVE ORDER 05-01

AFFIRMATIVE ACTION

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

The State of Oregon consists of people with diverse backgrounds, including different cultures, beliefs and life experiences;

The State of Oregon is committed to the right of all persons to work and advance on the basis of merit, ability and potential.

Affirmative Action is a valuable tool that may enable the State to mitigate the effects of past and present discrimination, intended or unintended, on the basis of race, religion, national origin, age, sex, marital status or disabilities;

Cultural Competency Assessment and Training is a proactive management strategy within a program of Affirmative Action that is designed to reduce discriminatory behaviors and practices that may exist; and

The State of Oregon, by and through the agencies, boards and commissions of the Executive Branch, values the principles of equal employment opportunities, affirmative action and diversity and should proactively lead the State on issues of equality and diversity and on the promotion of Affirmative Action.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Director of Affirmative Action and each Agency Director or Administrator shall review and discuss the affirmative action plans and affirmative action goals for their departments to identify resources for improving, if needed, the hiring and developmental opportunities of underrepresented persons.

2. The Director of Affirmative Action will coordinate with the Department of Administrative Services the development and presentation of training designed to improve the skills and competency necessary to effectively manage affirmative action and diversity issues.

3. The Department of Administrative Services, in consultation with the Director of Affirmative Action, shall devise a procedure to examine whether executive service and management service employees have appropriate affirmative action and diversity responsibilities in their position descriptions. The audit procedure shall also review whether employees have been evaluated on their Affirmative Action and Diversity successes and achievements.

4. The Director of Affirmative Action shall provide to all state agencies a list of approved firms that provide Cultural Competency Assessment and Training. The services of these firms are intended to enable state agencies to address the following objectives:

- The creation of a climate of increased cultural awareness;
- An ability to appropriately identify and respond to cultural and language barriers;
- A common understanding of how all members of the organization should be valued and respected;
- Promotion of managerial skills among diverse populations of employees;
- An understanding of the roles of employers and employees in creating a welcoming environment; and
- The improvement of employee morale.

Agency Directors and Administrators are encouraged to utilize the services of these firms within their agencies if, in the opinion of the Agency Director in consultation with Director of Affirmative Action, it would be beneficial and appropriate for the agency to do so.

Done this 26th day of January 2005, at Salem, Oregon.

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

ATTEST

/s/ Bill Bradbury
Bill Bradbury
SECRETARY OF STATE

OTHER NOTICES

A CHANCE TO COMMENT ON... DRAFT SULFUR DIOXIDE MILESTONE REPORT FOR REGIONAL HAZE

COMMENTS DUE: March 18, 2005

COMMENT PERIOD: February 11, 2005 to March 18, 2005.

PROPOSAL: The Department of Environmental Quality (DEQ) is seeking public comment on a draft report entitled: *Draft 2003 Regional SO₂ Emissions and Milestone Report, January 31, 2005*. This report describes 2003 sulfur dioxide (SO₂) emissions from large industrial sources in five states, including Oregon. The collective SO₂ emissions from these states must be less than the SO₂ milestone for 2003, which is described in Section 5.5.2.3.1 of Oregon's Section 309 Regional Haze Plan.

HIGHLIGHTS: On December 5, 2003, DEQ adopted a regional haze plan for Oregon. This plan is based on Section 309 of the federal Regional Haze Rule, which is designed to improve visibility in national parks and wilderness areas in the West by using regional strategies to reduce air pollution. Section 5.5.2.3.1 of the Oregon Regional Haze Plan requires that Oregon cooperate with four other states in preparing an annual report to determine if SO₂ emissions from large industrial sources are less than annual SO₂ emissions milestones. The 2003 SO₂ milestone represents one of several annual milestones that must be met over the next 15 years. The draft report concludes that for 2003, total SO₂ emissions from the five states—Oregon, Arizona, New Mexico, Wyoming and Utah—were 329,455 tons, while the SO₂ milestone is 447,383 tons, indicating that DEQ has met the annual milestone requirement in the plan.

HOW TO COMMENT: The *Draft 2003 Regional SO₂ Emissions and Milestone Report, January 31, 2005* report was prepared by the Western Regional Air Partnership, and can be found at their website: http://www.wrapair.org/forums/309/documents/050131Draft_WRA_P_SO2_Milestone_Report.pdf. See also DEQ's website at <http://egov.oregon.gov/DEQ/AQ/haze/index.shtml>. A copy of this report can also be obtained by contacting Brian Finneran at (503) 229-6278, by email at finneran.brian@deq.state.or.us, or by mail to the DEQ Air Quality Division, 811 SW 6th Ave., Portland, OR, 97204. To avoid long distance charges from other parts of the state, call DEQ toll free at 800-452-4011.

Written comments should be mailed to the address above, or faxed to (503) 229-5675, to the attention of Brian Finneran. The comment period closes at 5:00 p.m. on Friday, March 18, 2005. Comments postmarked on or before that date will be accepted.

THE NEXT STEP: DEQ will consider all public comments. A final report will be prepared and published in the Oregon Bulletin.

A CHANCE TO COMMENT ON... PROPOSED INTERIM CLEANUP ACTION AT THE ARKEMA, INC. SITE (FORMERLY KNOW AS ATOFINA CHEMICALS, INC., ELF ATOCEM AND PENNWALT).

COMMENTS DUE: March 31, 2005

PROJECT LOCATION: The ARKEMA Inc., site is located at 6400 N.W. Front Avenue in Portland.

PROPOSAL: ARKEMA is proposing to treat groundwater contaminated by hexavalent chromium. Chromium in the hexavalent (chromium VI) state is highly soluble in water and toxic to humans and wildlife. The proposed interim cleanup action is designed to convert the chromium to its trivalent state (chromium III), which has a low solubility and toxicity, by changing the groundwater chemistry by injecting a calcium polysulfide solution into the groundwater. The objective of the action is to reduce chromium VI levels in groundwater adjacent to the Willamette River to below the fresh water chronic ambient water quality criteria of 0.011 mg/L.

HIGHLIGHTS: The ARKEMA, Inc. facility used chromium VI in the manufacture of sodium chlorate which occurred at the plant from 1941 until 2001. Chlorate manufacturing operations resulted in the

release of chromium VI to site soil and groundwater. The remedial investigation conducted by ARKEMA under DEQ's Voluntary Cleanup Program determined that chromium VI impacted groundwater extends to the Willamette River.

HOW TO COMMENT: The work plan for the treatment of the chromium VI and related documents may be reviewed by appointment at DEQ's Northwest Region office, 2020 SW Fourth Ave., Suite 400, Portland, OR 97201. To schedule an appointment call Dawn Weinberger at (503) 229-6729. Send written comments by March 31, 2005 to Matt McClincy, DEQ's Project Manager at the address above or by e-mail to mcclincy.matt@deq.state.or.us. McClincy can be contacted at (503) 229-5538.

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

THE NEXT STEP: DEQ will consider all comments received before taking final action on this matter.

NOTICE FOR SELECTED CLEANUP PACIFICORP YOUNGS BAY SITE

PROJECT LOCATION: north shore of Youngs Bay, Astoria

PROPOSAL: The Department of Environmental Quality (DEQ) has selected the cleanup action for manufactured gas plant wastes (tar) present on the shoreline and Bay areas of the PacifiCorp property located on Youngs Bay, Astoria. The selected action includes excavation of the more mobile portion of the tar waste present in Youngs Bay, capping of the remaining tar in the Bay and along the shoreline of the site, and long-term monitoring and maintenance of the cap. Cleanup is expected to take place this summer.

HIGHLIGHTS: Between 1921 and 1954 the site was used for the manufacture of gas and power production. Waste coal tars and lampblack were placed in upland portions of the site and discharged into Youngs Bay. The tar and lampblack contain elevated concentrations of polycyclic aromatic hydrocarbons, some of which are carcinogens and may be toxic to aquatic life or pose threats via bioaccumulation in the food chain to fish that are eaten by wildlife and people.

The goals of the proposed action are to prevent exposure to and spread of the waste materials.

DEQ held a public comment period on this action a year ago and, in December 2004, NOAA's National Marine Fisheries Service (NOAA Fisheries) issued their Biological Opinion evaluating the effects of the action on endangered species and essential fish habitat. The Opinion concludes that the proposed action is not likely to jeopardize the continued existence of thirteen species of ESA-listed and proposed salmonid fishes.

The DEQ's Record of Decision for the cleanup action has been placed at the Astoria Public Library (450 10th St., Astoria), DEQ's North Coast Branch Office in Warrenton (65 N. Highway 101, Suite G), and DEQ's Northwest Region Office in Portland. To schedule an appointment to review files in DEQ's Northwest Region office, call (503) 229-6729. The DEQ Project Manager is Jennifer Sutter, (503) 229-6148.

THE NEXT STEP: PacifiCorp and their consultants are preparing Remedial Action work plan documents for DEQ review and implementation of the selected cleanup is anticipated this summer.

PROPOSED ENVIRONMENTAL CLEANUP METHOD FASHION CLEANERS SITE KLAMATH FALLS, OREGON

COMMENTS DUE: March 31, 2005

PROJECT LOCATION: 623 Klamath Avenue in Klamath Falls, Oregon

PROPOSAL: Pursuant to Oregon Revised Statute ORS 465.320 and Oregon Administrative Rules OAR 340-122-100, the Department of Environmental Quality (DEQ) requests public comment on its

OTHER NOTICES

proposed cleanup decision regarding soil and groundwater contamination at the former Fashion Cleaners Site. Chlorinated hydrocarbons from former dry cleaning operations have been identified as the principal contaminants of concern. DEQ will issue a final cleanup decision for the site after public comment and consideration of those comments by the Eastern Region Cleanup Manager.

HIGHLIGHTS: Fashion Cleaners, a former dry cleaning facility located at 623 Klamath Avenue in Klamath Falls, was destroyed by fire in September 1988. In August 1989, a monitoring well at an adjacent gas station showed high levels of perchloroethylene (PCE) in the groundwater. PCE is a solvent commonly used by dry cleaners.

DEQ began investigating the site in 1990 and found high levels of PCE in the soil and groundwater. In 1995, DEQ removed approximately 2,000 tons of contaminated soil from the site. In addition, about 8,300 gallons of contaminated groundwater was extracted and treated during this period. Deep wells were installed in 1998 to determine the extent of groundwater contamination. Air samples were also collected from adjacent buildings, and PCE vapors were detected at concentrations of concern.

In June 1999, a remedial investigation/feasibility study (RI/FS) concluded that, although the site is within the City of Klamath Falls' adopted well head protection area, subsurface contamination is not likely to produce a significant adverse impact on beneficial uses of groundwater.

Based on the exposure to human health at the site, DEQ completed a Risk Assessment for the site and indicated that there is a risk to workers and occupants within the locality of the facility and need to be addressed.

The recommended remedial action addresses the presence of PCE and its breakdown products in soil and groundwater at the site. The recommended remedial action for the site consists of the following elements:

- Enhanced bioremediation through injection or introduction of amendments in an area of the site containing elevated concentrations of PCE and its breakdown products;
- Basement sump capping and venting to prevent and reduce exposure to indoor air concentrations.
- Capping and venting the basement sumps will immediately reduce risk to building occupants to acceptable levels by controlling vapor intrusion from the basement sumps; and
- Continued groundwater and indoor air monitoring of the area.

HOW TO COMMENT: The staff report and other files will be available for public review beginning Tuesday, March 1, 2005. To schedule an appointment to review the site files call the DEQ project manager David Anderson at (541) 388-6146 x258; toll free at 1-800-452-4011; or TTY at 541-388-6145. Written comments concerning DEQ's proposed decision should be sent to the project manager at the Department of Environmental Quality, Eastern Region, 2146 NE 4th Ave., Bend, OR 97701, or via e-mail to anderson.david@deq.state.or.us by Thursday, March 31, 2005. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with a membership of 10 or more.

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

DEQ APPROVES FINAL CLEANUP ACTIONS AT FORMER GLOBE METALLURGICAL/DOW CORNING SITE IN SPRINGFIELD

FINAL DECISION: On February 3, 2005, the Department of Environmental Quality (DEQ) issued a certification of completion and final approval for the environmental cleanup of solvent-contaminated groundwater at the site formerly known as Globe Metallurgical Inc. and Dow Corning at 1801 Aster St. in Springfield.

BACKGROUND: Between 1954 and 1980 the site operated as a silicon metal manufacturing facility under several names, including National Metallurgical Corp., AMAZ, KBI and Cabot Corp. Dow Corning purchased the facility in 1980 and continued to operate it until 1993. Globe Metallurgical operated the facility from 1993 to December 2000, when it closed. New York-based Springfield-Aster LLC is the site's current owner.

DEQ oversaw environmental investigation and cleanup activities at the site from 1989 through 1995. Investigations found soil and groundwater contamination from solvent use and previous disposal practices. Cleanup officials conducted soil removal in November 1989, and it was determined that the removal was successful in eliminating the source of the contaminants in groundwater.

DEQ entered into a Consent Order with Dow Corning in February 1992. The order required Dow Corning to investigate and address groundwater contamination at the site. In September 1993, DEQ issued a Record of Decision based on investigative data collected under the Order. The Record of Decision specified remaining cleanup actions for contaminated groundwater at the site. In January 1994, DEQ amended the order to incorporate final cleanup actions outlined in the Record of Decision.

Based on the review of historical and recent (2003–2004) groundwater data, DEQ determined that the requirements of the Order and Record of Decision had been met, and given current site conditions and future use of the property, no additional investigation is required at the site. Prior to issuing the final decision, a formal public review and comment period was held from January 3, 2005 through February 1, 2005. No significant comments were received. **ADDITIONAL INFORMATION:** For additional information regarding the site cleanup, contact DEQ Project Manager, Nancy Gramlich at (503) 378-8240 x259 or by email at gramlich.nancy@deq.state.or.us.

PROPOSED NO FURTHER ACTION QUAIL RUN GOLF COURSE DESCHUTES COUNTY, OREGON

COMMENTS DUE: March 31, 2005

PROJECT LOCATION: 16725 Northridge Dr. in La Pine, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a "No Further Action" determination based soil excavation actions performed at the Quail Run Golf Course site located at 16725 Northridge Drive in La Pine, Oregon.

HIGHLIGHTS: An underground injection control (UIC) was associated with the equipment concrete wash pad was required to be decommissioned. A sample was collected of sediment within the standpipe and contained concentrations of gasoline, diesel, and heavy oil. The standpipe was removed and approximately 10 cubic yards of drain rock and soil was excavated from the drainfield. The excavated material was transported off-site for disposal. Two soil confirmation samples were collected from the final extent of the excavation. Concentrations of gasoline, diesel, heavy oil, organochlorine pesticides, organophosphorus pesticides, chlorinated herbicides were not detected.

HOW TO COMMENT: The project file may be reviewed by appointment at DEQ's Eastern Regional Office at 700 SE Emigrant, Suite #330, Pendleton, OR 97801. To schedule an appointment to review the file or to ask questions, please contact Katie Robertson at (541) 278-4620. Written comments should be received by March 31, 2005 and sent to Katie Robertson, Project Manager, at the address listed above.

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

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

OTHER NOTICES

PROPOSED REMEDIAL ACTION WASCO TRAP & SKEET CLUB WASCO, SHERMAN COUNTY

COMMENTS DUE: April 1, 2005

PROJECT LOCATION: Northeast corner of the intersection of Yates Street and Sherman Highway (Old US Highway 97), Wasco, Sherman County, Oregon

PROPOSAL: The Department of Environmental Quality is proposing a remedial action to address contamination from recreational shooting activities at the Wasco Trap & Skeet Club property. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: The subject property has been owned by the Wasco Trap & Skeet Club since 1947 and was used for recreational shooting through the 1960s. Based on the arrangement of the shooting station and trap house, the majority of shooting-related contamination (lead dust and fragments, and other debris from ammunition and clay targets) is assumed to lie within a triangular area on the east portion of the property. The North Sherman County Rural Fire Protection District (North Sherman RFPD) intends to buy this property and build a fire station there.

The most likely environmental risks at this site are related to direct exposure to people and animals from contaminants on the surface of the site. Leaching of contaminants to groundwater is not a significant concern, given that the area is arid (10 inches of precipitation per year), and it is unlikely that lead in its current form could leach through a soil thickness over 50 feet. Overland migration of contaminants to surface water bodies is not considered a significant concern either, because of the low rainfall and the fact that the nearest seasonal surface water body, Spanish Hollow, is 380 feet from the site.

Given the site characteristics described above, DEQ determined that the best approach for addressing site contamination is to cover the affected area and to implement a deed restriction prohibiting disturbance of that cover and prohibiting development of the site for agricultural or residential use. The affected area will therefore be covered either by structures, pavement or a minimum of 6 inches of soil or gravel.

Once the remedy has been implemented by North Sherman RFPD, and documentation has been received, the Department intends to issue a conditional No Further Action (NFA) determination. Because this will be a conditional NFA, the RFPD has been advised that the site will be placed on the Confirmed Release List and Inventory.

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, April 1, 2005.

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

PROPOSED NO FURTHER ACTION DETERMINATION PHILLIPS CREEK PLACE SITE SE FULLER ROAD, CLACKAMAS COUNTY

COMMENTS DUE: April 1, 2005

PROJECT LOCATION: SE Fuller Road, Clackamas County, Oregon

PROPOSAL: The Department of Environmental Quality is proposing to issue a No Further Action determination following excavation and removal of lead-contaminated soil at a property owned by Clackamas Community Land Trust. This determination is based on approval of investigation and remedial measures conducted to date. Public notification is required by ORS 465.320.

HIGHLIGHTS: The Clackamas Community Land Trust (CCLT) purchased this property for the purpose of redevelopment for low-income housing. Foundry sand from a lead-bronze foundry had been disposed of at various locations throughout the property. Lead-bronze foundry sand is often contaminated with metals associated with the casting process. Of these, the primary concerns are lead and, to a smaller extent, copper.

CCLT excavated about 400 tons of contaminated soil and hauled it to Chemical Waste Management's hazardous waste landfill in Arlington, Oregon, for stabilization and disposal. Remaining contamination on the property is below safe levels for human health. However, some contamination remains in portions of the site above ecological screening levels. To address this, CCLT plans to cover these areas with asphalt, concrete, or a minimum of six inches of imported clean fill, in the course of redevelopment.

Based on this information, DEQ proposes to issue a No Further Action determination for this site, once this cover has been applied.

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 No Further Action determination. Written comments should be received by Friday, April 1, 2005.

THE NEXT STEP: DEQ will consider all comments received. A final decision concerning the proposed No Further Action determination will be made 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*. If sufficient hearing requests are received by an agency, notice of the date and time of the rulemaking hearing must be published in the *Oregon Bulletin* at least 14 days before the hearing.

.....
Board of Architect Examiners
Chapter 806

Stat. Auth.: ORS 671.125
Stats. Implemented: ORS 671.010
Proposed Amendments: 806-010-0050
Last Date for Comment: 3-31-05, 4:30 p.m.
Summary: This rule amendment is housekeeping in nature only and makes no change whatsoever to the rules or requirements. The amendment is simply to clarify the existing language.
Rules Coordinator: Carol Halford
Address: Oregon Board of Architect Examiners, 205 Liberty St. NE, Suite A, Salem, OR 97301
Telephone: (503) 763-0662

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Board of Medical Examiners
Chapter 847

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.510
Proposed Amendments: 847-050-0037
Last Date for Comment: 3-28-05
Summary: The proposed 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
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(1)-(2)
Proposed Amendments: 847-010-0066
Last Date for Comment: 3-28-05
Summary: Proposed amendment expands the administrative rules to allow a visiting physician to practice in an accredited facility as well as a hospital.

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: 3-28-05
Summary: The proposed administrative rules change updates the EMT-Intermediate scope of practice to correspond to the new EMT-Intermediate curriculum developed for the Department of Human Services by several interest groups, which were composed of EMT instructors and EMT supervising physicians. The term "dual lumen airway" in the EMT-Basic scope of practice has been changed to a "cuffed pharyngeal airway."

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

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Board of Naturopathic Examiners
Chapter 850

Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.110
Proposed Amendments: 850-010-0190
Last Date for Comment: 3-30-05
Summary: Clarifies in more current language reasons why the license of a Naturopathic physician may be disciplined, and that denial and revocation are not the only disciplines used in these matters.
Rules Coordinator: Anne Walsh
Address: Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232
Telephone: (503) 731-4045

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Board of Nursing
Chapter 851

Date:	Time:	Location:
4-14-05	9 a.m.	800 NE Oregon St. Portland State Office Bldg. Rm. 120-C Portland, OR 97232

Hearing Officer: Marguerite Gutierrez, Board President
Stat. Auth.: ORS 678.385
Stats. Implemented: ORS 678.375 & 678.385
Proposed Amendments: 851-050-0131
Last Date for Comment: 4-12-05, 5 p.m.
Summary: The Board is authorized by ORS 678.385 to determine by rule and revise periodically the drugs and medicines to be included in the formulary that may be prescribed by a nurse practitioner acting under ORS 678.375, including controlled substances listed in Schedules II, III, III N, IV and V. This amendment adds the February and March 2005 updates to Drugs Facts and Comparisons to the formulary, with specific drugs proposed for inclusion or deletion. The Board may also petition to add currently excluded drugs to the Nurse Practitioner formulary.
**Auxiliary aids for persons with disabilities are available upon advance request.*
Rules Coordinator: KC Cotton
Address: Board of Nursing, 800 NE Oregon St., Suite 465, Portland, OR 97232-2162
Telephone: (503) 731-4754

NOTICES OF PROPOSED RULEMAKING

Board of Parole and Post-Prison Supervision Chapter 255

Stat. Auth.: ORS 144.050 & 144.140; Other Auth.: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-0170

Stats. Implemented:

Proposed Amendments: 255-005-0005

Last Date for Comment: 4-5-05

Summary: 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

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

Telephone: (503) 945-8978

Stat. Auth.: ORS 144.050 & 144.140; Other Auth.: Rule 2.110 of Interstate Compact for Adult Offender Supervision & OAR 291-180-0170

Stats. Implemented:

Proposed Amendments: 255-094-0000, 255-094-0010

Last Date for Comment: 4-5-05

Summary: 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

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

Telephone: (503) 945-8978

Board of Pharmacy Chapter 855

Date:
4-4-05

Time:
2 p.m.

Location:
255 Capitol St. NE
(Basement Rm. A)
Salem, OR

Hearing Officer: Board Officers

Stat. Auth.: ORS 689.135, 689.205, 689.155 & 475.973

Stats. Implemented: ORS 689.145, 689.205, 689.155, 475.215 & 475.973

Proposed Adoptions: 855-050-0037, 855-050-0038, 855-050-0039, 855-050-0041, 855-050-0042, 855-050-0043

Last Date for Comment: 4-4-05

Summary: This rule would restrict the retail sale of products which contain pseudoephedrine from anywhere other than behind a pharmacy counter. The rule exempts products from this prohibition, including liquid-filled capsules and liquid products. All sales require the pharmacy to keep a log documenting the sale. This includes the purchaser's name and either a driver's license number and state or issue or the purchaser's name, identification number and date of birth. In addition, the log must document the name or initials of the pharmacist or pharmacy technician who approved the transaction and the quantity of pseudoephedrine purchased. The proposed rule would require sellers to "exercise reasonable care" to limit a purchaser to 9 grams of pseudoephedrine in a 30-day period. All distributors and retailers of pseudoephedrine products would be required to keep records documenting distribution of pseudoephedrine products. The rule sets out procedures by which additional products may be exempted from these proposed rules.

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

Rules Coordinator: Karen Maclean

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

Telephone: (971) 673-0001

Date:
4-4-05

Time:
1:30 p.m.

Location:
255 Capitol St. NE
(Basement Rm. A)
Salem, OR

Hearing Officer: Board Officers

Stat. Auth.: ORS 689.205 & 689.508

Stats. Implemented: ORS 689.205 & 689.508

Proposed Amendments: 855-041-0040, 855-041-0060

Last Date for Comment: 4-4-05

Summary: Rule amendments define electronic recordkeeping and procedures to incorporate new statutory language adopted in 2003. This will allow pharmacies more flexibility in recordkeeping. This amendment generated a need to revise the rules relating to the required minimum equipment needed in a pharmacy. The Board has streamlined the list and places the responsibility on the practice setting for maintaining minimum requirements.

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

Rules Coordinator: Karen Maclean

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

Telephone: (971) 673-0001

Department of Administrative Services, Public Employees' Benefit Board Chapter 101

Stat. Auth.: ORS 243.061-243.302; Other Auth.: ORS 279

Stats. Implemented: ORS 243, 659 & 743

Proposed Amendments: 101-020-0020, 101-040-0080, 101-050-0015

Last Date for Comment: 3-25-05

Summary: This rulemaking amends current rules governing the eligibility of benefits and procedures of the Public Employees' Benefit Board and are made a part of OAR chapter 101 generally. Experience in using the rules, changes and clarification of federal regulations governing Internal Revenue Service Code Section 125, and the ongoing development of the agency-specific PEBB administrative manual has identified the need for clarification of existing rules.

Rules Coordinator: Kristin Keith

Address: Department of Administrative Services, Public Employees' Benefit Board, 155 Cottage St. NE, Salem, OR 97301-3972

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

Department of Agriculture Chapter 603

Stat. Auth.: ORS 561.190, 570.305, 571.015 & 571.145

Stats. Implemented: ORS 571.015

Proposed Adoptions: 603-052-1250

Last Date for Comment: 3-15-05

Summary: The proposed rule would create a *Phytophthora ramorum* certification program for nursery stock. The rule will comply with USDA regulations. Nurseries growing susceptible plants must be inspected and tested annually for *P. ramorum*. Qualifying nurseries will be able to enter into compliance agreements with the Department and will receive permission to use a *P. ramorum*-free federal shield. Nursery plants that are not host or associated plants must be inspected annually for symptoms that could be *P. ramorum*. Symptomatic plants must be tested.

Rules Coordinator: Sue Gooch

Address: Department of Agriculture, 635 Capitol St. NE, Salem, OR 97310

Telephone: (503) 986-4583

NOTICES OF PROPOSED RULEMAKING

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

Date: 3-17-05 **Time:** 9:30 a.m. **Location:** 1535 Edgewater Wt. NW
Salem, OR 97310

Hearing Officer: Andrea F. Simmons

Stat. Auth.: ORS 446.062, 446.100, 446.160, 446.180, 446.185, 446.225, 446.230, 446.240, 446.260, 446.271, 446.321, 446.348, 446.400, 446.405, 446.416, 446.430, 446.581, 446.586, 446.591, 446.596, 446.601, 446.606, 446.611, 446.616, 446.621, 446.626, 446.631, 446.636, 446.641, 446.646, 446.661, 446.666, 446.671, 446.676, 446.681, 446.711, 446.716, 446.721, 446.726, 446.731, 446.736, 446.741, 446.746, 446.751, 446.756 & 446.995

Stats. Implemented: ORS 446.062, 446.100, 446.160, 446.180, 446.185, 446.225, 446.230, 446.240, 446.260, 446.271, 446.321, 446.348, 446.400, 446.405, 446.416, 446.430, 446.581, 446.586, 446.591, 446.596, 446.601, 446.606, 446.611, 446.616, 446.621, 446.626, 446.631, 446.636, 446.641, 446.646, 446.661, 446.666, 446.671, 446.676, 446.681, 446.711, 446.716, 446.721, 446.726, 446.731, 446.736, 446.741, 446.746, 446.751, 446.756 & 446.995

Proposed Adoptions: 918-030-0400, 918-030-0410, 918-030-0420, 918-030-0430, 918-030-0490, 918-550-0000, 918-550-0005, 918-550-0010, 918-550-0100, 918-550-0120, 918-550-0140, 918-550-0160, 918-550-0180, 918-550-0200, 918-550-0600

Proposed Amendments: 918-001-0036, 918-030-0030, 918-500-0010

Last Date for Comment: 3-21-05, 5 p.m.

Summary: This rulemaking is necessary to implement Senate Bill (SB) 468, which passed the 2003 Legislature, and codified in ORS 446.561 through 446.995, and ORS 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.

**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 97309-0404

Telephone: (503) 373-7438

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Date: 3-17-05 **Time:** 9:30 a.m. **Location:** 1535 Edgewater St. NW
Salem, OR 97310

Hearing Officer: Casey T. Hoyer

Stat. Auth.: ORS 455.144

Stats. Implemented: ORS 455.468

Proposed Amendments: Rules in 918-282 & 918-400, 918-515-0110, 918-515-0415, 918-674-0095, 918-695-0010, 918-695-0038

Last Date for Comment: 3-21-05, 5 p.m.

Summary: This proposed rulemaking removes signature authentication requirements (i.e. notarized signatures) from licensing and other programs, except the elevator and electrical programs. In addition, it allows electrical and elevator online applicants to submit notarized documents electronically (fax, scan or email). These rules create consistent processes across all program areas, except the elevator and electrical programs.

**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 97309-0404

Telephone: (503) 373-7438

Stat. Auth.: ORS 455.144

Stats. Implemented: ORS 455.144

Proposed Adoptions: 918-001-0006

Last Date for Comment: 3-22-05, 5 p.m.

Summary: This rulemaking changes the name of an Oregon specialty code from the "One- and Two-Family Dwelling Specialty Code," to the "Oregon Residential Specialty Code."

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309-0404

Telephone: (503) 373-7438

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Stat. Auth.: ORS 447.020, 455.030 & 479.730

Stats. Implemented: ORS 447.020, 455.030 & 479.730

Proposed Amendments: 918-008-0030

Last Date for Comment: 3-22-05, 5 p.m.

Summary: This rulemaking is necessary to remove specific dates and timelines that relate to code adoption.

Rules Coordinator: Heather L. Gravelle

Address: Department of Consumer and Business Services, Building Codes Division, P.O. Box 14470, Salem, OR 97309-0404

Telephone: (503) 373-7438

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

Date:	Time:	Location:
4-11-05	1:30 p.m.	Douglas Forest Protective Association 1758 NE Airport Rd. Roseburg, OR 97470
4-14-05	1:30 p.m.	Labor & Industries Bldg. Second Flr. - Rm. 260 350 Winter St. NE Salem, OR 97301-3882
4-18-05	1:30 p.m.	Comfort Inn & Suites Conference Rm. 62065 SE 27th (Hwy 20 at 27th St.) Bend, OR 97701

Hearing Officer: Marilyn Schuster

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

Stats. Implemented: ORS 654.001 - 654.295

Proposed Adoptions: 437-007-1300, 437-007-1303, 437-007-1305, 437-007-1310, 437-007-1315, 437-007-1320, 437-007-1325, 437-007-1330, 437-007-1335, 437-007-1340, 437-007-1345

Proposed Amendments: 437-007-0004, 437-007-0025, 437-007-0130, 437-007-0215, 437-007-0230, 437-007-0235, 437-007-0660, 437-007-0665, 437-007-0685, 437-007-0905, 437-007-0935, 437-007-1115

Proposed Repeals: 437-007-1391, 437-007-1392, 437-007-1393, 437-007-1394, 437-007-1395, 437-007-1396, 437-007-1397, 437-007-1398, 437-007-1399

Last Date for Comment: 4-29-05

Summary: Oregon OSHA proposes new rules in Division 7/N, Forest Activities/Wildland Fire Suppression and Prescribed Fire. We will repeal OAR 437-007-1391 through 437-007-1399, and adopt eleven new rules in Division 7/N.

Also proposed are amendments to twelve existing standards in subdivisions A, B, C, G, J, L, and Appendix 7-C.

All proposed changes have been reviewed by the subcommittee for Wildland Firefighting comprised of representatives from labor, private and government land owners, and government agencies. This group started meeting in February 2003 and remains an active advisory group. These changes will clarify existing regulations and will keep standards current with updated technology.

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

Rules Coordinator: Sue C. Joye

NOTICES OF PROPOSED RULEMAKING

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

Stat. Auth.: ORS 654.025(2) & 656.726(4)
Stats. Implemented: ORS 654.001 - 654.295
Proposed Amendments: 437-002-0140, 437-002-0161, 437-002-0300, 437-002-0360, 437-002-0368, 437-003-0001, 437-005-0001
Proposed Repeals: 437-002-0361
Last Date for Comment: 3-31-05

Summary: Federal OSHA published in the January 5, 2005 Federal Register amendments to remove and revise provisions of its standards that are outdated, duplicative, unnecessary, or inconsistent, or can be clarified or simplified by being written in plain language. Most of these changes are in the health standards in general industry, construction, and shipyard employment. The December 6, 2004 Federal Register, makes a correction to a cross reference in Methylenedianiline in construction. We also propose to repeal an Oregon-initiated rule that has effective dates that have passed a number of years ago and is no longer necessary. A nonmandatory appendix to OAR 437-002-0161, Medical and First Aid, is proposed to be added.

Oregon OSHA proposes to adopt all these changes to remain at least as effective as Federal OSHA standards. Please visit OSHA's web site: www.osha.org

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

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

Date:	Time:	Location:
3-22-05	2 p.m.	350 Winter St. NE Rm. B (basement, Labor & Industries Bldg.) Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.704, 656.726(4), 656.850 & 656.855; Other Auth.: ORS 183.335, OAR 137-001 & OAR 436-001
Stats. Implemented: ORS 656.850 & 656.855
Proposed Amendments: 436-050-0003, 436-050-0440, 436-050-0460, 436-050-0480
Last Date for Comment: 3-28-05

Summary: The agency proposes to amend OAR chapter 436-050, "Employer/Insurer Coverage Responsibility." These proposed rules:

- Increase the initial license fee and license renewal fee for a worker leasing company from \$1,250 to \$2,050; and
- Increase the penalties for operating as a worker leasing company without a license.

Address questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; e-mail fred.h.bruyns@state.or.us

Proposed rules are available on the Workers' Compensation Division Web site: <http://wcd.oregon.gov/policy/rules/rules.html#proprules> or from WCD Publications (503) 947-7627 or fax (503) 947-7630.

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

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

Department of Corrections Chapter 291

Date:	Time:	Location:
3-15-05	9:30 a.m.	2575 Center St. NE Dept. of Corrections Conf. Rm. 259 Salem, OR 97301-4667

Hearing Officer: Birdie Worley
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-022-0100 – 291-022-0210
Last Date for Comment: 4-5-05

Summary: Adoption of these rules is necessary to establish policy and procedures governing the use of force and security equipment by Department of Corrections (state) parole and probation officers in the performance of their official duties.

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

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-076-0020, 291-076-0030
Last Date for Comment: 4-10-05

Summary: These rule amendments are necessary to implement recommendations from a department task force, Managing Mental Illness in Prison, responsible to review the aspects of how to effectively manage the inmate population with mental health issues. These modifications provide greater response to and assessment of incidents when an inmate has exhibited behavior indicative of suicide warning signs or attempted suicide.

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-131-0015
Last Date for Comment: 4-10-05

Summary: This rule amendment is necessary to implement a change in department policy to restrict inmate-to-inmate mail in certain specific instances. Several high profile cases have arisen in which segregated inmates used the mail system to communicate information with other inmates that constituted a direct threat and jeopardized the security, safety, health, good order, and discipline of department institutions.

Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

Department of Environmental Quality Chapter 340

Date:	Time:	Location:
3-15-05	3 p.m.	811 SW Sixth Ave. Rm. 3A Portland, OR

Hearing Officer: DEQ staff
Stat. Auth.: ORS 468.065 & 468A.315
Stats. Implemented:
Proposed Amendments: 340-220-0030, 340-220-0040, 340-220-0050
Last Date for Comment: 3-22-05, 5 p.m.

NOTICES OF PROPOSED RULEMAKING

Summary: The proposed rule amendment would increase Title V fees by the 2004 Consumer Price Index, of approximately 2.7%. Base fees currently at \$3178 will increase \$90, Emission fees currently at \$37.03 per ton will increase \$1.05 per ton, and all Special Activity fees will increase as follows:

- Administrative Fee — from \$318 to 327
- Simple Modification — from \$1,272 to 1,307
- Moderate Modification — from \$9,536 to 9,804
- Complex Modification — from \$19,073 to 19,607
- Ambient Air Monitoring — from \$2,543 to 2,614

All fee increases will become effective upon rule adoption which is scheduled for June, 2005, with invoices reflecting the increases to be mailed in July 2005.

To submit comments or request additional information, please contact David Kauth at the Department of Environmental Quality (DEQ), 811 S.W. Sixth Avenue, Portland, OR 97204, toll free in Oregon at 800-452-4011 or 503-229-5655, kauth.dave@deq.state.or.us, 503-229-5675, or visit DEQ's website //www.deq.state.or.us/news/index.asp

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

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Date:	Time:	Location:
3-22-05	7 p.m.	Lakeview Town Hall Council Chambers Lakeview, OR

Hearing Officer: Peter Brewer

Stat. Auth.: ORS 468A.025

Stats. Implemented: ORS 468A.025 & 468A.035

Proposed Amendments: 340-200-0040, 340-204-0030, 340-204-0040, 340-224-0060, 340-225-0020

Last Date for Comment: 3-31-05

Summary: The proposed rulemaking action would adopt a plan (and associated rule amendments) for Lakeview and its Urban Growth Boundary that is designed to maintain compliance with the federal public health standards for particulate matter ten microns and smaller (PM₁₀). The rulemaking action will change the status of Lakeview from "nonattainment" to "maintenance" for PM₁₀. The State's designation of "maintenance" indicates that the areas have met the federal health standard continuously for several years and are predicted to continue meeting the standard for at least ten more years. This rulemaking action includes a request to EPA to change the federal designation of Lakeview as in compliance with the PM₁₀ standard.

The plans include the following:

- 1) A commitment by DEQ and the local communities to continue most existing strategies to reduce PM₁₀ emissions (these include woodstove and open burning restrictions, and industrial requirements as identified in existing permits);
- 2) A transportation emissions budget for evaluating future transportation projects;
- 3) Increased flexibility in state rules for new and expanding industrial sources of PM₁₀ emissions:
 - a. Allows sources to consider cost in complying with emissions control technology requirements; and
 - b. Allows small increases in particulate emissions from new and expanding industry;
- 4) Contingency plans in the event of future exceedances or violations of the PM₁₀ public health standards.

Lakeview has previously violated the federal clean air standard for PM₁₀. The town now claims more than a ten-year history of meeting the standard. The proposed maintenance plan acknowledges the progress made by the citizens of the community, keeps most current emission reduction strategies, allows some new flexibility for indus-

trial growth, and ensure continuing compliance with the PM₁₀ public health standards for at least the next ten years.

To submit comments or request additional information, please contact Larry Calkins at the Department of Environmental Quality (DEQ), 400 Scenic Drive #307, The Dalles, Oregon 97058, toll free in Oregon at 800-452-4011 or 541-298-7255 extension 41, calkins.larry@deq.state.or.us, Fax: 541-298-7330, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

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Date:	Time:	Location:
3-24-05	7 p.m.	La Grande City Hall Council Chambers La Grande, OR

Hearing Officer: Patty Jacobs, DEQ

Stat. Auth.: ORS 468A.025

Stats. Implemented: ORS 468A.025 & 468A.035

Proposed Amendments: 340-200-0040, 340-204-0030, 340-204-0040

Last Date for Comment: 3-31-05

Summary: The proposed rulemaking action would adopt a plan (and associated rule amendments) for La Grande and its Urban Growth Boundary that is designed to maintain compliance with the federal public health standards for particulate matter ten microns and smaller (PM₁₀). The rulemaking action will change the status of La Grande from "nonattainment" to "maintenance" for PM₁₀. The State's designation of "maintenance" indicates that the areas have met the federal health standard continuously for several years and are predicted to continue meeting the standard for at least ten more years. This rulemaking action includes a request to EPA to change the federal designation of La Grande as in compliance with the PM₁₀ standard.

The plan includes the following:

- 1) A commitment by DEQ and the local communities to continue most existing strategies to reduce PM₁₀ emissions (these include woodstove and open burning restrictions, and industrial requirements as identified in existing permits);
- 2) A transportation emissions budget for evaluating future transportation projects;
- 3) Increased flexibility in state rules for new and expanding industrial sources of PM₁₀ emissions to consider cost when complying with emissions control technology requirements.
- 4) Contingency plans in the event of future exceedances or violations of the PM₁₀ public health standards.

La Grande has previously violated the federal clean air standard for PM₁₀. This area can now claim more than a fourteen-year history of meeting the standard. The proposed maintenance plan acknowledges the progress made by the citizens of the community, keeps most of the current emission reduction strategies, allows some new flexibility for industrial growth, and ensure continuing compliance with the PM₁₀ public health standards for at least the next ten years.

To submit comments or request additional information, please contact Larry Calkins at the Department of Environmental Quality (DEQ), 400 Scenic Drive #307, The Dalles, Oregon 97058, toll free in Oregon at 800-452-4011 or 541-298-7255 extension 41, calkins.larry@deq.state.or.us, Fax: 541-298-7330, or visit DEQ's website <http://www.deq.state.or.us/news/index.asp>

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

Rules Coordinator: Larry McAllister

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

Telephone: (503) 229-6412

NOTICES OF PROPOSED RULEMAKING

Date: 3-23-05
Time: 10 a.m.
Location: 811 SW Sixth Ave.
 Oregon DEQ
 Rm. 3a
 Portland, OR

Hearing Officer: Angela Parker, DEQ
Stat. Auth.: ORS 466.165, 468.020, 465.009, 466.020, 466.505, 465.200 - 465.320, 466.706 - 466.995, 468.020, 468B.345 - 468B.405, 183, 459, 466, 468, 468B.395, 466.625, 468B.010, 459.045, 459A.025, 459A.100 - 459A.120 & 468.020
Stats. Implemented: ORS 466.165, 465.003, 465.009, 466.005, 466.075, 466.105, 465.505, 466.750, 466.706, 468B.300 - 468B.500, 466.605, 466B.345 - 468.390, 466.630, 466.610, 466.620, 468B.395, 459A.005, 459A.010, 459A.665 & 459A.100
Proposed Amendments: 340-102-0065, 340-100-0002, 340-162-0150, 340-177-0095, 340-141-0005, 340-141-0010, 340-141-0140, 340-142-0005, 340-142-0130, 340-090-0040, 340-090-0045, 340-090-0050, 340-090-0060

Last Date for Comment: 3-30-05
Summary: If enacted, the proposed amendments would:
 1) revise language in OAR 340-102-0065 pertaining to fees paid by generators of hazardous waste, reflecting changes adopted by the 2003 legislature;
 2) adopt a corrected reference in OAR 340-100-0002 to existing federal regulations pertaining to hazardous waste management;
 3) incorporate fee changes enacted by the 2001 legislature for a) underground storage tank cleanup service provider registration and licenses in OAR 340-162-0150; and b) certification of home heating oil tank cleanup and decommissioning reports in OAR 340-177-0095;
 4) replace an out-of-date name for the federal emergency response system in OAR 340-141 and 340-142, reflecting changes made by the federal Department of Homeland Security. In addition, the amendments incorporate fee changes enacted by the 2003 legislature pertaining to dredge and passenger vessels into OAR 340-141-0010; and
 5) amend OAR 340-090-0040 to 0060 pertaining to solid waste recovery goals reflecting changes made by the 2001 legislature.

To submit comments or request additional information, please contact Jeff Christensen at the Department of Environmental Quality (DEQ), 811 S.W. Sixth Avenue, Portland, Oregon 97204, toll free in Oregon at 800-452-4011 or local at 503-229-6391, or fax at (503) 229-5977. For additional information, you can also visit DEQ's web-site at: <http://www.deq.state.or.us/news/index.asp>

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

Rules Coordinator: Larry McAllister
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6412

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Department of Fish and Wildlife
Chapter 635

Date: 4-15-05
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
 ODFW Commission Rm.
 Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Proposed Adoptions: Rules in 635-003, 635-013, 635-014, 635-016, 635-017, 635-018, 635-023
Proposed Amendments: Rules in 635-003, 635-013, 635-014, 635-016, 635-017, 635-018, 635-023
Proposed Repeals: Rules in 635-003, 635-013, 635-014, 635-016, 635-017, 635-018, 635-023
Last Date for Comment: 4-15-05

Summary: Amend rules relating to commercial and sport salmon fishing in the Pacific Ocean, sport salmon fishing in specific near-shore ocean waters, bays and coastal streams, and sport salmon fishing in the Columbia River and tributaries. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

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

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Date: 4-15-05
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
 ODFW Commission Rm.
 Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Proposed Adoptions: Rules in 635-004, 635-005, 635-011, 635-017
Proposed Amendments: Rules in 635-004, 635-005, 635-011, 635-017

Proposed Repeals: Rules in 635-004, 635-005, 635-011, 635-017
Last Date for Comment: 4-15-05
Summary: Adopt and amend rules to ban the use of lamprey use as bait Statewide. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

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

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Date: 4-15-05
Time: 8 a.m.
Location: 3406 Cherry Ave. NE
 ODFW Commission Rm.
 Salem, OR 97303

Hearing Officer: Fish and Wildlife Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146 & 496.162
Stats. Implemented: ORS 496.012, 496.138, 496.146 & 496.162
Proposed Amendments: Rules in 635-060
Last Date for Comment: 4-15-05

Summary: Amend rules to accommodate military personnel who have lost preference points because of being called to active service.
**Auxiliary aids for persons with disabilities are available upon advance request.*

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

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Department of Human Services,
Child Welfare Programs
Chapter 413

Date: 3-22-05
Time: 8:30 a.m.
Location: 500 Summer St. NE
 Rm. 254
 Salem, OR

Hearing Officer: Annette Tesch
Stat. Auth.: ORS 418.005; Other Auth.: Ch. 191 (2003 Laws)
Stats. Implemented: ORS 419B.005
Proposed Amendments: 413-015-1000
Last Date for Comment: 3-22-05

Summary: This Child Protective Services rule is being changed because the 2003 Legislature amended the statutory definition of child abuse to include: permitting a person under 18 years of age to enter or remain in a place where methamphetamines are being man-

NOTICES OF PROPOSED RULEMAKING

ufactured. This rule amendment will reflect this language in Oregon Administrative Rule.

These rules may also be changed to reflect new Department terminology and to correct formatting punctuation.

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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

Date:	Time:	Location:
3-16-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Adoptions: 410-124-0105

Last Date for Comment: 3-16-05, 12 p.m.

Summary: The Transplant Services rules govern Office of Medical Assistance Programs' (OMAP) payment for transplant services provided to clients. The Health Services Commission has included intestine and liver-intestine transplants above the line on the Prioritized List of covered health services for OHP clients. OMAP will adopt rule 410-124-0105 to establish criteria for intestine and liver-intestine transplants.

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

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177

Telephone: (503) 945-6927

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Date:	Time:	Location:
3-16-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: 414.065

Proposed Amendments: 410-121-0030, 410-121-0155, 410-121-0160

Last Date for Comment: 3-16-05, 12 p.m.

Summary: The Pharmaceutical Services program Administrative Rules govern the Office of Medical Assistance Programs' payments for services rendered to clients. OMAP will amend 410-121-0030 to update Table 121-0030-1 with the addition of the Angiotensin II Receptor Antagonists drug class and update six additional classes. OMAP will amend 410-121-0155 and 410-121-0160 to add clarifying language for applicable clients meeting eligible requirements for institutional pharmacy enhanced reimbursement.

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

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177

Telephone: (503) 945-6927

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Date:	Time:	Location:
3-22-05	9 a.m.	3420 Cherry Ave. NE DSO Office Salem, OR

Hearing Officer: Kelly Myrick-Duckett

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

Stats. Implemented: ORS 181.537

Proposed Amendments: 410-007-0210, 410-007-0220, 410-007-0230, 410-007-0240, 410-007-0250, 410-007-0260, 410-007-0270, 410-007-0280, 410-007-0290, 410-007-0300, 410-007-0310, 410-007-0320, 410-007-0330, 410-007-0340, 410-007-0370, 410-007-0380

Last Date for Comment: 3-22-05, 5 p.m.

Summary: The proposed amendments to the Department of Human Services Criminal History Check rules update who is subject to the background check and updates the process. The rules update the set of potentially disqualifying crimes and conditions, and the criteria that must be employed to determine fitness or suitability. The rules update and clarify who is authorized to make fitness determinations and handle the criminal history check process, and when the Department of Human Services requires entities to have these authorized designees and contact persons. The rules clarify the process for variances.

Draft rules available at: www.dhs.state.or.us/admin/hr/crim_checks/

**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

Telephone: (503) 945-5844

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Date:	Time:	Location:
3-16-05	10:30 a.m.–12 p.m.	500 Summer St. NE Rm. 137 B Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-1070

Last Date for Comment: 3-16-05, 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 410-125-1070 to clarify intent of responsibility of Type A and Type B hospitals to adhere to time lines for requested information.

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

Rules Coordinator: Darlene Nelson

Address: Department of Human Services, Departmental Administration and Medical Assistance Programs, 500 Summer St. NE, E35, Salem, OR 97301-0177

Telephone: (503) 945-6927

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Date:	Time:	Location:
3-16-05	10:30 a.m.–12 p.m.	Room 137B 500 Summer St. NE Salem, OR

Hearing Officer: Darlene Nelson

Stat. Auth.: ORS 409.010, 409.050 & 409.110

Stats. Implemented: ORS 414.065

Proposed Amendments: 410-125-0141, 410-125-0195

Last Date for Comment: 3-16-05, 12 p.m.

Summary: The Hospital Services Program administrative rules govern Office of Medical Assistance Programs' (OMAP) payment for services provided to clients. In October 2004 OMAP temporarily amended OAR 410-125-0141 and 410-125-0195, to reflect reimbursement methodology and rate changes for DRG Hospitals for

NOTICES OF PROPOSED RULEMAKING

inpatient and outpatient hospital services. This is the Notice to permanently amend rules OAR 410-125-0141 and 410-125-0195. These rules will be permanently amended retroactively, effective March 15, 2005.

**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, Mental Health and Developmental Disability Services Chapter 309

Date:	Time:	Location:
3-22-05	9 a.m.	3420 Cherry Ave. NE DSO Office Salem, OR

Hearing Officer: Kelly Myrick-Duckett

Stat. Auth.: ORS 181.537, 409.010 & 409.050; Other Auth.: ORS 181.537 & 409.010

Stats. Implemented:

Proposed Repeals: 309-018-0000, 309-018-0010, 309-018-0020, 309-018-0030, 309-018-0040, 309-018-0050, 309-018-0060

Last Date for Comment: 3-22-05, 5 p.m.

Summary: These rules are being repealed because the criminal history check process under these rules is being consolidated under OAR 410-007-0220 through 410-007-0380, which is concurrently being noticed for change.

Draft rules available at: www.dhs.state.or.us/admin/hr/crim_checks/

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

Rules Coordinator: Pat Bougher

Address: Department of Human Services, Mental Health and Developmental Disability Services, 500 Summer St. NE, E22, Salem, OR 97301

Telephone: (503) 945-5844

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Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
3-22-05	10 a.m.	500 Summer St. NE Rm. 254 Salem, OR

Hearing Officer: Annette Tesch

Stat. Auth.: ORS 411.060 & 411.816; Other Auth.: Food and Nutrition Services Memo Dated January 14, 2005 & Consolidated Appropriations Act of 2005 into Law (PL. 108-447) dated December 8, 2004

Stats. Implemented: ORS 411.060, 411.070 & 411.816

Proposed Adoptions: 461-145-0345

Proposed Amendments: 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295

Last Date for Comment: 3-22-05

Summary: Rule 461-145-0345 is being adopted to implement the change in the treatment of military allotments for the Food Stamp Program per the Consolidated Appropriations Act of 2005 into Law (PL. 108-447) dated December 8, 2004.

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

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

Rules Coordinator: Annette Tesch

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

Telephone: (503) 945-6067

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Department of Human Services, Vocational Rehabilitation Services Chapter 582

Date:	Time:	Location:
3-17-05	1:30 p.m.	500 Summer St. NE Rm. HSB-252 Salem

Hearing Officer: Robert Trachtenberg

Stat. Auth.: ORS 344.530; Other Auth.: 34 CFR 361.13(c) & 34 CFR 361.36

Stats. Implemented: ORS 344.530, 344.540 & 344.550

Proposed Amendments: 582-001-0010, 582-100-0040

Last Date for Comment: 3-30-05

Summary: 1. OAR 582-001-0010 is being 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 being 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.

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

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

Rules Coordinator: Robert Trachtenberg

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

Telephone: (503) 945-6734

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

Stat. Auth.: ORS 184.616, 184.619, 192.440, 801.402, 802.010, 802.031, 802.179, 802.183, 802.220, 802.230, 802.370, 803.012, 803.015, 803.045, 803.050, 803.097, 803.140, 803.370, 803.530, 803.600, 803.625, 805.200, 807.050, 819.016, 820.500, 821.060, 821.080, 822.009, 822.015, 822.025, 822.035 & 822.040

Stats. Implemented: ORS 801.402, 802.031, 802.175, 802.177 – 802.270, 803.015, 803.045, 803.097, 803.140, 803.220, 803.370, 803.420, 803.565, 803.600, 803.602, 803.645, 807.050, 807.420, 807.560, 819.010 – 819.040, 821.060, 821.080, 822.005 – 822.080 & 49 CFR Part 580

Proposed Amendments: 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

Proposed Repeals: 735-140-0000 – 735-140-0140, 735-150-0090, 735-150-0180

Last Date for Comment: 3-21-05

Summary: 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 Divi-

NOTICES OF PROPOSED RULEMAKING

sion 140 rules, the rules related to manufactured structures, and amending other DMV rules that refer to or pertain to manufactured structures, including OAR 735-010-0045, 735-010-0230, 735-020-0010, 735-022-0050, 735-024-0070, 735-024-0130 and 735-032-0000. 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 to these rules are being made to clarify the current language. Amendments to OAR 735-010-0008, 735-022-0040, 735-022-0060, and 735-024-0030 are being made to clarify the current language.

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, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.140, 819.014, 819.016 & 819.215

Stats. Implemented: ORS 819.014, 819.016 & 819.215

Proposed Adoptions: 735-024-0075

Proposed Amendments: 735-024-0110

Last Date for Comment: 3-21-05

Summary: These rule changes are needed to clarify the forms of notice that must be provided to DMV for: (1) abandoned vehicles appraised at a value of \$500 or less and disposed of under the provisions of ORS 819.215; and (2) totaled vehicles reported by insurers under ORS 819.014 and 819.016. DMV proposes to adopt OAR 735-024-0075 to describe the notice required when an authority or tower disposes of an abandoned vehicle appraised at a value of \$500 or less that is, or will be, disposed of under the provisions of ORS 819.215. The rule requires the use of the Abandoned Vehicle Certificate (DMV form 735-271). OAR 735-024-0110 describes the notice requirements for an insurer who declares that a vehicle is "totaled" pursuant to ORS 819.014 and 819.016. The proposed amendment to OAR 735-024-0110 adds a requirement that the state of registration, the date the vehicle was declared a total loss by the insurer and the name of the insurance company covering the loss to be included in the notice to DMV. Other proposed amendments have been made for clarity.

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, Driver and Motor Vehicle Services Division, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

Department of Transportation, Highway Division Chapter 734

Stat. Auth.: ORS 184.616, 184.619 & 184.634

Stats. Implemented: ORS 184.634

Proposed Amendments: 734-035-0110

Last Date for Comment: 3-21-05

Summary: 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.

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, Highway Division, 1905 Lana Ave. NE, Salem, OR 97314

Telephone: (503) 945-5278

Employment Department Chapter 471

Date:
3-15-05

Time:
1 p.m.

Location:
875 Union NE
Employment Dept. Auditorium
Salem, OR 97311

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 657.610 & 657.158

Stats. Implemented: ORS 657.158

Proposed Adoptions: 471-020-0025

Last Date for Comment: 3-15-05, 5 p.m.

Summary: The Employment Department is proposing to amend: OAR 471-020-0025 to establish parameters for the Self-employment assistance program.

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

Rules Coordinator: Richard L. Luthe

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

Telephone: (503) 947-1724

Employment Department, Child Care Division Chapter 414

Date:
3-15-05

Time:
3 p.m.

Location:
875 Union NE
Employment Dept. Auditorium
Salem, OR 97311

Hearing Officer: Richard Luthe

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657A.030

Proposed Amendments: 414-205-0170

Last Date for Comment: 3-15-05, 5 p.m.

Summary: OAR 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.

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

Rules Coordinator: Richard L. Luthe

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

Telephone: (503) 947-1724

Land Conservation and Development Department Chapter 660

Date:
4-28-05

Time:
9 a.m.

Location:
635 Capitol St. NE
Agriculture Bldg.
Basement Hearing Rm.
Salem, OR

Hearing Officer: LCDDC staff

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.712

Proposed Adoptions: 660-009-0030

Proposed Amendments: 660-009-0000, 660-009-0005, 660-009-0010, 660-009-0015, 660-009-0020, 660-009-0025

NOTICES OF PROPOSED RULEMAKING

Last Date for Comment: 4-28-05

Summary: Proposed amendments will clarify and simplify existing requirements for local governments to conduct economic opportunities analyses and inventory industrial and commercial lands to ensure that land is available for a variety of economic uses.

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

Rules Coordinator: Shelia Preston

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

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

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**Landscape Contractors Board
Chapter 808**

Date:	Time:	Location:
3-25-05	11 a.m.	Landscape Contractors Bd. 235 Union St. NE Salem, OR

Hearing Officer: Ron Overstreet

Stat. Auth.: ORS 670 & 671.670

Stats. Implemented: ORS 671

Proposed Amendments: 808-003-0025, 808-005-0020

Last Date for Comment: 3-25-05

Summary: 808-003-0025 - Adds alternative experience to qualify for testing. The alternative experience is a certificate in horticulture or other related fields from an accredited school or college that requires a minimum of 72 credit hours, which includes the completion of cooperative work experience requirement in landscaping.

808-005-0020 - Clarifies penalties for specific violations, adds penalty for failure to comply with the supervisory responsibilities.

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

Rules Coordinator: Kim Gladwill-Rowley

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

Telephone: (503) 986-6570

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**Oregon Liquor Control Commission
Chapter 845**

Date:	Time:	Location:
4-12-05	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Katie Hilton

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

Stats. Implemented: ORS 471.430(3)

Proposed Amendments: 845-006-0340

Last Date for Comment: 4-26-05

Summary: This rule describes how the Commission posts signs in licensed premises in order to maximize opportunities for minors to eat at licensed premises while minimizing their exposure to drinking environments. We need to amend this rule to add movie theaters as a type of operation which requires a written security plan, and to add a definition of movie theater.

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

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

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Date:	Time:	Location:
4-13-05	10 a.m.–12 p.m.	9079 SE McLoughlin Blvd. Portland, OR 97222

Hearing Officer: Katie Hilton

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

Stats. Implemented: ORS 471.398 & 471.750

Proposed Amendments: 845-005-0428

Last Date for Comment: 4-27-05

Summary: This rule describes how a distillery representative may conduct distilled spirits sample tasting at Full On-Premises Sales licensed establishments. We intend to amend the rule to bring its standards into agreement with the standards in other rules which allow sample tastings.

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

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

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

Stats. Implemented: ORS 471.360, 471.365(2) & 471.375

Proposed Amendments: 845-009-0010, 845-009-0015

Last Date for Comment: 4-1-05

Summary: These rules address requirements for service permits and the processes for application. We need to make housekeeping changes to these rules. We will add managers of those who mix, sell or serve to the list of those required to have service permits.

Rules Coordinator: Katie Hilton

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

Telephone: (503) 872-5004

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**Oregon Public Employees Retirement System
Chapter 459**

Date:	Time:	Location:
3-22-05	2 p.m.	11410 SW 68th Pkwy. Boardroom, PERS Headquarters Tigard, OR

Hearing Officer: David K. Martin

Stat. Auth.: ORS 238A.450

Stats. Implemented: ORS 238A.005, 238A.025, 238A.140, 238A.330 & 238A.335

Proposed Amendments: 459-070-0001

Last Date for Comment: 4-29-05

Summary: The modifications to OAR 459-070-0001 clarify the definition of "qualifying position" so staff can administer contributions into and distributions from the IAP, make the definition consistent with the PERS Chapter 238 Program members who are now members of the IAP and simplify the tracking and administration of these member accounts. Creating consistent standards will simplify the administration of benefits and eliminate the current confusion for employers trying to report into the system. Additionally, the current version of OAR 459-070-0001 was adopted prior to HB 2020 being codified. Now that the bill sections have been codified, the correct citations are to be added.

Generally, an eligible employee is not an active member of the PERS Chapter 238 Program or OPSRP unless they perform 600 hours in a calendar year. However, under the previously adopted version of OAR 459-070-0001 (OPSRP) and proposed OAR 459-010-0003 (PERS), for the initial determination of eligibility, an employee will be considered to be in a qualifying position if the employee performs less than 600 hours in their first calendar year and performs at least 600 hours in the subsequent year. Otherwise, employees hired into qualifying positions late in the year would not be eligible to begin their waiting periods even though they were in qualifying positions.

Although the previously adopted OPSRP rule provides the same consideration for incoming employees as the proposed PERS Chapter 238 Program rules, the PERS rule provides for the same treatment of employees leaving the system as it does for those coming into the system. The current version of the OPSRP rule does not.

The PERS Chapter 238 Program provision prevents the negative impact that would occur on members who leave the system early in the year, providing for continuing service if they were in a qualifying position the previous year. Unless the two sets of rules are con-

NOTICES OF PROPOSED RULEMAKING

sistent, PERS Chapter 238 Program members who separate from employment early in the year before performing 600 hours of service would receive service credit but not IAP contributions. This inconsistency cannot reasonably be administered or tracked under the current programming and is resulting in delays in distributing IAP funds and calculating PERS Chapter 238 Program retirements.

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

Rules Coordinator: David K. Martin

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

Telephone: (503) 603-7713

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Oregon State Lottery
Chapter 177

Date:	Time:	Location:
3-22-05	9-10 a.m.	Oregon Lottery 500 Airport Rd. SE Salem, OR 97301

Hearing Officer: Larry Trott

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

Stats. Implemented: ORS 461.210, 461.215, 461.217 & 461.220

Proposed Adoptions: 177-200-0075

Proposed Amendments: 177-200-0065

Proposed Repeals: 177-200-0000

Last Date for Comment: 3-25-05

Summary: At the January 26, 2005 Oregon Lottery Commission meeting, the Commission authorized the Oregon State Lottery to implement video line games.

The rules being adopted, amended, or repealed deal with video lottery and video line games. They repeal the existing authorized video lottery game rule, revise language contained in the video lottery game management rule, and add requirements for video line games.

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

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

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Date: 3-25-05
Time: 9 a.m.-1 p.m.
Location: State Fairgrounds
Cascade Hall
Salem, OR

Hearing Officer: Larry Trott

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

Stats. Implemented: ORS 461.310 & 461.445

Proposed Adoptions: 177-040-0027, 177-040-0028

Proposed Amendments: 177-040-0026

Last Date for Comment: 4-6-05, 5 p.m.

Summary: At the January 26, 2005 Oregon Lottery Commission meeting, the Commission authorized the Oregon State Lottery to implement video line games.

The proposed rule changes would amend OAR 177-040-0026 to move the retailer compensation rates for the sale of shares from video poker games to a new rule, OAR 177-040-0027. Proposed rule OAR 177-040-0028 sets forth the proposed retailer compensation rate for the sale of shares from video line games.

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

Rules Coordinator: Mark W. Hohlt

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

Telephone: (503) 540-1417

Oregon University System,
Southern Oregon University
Chapter 573

Date:	Time:	Location:
3-31-05	2 p.m.	Churchill 220 SOU Ashland, OR

Hearing Officer: Deborah Drost

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Proposed Adoptions: 573-095-0005, 573-095-0010

Proposed Amendments: 573-040-0005, 573-075-0000, 573-075-0010, 573-035-0020, 573-050-0045, 573-050-0020

Proposed Repeals: 573-075-0270

Last Date for Comment: 4-4-05

Summary: The proposed rule amendments in Div. 040 will eliminate fees that are no longer necessary and establish, increase, or decrease fees to more accurately reflect the actual costs of instruction for certain courses and special services not otherwise funded through the institution's operating budget. Changes in Divisions 75 and 35 are corrections of typographical errors. Div. 050 changes will increase parking fees and notice time before towing. Rule 573-075-0270 will be republished as a new rule and expanded to include a grading policy.

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

Rules Coordinator: Deborah S. Drost

Address: Oregon University System, Southern Oregon University, 1250 Siskiyou Blvd., Ashland, OR 97520

Telephone: (541) 552-8550

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Oregon University System,
University of Oregon
Chapter 571

Date:	Time:	Location:
4-7-05	4 p.m.	Alesa & Coquille Rms. ERB, UO Eugene, OR
4-11-05	4 p.m.	Alesa & Coquille Rms. ERB, UO Eugene, OR

Hearing Officer: Connie Tapp, Office of General Counsel

Stat. Auth.: ORS 351.070 & 352

Stats. Implemented: ORS 351.070

Proposed Amendments: 571-060-0005

Last Date for Comment: 4-12-05, 12 p.m.

Summary: Increase in family housing rental rates to cover projected operating costs for 2005-2006.

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

Rules Coordinator: Deb Eldredge

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

Telephone: (541) 346-3082

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Oregon Youth Authority
Chapter 416

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 181.010, 181.066, 181.511-580, 420A.010 & 420A.020

Proposed Amendments: 416-800-0000, 416-800-0010, 416-800-0050

Last Date for Comment: 3-23-05

Summary: OAR 416-800-0000 will be 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 will be amended to reformat definitions and delete the term "youth offender." OAR 416-800-0050 will be amended to add language that OYA staff are

NOTICES OF PROPOSED RULEMAKING

subject to criminal history checks at the time of promotion or lateral transfers, to delete the term "youth offender," and to correct grammatical errors. Interested persons may request a copy of the current rule from Kimberly Walker, OYA Rules/Policy Coordinator, 530 Center Street, Suite 200, Salem, OR 97301; 503-378-3864.

Rules Coordinator: Kimberly Walker

Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765

Telephone: (503) 378-3864

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Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420A.105 & 420A.108

Proposed Adoptions: 416-490-0020, 416-490-0030, 416-490-0040, 416-490-0050

Proposed Amendments: 416-490-0000, 416-490-0010

Last Date for Comment: 3-23-05

Summary: OAR Chapter 416, Division 490 will be amended to change its title. OAR 416-490-0000 will be amended to revise for clarity and remove details that are more appropriate to policy. OAR 416-490-0010 will be amended to add definitions and incorporated professional standards. OAR 416-490-0020 will be adopted to change the exemptions language. OAR 416-490-0030 will be adopted to incorporate the language from OAR 416-490-0010. OAR 416-490-0040 and OAR 416-490-0050 will be adopted to address notification and review language. 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

Physical Therapist Licensing Board Chapter 848

Date:	Time:	Location:
4-1-05	8:30 a.m.	800 NE Oregon St. Suite 445 Portland, OR

Hearing Officer: Cathy Zarosinski PT, MS

Stat. Auth.: ORS 182.462

Stats. Implemented: ORS 182.462

Proposed Amendments: 848-005-0010

Last Date for Comment: 4-1-05

Summary: [The Board's budgeted operating expenditures for the 2003-2005 biennium are \$740,765.]

The Physical Therapist Licensing Board hereby adopts by reference the Physical Therapist Licensing Board 2005-2007 Biennium Budget of \$796,000 covering the period from July 1, 2005 through June 30, 2007. The Executive Director of the Board will amend budgeted accounts as necessary within the approved budget of \$796,000 for the effective operation of the Board. The Board will not exceed the approved 2005-2007 Biennium Budget without amending this rule, notifying holders of licenses, and holding a public hearing thereon as required by ORS Chapter 182.462(1) and (2). Copies of the budget are available from the Board's office.

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

Rules Coordinator: James Heider

Address: Physical Therapist Licensing Board, 800 NE Oregon St, Suite 407, Portland, OR 97232

Telephone: (503) 731-4047, ext. 222

ADMINISTRATIVE RULES

Board of Accountancy Chapter 801

Adm. Order No.: BOA 1-2005

Filed with Sec. of State: 1-26-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 1-1-05

Rules Amended: 801-030-0015

Subject: This rule was previously noticed and a hearing was conducted. The Rule is re-noticed to provide clarification of the potential fiscal impact of revisions to OAR 801-030-0015(2)(e), increases the record retention period for attest and audit working papers from 5 years to 7 years.

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

801-030-0015

Responsibilities to Clients

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

(A) No licensee or any partner, officer, shareholder, member, manager, owner or employee of a licensee, shall voluntarily disclose information communicated to the licensee by a client relating to and in connection with services rendered to the client by the licensee.

(B) Members of the Board, members of Board committees and professional practice reviewers shall not disclose confidential client information which comes to their attention in the course of investigations, disciplinary proceedings or otherwise in carrying out their responsibilities, except that the Board may furnish such information when disclosure is required as described in subsection (b) of this rule.

(b) **Permitted disclosures.** Nothing in subsection (a) of this rule shall prohibit the disclosure of confidential client information under the following circumstances:

(A) When disclosure is required by the standards of the public accountancy profession in reporting on the examination of financial statements;

(B) When disclosure is required by a court order;

(C) In response to subpoenas issued in state or federal agency proceedings;

(D) In investigations or proceedings under ORS 673.170 or 673.400;

(E) In ethical investigations conducted by private professional organizations in the course of peer reviews;

(F) To the insurance carrier of a licensee in connection with a claim or potential claim; or

(G) When disclosure is required by the Oregon Board of Accountancy for regulatory purposes of the Board.

(2) Client records and working papers.

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

(A) Client records include any accounting or other records belonging to or obtained from or on behalf of the client or former client that the licensee received for the client's account or removed from the client's premises.

(B) Working papers include but are not limited to all statements, records, schedules, general ledgers, journals, trial balances and depreciation schedules made by the licensee incident to or in the course of rendering services to a client or former client. Working papers are and shall remain the property of the licensee in the absence of an express agreement to the contrary between the licensee and client.

(C) In addition to the requirements specified in paragraph (B) of this rule, attest documentation shall include, but not be limited to, the following:

(i) The objectives, scope and methodology, including any sampling criteria used;

(ii) Documentation of the work performed to support significant conclusions and judgments, including descriptions of transactions and records examined that would enable a reviewer with relevant knowledge and experience, having no previous connection with the attest engagement, to examine the same transactions and records; and

(iii) Evidence of any supervisory review of the work performed.

(b) **Requested records.** Licensees are required to furnish the following records to a client or former client, upon request, within a reasonable time after such request:

(A) In response to a client's request for client records, made within a reasonable time, that occurs prior to issuance of a tax return, financial statement, report or other document prepared by a licensee, the licensee shall furnish to the client or former client any accounting or other records

belonging to or obtained from or on behalf of the client that the licensee received for the client's account or removed from the client's premises.

(B) In response to a client's request for client records, made within a reasonable time, that occurs after the issuance of a tax return, financial statement, report or other document prepared by the licensee, the licensee shall furnish to the client or former client:

(i) A copy of a tax return, financial statement, report or other document issued by the licensee to or for such client or former client;

(ii) Any accounting or other records belonging to or obtained from or on behalf of the client that the licensee removed from the client's premises or received for the client's account; and

(iii) A copy of the licensee's working papers, to the extent that the working papers include records that would ordinarily constitute part of the client's records and are not otherwise available to the client.

(c) **Non-payment by client.** Licensees shall not refuse to provide client records and working papers as described in subsection (b) of this rule based on the client's failure or refusal to pay the licensee's fees.

(d) **Custody and disposition of working papers.**

(A) A licensee may not sell, transfer or bequeath working papers described in this rule to anyone other than one or more surviving partners or stockholders, or new partners or stockholders of the licensee, or any combined or merged organization or successor in interest to the licensee, without the prior written consent of the client or the client's personal representative or assignee.

(B) A licensee is not prohibited from making a temporary transfer of working papers or other material necessary to the conduct of peer reviews or for the disclosure of information as provided by section (1)(b) of this rule.

(C) A licensee shall adopt reasonable procedures for the safe custody of working papers and shall retain working papers for a period sufficient to meet the needs of the licensee's practice and to satisfy applicable professional standards and pertinent legal requirements for record retention.

(D) A licensee shall retain working papers during the pendency of any Board investigation, disciplinary action, or other legal action involving the licensee. Licensees shall not dispose of such working papers until notified in writing by the Board of the closure of the investigation or until final disposition of the legal action or proceeding if no Board investigation is pending.

(e) **Retention of attest and audit working papers.**

(A) Licensees must maintain for a period of at least seven years the working papers for any attest service or audit report prepared by the licensee together with any other supporting information, in sufficient detail to support the conclusions reached in such report.

(B) The seven-year retention period described in subsection (e) of this rule shall apply to working papers prepared prior to January 1, 2004, but only to the extent that such working papers are required to be retained for a total of seven years, including the period of retention that was cumulated prior to January 1, 2004. No working papers shall be required to be maintained longer than seven years, unless a longer period is required for purposes of a Board investigation as provided in paragraph (D) of this subsection and OAR 801-010-0115(3).

Stat. Auth.: ORS 670.310 & 673.410

Stats. Implemented: ORS 673.445

Hist.: AB 1-1978, f. & ef. 1-11-78; 1AB 2-1984, f. & ef. 5-21-84; AB 4-1994, f. & cert. ef. 9-27-94; BOA 6-1999, f. 12-21-99, cert. ef. 1-1-00; BOA 5-2001, f. 12-28-01, cert. ef. 1-1-02; BOA 6-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 1-2005, f. 1-26-05, cert. ef. 2-1-05

Board of Chiropractic Examiners Chapter 811

Adm. Order No.: BCE 1-2005

Filed with Sec. of State: 1-28-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 1-1-05

Rules Amended: 811-015-0010

Subject: 811-015-0010 Amends the Clinical Justification Rule. Provides updates to treatment parameters to address over-treatment and under-treatment by chiropractic physicians.

Rules Coordinator: Dave McTeague—(503) 378-5816, ext. 23

811-015-0010

Clinical Justification

(1) Clinical rationale, within accepted standards and understood by a group of peers, must be shown for all opinions, diagnostic and therapeutic procedures.

ADMINISTRATIVE RULES

(2) Accepted standards mean skills and treatment which are recognized as being reasonable, prudent and acceptable under similar conditions and circumstances.

(3) All initial examinations and subsequent re-examinations performed by a chiropractor to determine the need for chiropractic treatment of neuro-musculoskeletal conditions shall include a functional chiropractic analysis. Some combination of the following PARTS exam constitutes a functional chiropractic analysis:

- P Location, quality, and intensity of pain or tenderness produced by palpation and pressure over specific structures and soft tissues;
- A Asymmetry of sectional or segmental components identified by static palpation;
- R The decrease or loss of specific movements (active, passive, and accessory);
- T Tone, texture, and temperature change in specific soft tissues identified through palpation;
- S Use of special tests or procedures.

(4) Chiropractic physicians shall treat their patients as often as necessary to insure favorable progress. Evidence based outcomes management shall determine whether the frequency and duration of curative chiropractic treatment has been necessary. Outcomes management shall include both subjective or patient-driven information as well as objective provider-driven information. In addition, treatment of neuro-musculoskeletal conditions outside of the Oregon Practices and Utilization Guidelines — NMS Volume I, Chapter 5, may be considered contrary to accepted standards. Chiropractic physicians treating outside of the Practices and Utilization Guidelines – NMS Volume I, Chapter 5, bear the burden of proof to show that the treatment, or lack thereof, is clinically justified

(5) Copies of any independent examination report must be made available to the patient, the patient's attorney, the treating doctor and the attending physician at the time the report is made available to the initial requesting party.

(6) The amendments to OAR 811-015-0010 adopted on January 20, 2005 will expire as of February 1, 2008. Prior to expiration, the OBCE shall review the outcomes of these amendments and take action to further amend, continue or remove these provisions.

Stat. Auth.: ORS 684
Stats Implemented: ORS 684.155
Hist.: 2CE 1-1978, f. 6-16-78, ef. 7-1-78; CE 1-1995, f. & cert. ef. 10-30-95; BCE 2-2003, f. & cert. ef. 12-11-03; BCE 1-2005, f. 1-28-04, cert. ef. 2-1-05

Board of Medical Examiners
Chapter 847

Adm. Order No.: BME 1-2005

Filed with Sec. of State: 1-27-2005

Certified to be Effective: 1-27-05

Notice Publication Date: 12-1-04

Rules Amended: 847-015-0025

Subject: The adopted rules add that physicians who supervise or monitor health care providers who have emergency dispensing privileges must register as a dispensing physician.

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

847-015-0025

Dispensing Physicians

(1) Any actively licensed physician who dispenses drugs shall register with the Board on the appropriate form before beginning to dispense drugs.

(2) A physician who supervises a physician assistant who is applying for emergency dispensing privileges, or monitors/supervises any other health care provider with emergency dispensing privileges, must be registered with the Board of Medical Examiners as a dispensing physician.

(3) Dispensing of samples, without charge, will not constitute dispensing under this rule.

(4) Administering drugs in the physician's office will not constitute dispensing under this rule.

(5) At the time of biennial medical license reregistration, all actively licensed physicians who dispense shall so indicate on the reregistration form.

(6) Any physician who dispenses drugs after January 1, 1988, without first registering with the Board will be fined \$100, and may be subject to further disciplinary action by the Board.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.010(5)
Hist.: ME 22-1987, f. & ef. 10-29-87; ME 9-1993, f. & cert. ef. 7-27-93; BME 1-2005, f. & cert. ef. 1-27-05

Adm. Order No.: BME 2-2005

Filed with Sec. of State: 1-27-2005

Certified to be Effective: 1-27-05

Notice Publication Date: 12-1-04

Rules Amended: 847-035-0030

Subject: The adopted rules allows EMT-Basics, in the event of a release of chemical agents, to administer atropine sulfate and pralidoxime chloride from a pre-loaded auto-injector device if they are given a direct order by their supervising physician, or they are under the direction of an EMT-Paramedic who is on the scene. The rules also add the administration of epinephrine by automatic injection device for anaphylaxis to the First Responder scope of practice, and correct the spelling of a drug in the EMT-Intermediate scope of practice.

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

847-035-0030

Scope of Practice

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

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

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

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

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

(6) An Oregon-certified First Responder or EMT, acting through standing orders, shall respect the patient's wishes including life-sustaining treatments. Physician supervised First Responders and EMTs shall request and honor life-sustaining treatment orders executed by a physician or a nurse practitioner, if available. A patient with life-sustaining treatment orders always requires respect, comfort and hygienic care.

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

- (a) Conduct primary and secondary patient examinations;
 - (b) Take and record vital signs;
 - (c) Utilize noninvasive diagnostic devices in accordance with manufacturer's recommendation;
 - (d) Open and maintain an airway by positioning the patient's head;
 - (e) Provide external cardiopulmonary resuscitation and obstructed airway care for infants, children, and adults;
 - (f) Provide care for soft tissue injuries;
 - (g) Provide care for suspected fractures;
 - (h) Assist with prehospital childbirth; and
 - (i) Complete a clear and accurate prehospital emergency care report form on all patient contacts and provide a copy of that report to the senior EMT with the transporting ambulance.
- (8) A First Responder may perform the following procedures only when the First Responder is providing emergency care as part of an agency which has a Board-approved supervising physician who has issued written standing orders to that First Responder authorizing the following:
- (a) Administration of medical oxygen;
 - (b) Open and maintain an airway through the use of an oropharyngeal and nasopharyngeal airway and pharyngeal suctioning devices;
 - (c) Operate a bag mask ventilation device with reservoir;
 - (d) Provision of care for suspected medical emergencies, including administering liquid oral glucose for hypoglycemia; and
 - (e) Administer epinephrine by automatic injection device for anaphylaxis;

ADMINISTRATIVE RULES

(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 dual lumen airway device in the practice of airway maintenance;

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

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

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

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

(B) Administer epinephrine by subcutaneous injection 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 preloaded auto-injector device, and perform endotracheal or pharyngoesophageal intubation, using protocols promulgated by the Section and adopted by the supervising physician. 100% of EMT-Basic actions taken pursuant to this section shall be reported to the Section via a copy of the prehospital emergency care report and shall be reviewed for appropriateness by Section staff and the Subcommittee on EMT Certification, Education and Discipline.

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

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

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

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

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

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

(c) Initiate and maintain an intraosseous infusion;

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

(e) Infuse any physiologic isotonic crystalloid solution;

(f) Draw peripheral blood specimens;

(g) Initiate or administer the following medications:

(A) Epinephrine 1:10,000;

(B) Atropine sulfate;

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

(D) Naloxone hydrochloride;

(E) Hypertonic glucose;

(F) Nitroglycerine for chest pain;

(G) Beta-2-specific nebulized bronchodilators;

(H) Morphine for pain management;

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

(i) Insert an orogastric tube;

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

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

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

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

(b) Initiate the following airway management techniques:

(A) Endotracheal intubation;

(B) Tracheal suctioning techniques;

(C) Needle cricothyrotomy; and

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

(c) Initiate a nasogastric tube;

(d) Initiate electrocardiographic monitoring and interpret presenting rhythm;

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

(f) Perform emergency cardioversion in the compromised patient;

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

(h) Initiate needle thoracostomy 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

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Adm. Order No.: BME 3-2005
Filed with Sec. of State: 1-27-2005
Certified to be Effective: 1-27-05
Notice Publication Date: 12-1-04
Rules Amended: 847-050-0041

Subject: The adopted administrative rules require the supervising physician of a physician assistant who is requesting emergency dispensing privileges to be registered with the Board as a dispensing physician.

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

847-050-0041

Prescription Privileges

(1) An Oregon grandfathered physician assistant may issue written or oral prescriptions for medications, Schedule III-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice description and approved by the Board if the physician assistant has passed a specialty examination approved by the Board prior to July 12, 1984, and the conditions in (2)(a) and (b) are met.

(2) A physician assistant may issue written or oral prescriptions for medications, Schedule II-V, which the supervising physician has determined the physician assistant is qualified to prescribe commensurate with the practice description and approved by the Board if the following conditions are met:

(a) The physician assistant has met the requirements of OAR 847-050-0020(1); or is an Oregon grandfathered physician assistant who has passed the Physician Assistant National Certifying Examination (PANCE).

(b) The applicant must document adequate training and/or experience in pharmacology commensurate with the practice description;

(c) The Board may require the applicant to pass a pharmacological examination which may be written, oral, practical, or any combination thereof based on the practice description.

(d) An application for Schedule II controlled substances prescription privileges must be submitted to the Board by the physician assistant's supervising physician and must be accompanied by the practice description of the physician assistant. The Schedule II controlled substances prescription privileges of a physician assistant shall be limited by the practice description approved by the board and may be restricted further by the supervising physician at any time. To be eligible for Schedule II controlled substances prescription privileges, a physician assistant must be certified by the National Commission for the Certification of Physician Assistants and must complete all required continuing medical education coursework.

(3) The prescribing physician assistant, to be authorized to issue prescriptions for Schedules II through V controlled substances, must be registered with the Federal Drug Enforcement Administration.

(4) Written prescriptions shall be on a blank which includes the printed or handwritten name, office address, and telephone number of the supervising physician and the printed or handwritten name of the physician assistant. The prescription shall also bear the name of the patient and the date on which the prescription was written. The physician assistant shall sign the prescription and the signature shall be followed by the letter "P.A." Also the physician assistant's Federal Drug Enforcement Administration number shall be shown on prescriptions for controlled substances.

(5) A licensed physician assistant may make application to the Board for emergency administering and dispensing authority. The application must be submitted in writing to the Board by the supervising physician and must explain the need for the request, as follows:

(a) Location of the practice site;

(b) Accessibility to the nearest pharmacy, and

(c) Medical necessity for emergency administering or dispensing.

(6) The dispensed medication must be pre-packaged by a licensed pharmacist, manufacturing drug outlet or wholesale drug outlet authorized to do so under ORS 689 and the physician assistant shall maintain records of receipt and distribution.

(7) A physician who supervises a physician assistant who is applying for emergency dispensing privileges must be registered with the Board of Medical Examiners as a dispensing physician.

Stat. Auth.: ORS 677.265

Stats. Implemented: ORS 677.265 & 677.545

Hist.: ME 1-1979, f. & ef. 1-29-79; ME 5-1979, f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 6-1982, f. & ef. 10-27-82; ME 10-1984, f. & ef. 7-20-84; ME 5-1986, f. & ef. 4-23-86; ME 16-1987, f. & ef. 8-3-87; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1994, f. & cert. ef. 1-24-94; BME 2-2000, f. & cert. ef. 2-7-00; BME 4-2002, f. & cert. ef. 4-23-02; BME 4-2002, f. & cert. ef. 4-23-02; BME 13-2003, f. & cert. ef. 7-15-03; BME 8-2004, f. & cert. ef. 4-22-04; BME 3-2005, f. & cert. ef. 1-27-05

Board of Naturopathic Examiners Chapter 850

Adm. Order No.: BNE 1-2005
Filed with Sec. of State: 2-4-2005
Certified to be Effective: 2-4-05
Notice Publication Date: 12-1-04

Rules Amended: 850-020-0000, 850-020-0005, 850-020-0020, 850-020-0025, 850-020-0030

Rules Repealed: 850-020-0010, 850-020-0015

Subject: This rule amends Division 20 for clarity as to Board's authority to approve accrediting bodies for schools of Naturopathic medicine.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-020-0000

Scope and Purpose

(1) ORS 685.060 requires that one of the minimum educational requirements for licensure to practice naturopathic medicine in Oregon is graduation from a naturopathic school or college approved by the State Board of Naturopathic Examiners which teaches adequate courses in all subjects necessary to the practice of naturopathic medicine. The statute also specifies required subjects and subjects which the Board may not require, and permits the Board to require other subjects at its discretion.

(2) The Board of Naturopathic Examiners approves schools of naturopathic medicine that have met the accreditation standards of the Council on Naturopathic Medical Education (CNME) and meets the standards of ORS 685.060 and any rules promulgated by the Board.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.010

Hist.: NE 1-1981, f. & ef. 12-7-81; BNE 1-2005, f. & cert. ef. 2-4-05

850-020-0005

Exercise of Board Authority

(1) The Board retains its authority to review any school for approval even if it has met the standards of the CNME, other Board approved regional accrediting bodies, or both.

(2) The Board may revoke the approval of a school if it fails to meet the standards of the CNME, other Board approved accrediting bodies, or the Board.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.010

Hist.: NE 1-1981, f. & ef. 12-7-81; BNE 1-2005, f. & cert. ef. 2-4-05

850-020-0020

Standards

(1) The criteria used by the Board in considering a naturopathic college's application for approval shall include, but not be limited to the following:

(a) Program's mission and objectives;

(b) Organization and administration;

(c) Finances;

(d) Faculty;

(e) Student Services;

(f) Core Curriculum;

(g) Clinical education;

(h) Continuing education and Certification programs;

(i) Library and Information resources;

(j) Research; and

(k) Physical resources.

(1) The Board may request any additional information it feels pertinent to qualifying a school of naturopathic medicine.

(2) When appropriate, the Board will evaluate the criteria to ensure that the college is financially stable and that the college has resources and will produce a curriculum and level of instruction that should produce graduates who are competent to practice naturopathic medicine in Oregon.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.010

Hist.: NE 1-1981, f. & ef. 12-7-81; NE 3-1997(Temp), f. 12-1-97, cert. ef. 12-2-97 thru 5-31-98; BNE 3-1998, f. 7-31-98, cert. ef. 8-3-98; BNE 5-2001, f. & cert. ef. 8-10-01; BNE 1-2005, f. & cert. ef. 2-4-05

850-020-0025

Review Procedures

(1) The Board may acknowledge the adequacy of accreditation by the Council on Naturopathic Medical Education, the Council on Higher

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Education Accreditation or other accrediting agency approved by resolution of the Board.

(2) Final action for approval by the Board may be held open to the public and the applicant college will be invited to attend.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.010

Hist.: NE 1-1981, f. & ef. 12-7-81; BNE 1-2005, f. & cert. ef. 2-4-05

850-020-0030

Revocation of Approval

Approval obtained under ORS 685.060 may be revoked for proper cause by the Board at its discretion, after a hearing. Such hearing shall be held in accordance to Model Rules of Procedure applicable to contested cases.

Stat. Auth.: ORS 685.125

Stats. Implemented: 685.010

Hist.: NE 1-1981, f. & ef. 12-7-81; BNE 1-2005, f. & cert. ef. 2-4-05

Adm. Order No.: BNE 2-2005

Filed with Sec. of State: 2-4-2005

Certified to be Effective: 2-4-05

Notice Publication Date: 12-1-04

Rules Amended: 850-010-0220

Subject: Clarifies what a Naturopathic physician can prescribe, dispense, and order.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-010-0220

Authority to Prescribe, Dispense, and Order

Naturopathic physicians shall be allowed to prescribe, dispense, and order the following:

(1) All substances recommended by the Formulary Council and approved by the Board.

(a) All biological substances including extracts and/or their products and residues.

(b) All topical preparations.

(2) All vitamins, minerals, trace minerals, enzymes, and food.

(3) All mechanical devices, except those that require major surgical intervention.

(4) All homeopathic preparations.

(5) All laboratory and diagnostic procedures.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.030

Hist.: NE 2-1984, f. & ef. 2-28-84; BNE 2-2005, f. & cert. ef. 2-4-05

Adm. Order No.: BNE 3-2005

Filed with Sec. of State: 2-4-2005

Certified to be Effective: 2-4-05

Notice Publication Date: 12-1-04

Rules Amended: 850-010-0225

Subject: Updates the formulary compendium used by naturopathic physicians and pharmacists.

Rules Coordinator: Anne Walsh—(503) 731-4045

850-010-0225

Naturopathic Formulary Compendium

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

(1) Abacavir;

(2) Acarbose;

(3) Acetic Acid;

(4) Acetylcysteine;

(5) Acitretin;

(6) Acyclovir;

(7) Adapalene;

(8) Adenosine Monophosphate;

(9) Albuterol Sulfate;

(10) Alendronate;

(11) Alprostadil;

(12) Amino Acids;

(13) Amino Aspirins;

(14) Aminoglycosides;

(15) Aminolevulinic Acid;

(16) Aminophylline;

(17) Aminosalicyclic Acid;

(18) Ammonium Chloride;

(19) Ammonium lactate lotion 12%;

(20) Amoxicillin;

(21) Amoxicillin & Clavulanate;

(22) Amphotericin B;

(23) Ampicillin;

(24) Ampicillin & Sulbactam;

(25) Anastrozole;

(26) Anthralin;

(27) Atorvastatin;

(28) Atropine;

(29) Atropine Sulfate;

(30) Auranofin;

(31) Azelaic Acid;

(32) Azithromycin;

(33) Bacampicillin;

(34) Bacitracin;

(35) Becaplermin;

(36) Belladonna;

(37) Benzodiazepines;

(38) Benzoic Acid;

(39) Benzonatate;

(40) Betaine;

(41) Betamethasone;

(42) Bethanechol Chloride;

(43) Bichloroacetic Acid*;

(44) Bimatoprost Ophthalmic Solution 0.03%;

(45) Biologicals;

(46) Biphosphonate;

(47) Bromocriptine;

(48) Budesonide;

(49) Buprenorphine;

(50) Butorphanol;

(51) Cabergoline;

(52) Calcipotriene;

(53) Calcitonin;

(54) Calcitriol;

(55) Carbamide Peroxide;

(56) Carbidopa;

(57) Carbol-Fuchsin;

(58) Captopril;

(59) Cefaclor;

(60) Cefdinir;

(61) Cefibuten;

(62) Cefadroxil;

(63) Cefditoren;

(64) Cefixime;

(65) Cefonicid Sodium;

(66) Cefpodoxime Proxetil;

(67) Cefprozil;

(68) Ceftributen;

(69) Cefuroxime;

(70) Celecoxib;

(71) Cellulose Sodium Phosphate;

(72) Cenestin;

(73) Cephalixin;

(74) Cephadrine;

(75) Chirocaine*;

(76) Chloramphenicol;

(77) Citrate Salts;

(78) Clarithromycin;

(79) Clindamycin;

(80) Clloquinol;

(81) Clostridium botulinum toxin (ab);

(82) Cloxacillin;

(83) Codeine;

(84) Colchicine;

(85) Colistimethate;

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- (86) Collagenase;
(87) Condylox;
(88) Cortisone;
(89) Coumadin;
(90) Cromolyn Sodium;
(91) Cyanocobalamin;
(92) Cycloserine;
(93) Danazol;
(94) Deferoxamine / Desferroxamine (Board approved certification required before therapeutic IV chelation is allowed);
(95) Demeclocycline Hydrochloride;
(96) Desmopressin;
(97) Desoxyribonuclease;
(98) Dexamethasone;
(99) Dextran;
(100) Dextromethorphan;
(101) Dextrose;
(102) Dextrothyroxine;
(103) Dicloxacillin;
(104) Dihydroergotamine Migranal;
(105) Didanosine;
(106) Dimethyl Sulfone (DMSO);
(107) Digitalis;
(108) Digitoxin;
(109) Digoxin;
(110) Dinoprostone;
(111) Diphylline;
(112) Dirithromycin;
(113) DMPS (Board approved certification required before therapeutic IV chelation is allowed);
(114) DMSA;
(115) Doxercalciferol;
(116) Doxycycline;
(117) Dronabinol;
(118) Dyclonine;
(119) EDTA (Board approved certification required before therapeutic IV chelation is allowed);
(120) Electrolyte Solutions;
(121) Emtricitabine;
(122) Ephedrine;
(123) Epinephrine*;
(124) Epinephrine (auto-inject);
(125) Ergoloid Mesylates;
(126) Ergonovine Maleate;
(127) Ergotamine;
(128) Erythromycins;
(129) Erythropoietin;
(130) Estradiol;
(131) Estriol;
(132) Estrogen-Progestin Combinations;
(133) Estrogens, Conjugated;
(134) Estrogen, Esterified;
(135) Estrone;
(136) Estropipate;
(137) Ethyl Chloride;
(138) Etidronate;
(139) Famciclovir;
(140) Fentanyl;
(141) Fibrinolysin;
(142) Flavoxate;
(143) Fluconazole;
(144) Fludrocortisone Acetate;
(145) Flunisolide;
(146) Fluorides;
(147) Fluoroquinolones;
(148) Fluoroquinolines;
(149) Fluorouracil;
(150) Fluticasone propionate;
(151) Fluvastatin;
(152) Gabapentin;
(153) Galantamine H. Br.;
(154) Ganciclovir;
(155) Gentamicin;
(156) Gentian Violet;
(157) Griseofulvin;
(158) Guaifenesin;
(159) Heparin - subcutaneous, sublingual and heparin locks;
(160) Hexachlorophene;
(161) Homatropine Hydrobromide*;
(162) Human Growth Hormone;
(163) Hyaluronic Acid;
(164) Hyaluronidase;
(165) Hydrocodone;
(166) Hydrocortisone;
(167) Hydrogen Peroxide;
(168) Hydromorphone;
(169) Hydroquinone;
(170) Hydroxypolyethoxydodecane*;
(171) Hyoscyamine;
(172) Imiquimod Cream (5%);
(173) Immune Globulins*;
(174) Insulin;
(175) Interferon Alpha b w/Ribavirin;
(176) Iodine;
(177) Iodoquinol;
(178) Iron Preparations;
(179) Isosorbide Dinitrate;
(180) Isotretinoin;
(181) Itraconazole;
(182) Kanamycin Sulfate;
(183) Ketoconazole;
(184) Lactulose;
(185) Lamivudine;
(186) Letrozole;
(187) Leucovorin Calcium;
(188) Levalbuteral;
(189) Levodopa;
(190) Levonorgestrel;
(191) Levorphanol;
(192) Levothyroxine;
(193) Lincomycin;
(194) Lindane;
(195) Liothyronine;
(196) Liotrix;
(197) Lisinopril;
(198) Lisuride;
(199) Lithium;
(200) Lovastatin;
(201) Mebendazole;
(202) Meclizine;
(203) Medroxyprogesterone;
(204) Medrysone;
(205) Megestrol Acetate;
(206) Mercury, Ammoniated;
(207) Mesalamine;
(208) Metformin;
(209) Methadone;
(210) Methoxsalen;
(211) Methscopolamine;
(212) Methylergonovine;
(213) Methylprednisolone;
(214) Methylsulfonylmethane (MSM);
(215) Methyltestosterone;
(216) Methysergide;
(217) Metronidazole;
(218) Miglitol;
(219) Minerals (Oral & Injectable);
(220) Minocycline;
(221) Misoprostol;
(222) Monobenzone;
(223) Morphine;
(224) Mupirocin;
(225) Nafarelin acetate;
(226) Naloxone;
(227) Natamycin;
(228) Nicotine;
(229) Nitroglycerin;
(230) Novobiocin;
(231) Nystatin;
(232) Olsalazine;

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- (233) Omeprazole;
(234) Opium;
(235) Over the Counter (OTC) substances, not to exceed their current
OTC dose or dosage forms;
(236) Oxacillin;
(237) Oxamniquine;
(238) Oxaprozin;
(239) Oxtriphylline;
(240) Oxycodone;
(241) Oxygen;
(242) Oxymorphone;
(243) Oxytetracycline;
(244) Oxytocin*;
(245) Pancrelipase;
(246) Papain;
(247) Papavarine;
(248) Paramethasone;
(249) Paregoric;
(250) Penciclovir;
(251) Penicillamine (Board approved certification required before
therapeutic IV chelation is allowed);
(252) Penicillin;
(253) Pentosan;
(254) Pentoxifylline;
(255) Pergolide;
(256) Permethrin;
(257) Phenazopyridine;
(258) Phenylalkylamine;
(259) Phenylephrine*;
(260) Physostigmine;
(261) Pilocarpine;
(262) Pimecrolimus Cream 1%;
(263) Podophyllum Resin;
(264) Polymyxin B Sulfate;
(265) Polysaccharide-Iron Complex;
(266) Potassium Iodide;
(267) Potassium Supplements;
(268) Pramoxine;
(269) Pravastatin;
(270) Prednisolone;
(271) Prednisone;
(272) Progesterone;
(273) Progestins;
(274) Prostaglandins;
(275) Proton Pump inhibitor;
(276) Pyrazinamide;
(277) Pyrethrins;
(278) Quinidine;
(279) Quinilones;
(280) Quinolines;
(281) Quinine Sulfate;
(282) Rauwolfia Alkaloids;
(283) Rho(D) Immune Globulins*;
(284) Rifabutin;
(285) Rifampin;
(286) Risendronate;
(287) Salicylamide;
(288) Salicylate Salts;
(289) Salicylic Acid;
(290) Salsalate;
(291) Scopolamine;
(292) Selenium Sulfide;
(293) Silver Nitrate;
(294) Simvastatin;
(295) Sodium Polystyrene Sulfonate;
(296) Sodium Thiosulfate;
(297) Spirolactone;
(298) Stavudine;
(299) Spectinomycin;
(300) Sucralfate;
(301) Sulfasalazine;
(302) Sulfonamide/Trimethoprim/Sulfones;
(303) Tazarotene topical gel;
(304) Tacrolimus;
(305) Tenofovir;
(306) Testosterone;
(307) Tetracycline;
(308) Theophylline;
(309) Thiabendazole;
(310) Thyroid;
(311) Thyroxine;
(312) Tibolone;
(313) Tiludronate;
(314) Tinidazole;
(315) Tobramycin;
(316) Topical steroids;
(317) Tramadol;
(318) Trandolapril;
(319) Troleandomycin;
(320) Tretinoin;
(321) Triamcinolone;
(322) Triamterene;
(323) Trichloroacetic Acid*;
(324) Trioxsalen;
(325) Triptans;
(326) Troleandomycin;
(327) Undecylenic Acid;
(328) Urea;
(329) Urised;
(330) Ursodiol;
(331) Valacyclovir;
(332) Vancomycin;
(333) Verapamil;
(334) Vidarabine;
(335) Vitamins (Oral & Injectable);
(336) Yohimbine;
(337) Zalcitabine;
(338) Zidovudine;
(339) Zolpidem;
(340) Local Anesthetics:
(a) Benzocaine*;
(b) Bupivacaine*;
(c) Chloroprocaine*;
(d) Dyclonine*;
(e) Etidocaine*;
(f) Lidocaine*;
(g) Lidocaine (non-injectable dosage form);
(h) Mepivocaine*;
(i) Prilocaine*;
(j) Procaine*;
(k) Tetracaine*.
(341) Vaccines:
(a) BCG*;
(b) Cholera*;
(c) Diphtheria*;
(d) DPT*;
(e) Haemophilus b Conjugate*;
(f) Hepatitis A Virus*;
(g) Hepatitis B*;
(h) Influenza Virus*;
(i) Japanese Encephalitis Virus*;
(j) Measles Virus*;
(k) Mumps Virus*;
(l) Pertussis*;
(m) Plague*;
(n) Pneumococcal*;
(o) Poliovirus Inactivated*;
(p) Poliovirus-Live Oral*;
(q) Rabies*;
(r) Rubella*;
(s) Smallpox*;
(t) Tetanus IG*;
(u) Tetanus Toxoid*;
(v) Typhoid*;
(w) Varicella*;
(x) Yellow Fever*.
(342) Skin Tests:
(a) Diphtheria*;
(b) Mumps*;
(c) Tuberculin*.
Stat. Auth.: ORS 685.125

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Stats. Implemented: ORS 681.145

Hist.: NE 2-1990, f. & cert. ef. 11-8-90; NE 1-1997, f. 10-13-97, cert. ef. 10-20-97; BNE 1-1999, f. 6-24-99, cert. ef. 6-25-99; BNE 1-2000, f. & cert. ef. 1-10-00; BNE 3-2000, f. & cert. ef. 8-16-00; BNE 2-2001, f. & cert. ef. 2-7-01; BNE 4-2001, f. & cert. ef. 5-25-01; BNE 8-2001, f. & cert. ef. 12-7-01; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; BNE 3-2005, f. & cert. ef. 2-4-05

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: 1PB 42, f. & ef. 4-6-76; 1PB 54, f. & ef. 12-13-77; 1PB 1-1978, f. & ef. 2-21-78; 1PB 7-1978(Temp), f. & ef. 7-1-78; 1PB 9-1978, f. & ef. 10-23-78; BP 1-2001, f. & cert. ef. 3-5-01; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 1-2005, f. & cert. ef. 2-7-05

Board of Pharmacy Chapter 855

Adm. Order No.: BP 1-2005

Filed with Sec. of State: 2-7-2005

Certified to be Effective: 2-7-05

Notice Publication Date: 1-1-05

Rules Amended: 855-001-0000

Subject: To clarify that the Board will always give notice prior to permanently adopting, amending or repealing any rule as required by ORS 183.335(1).

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

855-001-0000

Notice of Proposed Rule

Prior to the permanent adoption, amendment, or repeal of any rule, the State Board of Pharmacy shall give notice of its intended action as required in ORS 183.335(1):

(1) In a manner established by rule adopted by the Board under ORS 183.341(4), which provides a reasonable opportunity for interested persons to be notified of the agency's proposed action;

(2) In the bulletin referred to in ORS 183.360 at least 21 days prior to the effective date;

(3) To persons who have requested notice pursuant to ORS 183.335(8) at least 28 days before the effective date; and

(4) To persons specified in ORS 183.335(15) at least 49 days before the effective date.

(5) With the exception of rules under section (7) of this rule, mail such notice to the following persons or organizations, where the Board's Executive Officer determines that such person or organization would be likely to have an interest in the subject matter of the proposal or would be likely to notify interested persons of the proposal:

(a) Oregon State Pharmacist Association and local affiliated organizations;

(b) Portland Retail Druggists Association;

(c) Professional Society of Pharmacists;

(d) Oregon Society of Health System Pharmacists;

(e) Oregon Society of Consultant Pharmacists;

(f) Affected licensees of the Board; and

(g) Oregon State University College of Pharmacy

(6) In the case of rules relating to Aerosols and Laetrile, in addition to mailings under section (4) of this rule, mail such notice to: United Grocers, Inc.

(7) In the case of rules relating to DMSO, in addition to mailings under section (4) of this rule, mail such notice to:

(a) Oregon State Board of Medical Examiners;

(b) School of Medicine (Oregon Health Sciences University);

(c) Oregon Medical Association;

(d) Local medical societies;

(e) Oregon Health Care Association.

(8) In the case of rules relating to controlled substances, in addition to mailings under section (4) of these rules, mail such notice to:

(a) Oregon State Board of Medical Examiners;

(b) School of Medicine (Oregon Health Sciences University);

(c) Oregon Medical Association;

(d) Local medical societies;

(e) Oregon Health Care Association;

(f) Oregon State Board of Dentistry;

(g) Oregon State Association of Podiatry Examiners;

(h) Oregon State Board of Veterinary Medical Examining Board Examiners;

(i) Oregon State Police;

(j) Oregon Department of Public Safety Standards and Training.

(k) Oregon Police Chief Association;

(l) Oregon District Attorneys Association;

(m) Oregon State Bar;

(n) Oregon Board of Naturopathic Examiners; and

(o) Oregon Board of Nursing.

Adm. Order No.: BP 2-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 12-1-04

Rules Adopted: 855-041-0600, 855-041-0610, 855-041-0620

Rules Amended: 855-110-0007, 855-110-0010

Subject: This rule will allow pharmacies the ability to safely provide pharmacy services through an automated pharmacy system. These systems will be especially useful in rural areas where local pharmacies are a considerable distance from the customer. The rule defines the systems, duties and responsibilities of the pharmacist in charge, and the drug delivery and control for the remote dispensing machine.

Rules Coordinator: Karen Maclean—(971) 673-0001

855-041-0600

Definitions

(1) "Automated Pharmacy System" (APS) means a mechanical system that performs operations or activities, including but not limited to, those related to the storage, packaging, dispensing, or distribution of medications, but not including compounding or administration, and that collects, controls, and maintains all transaction information.

(2) "Remote Dispensing Machine" (RDM) means a component of an Automated Pharmacy System that contains prepackaged drugs for dispensing.

(3) "Responsible Pharmacy" means the licensed pharmacy that is responsible for the APS and RDM.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05

855-041-0610

Duties and Responsibilities of the Pharmacist-in-Charge.

Each RDM must be under the supervision of the Pharmacist-in-Charge of the Responsible Pharmacy. The Pharmacist-in-Charge must:

(1) Develop written policies and procedures prior to installation of the RDM that:

(a) Ensure safety, accuracy, security, and patient confidentiality;

(b) Define access to the RDM and to medications contained within or associated with the RDM, including but not limited to policies that assign, discontinue, or change access to the RDM and medications.

(c) Ensure that access to the medications complies with state and federal laws and regulations.

(2) Obtain written approval by the Board prior to installing any RDM.

(3) Train all personnel who will access the APS (including the RDM) before being allowed access to the APS. Training must ensure the competence and ability of all personnel who operate any component of the APS. Documentation of original training and continuing education must be kept both in the pharmacy and at the site of the RDM, and readily available for inspection by the Board.

(4) Ensure that the RDM is in good working order and accurately dispenses the correct strength, dosage form, and quantity of the drug prescribed while maintaining appropriate record-keeping and security safeguards.

(5) Implement an ongoing quality assurance program that monitors performance of the APS, including the RDM, and the personnel who access it.

(6) Notify the Board within 15 days of removal or closure of the RDM and the disposition of drugs contained in the RDM before it was removed or closed.

(7) Ensure that the RDM is stocked accurately and in accordance with established, written policies and procedures. A pharmacist must check the accuracy of the product supplied for stocking the machine.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.205

Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05

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855-041-0620

Drug Delivery and Control

(1) Each RDM must be registered with the Board, under the control of and connected via computer with a Responsible Pharmacy, but not located in a pharmacy. RDMs must be used only in settings with an established program of pharmaceutical care that ensures prescription orders are reviewed by a pharmacist before release to the patient. The Responsible Pharmacy must establish the policies and procedures necessary to fulfill the requirements of all applicable state and federal laws and regulations.

(2) The following must be conspicuously displayed at the site of the RDM:

- (a) RDM license;
- (b) DEA registration if required;
- (c) A certified copy of the Responsible Pharmacy license; and
- (d) A certified copy of the Pharmacist-In-Charge license.

(3) Documentation as to type of equipment, serial numbers, content, policies and procedures, and location shall be maintained in the pharmacy for review by the board. Such documentation must include, but is not limited to:

- (a) Location of RDM(s);
- (b) Manufacturer's name and model for each RDM;
- (c) Description of how the RDM is used;
- (d) Quality assurance procedures to determine continued appropriate use of the automated device; and
- (e) Policies and procedures for training of appropriate personnel, system operation, safety, security, accuracy, patient confidentiality, oral counseling by a pharmacist or pharmacist-intern, access, and malfunction.

(4) Policies and procedures addressing the operation of the RDM must be maintained in the pharmacy responsible for the APS and at the location at which the RDM has been installed.

(5) All events involving the contents of the RDM must be recorded electronically. Records must be maintained by the pharmacy for a minimum of three years and must be readily available to the Board. Such records shall include:

- (a) Identity of RDM accessed;
- (b) Identification of the individual accessing the RDM;
- (c) Type of transaction;
- (d) Date and time of transaction;
- (e) Name, strength, dosage form, and quantity of the drug accessed;
- (f) Name of the patient for whom the drug was ordered;
- (g) Name of the prescribing practitioner
- (h) Such additional information as the pharmacist-in-charge may deem necessary; and

(6) Only an Oregon registered technician or an Oregon licensed pharmacist may have access to the RDM.

(7) Only an Oregon registered technician or an Oregon licensed pharmacist may stock medications in the RDM.

(8) All containers of medications stored in the RDM shall be packaged and labeled in accordance with state and federal laws and regulations, including OAR 855-041-0065(6)(a-k).

(9) All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.

(10) Oral counseling, as required by OAR 855-041-0100, shall be provided by the pharmacist at the time of dispensing by a two-way audio and video hookup with the Responsible Pharmacy.

(11) The Automated Pharmacy Systems shall provide a mechanism for securing and accounting for wasted, discarded or unused medications in accordance with existing state and federal laws and regulations.

(12) The RDM must be clearly marked with the name, address, and phone number of the Responsible Pharmacy and Pharmacist-In-Charge.

(13) A Responsible Pharmacy located outside of Oregon that operates a RDM in Oregon must be currently licensed and in good standing in Oregon. The Pharmacist-In-Charge must also be currently licensed and in good-standing both in Oregon and in the state in which the Responsible Pharmacy is located.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.205
Hist.: BP 2-2005, f. 2-14-05, cert. ef. 3-1-05

855-110-0007

Fees for Registration, Renewal, and Reinspection of Drug Outlets

(1) County Health Clinic. Expires March 31 annually. — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(2) Drug room fee. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$75.

(3) Manufacturer. Expires September 30 annually — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(4) Medical Device, Equipment & Gas (MDEG) Class C. Expires January 31 annually. — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(5) Nonprescription Class A. Expires January 31 annually — \$50. Delinquent renewal fee (postmarked after December 31) — \$25.

(6) Nonprescription Class B. Expires January 31 annually — \$25. Delinquent renewal fee (postmarked after December 31). — \$10.

(7) Nonprescription Class D. Expires January 31 annually — \$100. Delinquent renewal fee (postmarked after December 31) — \$25.

(8) Prophylactic and/or Contraceptive Wholesaler and/or Manufacturer — \$50. Expires December 31 annually.

(9) Reinspection fee — \$100. Applies to any reinspection of a drug outlet occasioned to verify corrections of violations found in an initial inspection.

(10) Retail or Institutional Drug Outlet. Expires March 31 annually — \$175. Delinquent renewal fee (postmarked after February 28) — \$75.

(11) Student Health Center. Expires March 31 annually — \$75. Delinquent renewal fee (postmarked after February 28) — \$25.

(12) Veterinary Drug Outlet, Expires September 30 annually \$00. — Delinquent renewal fee (postmarked after August 31) — \$00.

(13) Wholesaler. Expires September 30 annually. — \$400. Delinquent renewal fee (postmarked after August 31) — \$100.

(14) Remote Dispensing Machine. Expires March 31 annually — \$100. Due by February 28 annually.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.135
Hist.: PB 1-1996, f. & cert. ef. 4-5-96; PB 1-1997, f. & cert. ef. 9-22-97; BP 3-1998, f. & cert. ef. 3-23-98; BP 2-2001(Temp), f. & cert. ef. 7-26-01 thru 1-22-02; BP 1-2002, f. & cert. ef. 1-8-02; BP 4-2002, f. 6-27-02, cert. ef. 7-1-02; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05

855-110-0010

Fees for Registration for Controlled Substances under ORS 475.095

(1) Animal euthanasia controlled substance registration; fee — \$25 annually.

(2) County Health Clinics controlled substance registration fee — \$25 annually.

(3) Drug Room controlled substance registration fee — \$25 annually.

(4) Manufacturers controlled substance registration fee — \$50 annually.

(5) Retail or Institutional Drug Outlet controlled substance registration fee — \$25 annually.

(6) Schedule II Precursor Registration fee — \$25 annually.

(7) Wholesalers controlled substance registration fee — \$50 annually.

(8) Remote Dispensing Machine controlled substance registration fee — \$25 annually.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.135
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 6-1982, f. & ef. 8-6-82; 1PB 2-1984, f. & ef. 3-7-84; PB 15-1989, f. & cert. ef. 12-26-89; PB 10-1990, f. & cert. ef. 12-5-90; PB 3-1991, f. & cert. ef. 9-19-91; PB 1-1996, f. & cert. ef. 4-5-96; BP 2-2005, f. 2-14-05, cert. ef. 3-1-05

Bureau of Labor and Industries Chapter 839

Adm. Order No.: BLI 6-2005

Filed with Sec. of State: 2-8-2005

Certified to be Effective: 2-11-05

Notice Publication Date: 1-1-05

Rules Amended: 839-050-0050, 839-050-0220, 839-050-0360

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

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

839-050-0050

Timeliness

(1) The administrative law judge may disregard any document that is filed with the Hearings Unit beyond the established number of days for filing.

(2) When a participant requires additional time to submit any document, a written request for such extension must be filed with and received by the Hearings Unit no later than the date set for filing of the document in question, except that the administrative law judge has discretion to permit

ADMINISTRATIVE RULES

a participant to make an oral motion for an extension of time. When the administrative law judge allows a participant to make an oral motion for extension of time, the administrative law judge will promptly notify the other participants of the motion and give them an opportunity to respond, either orally or in writing. When a participant files a written motion for extension of time, the other participants will have seven days after service of the motion in which to file a written response, unless that time is altered by order of the administrative law judge.

(3) The administrative law judge may grant such an extension of time only in situations when the requesting participant shows good cause for the need for more time or when no other participant opposes the request. The administrative law judge will promptly notify the participant requesting the extension whether it will be allowed.

(4) When an extension of time is allowed to a participant, the administrative law judge will advise all participants of the new due date, and will state whether the same extension of time applies to the other participants.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820, 659A.845 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0040; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 6-2005, f. 2-8-05, cert. ef. 2-11-05

839-050-0220

Informal Disposition of Contested Case

(1) An informal disposition of a contested case occurs when, after the Agency issues a charging document, a case is resolved by stipulation, agreed settlement, consent order, settlement agreement, or default.

(2) When a party is interested in settling a case prior to the contested case hearing, the party should contact the Agency case presenter or other individual named in the notice of hearing who is scheduled to present the case for the Agency. Settlement negotiations do not serve as a basis for a postponement of the hearing, and participants should continue to prepare for hearing until they reach an agreement to settle and the Hearings Unit is so notified. An agreement to settle is reached when the participants have made an agreement to resolve the contested case and have agreed, orally or in writing, to the specific conditions of their agreement.

(3) When an agreement to settle is reached before the date of hearing, the participants will immediately notify the Hearings Unit. If such notice is given before the case summary due date, the case summary need not be filed by the participants that have reached an agreement to settle. The participants will file settlement documents with the Hearings Unit as soon as they are fully executed. If the participants have not filed fully executed documents with the Hearings Unit before the time set for hearing, at that time the participants must:

- (a) Submit all necessary settlement documents, fully executed; or
- (b) Put the settlement terms in writing and fully execute the written document as provided in subsection (8) of this rule.

(4) When the participants notify the Hearings Unit before a hearing that an agreement to settle has been reached, but fail to submit fully executed settlement documents before or at the time set for hearing and disagree on the record as to the specific terms of the agreement to settle, the administrative law judge may hold the hearing as scheduled if the participants agree or reschedule the hearing as soon as practicable, with the date being determined by the administrative law judge. Unless the administrative law judge and all participants agree, the new date of hearing will be no sooner than 14 days from the original date set for hearing. No further postponement will be allowed on the basis of a purported settlement and the case summary requirement will not be waived for the rescheduled hearing as provided in subsection (3) of this rule.

(5) Fully executed settlement documents submitted to the Hearings Unit will not contain terms that the Agency lacks the authority to enforce or is not a party to, such as an agreement by the claimant(s) or complainant(s) not to pursue legal actions against respondent(s) other than the claim or complaint being settled.

(6) Fully executed settlement documents submitted to the Hearings Unit will not contain provisions requiring the settlement terms to be confidential or requiring the claimant(s), complainant(s), or the Agency to keep the settlement terms confidential.

(7) Participants waive their right to a contested case hearing by their signatures on fully executed settlement documents.

(8) When a contested case is resolved by informal disposition other than default (see OAR 839-050-0330), the administrative law judge will incorporate the settlement terms into a Final Order on Informal Disposition. When an Order of Determination or Notice of Intent has been issued, but a Notice of Hearing has not been issued, the fully executed settlement docu-

ment may be incorporated into a Final Order on Informal Disposition by either the Administrator of the Wage and Hour Division or an administrative law judge.

(a) The Hearings Unit will deliver or mail a copy of a Final Order on Informal Disposition issued by an administrative law judge, and the Wage and Hour Division will deliver or mail a copy of a Final Order on Informal Disposition issued by the Administrator of the Wage and Hour Division, to each participant and, if applicable, to the participant's attorney of record.

(b) A Final Order on Informal Disposition is not subject to ORS 183.470.

(c) A Final Order on Informal Disposition is not subject to judicial review.

(d) Within 60 days after a Final Order on Informal Disposition is issued, a participant may petition the Bureau of Labor and Industries to set aside the order on the ground that the informal disposition was obtained by fraud or duress.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 183.415(5), 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 6-1989, f. & cert. ef. 9-5-89; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0200; BL 12-1996, f. & cert. ef. 12-10-96; BLI 3-1998, f. & cert. ef. 2-11-98; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 6-2005, f. 2-8-05, cert. ef. 2-11-05

839-050-0360

Post-Hearing Briefs

(1) The administrative law judge may request a post-hearing brief from a participant. The administrative law judge will state the specific issues to be briefed and the deadline for filing the brief.

(2) If a party's brief contains legal argument as defined in OAR 839-050-0110(4), the party must file its brief through counsel, except if the party is an individual who is not required under OAR 839-050-0110(1) to be represented by counsel and personally files the brief. The Agency may respond to the administrative law judge's request by filing a legal brief from the Attorney General or an Agency statement of policy.

(3) Nothing in this rule limits the administrative law judge's authority to request a statement of policy from the Agency.

Stat. Auth.: ORS 183 & 651.060(4)
Stats. Implemented: ORS 279.361, 279.370, 652.332(3), 653.065(1), 658.115, 658.407(3), 658.820 & 659A.850
Hist.: BL 8-1986, f. & ef. 9-2-86; BL 10-1988, f. & cert. ef. 6-16-88; BL 4-1993(Temp), f. 4-7-93, cert. ef. 4-12-93; BL 8-1993, f. & cert. ef. 9-3-93, Renumbered from 839-030-0155; BL 12-1996, f. & cert. ef. 12-10-96; BLI 2-2000, f. & cert. ef. 1-27-00; BLI 15-2004, f. 11-1-04, cert. ef. 11-3-04; BLI 6-2005, f. 2-8-05, cert. ef. 2-11-05

Commission for the Blind Chapter 585

Adm. Order No.: CFTB 1-2005

Filed with Sec. of State: 2-11-2005

Certified to be Effective: 2-11-05

Notice Publication Date: 1-1-05

Rules Amended: 585-001-0000, 585-010-0115, 585-010-0120, 585-010-0125, 585-010-0130, 585-010-0150, 585-010-0210, 585-010-0215, 585-010-0220, 585-010-0230, 585-010-0310, 585-020-0010, 585-020-0020, 585-020-0035, 585-020-0060

Rules Renumbered: 585-010-0300 to 585-001-0006

Subject: Division I - Procedural Rules: a. updates Name; b. renumbers 585-010-0300 and moves it to Division 1.

Division 10 - College Training for Blind Persons: changes a few technical corrections to reflect current language in the Rehabilitation Act as well as clarify that Merit Based Scholarships are not a comparable benefit (which is language from the Act).

Division 10 - Reader's Service for Blind Students: requires updating. A maximum of 70 hours of reader's services cannot be imposed. Also, added some procedural clarification and removed language that is no longer reflecting agency practice.

Division 10 - Business Policy: one correction to reflect current language.

Division 20 - Equipment Policy: updates language to reflect the Rehabilitation Act.

Rules Coordinator: Linda Mock—(503) 731-3221, ext. 200

ADMINISTRATIVE RULES

585-001-0000

Procedure for Notification of Proposed Action

(1) What this rule does. This establishes a procedure for notifying interested persons of the Commission for the Blind's proposed action to adopt, amend, or repeal any rule.

(2) Statutory Authority. This rule is authorized by ORS 346.150, ORS 346.180, and Oregon Laws, Chapter 758, Section 6. Public notice of rule making was given by the Commission in Oregon Administrative Rules Bulletin of October 15, 1975, published October 29, 1975. The rule was adopted November 19, 1975, and filed December 17, 1975.

(3) Effective date. This rule is effective December 17, 1975.

(4) Procedure for notification. Prior to the adoption, amendment, or repeal of any rule, the Commission for the Blind shall give notice of proposed adoption, amendment, or repeal as follows:

(a) By publication in the Secretary of State's Bulletin referred to in ORS 183.360 at least 15 days prior to date of the proposed action;

(b) By mailing a copy of the notice of proposed action to persons on the Commission for the Blind's mailing list established pursuant to ORS 183.335(6);

(c) By mailing a copy of the notice of proposed action to the following organizations or publications:

- (A) The American Council of the Blind of Oregon
- (B) The National Federation of the Blind of Oregon;
- (C) The Blind Business Managers Association of Oregon;
- (D) United Press International;
- (E) Associated Press.

Stat. Auth.: ORS 183

Stats. Implemented:

Hist: 2BC 25, f. & ef. 12-17-75; CFTB 1-2005, f. & cert. ef. 2-11-05

585-001-0006

Payment of Legal Fees and Transportation Costs

(1) What this rule does. This rule provides information to all interested persons that the Commission for the Blind will not pay for legal services fees or transportation costs for an applicant or client in connection with an Administrative Review, Mediation, or Fair Hearing proceeding.

(2) Assistance of Applicants or Clients;

(a) The Commission for the Blind will not pay for legal service fees or transportation costs for an applicant for vocational rehabilitation services or for a client receiving vocational rehabilitation services, in connection with an administrative review, mediation, or fair hearing proceeding.

(b) Any Administrative Review, Mediation, or Fair Hearing Proceeding will be held at a time and place convenient and accessible to the requesting individual. Each applicant for or recipient of vocational rehabilitation services will be provided information as to their rights to and procedures concerning an Administrative Review, Mediation, or Fair hearing.

Stat. Auth.: ORS 346

Stats. Implemented: ORS 346.150

Hist: 2BC 1-1979, f. & ef. 10-24-79; CFTB 3-1999, f. & cert. ef. 7-8-99; Renumbered from 585-010-0300, CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0115

Hours of Reader's Service Authorized

(1) The number of hours of Reader's Service authorized will be based on the individual circumstances of the student, their specific course of study, and their overall individualized plan for employment. The following is a reasonable standard for the number of hours to be authorized for reader's services:

(a) An undergraduate student carrying a course load of at least 12 hours will likely need about 70 hours of reader's service per month. A proportionate share can be authorized where the course load is less than 12 hours.

(b) A graduate student carrying a course load of at least nine hours will likely need about 70 hours of reader's service per month. This amount can be reduced proportionately for those graduate students carrying a course load of less than nine hours.

(c) Exceptions may be made if the student demonstrates to the Commission that he/she is engaged in a special project or is conducting special research which is approved by the institution where he/she is matriculating or that he/she is writing a degree at the master's level or above.

(2) Each student will make an effort to utilize alternate formats of materials in lieu of hiring readers and must be able to demonstrate such effort upon request.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 19, f. 12-4-73, ef. 12-26-73; 2BC 3-1984, f. & ef. 5-24-84; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0120

Restrictions on the Hourly Rate of Payment

The hourly rate of payment for reader's service is a matter to be agreed upon between the student and the reader, however, the rate should not exceed the prevailing state minimum wage. Exceptions to this limitation may be granted under unusual circumstances. Requests for such exceptions must be submitted in writing to the student's counselor at the Commission and the exceptional rate must be approved prior to authorizing any payments.

Stat. Auth.:

Stats. Implemented:

Hist: 2BC 19, f. 12-4-73, ef. 12-26-73; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0125

Invoices for Blind Student Reader's Service

The Commission will supply each student with invoices, which the student will provide to each of his/her readers. These forms are to be completed by each reader and shall indicate the number of hours of service to the student, the hourly rate of payment agreed upon between the student and the reader, the social security number and address of the reader, and must be signed by the reader. The student will sign each invoice, thus certifying as to its accuracy. The student is responsible for forwarding copies 1 and 2 of each invoice to the Commission at least monthly. The student will return copy 3 of each completed and signed invoice to the reader. Each student is responsible for informing his/her readers that the service they are providing are services to the student and not to the Commission for the Blind, and further, that the readers are not employees of the Commission for the Blind. By signing and submitting the invoice, the student is verifying that the reader is able to demonstrate an adequate level of reading skills to efficiently read the required subject matter.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 19, f. 12-4-73, ef. 12-26-73; 2BC 3-1984, f. & ef. 5-24-84; BLC 3-1987, f. & ef. 11-18-87; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0130

Maintenance of Record of Certified Invoices

Each student shall maintain an itemized record of the dates and times when readers are used which should match the invoice statements that are submitted. The student should be able to provide these records when requested to do so.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 19, f. 12-4-73, ef. 12-26-73; 2BC 3-1984, f. & ef. 5-24-84; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0150

Distribution of Copies of This Rule

The Commission will provide each student with a copy of this rule. Violation of this rule may result in discontinuance of payment for reader's service.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 19, f. 12-4-73, ef. 12-26-73; 2BC 3-1984, f. & ef. 5-24-84; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0210

Effective Date

This rule is effective December 26, 1973, for those students entering college. The policies established by this rule will be utilized in evaluating continued support for those students presently in college.

Stat. Auth.:

Stats. Implemented:

Hist: 2BC 20, f. 12-4-73, ef. 12-26-73; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0215

Basic Criteria

(1) The planned training at an institution of higher education must be part of an approved Individualized Plan for Employment.

(2) The extent of the financial support provided will be conditioned by the following:

(a) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain cash grant assistance or non-merit scholarships from other sources to pay for the planned training, in whole or in part;

(b) Where cash grant assistance or scholarships are obtained to partially fund training costs, the client must submit copies of the relevant correspondence to identify the extent that training costs will be funded from other sources including family resources. Awards and scholarships based on merit are not considered a comparable benefit.

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(c) Where denial of cash grant assistance or scholarships is based on the availability of family resources, the client will be expected to utilize such family resources to fund that part of the planned training expenses involving tuition, books, and supplies;

(d) Financial support will be provided where client is determined to be eligible by the institution(s) but denial of cash grant assistance or scholarships is based solely on the non-availability of funds to the applicable institution(s). The client should secure a "No Funds" letter and submit it to his or her counselor at the Commission promptly.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC, f. 12-4-73, ef. 12-26-73; 2BC 23, f. 8-2-74, ef. 8-25-74; 2BC 2-1984, f. & ef. 5-24-84; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0220

Comprehensive Evaluation Required

Except as provided for in OAR 585-010-0225, financial support will be provided to a blind person to attend college only after he/she has completed a comprehensive evaluation program. The evaluation must indicate that the client has an acceptable level of functioning in the following areas:

- (1) Orientation and Mobility;
- (2) Communication Skills;
- (3) Personal Management, i.e., techniques of daily living, personal grooming, and social competency;
- (4) Use of the written language on a college level;
- (5) Understanding of career alternatives and availability of jobs in the future labor market;
- (6) Psychological adjustment to blindness;
- (7) Study skills which will insure effective use of time and resources while in an academic program.

The Commission is prepared to provide a structured and objective evaluation of each client. The evaluation will be accomplished at the Orientation and Career Center for the Blind, or on an individual basis by the professional staff of the Commission or by a means approved by the client's vocational rehabilitation counselor.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 20, f. 12-4-73, ef. 12-26-73; 2BC 2-1984, f. & ef. 5-24-84; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0230

Remedial Training

Where evaluation results indicate that a client is not ready for college, remedial training will be made available, if a potential for college training is present. When training progress indicates that the client is ready for a college, financial support may be provided.

Stat. Auth.:

Stats. Implemented:

Hist: 2BC 20, f. 12-4-73, ef. 12-26-73; CFTB 1-2005, f. & cert. ef. 2-11-05

585-010-0310

Business Policy

(1) What This Rule Does. This rule establishes the conditions under which financial support for funding business ventures will be provided by the Commission for the Blind.

(2) Statutory Authority. This rule is authorized by ORS 183.341 and 346.150.

(3) Definitions. The following definitions apply to this rule:

- (a) "Agency" means the Commission for the Blind;
- (b) "IPE" means Individualized Plan for Employment;
- (c) "SBA" means the U. S. Small Business Administration;
- (d) "SSA" means the U. S. Social Security Administration;
- (e) "Counselor" means the client's assigned Vocational Rehabilitation Counselor who is a staff member of the Agency.

(4) Effective Date. This rule is effective upon publication for clients requesting assistance in becoming involved in a business venture including the agency-sponsored Business Enterprise Program.

(5) Basic Criteria:

(a) Intent to establish or run a business is to help an individual become financially independent. Agency involvement will be available to establish or run a business that can reasonably be expected to provide income to the client commensurate with the individual's strengths, abilities, capabilities and interests. The agency will not fund "hobby" businesses;

(b) If a client is involved with a business partnership or corporation, s/he must present written evidence of being the controlling partner or controlling shareholder of the corporation. Provision must be made in the Partnership Agreement for the client to settle all debts should the business not succeed. The agency will assume no financial liability for debts;

(c) Speculative or high-risk business ventures will not be considered. These include those which present a risk beyond the control of the business owner or those which are so subject to economic whims as to have an unpredictable future;

(d) The client must present documentary evidence to indicate that a reasonable effort has been made to obtain financial support from traditional sources such as banks to finance the business in part or in whole before requesting agency assistance. If the request was denied because of an insufficient business plan, the client must revise the plan and resubmit it to the funding source;

(e) Where partial support is obtained elsewhere, the client must submit copies of the relevant documentation to identify the extent of that financial assistance;

(f) Where denial of financial support outside this agency is based on the availability of personal or family resources, the client will be expected to utilize those resources before requesting agency funding support;

(g) The client may seek assistance in developing a business plan from outside sources such as the Small Business Administration or the Small Business Development Centers at community colleges.

(6) Comprehensive Assessment:

(a) Financial support will be provided to a client to become involved in a business only after the client has satisfied a comprehensive self-assessment. As a part of this, the agency is prepared to provide or arrange for an assessment by agency staff or competent business persons outside the agency to assess the business skills, background, and potential of the client seeking financial assistance. Portions of the assessment may be conducted by business persons such as a representative of the Oregon Small Business Development Center;

(b) The comprehensive self-assessment will cover the following:

(A) Evaluation of previous work experience, especially in the same or a similar industry to the proposed business or in other self-employment;

(B) Understanding of other career options and availability of jobs in the present and future job market;

(C) Communications skills necessary in the proposed business (written and verbal skills, along with capability to maintain and interpret financial records for the business);

(D) Factors such as willingness to make personal financial investment in the business, ability to make appropriate decisions, dependability, follow-through, organizational ability, adequate travel skills as demonstrated by interaction with agency personnel and former business colleagues;

(E) Alternative skills of blindness adequate to function in the business; Knowledge of technology, adaptive technology and software applications currently being used in the management of similar businesses;

(F) Demonstration of money/resource management skills consistent with running a viable small business.

(G) Background or training in financial management skills required for managing a self-owned business.

(7) Comprehensive Business Plan:

(a) The client must prepare a well-researched and written comprehensive business plan such as that required by a bank or the Small Business Administration.

(b) The plan must include an itemized list of equipment or business-related expenses, which the client requests the agency to provide. The client must make a formal presentation of the plan to the agency. If the plan is accepted, the decisions made will lead to the development or amendment of the IPE. Any agency support must be a part of an agreed upon IPE.

(c) If the total request for financial assistance and technical assistance is less than \$3,500 the counselor may not require a formal business plan.

(d) Requests for an existing business, which exclusively involve adaptive equipment, may require documentation of the viability of the business rather than a formal business plan.

(8) Training. Where assessment results indicate that a client lacks some of the skills necessary for successful business management, the agency may make available and require training in those specific skill areas, especially the alternative skills dealing with blindness and financial management skills.

(9) Availability of Funds:

(a) Financial support for any service provided under an IPE is contingent upon the availability of funds to the agency;

(b) Financial assistance should not place a burden on agency resources to the extent that the agency would be unable to provide services to other clients.

(10) Financial Support:

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(a) Client will provide timely financial statements and other documentation as requested by the Commission showing progress toward becoming self-sufficient.

(b) Agency support is designed to assist in the initial startup of a business; it is not to be considered an on-going resource, and in no case will losses be reimbursed by the agency;

(c) The client and Counselor will jointly determine the limits of agency financial involvement and time limits. Development of a comprehensive business plan is expected to adequately capitalize the business and limit the need for ongoing financial support by the agency.

(11) Equipment:

(a) Any equipment for the business must be purchased in accordance with agency policy; i.e., preauthorized, with appropriate bids, where necessary, obtained by the client;

(b) Under the criteria in ORS 346.210, ownership of equipment may be transferred to the client. The Counselor will determine appropriateness of this action. Regardless of ownership, the client is responsible for adequately maintaining the equipment;

(c) Any equipment whose title is not passed to the client will be returned to the agency when it is no longer required for the purpose for which it was procured.

Stat. Auth.: ORS 183 & 346

Stats. Implemented: ORS 346.150

Hist: 2BC 1-1985, f. & ef. 1-31-85; CFTB 3-1999, f. & cert. ef. 7-8-99; CFTB 1-2004, f. & cert. ef. 10-8-04; CFTB 1-2005, f. & cert. ef. 2-11-05

585-020-0010

Definitions

The following definitions apply to these rules:

(1) "Client" means a person who has applied for and been accepted for services under the rules of the Oregon Commission for the Blind.

(2) "Equipment" means an item which is non-expendable and could be assigned to another client.

(3) "VRC" means a Vocational Rehabilitation Counselor, who is an employee of the Oregon Commission for the Blind.

(4) "Agency" means the Oregon Commission for the Blind.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 1-1986, f. & ef. 4-11-86; CFTB 1-2005, f. & cert. ef. 2-11-05

585-020-0020

Financing Equipment

The agency is to be considered the last dollar resource. VRC's and clients will attempt to use all possible financial resources to pay for job-related equipment, such as:

(1) Employer purchases equipment.

(2) Client purchases equipment and lists it as a work related expense under the SSI or SSDI programs.

(3) Use Social Security Plan for Achieving Self Support to purchase equipment.

(4) Equipment that can be categorized as rehabilitation technology as defined by the Rehabilitation Act does not require the use of other resources. Although not required, other possible financial resources can be considered and utilized.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 1-1986, f. & ef. 4-11-86; CFTB 1-2005, f. & cert. ef. 2-11-05

585-020-0035

Upgrading Equipment

The client or employer will be responsible for any upgrade. The agency should be considered the last dollar resource.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 1-1986, f. & ef. 4-11-86; CFTB 1-2005, f. & cert. ef. 2-11-05

585-020-0060

Transfer of Equipment to Clients

(1) For equipment valued at \$5000 or more, VRC's, with the approval of the Director of Rehabilitation Services, may transfer title of equipment to a client only after at least one continuous year of use on the job. Once title is transferred to the client, the agency will have no further obligation for repair or upkeep of the equipment.

(2) The agency can transfer items valued under \$5,000 to clients at its discretion. This may be done after determining that the client is using the equipment for the purpose for which it was intended and that the job appears stable. If the equipment is likely to be usable for other clients after the current client no longer requires it for employment, the counselor may

determine that the agency will retain title. This determination will be made on an individual basis.

(3) Title for computer software will be transferred to clients at the time that they receive it.

(4) Equipment Purchases by Agency:

(a) For equipment valued at \$5000 or more, after approval by the counselor, the specific recommendations, including information on all adaptive equipment to be used with the system, will be submitted to the agency purchasing agent for identification of an appropriate vendor. The purchasing agent will identify an appropriate vendor in accordance with state purchasing regulations, using state purchasing agreements or, obtaining the necessary quotes or bids. After identifying the appropriate vendor, the purchasing agent will provide the counselor with the necessary information for doing the authorization.

(b) For equipment valued at less than \$5000, State price agreements need not be used for items purchased for clients as long as title of these items is directly transferred to the client and is in the best interest of the client, consistent with informed choice. Items for clients may be purchased from price agreements if the counselor and client agree on this option.

Stat. Auth.: ORS 183 & 346

Stats. Implemented:

Hist: 2BC 1-1986, f. & ef. 4-11-86; CFTB 1-2005, f. & cert. ef. 2-11-05

Department of Administrative Services Chapter 125

Adm. Order No.: DAS 1-2005

Filed with Sec. of State: 2-9-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 10-1-04

Rules Repealed: 125-020-0100, 125-020-0110, 125-020-0120, 125-020-0130, 125-020-0140, 125-020-0200, 125-020-0210, 125-020-0220, 125-020-0225, 125-020-0300, 125-020-0310, 125-020-0320, 125-020-0330, 125-020-0335, 125-020-0340, 125-020-0350, 125-020-0360, 125-020-0400, 125-020-0410, 125-020-0430, 125-020-0440, 125-020-0500, 125-020-0510, 125-020-0520, 125-020-0530, 125-020-0540, 125-020-0550, 125-020-0600, 125-020-0610, 125-020-0620, 125-020-0700, 125-025-0000, 125-025-0010, 125-025-0030, 125-025-0040, 125-025-0050, 125-025-0060, 125-025-0070, 125-025-0080, 125-025-0082, 125-025-0085, 125-025-0087, 125-025-0090, 125-025-0100, 125-025-0110, 125-030-0000, 125-030-0001, 125-030-0002, 125-030-0003, 125-030-0004, 125-030-0005, 125-030-0007, 125-030-0009, 125-030-0014, 125-030-0028, 125-030-0029, 125-030-0030, 125-030-0033, 125-030-0060, 125-030-0070, 125-030-0080, 125-030-0081, 125-030-0082, 125-030-0100, 125-031-0000, 125-031-0005, 125-031-0006, 125-031-0010, 125-050-0000, 125-050-0020, 125-050-0040, 125-050-0060, 125-300-0000, 125-300-0010, 125-300-0050, 125-300-0100, 125-310-0005, 125-310-0010, 125-310-0012, 125-310-0030, 125-310-0035, 125-310-0040, 125-310-0044, 125-310-0060, 125-310-0090, 125-310-0135, 125-310-0180, 125-310-0200, 125-320-0010, 125-320-0020, 125-320-0025, 125-330-0030, 125-330-0140, 125-330-0200, 125-330-0260, 125-330-0330, 125-330-0340, 125-330-0450, 125-330-0500, 125-330-0600, 125-330-0700, 125-360-0010, 125-360-0020, 125-360-0030, 125-310-0220, 125-310-0300, 125-310-0400, 125-310-0500

Subject: The Department of Administrative Services (DAS) is mandated by HB 2341 to develop rules for state agencies subject to DAS purchasing authority. On November 23, 2004, public contracting rules were filed to replace the current public contracting rules in Chapter 125, divisions 20, 25, 30, 300, 310, 320, 330 and 360, effective March 1, 2005. Now, the Department of Administrative Services repeals the current rules effective March 1, 2005. The new rules are written to implement the Public Contracting Code, ORS 279A, 279B, and 279C.

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

Department of Agriculture Chapter 603

Adm. Order No.: DOA 1-2005

Filed with Sec. of State: 1-24-2005

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Certified to be Effective: 1-24-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-1230

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

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-1230

Quarantine: *Phytophthora Ramorum*

(1) Establishing a quarantine: A quarantine is established against *Phytophthora ramorum*, the cause of sudden oak death and other plant diseases. This quarantine is established under ORS 561.510 and 561.540 to protect Oregon's agricultural industries and natural resources from the artificial spread of *P. ramorum*. This pathogen causes mortality in susceptible oak (*Quercus* spp.), tanoak (*Lithocarpus* spp.), Rododendron (*Rhododendron* spp.), madrone (*Arbutus menziesii*) and evergreen huckleberry (*Vaccinium ovatum*). In other susceptible plants it causes leaf spots, twig dieback and/or stem cankers. Methods for exclusion of commodities potentially infected with this disease and procedures for eradication of incipient infections are prescribed in this quarantine.

(2) Area under quarantine:

(a) The following counties in California: Alameda, Contra Costa, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma.

(b) The following portion of Curry County, Oregon: Township 40s, Range 13W, Sections 5, 8, 16, 17, 20, 21, 28, 29, 32, 33, the western half of section 9, the western half of section 4, the southeastern quarter-section of 19, and the northeastern quarter-section of 30.

(c) Any country, state, county, province or area covered by federal quarantine, 7 CFR 301.92 through 301.92-11, *Phytophthora ramorum*; quarantine and regulations.

(d) Any property in Oregon where *P. ramorum* is found, including a buffer-zone of up to 0.5 miles surrounding the infected site during any eradication program.

(3) The following definitions apply to ORS 603-052-1230:

(a) "Hosts and associated plants" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised August 2, 2004. [Ed. note: This list is available online at: http://egov.oregon.gov/ODA/PLANT/path_sod_index.shtml or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.]

(b) Nursery stock is defined in ORS 571.005.

(c) Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Commodities covered:

(a) All plants and plant parts of hosts and associated plants: Examples of covered commodities include all above ground portions of the plants including, but not limited to nursery stock, logs, bark, wood chips, mulch, firewood, sawdust, green waste, other plant products that may contain bark or foliage.

(b) Any other plant found to be naturally infected with *P. ramorum*, any product or article that an official inspector determines to present a risk of spreading *P. ramorum*. All life stages of *P. ramorum*.

(5) Provisions of the quarantine: Covered commodities originating from the area under quarantine, and any other area found to be infested with *P. ramorum* during the life of this quarantine, are prohibited unless one of the following requirements has been met:

(a) All regulated commodities must be kiln-dried or heat-treated to 71.1°C (160°F) for 75 minutes measured at the core prior to shipment. Treatments must be officially verified. The official certificate must include the following additional declaration "The (type of covered commodity) from (name of county) County has been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate.

(b) Soil and potting media from the quarantine area at a known infected site or from within five meters of an infected host plant must be sterilized before shipment. The soil or potting media must reach a minimum temperature of 60°C (135°F) for 1 hour measured at the center of the mass of soil or potting media. Soil or potting media that has never been associated with the covered commodities is exempt. Treatments must be officially verified. The official certificate must include the following additional declaration "The (soil or potting media) from (name of county) County has

been treated for *Phytophthora ramorum* as required prior to shipment." The length and temperature of the treatment must be recorded on the official certificate.

(c) Nursery stock grown in a quarantined county or area may be eligible for shipment to Oregon providing the nursery is part of an official certification program and has been inspected and tested annually for *P. ramorum*. The official certificate must include the following additional declaration: "The (covered commodity) from (name of county) County has met the *Phytophthora ramorum* quarantine requirements for shipment into Oregon." Note: Recipients of tree and shrub nursery stock imported into the state must notify the ODA no later than two business days after it's arrival as required by OAR 603-054-0027.

(6) Infected properties in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. The disease must be eradicated from the property as quickly as possible. Affected property owners will be issued infection location and eradication requirements in the form of an Administrative Order. The Oregon Departments of Agriculture (ODA) and Forestry (ODF) will work with the landowner to develop an eradication plan. The program may include some or all of the following activities: cutting and piling susceptible trees and shrubs, burning the wood and plant debris when safe to do so, herbicide spraying of stumps and sprouts, fungicide spraying, sampling and monitoring.

(7) Infected nurseries in Oregon: Confirmation of a *P. ramorum* infection must be made by the ODA or an official cooperator. Nurseries are required to eradicate the disease as quickly as possible. The ODA will work with the nursery owner to implement an eradication and monitoring program utilizing protocols prescribed by USDA (Confirmed Nursery Protocol). [Ed. note: this protocol is available online at: http://egov.oregon.gov/ODA/PLANT/path_sod_index.shtml or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644.]

(8) Special permits: The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state and transport within this state of quarantined commodities for research purposes only. Movement of such commodities will be subject to any conditions or restrictions stipulated in the permit.

(9) Violation of quarantine: Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000, as provided by ORS 561.990. In addition, violators will be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, Chapter 390, Section 2. Commodities shipped in violation of this quarantine may be treated, destroyed or returned to their point of origin without expense or indemnity paid by the state.

Stat. Auth.: ORS 561.190 & 561.560

Stats. Implemented: ORS 561.560

Hist.: DOA 1-2001(Temp), f. & cert. ef. 1-5-01 thru 4-4-01, DOA 5-2001, f. & cert. ef. 3-27-01; DOA 1-2005, f. & cert. ef. 1-24-05

Adm. Order No.: DOA 2-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0051

Subject: The amendment will require that containerized grape plants imported to the state be treated with a soil or systemic insecticide effective against pests which may be present on the roots such as vine mealybug, *Planococcus ficus*. This pest is now widespread in California, but it is not known to occur in Oregon.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0051

Quarantine

(1) Establishing Quarantine. A quarantine is established against pests and diseases of wine grapes.

(2) Area Under Quarantine. All states, districts, and territories of the United States, except Oregon.

(3) Commodities Covered. Plants, cuttings and all other plant parts (except fruits) of grape (*Vitis* species), excluding table grapes, *Vitis labrusca*.

(4) Restrictions: All covered commodities are prohibited entry into the State of Oregon unless they meet the requirements in (a) through (d) below;

(a) Freedom from Soil: Only grape cuttings and rooted plants produced in sterile soil-less media are permitted entry into Oregon. Potting

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media must be treated with a soil insecticide effective against vine mealybug and any pests that may be present on the roots.

(b) Freedom from dangerous pests and diseases: Cuttings and plants must be free of dangerous pests and diseases.

(c) Phytosanitary Certificate Required: All shipments must be accompanied by a phytosanitary certificate issued by an official of the state of origin certifying that the grape cuttings or rooted plants have been inspected and to the best of the knowledge of the inspecting official are free from dangerous pests and diseases. In addition, the phytosanitary certificate must certify that rooted plants were grown in sterile soil-less media and treated with a soil or systemic insecticide effective against vine mealybug and any other pests that may be present on the roots. Note: depending on origin, other State quarantines may apply (e.g. glassywinged sharpshooter, European brown garden snail, Japanese beetle) and may require other additional declarations on the phytosanitary certificate.

(d) Prenotification of regulated commodity shipment is required. At least one day prior to shipment, the shipper shall mail, FAX or e-mail documents including the phytosanitary certificate, listing the type and quantity of plants, address of shipper, address of recipient, and contact phone numbers to: Nursery Program Supervisor, Plant Division, Oregon Department of Agriculture, 635 Capitol Street NE, Salem, Oregon 97301; FAX: 503/986-4564; e-mail: <quarantine@oda.state.or.us>. The Department may require that shipments be held until inspected and released. If the recipient is not a licensed nursery, the Department may charge established rates for time and mileage to recover the cost of inspection.

(5) Violation of Quarantine. All covered commodities determined to be in violation of this quarantine, shall be immediately returned by the recipient to the point of origin or, at their option and without expense or indemnity paid by the Department, destroyed. Violation of this quarantine may result in a fine, if convicted, of not less than \$500 nor more than \$5,000 as provided by ORS 561.990(4). Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, chapter 390, section 2; nursery license suspension or nursery license revocation.

Stat. Auth.: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 913(19-69), f. 12-26-69, ef. 1-25-70; AD 939(7-71), f. 8-18-71, ef. 9-1-71; Suspended by DOA 19-2001(Temp), f. & cert. ef. 9-11-01 thru 2-22-02; DOA 14-2002, f. & cert. ef. 5-23-02; DOA 2-2005, f. & cert. ef. 2-14-05

Adm. Order No.: DOA 3-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0114

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

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0114

Quarantine; Dutch Elm Disease and Elm Yellows Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the fungus *Ophiostoma novo-ulmi*, currently the fungus that causes Dutch elm disease in North America and related species *O. ulmi* and elm yellows (*elm phloem necrosis*) phytoplasma.

(2) Areas under Quarantine:

(a) In Oregon, the counties of: Benton, Clackamas, Lane, Linn, Malheur, Marion, Multnomah, Polk, Union, Washington and Yamhill

(b) All states and districts of the United States except Alaska, Arizona, Florida, Hawaii, Louisiana, New Mexico and Utah.

(3) Commodities Covered. All trees, plants, cuttings, scions, leaves, bark, roots, or other parts, except seed, of all species of elm (*Ulmus spp.*) and of the related genera *Zelkova* and *Planera*, including wood products manufactured from bark-bearing parts thereof. Tissue culture plantlets in sealed, sterile containers are exempt from this regulation.

(4) Restrictions:

(a) Commodities Prohibited from Quarantine Areas. All commodities described in section (3) of this rule originating or grown within or shipped from any state or district described in subsection (2)(b) of this rule, except as provided in subsection (b) of this section, are prohibited entry into the State of Oregon whether moved direct from said areas or diverted or reconsigned from any such areas. All tools or equipment utilized in the pruning

or disposal of infected commodities are also prohibited entry into the State of Oregon unless they are decontaminated by an approved method therefor;

(b) Commodities Admitted Under Origin Certificate. Commodities described in section (3) of this rule may be permitted entry into the State of Oregon if each lot or shipment is accompanied by a certificate issued by an official state agency of the state of origin certifying the kind and amount of commodities covered by the certificate, that all such commodities are a product of the state from which shipped or of another state within which neither Dutch Elm Disease nor Elm Yellows phytoplasma is known to occur, that such commodities are free from the described disease, and setting forth in either case the name of the state where produced;

(c) Commodities Restricted Within Quarantine Areas. With exception of commercially produced nursery stock, commodities described in section (3) of this rule situated within the counties described in subsection (2)(a) of this rule, are prohibited movement within or outside said areas except for the transportation of such commodities to locations authorized by the Department for the burning, burial, or other approved method of disposal thereof. All tools or equipment utilized in the pruning or disposal of infected commodities are also prohibited movement within or outside said areas unless they are decontaminated by an approved method therefore.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 1088(11-76), f. 3-22-76, ef. 4-1-76; AD 24-1977, f. 10-25-77, ef. 11-15-77; AD 3-1995, f. & cert. ef. 4-5-95; DOA 3-2005, f. & cert. ef. 2-14-05

Adm. Order No.: DOA 4-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0150

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

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0150

Control Areas and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established in each of the following counties for the protection of the cherry industry in that area through the eradication or control of the cherry fruit fly:

- (a) Hood River County;
- (b) Lane County;
- (c) Linn County;
- (d) Marion County;
- (e) Polk County;
- (f) Umatilla County;
- (g) Union County;
- (h) Yamhill County; and
- (i) The portion of Wasco county, north of Warm Springs Reservation.

(2) Approved IPM practices, including spray formulations, are those recommended by the Oregon State Extension Service as described for specific control areas in the following extension documents:

(a) For Hood River and Wasco counties: **2004 Pest Management Guide for Tree Fruits in the Mid-Columbia Area**. EM 8203, Oregon State University Extension Service, 2004.

(b) For Lane, Linn, Marion, Polk and Yamhill counties: **2004 Pest Management Guide for the Willamette Valley**, EM 8329, Oregon State University Extension Service, 2004.

(c) For Umatilla and Union counties **Cherry Fruit Fly Pest Management for control areas in Umatilla and Union counties**. EM 8587, Oregon State University Extension Service, 1995.

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

Stat. Auth.: ORS 570
Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415
Hist.: AD 603, f. & ef. 10-31-58; AD 974(7-72), f. 7-27-72, ef. 8-15-72; AD 1073(19-75), f. & ef. 12-5-75; AD 11-1977, f. 5-10-77, ef. 5-20-77; DOA 4-2005, f. & cert. ef. 2-14-05

Adm. Order No.: DOA 5-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

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Rules Amended: 603-052-0121

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

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0121

Quarantine; Apple Maggot

(1) Establishing a Quarantine. A quarantine is established against apple maggot (*Rhagoletis pomonella*), a dipterous insect of the family Tephritidae whose larval stages live within the fruit of their host plants and cause extensive damage to such fruit.

(2) Areas Under Quarantine:

(a) Within the State of Oregon: the counties of Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Gilliam, Hood River, Jackson, Josephine, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Tillamook, Yamhill, Wasco, Washington, and the City of Pendleton in Umatilla County.

(b) In the western United States: California, Idaho, Utah and Washington.

(c) In the eastern United States: all states and districts east of and including the states of North Dakota, South Dakota, Nebraska, Kansas, Oklahoma and Texas.

(3) Commodities Covered. From the areas under quarantine: all fresh fruit of hawthorne (haw); all non-commercial fresh fruit of pear; and all fresh fruit of apple (including crabapple).

(4) Restrictions:

(a) Certification Required. Commodities covered which are produced in or shipped from the area under quarantine are prohibited entry into the commercial apple producing counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco counties of the State of Oregon unless each lot or shipment is accompanied by a certificate issued by and bearing the original or facsimile signature of the authorized agricultural official of the state from which the commodity is shipped evidencing compliance with subsection (e), (f), or (g) of this section. No certificate is required for commodities meeting the requirements of subsection (c) or (d) of this section;

(b) In the western U.S., not all counties in infested states have established populations of apple maggot. Provided each lot or shipment is certified by an authorized agricultural official to have been grown in a county not known to be infested with apple maggot, the commodities may be shipped to the Oregon counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco.

(c) Reshipments in Original Containers if Commodities Grown Outside Area Under Quarantine. Commodities in original unopened containers, each bearing labels or other identifying marks evidencing origin outside the areas under quarantine, may be reshipped to the counties Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco of the State of Oregon from any point within the areas under quarantine;

(d) Repacked Commodities Admissible if Certified Grown Outside from Area Under Quarantine. Provided each lot or shipment is certified by an authorized agricultural official to have been grown outside the area under quarantine and that continued identity has been maintained while within the area under quarantine, the commodities may be repacked and shipped by common carrier from any point within the area under quarantine to the Oregon counties of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco. The certificate shall set forth the state in which commodities were grown, point of repacking and reshipment, amount and kind of commodities comprising the lot or shipment, and the names and addresses of the shipper and consignee;

(e) Apples Exposed to Controlled Atmosphere (CA) Storage Admissible Under Certificate. Apples which are exposed to controlled atmosphere (CA) storage for a continuous period of 90 days, during which period the temperature within the storage room is maintained at 38° F (3.3°C) or less, may be admitted into the counties of Hood River, Morrow, Umatilla and Wasco of the State of Oregon provided said storage room or building is approved by the proper authorities in the state of origin as a controlled atmosphere facility and further provided each lot or shipment of such apples to the afore named Oregon counties is accompanied by a cer-

tificate, as stated in subsection (a) of this section, evidencing compliance with the minimum requirements of this section;

(f) Solid Frozen Fruits Exempt. No restrictions are placed by this regulation on the entry into the Oregon counties of Hood River, Morrow, Umatilla and Wasco of fruits which upon arrival are frozen solid and which are under refrigeration to assure their solid frozen state;

(g) Shipments from Cold Storage at 32° F (0°C). Commodities covered which are held in cold storage for a continuous period of 40 days or more, during which period the temperature within the storage room is maintained at 32° F (0°C) or less, may be admitted into the counties of Hood River, Morrow, Umatilla and Wasco of the State of Oregon provided each lot or shipment is accompanied by a certificate, as described in subsection (a) of this section, evidencing compliance with the requirements of this section.

(5) Exceptions:

(a) Based on a memorandum of agreement between the Oregon and Washington Departments of Agriculture, the Washington counties of Klickitat and Skamania and the Oregon counties of Hood River and Wasco are considered a single production area, and under the terms of this memorandum fresh commercial apple fruit produced in this production area may move freely throughout these counties. This exception shall be allowable only as long as such memorandum is in effect;

(b) Special Permits: The Director of the Oregon State Department of Agriculture may issue special permits admitting covered commodities not otherwise eligible for entry into of Gilliam, Grant, Hood River, Morrow, Sherman, Umatilla and Wasco counties of the State of Oregon from areas under quarantine subject to specific conditions and provisions which the director may prescribe to prevent introduction, escape or spread of the quarantined pests.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 7-1985, f. 9-16-85, ef. 10-1-85; DOA 5-2005, f. & cert. ef. 2-15-05

Adm. Order No.: DOA 6-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0116

Subject: Changes will update Oregon's quarantine against peach yellows disease. The common name of the disease will be changed from "peach yellows MLO" to "peach yellows phytoplasma." The area under quarantine will be expanded to include Texas. Civil penalty authority, recently given to the department for quarantine violations, would become part of the rule.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0116

Quarantine; Peach Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the disease of peach known as Peach Yellows Phytoplasma.

(2) Areas under Quarantine. Alabama, Connecticut, Delaware, Florida, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Michigan, North Carolina, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Tennessee, Virginia, West Virginia, and District of Columbia.

(3) Commodities Covered:

(a) Propagating parts, except seeds, and any tree budded or grafted on understock of the

following species of plum which are symptomless carriers of Peach Yellows, phytoplasma:

(A) Native American plum, *Prunus hortulana* and *P. americana*;

(B) Common or European plum, *P. domestica*;

(C) Japanese plum, *P. salicina*;

(D) Myrobalan plum, *P. cerasifera*;

(E) Othello plum, *P. cerasifera* var. *atropur-purea*;

(F) Wild goose plum, *P. munsoniana*.

(b) All trees, roots, stalks, cuttings, grafts, scions, and buds of all species and varieties of *Prunus* except sweet cherry, *P. avium*; sour cherry, *P. cerasus*; Portugal laurel, *P. lusitanica*; common cherry laurel, *P. lauro-cerasus*; holly leaved cherry, *P. ilicifolia*; and Catalina cherry, *P. lyonii*;

(c) Any tree or bud grafted on peach or plum understock.

(4) Exceptions:

(a) Seedling trees or trees budded on admissible rootstock which are grown from seed and shipped in one growing season may be certified pro-

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vided any budwood used in the production of such trees meets the conditions of subsection (c) of this section and Peach Yellows disease has not occurred during the growing season either on or within one mile of the growing ground property;

(b) Certificates may be issued for reshipment of dormant host trees and propagative parts which have been produced outside the areas under quarantine and have remained dormant while within such areas. Certificates shall state the name of the state where produced;

(c) Species and varieties other than symptom-less carriers may be shipped into this state provided they are properly labeled as to scientific name and each lot or shipment is accompanied by a state-of-origin inspection certificate certifying that the following conditions have been met:

(A) Adequate surveys have been made by state agricultural officials, at the proper time in relation to diseases and hosts, and as Peach Yellows disease has not been found during the last two growing seasons previous to digging the trees or taking the buds either on or within one mile of the growing grounds or bud source properties; and

(B) The growing premises have been free from any prohibited symptomless species of plum trees or any other tree growing on any prohibited species of plum understock and, during the last two growing seasons previous to digging the trees or taking the buds, any prohibited symptomless species of plum trees has not existed within one mile of the growing premises or bud source properties.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of this state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same. Violators may also be subject to civil penalties of up to \$10,000 as provide by Oregon Laws 1999, Chapter 390, section 2.

(6) Special Permits. This section does not apply to experimental shipments moved by, or at the request of, the United States Department of Agriculture. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 1085(8-76), f. & ef. 3-11-76; AD 3-1995, f. & cert. ef. 4-5-95; DOA 6-2005, f. & cert. ef. 2-15-05

Adm. Order No.: DOA 7-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0450

Subject: The changes will update the area under quarantine to include Multnomah and Clackamas counties. In addition, notification procedures will be updated to reflect requirements in OAR 603-054-0027, which mandates that importers of tree and shrub nursery stock notify the department within two days of receiving a shipment of imported nursery stock.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0450

Quarantine; Cherry Bark Tortrix

(1) Establishing a Quarantine. A quarantine is established against the pest known as cherry bark tortrix, *Enarmonia formosana* (*Scopoli*).

(2) Areas Under Quarantine. The entire state of Washington, the province of British Columbia, and any other state, territory or province where the presence of an established population of cherry bark tortrix is confirmed and effective eradication procedures have not been implemented, as determined by the Director of the Oregon Department of Agriculture. In Oregon, Multnomah and Clackamas counties.

(3) Commodities Covered. The cherry bark tortrix, *Enarmonia formosana* (*Scopoli*); host plants of the cherry bark tortrix, including all species of the genera, *Crataegus*, *Cydonia*, *Malus*, *Prunus*, *Pyracantha*, *Pyrus* and *Sorbus*; and unseasoned firewood derived from trees of these host plant genera. Uninfested nursery stock plants of these genera that are less than two inches in diameter are exempted from the quarantine.

(4) Restrictions. Regulated commodities shall not be shipped or moved directly or indirectly from the regulated areas into the state of Oregon unless accompanied by a permit or certificate issued by a state or

federal agriculture official from the regulated area and based upon the following conditions:

(a) The regulated plants have been grown in a screened greenhouse or screenhouse adequate to exclude the adults of cherry bark tortrix; or

(b) Such regulated plants have been treated in accordance with a fumigation schedule approved in writing by the Director of the Oregon Department of Agriculture; or

(c) Each dormant, defoliated, regulated host plant shall be inspected by an authorized agricultural official of the regulated state or province for the presence of cherry bark tortrix and found free of any evidence of infestation by that pest;

(d) Portions of states or provinces listed in the area under quarantine may have counties that are not infested with cherry bark tortrix. Shipments of covered commodities may be accepted from these noninfested counties if annual surveys are made in such counties and the results of such surveys are negative for cherry bark tortrix. A list of counties so approved will be maintained by the Oregon Department of Agriculture. Agricultural officials of a quarantined state or province may recommend a noninfested county be placed on the approved county list by writing for such approval and giving the following information: areas surveyed, how the survey was carried out, personnel involved and, if the county was previously infested, date of last infestation. If heavy infestations occur in neighboring counties, approval may be denied. To be maintained on the approved list, each county must be reappraised every twelve (12) months. Shipments of and covered commodities from noninfested counties will only be allowed entry into Oregon if the uninfested county has been placed on the approved list prior to the arrival of the shipment in Oregon.

(5) Persons shipping regulated commodities into the state of Oregon must comply with Oregon's notification requirement for imported tree and shrub nursery stock, OAR 603-054-0027.

(6) The person to whom the regulated commodities are shipped shall hold the articles until they are inspected and released by a duly appointed inspector of the state of Oregon.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600 & 570.305

Hist: AD 6-1996, f. & cert. ef. 6-10-96; DOA 7-2005, f. & cert. ef. 2-15-05

Adm. Order No.: DOA 8-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0118

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

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0118

Quarantine; Peach Rosette Phytoplasma

(1) Establishing a Quarantine. A quarantine is established against the phytoplasma disease of peach known as Peach Rosette.

(2) Areas Under Quarantine. Alabama, Arkansas, Georgia, Illinois, Indiana, Kansas, Kentucky, Mississippi, Missouri, Oklahoma, South Carolina, Tennessee, Texas and West Virginia.

(3) Commodities Covered. The following commodities are hereby declared to be hosts or possible carriers of the disease herein quarantined, and are prohibited from entry into this state, either directly, indirectly, diverted, or reconsigned:

(a) Symptomless carriers of Peach Rosette, namely trees and propagating parts, except seed, of Wilson apricot (a variety of *Prunus armeniaca*) and Marianna plum (a hybrid variety of *P. cerasifera*) and any tree budded or grafted on Marianna plum understock;

(b) All trees, roots, stalks, cuttings, grafts, scions, or buds of all species and varieties of the genus *Prunus* except American cherry-laurel, *P. caroliniana*; Catalina cherry, *P. lyonii*; common cherry laurel, *P. laurocerasus*; Portugal laurel, *P. lusitanica*, and holly leaved cherry, *P. ilicifolia*;

(c) Any tree or bud grafted on peach or plum understock.

(4) Exceptions:

(a) Seedling trees or trees budded on admissible rootstocks which are grown from seed and shipped in one growing season may be certified, and

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provided any budwood used in the production of such trees meets the conditions of subsection (c) of this section, and Peach Rosette has not occurred during the growing season either on or within one mile of the growing ground property;

(b) Certificates may be issued for reshipment of dormant host trees and propagative parts which have been produced outside the areas under quarantine and have remained dormant while within such areas. Certificates shall state the name of the state where produced;

(c) Species and varieties other than symptom-less carriers may be shipped into this state provided they are properly labeled as to scientific name and each lot or shipment is accompanied by a state-of-origin inspection certificate certifying that the following conditions have been met:

(A) Adequate surveys have been made by state agricultural officials, at the proper time in relation to diseases and hosts, and no Peach Rosette has been found during the last two growing seasons previous to digging the trees or taking the buds either on or within one mile of the growing premises or bud source properties;

(B) The growing premises have been found free from Wilson apricot and Marianna plum trees and any other tree growing on Marianna plum understock and, during the last two growing seasons previous to digging the trees or taking the buds, Wilson apricot or Marianna plum trees have not existed within one mile of the growing premises or the bud source properties.

(5) Disposition of Commodities in Violation of Quarantine. Commodities shipped in violation of this quarantine shall be refused entry into this state and shall be immediately sent out of the state or, at his option and without expense to or indemnity paid by the Department, destroyed under departmental supervision by the person receiving the same. Violators may also be subject to civil penalties of up to \$10,000 as provided by Oregon Laws 1999, Chapter 390, Section 2.

(6) Special Permits. This section does not apply to experimental shipments moved by, or at the request of, the United States agency. The Department, upon receipt of an application in writing, may issue a special permit allowing entry into this state of quarantined commodities for research purposes only. Movement of such commodities shall be subject to any conditions or restrictions stipulated in the permit.

Stat. Auth.: ORS 561.190, 561.510 - 561.600 & 570.305

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 1041(31-74), f. 8-28-74, ef. 9-25-74; AD 1086(9-76), f. & ef. 3-11-76; AD 3-1995, f. & cert. ef. 4-5-95; DOA 8-2005, f. & cert. ef. 2-15-05

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Adm. Order No.: DOA 9-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 603-052-0385

Subject: The amendment will update the scientific names of bean diseases covered by the Malheur County control area. In addition, Anthracnose disease will be added to the regulated list and commercial planting of small white, navy and black turtle beans will be added to the list of varieties exempt from some inspections. These changes will align Oregon's regulation with Idaho's rules governing the planting of beans for seed.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-052-0385

Malheur County Bean Disease Control Area and Procedures

(1) As authorized by ORS 570.405 to 570.435, a control area is established for the protection of the bean seed industry in the following described area through the eradication or control of seedborne bacterial diseases, specifically: Halo Blight caused by *Pseudomonas syringae* pv. *phaseolicola*; Common Bean Blight caused by *Xanthomonas campestris* pv. *phaseoli*; and *X. c. pv. phaseoli* var. *fuscans*; Brownspot caused by *Pseudomonas syringae* pv. *Syringae* (only strains virulently pathogenic to *Phaseolus* sp.); Bean Bacterial Wilt caused by *Curtobacterium flaccumfaciens* pv. *flaccumfaciens*; Anthracnose caused by *Colletotrichum lindemuthianum* or any variations or new strains of these diseases, which are recognized as virulently pathogenic and seedborne, and/or a potential threat to seed production, all of which are hereafter referred to as diseases of beans; such control area includes all of Malheur County, Oregon.

(2) The following methods of control are declared to be the proper methods to be used in the control area described in section (1) of this rule, for the control and prevention of the introduction of diseases of beans. All

bean seed, *Phaseolus* species, from whatever source, used for planting purposes within Malheur County are subject to the following:

(a) Bean seed grown in Malheur County for planting in Malheur County:

(A) Shall be certified in accordance with the procedures and provisions of section (3) of this rule;

(B) Shall have a Malheur County planting certificate number assigned by the Department;

(C) Shall have been Departmentally inspected or bear approved tags; and

(D) Shall have been grown and inspected for two consecutive preceding generations in Malheur County under rill irrigation prior to growing under sprinkler irrigation.

(b) Imported bean seed grown west of the Continental Divide in the contiguous states:

(A) May not be grown under sprinkler irrigation in Malheur County;

(B) Must have an approved phytosanitary certificate from the state of origin affirming freedom from the diseases listed in section (1) of this rule, based on growing season and windrow inspection, this seed may be planted in Malheur County only with the prior approval of the Department and provided that each field planted within Malheur county is submitted for Departmental inspections; and

(C) Shall successfully pass laboratory and/or greenhouse tests conducted by the Department from officially drawn samples; except

(D) Idaho grown bean seed shall be exempt from the requirements of this paragraph provided that:

(i) It has been certified for in-state planting by the Idaho Department of Agriculture;

(ii) It bears Idaho Department of Agriculture inspected or approved tags;

(iii) It is certified by the Idaho Department of Agriculture to have been grown and inspected for two consecutive preceding generations in Idaho under rill irrigation prior to planting for growing under sprinkler irrigation in Malheur County;

(iv) It has been grown in Idaho, has been inspected by the Idaho Crop Improvement Association, and been approved for planting in Idaho; and

(v) Imported bean seed grown east of the Continental Divide in the contiguous states or in foreign countries or otherwise ineligible for planting in Malheur County may be planted in Malheur County only on Departmentally approved Trial Grounds, and are subject to the provisions of section (6) of this rule.

(3) All bean fields in Malheur County shall be subject to entry and inspection by the Department. Growing season inspections of all bean fields shall be done as many times as deemed necessary by the Department, in accordance with the following:

(a) Bean fields grown for seed to be certified for planting in Malheur County shall be inspected by the Department during the growing season and in the windrow, including:

(A) Such bean fields grown under rill irrigation shall be inspected a minimum of one time during the growing season before plants mature seed, and again in the windrow;

(B) Such bean fields grown under sprinkler irrigation shall be inspected a minimum of two times during the growing season before plants mature seed, and once in the windrow; and

(C) The tolerance for the diseases (identified in section (1) of this rule) in any field or part thereof for seed to be certified for planting in Malheur County shall be zero.

(b) Bean crops requiring field inspections to qualify for phytosanitary certifications shall be subject to the same inspection requirements and tolerances as set forth in subsection (a) of this section;

(c) Oregon State University certification inspections may replace the Departmental inspections for certification of seed for planting in Malheur County, if appropriate growing season and windrow inspection requirements as set forth in subsection (a) of this section are met;

(d) Every grower, seed company, or handler of bean seed for planting crops to be grown in Malheur County shall submit his written request to the Department to make the inspections required under this Bean Disease Control Area Order, on or before July 1 of each year. Such written request shall include acreage, general location of field, method of irrigation, name and address and telephone number of applicant.

(4) Eradication methods used shall only be those approved by the Department, including:

(a) Any bean seed found or known to be contaminated with disease which is now within the boundaries of Malheur County shall not be planted in Malheur County;

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(b) Any bean fields within the boundaries of Malheur County which show contamination of disease shall be destroyed in part or in total as may be required to eliminate the presence of disease in the field, by and at the expense of the grower, or landlord, or his authorized agents. The Department shall notify the grower, or landlord, or his authorized agents, of the method and extent of destruction and any safeguards to be taken against disease spread;

(c) The true identity of a regulated disease on growing plants or plants in the windrow will be based upon the observance of symptoms of a regulated disease and, when necessary to establish identity or pathogenicity, either laboratory or greenhouse tests to be conducted by the Department, including:

(A) The definitive verification of identity or pathogenicity shall include isolation of the suspected pathogen and inoculation of seedlings of a known susceptible host;

(B) Until verification of the suspected pathogen is completed the involved planting shall be placed under quarantine for a period of 30 days subject to review or extension as determined by the Department, and entry to the quarantined area shall be restricted to the grower, his agents, the Departmental officials, or persons authorized in writing by the Department, who shall be required to take all necessary sanitary precautions, as prescribed by the quarantine order, to safeguard against the possible spread of the suspected regulated disease; and

(C) The true identity of a regulated disease when found in or on seed shall be based on serological testing methods, the positive results of which shall be conclusive that the plants are subject to this control order, unless the owner of the seed requests verification of pathogenicity to be performed at his expense.

(d) When any regulated disease is verified by the Department, the grower or seed company shall be notified by the Department of such findings, and shall have 48 hours to view the involved planting or laboratory results prior to any action being taken by the Department.

(5) Exemption and special situations to these requirements are as follows:

(a) Any commercial or garden beans first found infected during windrow inspection, are exempt from destruction if the diseased portion of the field and an appropriate buffer area (not less than a 50-foot radius) surrounding the infected site are promptly destroyed;

(b) Beans for processing or fresh consumption are exempt from destruction if the diseased portion of the field is destroyed or harvested within five days after first detection or laboratory verification of the disease, and the crop residue is promptly and completely plowed under after harvest;

(6) Trial Grounds are defined as parcels of land approved by the Department to be set aside for research, testing, or increase of: bean seed grown on Trial Grounds in Malheur County during previous seasons; bean seed eligible for planting in Malheur County; or bean seed otherwise ineligible for planting within the Malheur County. Trial Grounds shall be utilized in accordance with the following:

(a) They shall be under the supervision of technically trained personnel approved by the Department;

(b) The land upon which they are situated shall be owned or leased by the grower and, if leased, a copy of the lease shall accompany the application for approval;

(c) Applications for approval shall be submitted to the Department prior to May 20 of any year and shall contain:

(A) The name of supervisor in charge;

(B) The location and size of the Trial Ground; and

(C) A detailed varietal planting plan (if the original planting plan is changed, the Department shall be notified).

(d) An applicant may have more than one Trial Ground approved, provided a separate application is submitted for each Trial Ground and provided it meets the requirements of this section;

(e) Any seed grown on Trial Grounds to be released to farmer growers for replanting within Malheur County or requiring phytosanitary certification shall meet the inspection requirements of section (3) of this rule;

(f) All information submitted with the approval applications shall be deemed to be confidential under ORS 192.500(1)(b) and (c);

(g) Experimental Plots are defined as subdivision areas within Trial Grounds used for the introduction of imported seed otherwise ineligible for planting in Malheur County. A maximum of one pound of bean seed per variety may be planted in an Experimental Plot with no restrictions, except as noted in this section;

(h) Observation Plots are defined as subdivision areas within Trial Grounds used for the introduction, testing, and observation of imported

seed otherwise ineligible for planting in Malheur County. A maximum of ten pounds of bean seed per variety may be planted in an Observation Plot. Bean seed for Observation Plot planting shall pass laboratory or greenhouse tests conducted by the Department on official or submitted samples prior to planting;

(i) Increase Plots are defined as subdivision areas within Trial Grounds used for the introduction or increase of imported bean seed grown east of the Continental Divide or in foreign countries, imported bean seed from west of the Continental Divide not meeting the requirements of section (2) of this rule, any bean seed previously grown in Malheur County, or any bean seed eligible for planting in Malheur County. A maximum of five acres per variety in any given year may be planted in an Increase Plot. Imported seed shall have successfully passed laboratory or greenhouse testing conducted by the Department from official samples prior to planting. Only one Increase Plot may be maintained by a holder of more than one approved Trial Ground;

(j) Trial Grounds shall be subject to the following restrictions and inspection procedures:

(A) All machinery used in production of bean seed on Trial Grounds shall be disinfected to the satisfaction of the Department prior to the movement to other bean field;

(B) There shall be a minimum of four growing seasons and one windrow inspection, by the Department, for which the fees and charges will be \$7.50 per acre (or fraction thereof) per inspection of seed from east of the Continental Divide or foreign countries; and \$2 per acre (or fraction thereof) per inspection of seed from west of the Continental Divide; and

(C) If disease is found on Trial Ground, none of the seed produced on that Trial Ground may be certified but shall under go one additional year of Trial Ground growing to assure that contamination did not occur.

Stat. Auth.: ORS 561 & 570

Stats. Implemented: ORS 561.190, 561.510 - 561.600, 570.305, 570.405 & 570.410 - 570.415

Hist.: AD 5-1978, f. 5-17-78, ef. 6-10-78; DOA 9-2005, f. & cert. ef. 2-15-05

Adm. Order No.: DOA 10-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 603-054-0040, 603-054-0045, 603-054-0050, 603-054-0055, 603-054-0060, 603-054-0065, 603-054-0070, 603-054-0075

Subject: The amendment will change failure or refusal to license as a Christmas tree grower or nursery from a minor violation to a moderate violation. Penalties will increase from: \$0-\$300 to \$300-\$1800.

Rules Coordinator: Sue Gooch—(503) 986-4583

603-054-0040

Intent

Civil penalties encourage compliance with plant protection and marketing regulatory requirements. The intent of this civil penalty regulation is to implement the authority provided by the Oregon Legislature in order to protect Oregon's natural resources and enhance the marketing of our agricultural products. Communication is an important first step in reaching the Department of Agriculture's goal of educating the public and industry into compliance with its regulatory requirements. Occasionally, however, the violation is so obvious and threatening that stronger measures are appropriate in the first instance. Enforcement serves as an important, though usually secondary, educational tool.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0045

Definitions

In addition to the definitions set forth in ORS 561.005, 570.005, 570.105, and 571.005, the following will apply:

(1) "Abatement": Action by a person to comply with a cited violation of the rules or statutes.

(2) "Director": The Director of the Department of Agriculture, or the Director's designee.

(3) "Good cause": Means a cause beyond the reasonable control of the person. "Good cause" exists when it is established by satisfactory evidence that factors or circumstances are beyond the control of a rational and prudent person of normal sensitivity, exercising ordinary common sense.

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(4) "Magnitude of Violation": Means the seriousness of a violation with respect to how it is categorized. The prohibited acts shall be categorized as a Major violation, Moderate violation, or Minor violation.

(5) "Repeat violation": A violation that has not been fully corrected by the date ordered or subsequent violation of the same rule, order or statute.

(6) "Violation": The breach of a person's duty to comply with ORS chapters 561, 570, or 571 or any regulation, rule or order issued thereunder.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0050

Consolidation of Proceedings

Each and every violation is a separate and distinct offense. In cases of continuing violations, proceedings for the assessment of multiple civil penalties for multiple violations against a person may be consolidated into a single hearing.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0055

Notice of Violation and Assessment of Civil Penalties

(1) Notice of a violation shall inform the person of the existence of a violation, the actions required to resolve the violation and the consequences of continued non-compliance.

(2) The Director shall prescribe a reasonable time for the abatement of a violation of ORS 561, 570 or 571. Upon timely request, the Director may extend this time for good cause shown. The request should state any good cause that supports the request.

(3) Violations occurring after the time prescribed for the elimination of the violation shall be considered repeat violations.

(4) Persons receiving a notice of proposed civil penalty under these rules shall have twenty (20) calendar days to request a hearing. If a request is not received on the 20th day after the notice is served, the Department may issue a default order. The Department file is designated as the record in cases of default.

(5) Notice of violation shall be in writing and shall be sent by registered or certified mail to the last known address on file with the Department of Agriculture. The notice shall include, but not be limited to:

(a) A reference to the particular section of the statute and/or administrative rule involved;

(b) A short and plain statement of the matters asserted or charged;

(c) A statement of the amount of the penalty or penalties assessed, and how it was calculated;

(d) A person's right to request a hearing within twenty (20) days of receipt of the notice and explanation of how a hearing may be requested;

(e) A statement that the notice becomes a final order unless the Department receives a written request for a hearing from the person whom the civil penalty is addressed within twenty (20) days from the receipt of the notice;

(f) A statement that the person is entitled to an informal conference with the Department to attempt resolution of the violation and penalty prior to commencement of a formal contested case hearing.

(6) Civil penalties shall be due and payable within twenty (20) days of receipt of the final order of violation or when the notice is converted to a final order because the person has defaulted.

(7) Any time after the service of the written notice of assessment of a civil penalty, the Director may compromise, reduce or settle any unpaid civil penalty at any amount that the Director deems appropriate in his or her discretion. As provided by ORS 183.415(5), any compromise, reduction or settlement authorized by the Director shall be final and not subject to judicial review.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0060

Hearing Procedures

All hearings shall be conducted pursuant to the applicable contested case procedures as outlined in ORS 183.310 to 183.550 and the Attorney General's Uniform and Model Rules of Procedure (OAR Chapter 137, 1999).

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0065

Entry of Order and Appeal Rights

(1) If a person, having received a notice of violation(s), fails to request a hearing as specified in OAR 603-054-055 (5)(d), or if after the hearing the person is found to be in violation of the provisions of these rules, a final order may be entered by the department assessing a civil penalty.

(2) The Director or his/her designate shall sign the order.

(3) The final order, if not appealed or not sustained on appeal, shall constitute a judgement and may be recorded with the county clerk in any county of this state. The penalty provided in the order so recorded becomes a lien upon the title of any interest and real property in the county owned by the person against whom the order is entered.

Stat. Auth.: 1999 OL 390

Stats. Implemented: 1999 OL 390

Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0070

Civil Penalty Schedule Matrix

(1) In addition to any other penalty provided by law, the Director may assess a civil penalty for violation of any provision of ORS Chapters 561, 570 and 571 relating to agricultural orders, quarantine rules and regulations, director's exemptions, compliance agreements, control area orders, failure to pay imported timber inspection fee, unlicensed activity as grower, dealer or agent for the plant nursery, and unlicensed activity as a Christmas tree grower. The amount of any civil penalty shall be determined using the following matrix. The amount of an initial civil penalty shall not exceed \$5,000 and any subsequent civil penalties for a repeat occurrence of the same prohibited act shall not exceed \$10,000 per violation. [Matrix not included. See ED. NOTE.]

(2) Magnitude of violation: The commission of any prohibited act specified below has been determined to be a violation of ORS Chapter 561, 570 or 571 and is subject to a civil penalty. The commission of each prohibited act has been categorized as to its magnitude of violation as follows:

(a) Major:

(A) Knowingly importing or transferring infested or infected plant material, or other regulated items or regulated organisms into or within Oregon in violation of an agricultural quarantine order, quarantine rules and regulations, director's exemption, compliance agreement, or control area order.

(B) Using falsified or altered certificates or other official documents issued by a federal, state or county phytosanitary official.

(C) Tampering with, altering, misrepresenting or falsifying in any manner official documents issued by a plant regulatory official.

(D) Providing false information required for issuance of documents or official certificates as required under agricultural quarantine orders, quarantine rules and regulations, director's exemptions, compliance agreements, control area orders, or imported timber products inspection program.

(E) Substituting uninspected plant material or regulated items for plant material or regulated items covered by a Department inspection.

(F) Willful violation: a violation that is committed knowingly by a person, or the person's agent, who intentionally or knowingly disobeys or recklessly disregards the requirements of a statute, regulation, rule, or order.

(G) Repeat violations.

(b) Moderate:

(A) Failure to license or refusal to license as a Christmas Tree Grower; Nursery Stock Grower or Collector of Native Plants; Greenhouse Grower of Herbaceous Plants; Nursery Dealer, Florist or Landscape Contractor.

(B) Importing or transferring infested or infected plant material, or other regulated items or regulated organisms into or within Oregon in violation of an agricultural quarantine order, quarantine rules and regulations, director's exemption, compliance agreement, or control area order.

(C) Knowingly falsifying all or part of any application for registration or licensing.

(D) Failure to pay imported timber products program inspection fees.

(E) Growing plants or conducting other activities requiring a compliance agreement with the Department, without entering into said compliance agreement.

(c) Minor:

(A) Failure to maintain proper certificates or paperwork as required by an agricultural quarantine order, quarantine rules and regulations, director's exemption, compliance agreement, control area order, or the timber products inspection program.

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(B) Failure to notify the Department as required by an agricultural quarantine order, quarantine rules and regulations, director's exemption, compliance agreement, control area order, or the timber products inspection program.

(C) Transporting or accepting for transportation plant material or regulated items that do not carry the official inspection documents required by the Department.

[ED. NOTE: Matrix referenced are available from the agency.]
Stat. Auth.: 1999 OL 390
Stats. Implemented: 1999 OL 390
Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

603-054-0075

Mitigating Circumstances

During the process of determining the amount of civil penalty to be assessed, the Director may take into consideration any factors which may have an influence on the particular case. Such factors may include whether the violation appears to be accidental or willful and repeated, whether the violation is a first time offense or if there is a history of violations and the degree of cooperation shown by the person involved in the violation.

Stat. Auth.: 1999 OL 390
Stats. Implemented: 1999 OL 390
Hist.: DOA 3-2001, f. & cert. ef. 1-5-01; DOA 10-2005, f. & cert. ef. 2-15-05

Department of Environmental Quality Chapter 340

Adm. Order No.: DEQ 2-2005

Filed with Sec. of State: 2-10-2005

Certified to be Effective: 2-10-05

Notice Publication Date: 9-1-04

Rules Amended: 340-200-0020, 340-200-0040, 340-218-0080, 340-230-0030, 340-230-0410, 340-238-0040, 340-238-0060, 340-244-0030, 340-244-0040, 340-244-0120, 340-244-0210, 340-244-0220, 340-244-0230

Subject: Adopts changes to the National Emission Standards for Hazardous Air Pollutants (NESHAPs), New Source Performance Standards (NSPSs), and Air Quality Title V program that DEQ implements. NESHAPs control emissions of hazardous air pollutants from specific types of emission sources (i.e. pulp and paper mills and chromium electroplaters) and implement the requirements of Section 112 of the Clean Air Act. NSPSs control emissions from types of emission sources (i.e. bulk gasoline terminals and landfills) that EPA determines "cause, or contribute significantly to, air pollution" as directed by section 111 of the Clean Air Act. Title V of the Clean Air Act requires each state to develop a comprehensive operating permit program for major industrial sources of air pollution. The proposed changes would update state rules to reflect recent changes in the federal programs and ensure consistency between state and federal standards.

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

340-200-0020

General Air Quality Definitions

As used in divisions 200 through 268, unless specifically defined otherwise:

(1) "Act" or "FCAA" means the Federal Clean Air Act, 42 U.S.C.A. §§ 7401 to 7671q.

(2) "Activity" means any process, operation, action, or reaction (e.g., chemical) at a source that emits a regulated pollutant.

(3) "Actual emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) For determining actual emissions as of the baseline period:

(A) Except as provided in paragraph (B), actual emissions equal the average rate at which the source actually emitted the pollutant during a baseline period and that represents normal source operation;

(B) The Department presumes that the source-specific mass emissions limit included in a source's permit that was effective on September 8, 1981 is equivalent to the source's actual emissions during the baseline period if it is within 10% of the actual emissions calculated under paragraph (A).

(C) For any source that had not begun normal operation, actual emissions equal the potential to emit of the source.

(b) For determining actual emissions for Emission Statements under OAR 340-214-0200 through 340-214-0220 and Oregon Title V Operating

Permit Fees under OAR 340 division 220, actual emissions include, but are not limited to, routine process emissions, fugitive emissions, excess emissions from maintenance, startups and shutdowns, equipment malfunction, and other activities, except categorically insignificant activities and secondary emissions.

(c) For Oregon Title V Operating Permit Fees under OAR 340 division 220, actual emissions must be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates, or types of materials processed, stored, or combusted during the specified time period.

(4) "Adjacent" means interdependent facilities that are nearby to each other.

(5) "Affected source" means a source that includes one or more affected units that are subject to emission reduction requirements or limitations under Title IV of the FCAA.

(6) "Affected states" means all states:

(a) Whose air quality may be affected by a proposed permit, permit modification, or permit renewal and that are contiguous to Oregon; or

(b) That are within 50 miles of the permitted source.

(7) "Aggregate insignificant emissions" means the annual actual emissions of any regulated air pollutant from one or more designated activities at a source that are less than or equal to the lowest applicable level specified in this section. The total emissions from each designated activity and the aggregate emissions from all designated activities must be less than or equal to the lowest applicable level specified.

(a) One ton for total reduced sulfur, hydrogen sulfide, sulfuric acid mist, any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, and each criteria pollutant, except lead;

(b) 120 pounds for lead;

(c) 600 pounds for fluoride;

(d) 500 pounds for PM10 in a PM10 nonattainment area;

(e) The lesser of the amount established in OAR 340-244-0040, **Table 1** or 340-244-0230, **Table 3**, or 1,000 pounds;

(f) An aggregate of 5,000 pounds for all Hazardous Air Pollutants.

(8) "Air Contaminant" means a dust, fume, gas, mist, odor, smoke, vapor, pollen, soot, carbon, acid or particulate matter, or any combination thereof.

(9) "Air Contaminant Discharge Permit" or "ACDP" means a written permit issued, renewed, amended, or revised by the Department, pursuant to OAR 340 division 216.

(10) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance. An alternative method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(11) "Applicable requirement" means all of the following as they apply to emissions units in an Oregon Title V Operating Permit program source or ACDP program source, including requirements that have been promulgated or approved by the EPA through rule making at the time of issuance but have future-effective compliance dates:

(a) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by the EPA through rule-making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in **40 CFR Part 52**;

(b) Any standard or other requirement adopted under OAR 340-200-0040 of the State of Oregon Clean Air Act Implementation Plan, that is more stringent than the federal standard or requirement which has not yet been approved by the EPA, and other state-only enforceable air pollution control requirements;

(c) Any term or condition in an ACDP, OAR 340 division 216, including any term or condition of any preconstruction permits issued pursuant to OAR 340 division 224, New Source Review, until or unless the Department revokes or modifies the term or condition by a permit modification;

(d) Any term or condition in a Notice of Construction and Approval of Plans, OAR 340-210-0200 through 340-210-0240, until or unless the Department revokes or modifies the term or condition by a Notice of Construction and Approval of Plans or a permit modification;

(e) Any term or condition in a Notice of Approval, OAR 340-218-0190, issued before July 1, 2001, until or unless the Department revokes or

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modifies the term or condition by a Notice of Approval or a permit modification;

(f) Any term or condition of a PSD permit issued by the EPA until or unless the EPA revokes or modifies the term or condition by a permit modification;

(g) Any standard or other requirement under section 111 of the Act, including section 111(d);

(h) Any standard or other requirement under section 112 of the Act, including any requirement concerning accident prevention under section 112(r) (7) of the Act;

(i) Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;

(j) Any requirements established pursuant to section 504(b) or section 114(a)(3) of the Act;

(k) Any standard or other requirement under section 126(a)(1) and (c) of the Act;

(l) Any standard or other requirement governing solid waste incineration, under section 129 of the Act;

(m) Any standard or other requirement for consumer and commercial products, under section 183(e) of the Act;

(n) Any standard or other requirement for tank vessels, under section 183(f) of the Act;

(o) Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under section 328 of the Act;

(p) Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the Administrator has determined that such requirements need not be contained in an Oregon Title V Operating Permit; and

(q) Any national ambient air quality standard or increment or visibility requirement under part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to section 504(e) of the Act.

(12) "Assessable Emission" means a unit of emissions for which the major source owner or operator will be assessed a fee. It includes an emission of a pollutant as specified in OAR 340-220-0060 from one or more emissions devices or activities within a major source.

(13) "Baseline Emission Rate" means the actual emission rate during the baseline period. Baseline emission rate does not include increases due to voluntary fuel switches or increased hours of operation that occurred after the baseline period.

(14) "Baseline Period" means any consecutive 12 calendar month period during calendar years 1977 or 1978. The Department may allow the use of a prior time period upon a determination that it is more representative of normal source operation.

(15) "Best Available Control Technology" or "BACT" means an emission limitation, including, but not limited to, a visible emission standard, based on the maximum degree of reduction of each air contaminant subject to regulation under the Act which would be emitted from any proposed major source or major modification which, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such air contaminant. In no event may the application of BACT result in emissions of any air contaminant that would exceed the emissions allowed by any applicable new source performance standard or any standard for hazardous air pollutant. If an emission limitation is not feasible, a design, equipment, work practice, or operational standard, or combination thereof, may be required. Such standard must, to the degree possible, set forth the emission reduction achievable and provide for compliance by prescribing appropriate permit conditions.

(16) "Capacity" means the maximum regulated pollutant emissions from a stationary source under its physical and operational design.

(17) "Capture system" means the equipment (including but not limited to hoods, ducts, fans, and booths) used to contain, capture and transport a pollutant to a control device.

(18) "Categorically insignificant activity" means any of the following listed pollutant emitting activities principally supporting the source or the major industrial group. Categorically insignificant activities must comply with all applicable requirements.

(a) Constituents of a chemical mixture present at less than 1% by weight of any chemical or compound regulated under divisions 200 through 268 excluding divisions 248 and 262 of this chapter, or less than 0.1% by weight of any carcinogen listed in the U.S. Department of Health and

Human Service's Annual Report on Carcinogens when usage of the chemical mixture is less than 100,000 pounds/year;

(b) Evaporative and tail pipe emissions from on-site motor vehicle operation;

(c) Distillate oil, kerosene, and gasoline fuel burning equipment rated at less than or equal to 0.4 million Btu/hr;

(d) Natural gas and propane burning equipment rated at less than or equal to 2.0 million Btu/hr;

(e) Office activities;

(f) Food service activities;

(g) Janitorial activities;

(h) Personal care activities;

(i) Groundskeeping activities including, but not limited to building painting and road and parking lot maintenance;

(j) On-site laundry activities;

(k) On-site recreation facilities;

(l) Instrument calibration;

(m) Maintenance and repair shop;

(n) Automotive repair shops or storage garages;

(o) Air cooling or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment;

(p) Refrigeration systems with less than 50 pounds of charge of ozone depleting substances regulated under Title VI, including pressure tanks used in refrigeration systems but excluding any combustion equipment associated with such systems;

(q) Bench scale laboratory equipment and laboratory equipment used exclusively for chemical and physical analysis, including associated vacuum producing devices but excluding research and development facilities;

(r) Temporary construction activities;

(s) Warehouse activities;

(t) Accidental fires;

(u) Air vents from air compressors;

(v) Air purification systems;

(w) Continuous emissions monitoring vent lines;

(x) Demineralized water tanks;

(y) Pre-treatment of municipal water, including use of deionized water purification systems;

(z) Electrical charging stations;

(aa) Fire brigade training;

(bb) Instrument air dryers and distribution;

(cc) Process raw water filtration systems;

(dd) Pharmaceutical packaging;

(ee) Fire suppression;

(ff) Blueprint making;

(gg) Routine maintenance, repair, and replacement such as anticipated activities most often associated with and performed during regularly scheduled equipment outages to maintain a plant and its equipment in good operating condition, including but not limited to steam cleaning, abrasive use, and woodworking;

(hh) Electric motors;

(ii) Storage tanks, reservoirs, transfer and lubricating equipment used for ASTM grade distillate or residual fuels, lubricants, and hydraulic fluids;

(jj) On-site storage tanks not subject to any New Source Performance Standards (NSPS), including underground storage tanks (UST), storing gasoline or diesel used exclusively for fueling of the facility's fleet of vehicles;

(kk) Natural gas, propane, and liquefied petroleum gas (LPG) storage tanks and transfer equipment;

(ll) Pressurized tanks containing gaseous compounds;

(mm) Vacuum sheet stacker vents;

(nn) Emissions from wastewater discharges to publicly owned treatment works (POTW) provided the source is authorized to discharge to the POTW, not including on-site wastewater treatment and/or holding facilities;

(oo) Log ponds;

(pp) Storm water settling basins;

(qq) Fire suppression and training;

(rr) Paved roads and paved parking lots within an urban growth boundary;

(ss) Hazardous air pollutant emissions of fugitive dust from paved and unpaved roads except for those sources that have processes or activities that contribute to the deposition and entrainment of hazardous air pollutants from surface soils;

(tt) Health, safety, and emergency response activities;

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(uu) Emergency generators and pumps used only during loss of primary equipment or utility service due to circumstances beyond the reasonable control of the owner or operator, or to address a power emergency as determined by the Department;

(vv) Non-contact steam vents and leaks and safety and relief valves for boiler steam distribution systems;

(ww) Non-contact steam condensate flash tanks;

(xx) Non-contact steam vents on condensate receivers, deaerators and similar equipment;

(yy) Boiler blowdown tanks;

(zz) Industrial cooling towers that do not use chromium-based water treatment chemicals;

(aaa) Ash piles maintained in a wetted condition and associated handling systems and activities;

(bbb) Oil/water separators in effluent treatment systems;

(ccc) Combustion source flame safety purging on startup;

(ddd) Broke beaters, pulp and repulping tanks, stock chests and pulp handling equipment, excluding thickening equipment and repulpers;

(eee) Stock cleaning and pressurized pulp washing, excluding open stock washing systems; and

(fff) White water storage tanks.

(19) "Certifying individual" means the responsible person or official authorized by the owner or operator of a source who certifies the accuracy of the emission statement.

(20) "CFR" means Code of Federal Regulations.

(21) "Class I area" means any Federal, State or Indian reservation land which is classified or reclassified as Class I area. Class I areas are identified in OAR 340-204-0250.

(22) "Commence" or "commencement" means that the owner or operator has obtained all necessary preconstruction approvals required by the Act and either has:

(a) Begun, or caused to begin, a continuous program of actual on-site construction of the source to be completed in a reasonable time; or

(b) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the source to be completed in a reasonable time.

(23) "Commission" or "EQC" means Environmental Quality Commission.

(24) "Constant Process Rate" means the average variation in process rate for the calendar year is not greater than plus or minus ten percent of the average process rate.

(25) "Construction":

(a) Except as provided in subsection (b) of this section means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of a source or part of a source;

(b) As used in OAR 340 division 224 means any physical change including, but not limited to, fabrication, erection, installation, demolition, or modification of an emissions unit, or change in the method of operation of a source which would result in a change in actual emissions.

(26) "Continuous compliance determination method" means a method, specified by the applicable standard or an applicable permit condition, which:

(a) Is used to determine compliance with an emission limitation or standard on a continuous basis, consistent with the averaging period established for the emission limitation or standard; and

(b) Provides data either in units of the standard or correlated directly with the compliance limit.

(27) "Continuous Monitoring Systems" means sampling and analysis, in a timed sequence, using techniques which will adequately reflect actual emissions or concentrations on a continuing basis in accordance with the Department's Continuous Monitoring Manual, and includes continuous emission monitoring systems, continuous opacity monitoring system (COMS) and continuous parameter monitoring systems.

(28) "Control device" means equipment, other than inherent process equipment, that is used to destroy or remove air pollutant(s) prior to discharge to the atmosphere. The types of equipment that may commonly be used as control devices include, but are not limited to, fabric filters, mechanical collectors, electrostatic precipitators, inertial separators, afterburners, thermal or catalytic incinerators, adsorption devices (such as carbon beds), condensers, scrubbers (such as wet collection and gas absorption devices), selective catalytic or non-catalytic reduction systems, flue gas recirculation systems, spray dryers, spray towers, mist eliminators, acid plants, sulfur recovery plants, injection systems (such as water, steam, ammonia, sorbent

or limestone injection), and combustion devices independent of the particular process being conducted at an emissions unit (e.g., the destruction of emissions achieved by venting process emission streams to flares, boilers or process heaters). For purposes of OAR 340-212-0200 through 340-212-0280, a control device does not include passive control measures that act to prevent pollutants from forming, such as the use of seals, lids, or roofs to prevent the release of pollutants, use of low-polluting fuel or feedstocks, or the use of combustion or other process design features or characteristics. If an applicable requirement establishes that particular equipment which otherwise meets this definition of a control device does not constitute a control device as applied to a particular pollutant-specific emissions unit, then that definition will be binding for purposes of OAR 340-212-0200 through 340-212-0280.

(29) "Criteria Pollutant" means nitrogen oxides, volatile organic compounds, particulate matter, PM10, sulfur dioxide, carbon monoxide, or lead.

(30) "Data" means the results of any type of monitoring or method, including the results of instrumental or non-instrumental monitoring, emission calculations, manual sampling procedures, recordkeeping procedures, or any other form of information collection procedure used in connection with any type of monitoring or method.

(31) "De minimis emission level" means: [Table not included. See ED. NOTE.]

Note: De minimis is compared to all increases that are not included in the PSEL.

(32) "Department":

(a) Means Department of Environmental Quality; except

(b) As used in OAR 340 divisions 218 and 220 means Department of Environmental Quality or in the case of Lane County, Lane Regional Air Pollution Authority.

(33) "Device" means any machine, equipment, raw material, product, or byproduct at a source that produces or emits a regulated pollutant.

(34) "Director" means the Director of the Department or the Director's designee.

(35) "Draft permit" means the version of an Oregon Title V Operating Permit for which the Department or Lane Regional Air Pollution Authority offers public participation under OAR 340-218-0210 or the EPA and affected State review under OAR 340-218-0230.

(36) "Effective date of the program" means the date that the EPA approves the Oregon Title V Operating Permit program submitted by the Department on a full or interim basis. In case of a partial approval, the "effective date of the program" for each portion of the program is the date of the EPA approval of that portion.

(37) "Emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the owner or operator, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency does not include noncompliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.

(38) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(39) "Emission Estimate Adjustment Factor" or "EEAF" means an adjustment applied to an emission factor to account for the relative inaccuracy of the emission factor.

(40) "Emission Factor" means an estimate of the rate at which a pollutant is released into the atmosphere, as the result of some activity, divided by the rate of that activity (e.g., production or process rate). Where an emission factor is required sources must use an emission factor approved by EPA or the Department.

(41)(a) Except as provided in subsection (b) of this section, "Emission Limitation" and "Emission Standard" mean a requirement established by a State, local government, or the EPA which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(b) As used in OAR 340-212-0200 through 340-212-0280, "Emission limitation or standard" means any applicable requirement that constitutes an emission limitation, emission standard, standard of performance or means of emission limitation as defined under the Act. An emission limitation or standard may be expressed in terms of the pollutant, expressed either as a specific quantity, rate or concentration of emissions (e.g., pounds of SO₂ per hour, pounds of SO₂ per million British thermal units of fuel input, kilo-

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grams of VOC per liter of applied coating solids, or parts per million by volume of SO₂) or as the relationship of uncontrolled to controlled emissions (e.g., percentage capture and destruction efficiency of VOC or percentage reduction of SO₂). An emission limitation or standard may also be expressed either as a work practice, process or control device parameter, or other form of specific design, equipment, operational, or operation and maintenance requirement. For purposes of OAR 340-212-0200 through 340-212-0280, an emission limitation or standard does not include general operation requirements that an owner or operator may be required to meet, such as requirements to obtain a permit, to operate and maintain sources in accordance with good air pollution control practices, to develop and maintain a malfunction abatement plan, to keep records, submit reports, or conduct monitoring.

(42) "Emission Reduction Credit Banking" means to presently reserve, subject to requirements of OAR 340 division 268, Emission Reduction Credits, emission reductions for use by the reserver or assignee for future compliance with air pollution reduction requirements.

(43) "Emission Reporting Form" means a paper or electronic form developed by the Department that must be completed by the permittee to report calculated emissions, actual emissions, or permitted emissions for interim emission fee assessment purposes.

(44) "Emissions unit" means any part or activity of a source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a source is any machine, equipment, raw material, product, or byproduct that produces or emits regulated air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits regulated air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit if the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable.

(c) The term emissions unit is not meant to alter or affect the definition of the term "unit" under Title IV of the FCAA.

(d) Parts and activities cannot be grouped for determining emissions increases from an emissions unit under OAR 340-224-0050 through 340-224-0070, or 340 division 210, or for determining the applicability of any New Source Performance Standard (NSPS).

(45) "EPA" or "Administrator" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(46) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions. An equivalent method used to meet an applicable federal requirement for which a reference method is specified must be approved by EPA unless EPA has delegated authority for the approval to the Department.

(47) "Event" means excess emissions that arise from the same condition and occur during a single calendar day or continue into subsequent calendar days.

(48) "Exceedance" means a condition that is detected by monitoring that provides data in terms of an emission limitation or standard and that indicates that emissions (or opacity) are greater than the applicable emission limitation or standard (or less than the applicable standard in the case of a percent reduction requirement) consistent with any averaging period specified for averaging the results of the monitoring.

(49) "Excess emissions" means emissions in excess of a permit limit or any applicable air quality rule.

(50) "Excursion" means a departure from an indicator range established for monitoring under OAR 340-212-0200 through 340-212-0280 and 340-218-0050(3)(a), consistent with any averaging period specified for averaging the results of the monitoring.

(51) "Federal Land Manager" means with respect to any lands in the United States, the Secretary of the federal department with authority over such lands.

(52) Federal Major Source means a source with potential to emit any individual regulated pollutant, excluding hazardous air pollutants listed in OAR 340 division 244, greater than or equal to 100 tons per year if in a source category listed below, or 250 tons per year if not in a source category listed. Potential to emit calculations must include emission increases due to a new or modified source.

(a) Fossil fuel-fired steam electric plants of more than 250 million BTU/hour heat input;

(b) Coal cleaning plants with thermal dryers;

(c) Kraft pulp mills;

(d) Portland cement plants;

(e) Primary Zinc Smelters;

(f) Iron and Steel Mill Plants;

(g) Primary aluminum ore reduction plants;

(h) Primary copper smelters;

(i) Municipal Incinerators capable of charging more than 50 tons of refuse per day;

(j) Hydrofluoric acid plants;

(k) Sulfuric acid plants;

(l) Nitric acid plants;

(m) Petroleum Refineries;

(n) Lime plants;

(o) Phosphate rock processing plants;

(p) Coke oven batteries;

(q) Sulfur recovery plants;

(r) Carbon black plants, furnace process;

(s) Primary lead smelters;

(t) Fuel conversion plants;

(u) Sintering plants;

(v) Secondary metal production plants;

(w) Chemical process plants;

(x) Fossil fuel fired boilers, or combinations thereof, totaling more than 250 million BTU per hour heat input;

(y) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(z) Taconite ore processing plants;

(aa) Glass fiber processing plants;

(bb) Charcoal production plants.

(53) "Final permit" means the version of an Oregon Title V Operating Permit issued by the Department or Lane Regional Air Pollution Authority that has completed all review procedures required by OAR 340-218-0120 through 340-218-0240.

(54) "Fugitive Emissions":

(a) Except as used in subsection (b) of this section, means emissions of any air contaminant which escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct, or equivalent opening.

(b) As used to define a major Oregon Title V Operating Permit program source, means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

(55) "General permit":

(a) Except as provided in subsection (b) of this section, means an Oregon Air Contaminant Discharge Permit established under OAR 340-216-0060;

(b) As used in OAR 340 division 218 means an Oregon Title V Operating Permit established under OAR 340-218-0090.

(56) "Generic PSEL" means: [Table not included. See ED. NOTE.]

Note: Sources are eligible for a generic PSEL if expected emissions are less than or equal to the levels listed in the table above. Baseline emission rate and netting basis do not apply to pollutants at sources using generic PSELs.

(57) "Growth Allowance" means an allocation of some part of an airshed's capacity to accommodate future proposed major sources and major modifications of sources.

(58) "Immediately" means as soon as possible but in no case more than one hour after a source knew or should have known of an excess emission period.

(59) "Inherent process equipment" means equipment that is necessary for the proper or safe functioning of the process, or material recovery equipment that the owner or operator documents is installed and operated primarily for purposes other than compliance with air pollution regulations. Equipment that must be operated at an efficiency higher than that achieved during normal process operations in order to comply with the applicable emission limitation or standard is not inherent process equipment. For the purposes of OAR 340-212-0200 through 340-212-0280, inherent process equipment is not considered a control device.

(60) "Insignificant Activity" means an activity or emission that the Department has designated as categorically insignificant, or that meets the criteria of aggregate insignificant emissions.

(61) "Insignificant Change" means an off-permit change defined under OAR 340-218-0140(2)(a) to either a significant or an insignificant activity which:

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(a) Does not result in a redesignation from an insignificant to a significant activity;

(b) Does not invoke an applicable requirement not included in the permit; and

(c) Does not result in emission of regulated air pollutants not regulated by the source's permit.

(62) "Late Payment" means a fee payment which is postmarked after the due date.

(63) "Lowest Achievable Emission Rate" or "LAER" means that rate of emissions which reflects: the most stringent emission limitation which is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent. The application of this term cannot permit a proposed new or modified source to emit any air contaminant in excess of the amount allowable under applicable New Source Performance Standards (NSPS) or standards for hazardous air pollutants.

(64) "Maintenance Area" means a geographical area of the State that was designated as a nonattainment area, redesignated as an attainment area by EPA, and redesignated as a maintenance area by the Environmental Quality Commission in OAR chapter 340, division 204.

(65) "Maintenance Pollutant" means a pollutant for which a maintenance area was formerly designated a nonattainment area.

(66) "Major Modification" means any physical change or change of operation of a source that results in the following for any regulated air pollutant:

(a) An increase in the PSEL by an amount equal to or more than the significant emission rate over the netting basis; and

(b) The accumulation of physical changes and changes of operation since baseline would result in a significant emission rate increase.

(A) Calculations of emission increases in (b) must account for all accumulated increases in actual emissions due to physical changes and changes of operation occurring at the source since the baseline period, or since the time of the last construction approval issued for the source pursuant to the New Source Review Regulations in OAR 340 division 224 for that pollutant, whichever time is more recent. These include emissions from insignificant activities.

(B) Emission increases due solely to increased use of equipment or facilities that existed during the baseline period are not included, if that increased use was possible during the baseline period under the baseline configuration of the source, and the increased use of baseline equipment capacity is not to support a physical change or change in operation.

(c) For new or modified major sources that were permitted to construct and operate after the baseline period and were not subject to New Source Review, a major modification means:

(A) Any change at a source, including production increases, that would result in a Plant Site Emission Limit increase of 1 ton or more for any regulated pollutant for which the source is a major source; or

(B) The addition or modification of any stationary source or sources after the initial construction that have cumulative potential emissions greater than or equal to the significant emission rate, excluding any emission decreases.

(C) Changes to the PSEL solely due to the availability of better emissions information are exempt from being considered an increase.

(d) The following are not considered major modifications:

(A) Except as provided in (c), proposed increases in hours of operation or production rates that would cause emission increases above the levels allowed in a permit and would not involve a physical change or change in method of operation in the source;

(B) Pollution control projects that are determined by the Department to be environmentally beneficial;

(C) Routine maintenance, repair, and replacement of components;

(D) Temporary equipment installed for maintenance of the permanent equipment if the temporary equipment is in place for less than six months and operated within the permanent equipment's existing PSEL;

(E) Use of alternate fuel or raw materials, that were available and the source was capable of accommodating in the baseline period.

(67) "Major Source":

(a) Except as provided in subsection (b), means a source that emits, or has the potential to emit, any regulated air pollutant at a Significant Emission Rate. This includes emissions from insignificant activities.

(b) As used in OAR 340 division 210, Stationary Source Notification Requirements, OAR 340 division 218, Rules Applicable to Sources

Required to Have Oregon Title V Operating Permits OAR 340 division 220, Oregon Title V Operating Permit Fees, and OAR 340-216-0066 Standard ADCDPs, means any stationary source (or any group of stationary sources that are located on one or more contiguous or adjacent properties and are under common control of the same person (or persons under common control)) belonging to a single major industrial grouping or supporting the major industrial group and that is described in paragraphs (A), (B), or (C) of this subsection. For the purposes of this subsection, a stationary source or group of stationary sources is considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same Major Group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual (U.S. Office of Management and Budget, 1987) or support the major industrial group.

(A) A major source of hazardous air pollutants, which means:

(i) For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tons per year (tpy) or more of any hazardous air pollutants that has been listed pursuant to OAR 340-244-0040; 25 tpy or more of any combination of such hazardous air pollutants, or such lesser quantity as the Administrator may establish by rule. Emissions from any oil or gas exploration or production well, along with its associated equipment, and emissions from any pipeline compressor or pump station will not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or

(ii) For radionuclides, "major source" will have the meaning specified by the Administrator by rule.

(B) A major stationary source of air pollutants, as defined in section 302 of the Act, that directly emits or has the potential to emit 100 tpy or more of any regulated air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source are not considered in determining whether it is a major stationary source for the purposes of section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:

(i) Coal cleaning plants (with thermal dryers);

(ii) Kraft pulp mills;

(iii) Portland cement plants;

(iv) Primary zinc smelters;

(v) Iron and steel mills;

(vi) Primary aluminum ore reduction plants;

(vii) Primary copper smelters;

(viii) Municipal incinerators capable of charging more than 50 tons of refuse per day;

(ix) Hydrofluoric, sulfuric, or nitric acid plants;

(x) Petroleum refineries;

(xi) Lime plants;

(xii) Phosphate rock processing plants;

(xiii) Coke oven batteries;

(xiv) Sulfur recovery plants;

(xv) Carbon black plants (furnace process);

(xvi) Primary lead smelters;

(xvii) Fuel conversion plants;

(xviii) Sintering plants;

(xix) Secondary metal production plants;

(xx) Chemical process plants;

(xxi) Fossil-fuel boilers, or combination thereof, totaling more than 250 million British thermal units per hour heat input;

(xxii) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(xxiii) Taconite ore processing plants;

(xxiv) Glass fiber processing plants;

(xxv) Charcoal production plants;

(xxvi) Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; or

(xxvii) Any other stationary source category, that as of August 7, 1980 is being regulated under section 111 or 112 of the Act.

(C) A major stationary source as defined in part D of Title I of the Act, including:

(i) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of VOCs or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe," and 10 tpy or more in areas classi-

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fied as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides do not apply with respect to any source for which the Administrator has made a finding, under section 182(f)(1) or (2) of the Act, that requirements under section 182(f) of the Act do not apply;

(ii) For ozone transport regions established pursuant to section 184 of the Act, sources with the potential to emit 50 tpy or more of VOCs;

(iii) For carbon monoxide nonattainment areas:

(I) That are classified as "serious;" and

(II) In which stationary sources contribute significantly to carbon monoxide levels as determined under rules issued by the Administrator, sources with the potential to emit 50 tpy or more of carbon monoxide.

(iv) For particulate matter (PM10) nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM10.

(68) "Material Balance" means a procedure for determining emissions based on the difference in the amount of material added to a process and the amount consumed and/or recovered from a process.

(69) "Modification", except as used in the term "major modification", means any physical change to, or change in the method of operation of, a stationary source that results in an increase in the stationary source's potential to emit any regulated air pollutant on an hourly basis. Modifications do not include the following:

(a) Increases in hours of operation or production rates that do not involve a physical change or change in the method of operation;

(b) Changes in the method of operation due to using an alternative fuel or raw material that the stationary source was physically capable of accommodating during the baseline period; and

(c) Routine maintenance, repair and like-for-like replacement of components unless they increase the expected life of the stationary source by using component upgrades that would not otherwise be necessary for the stationary source to function.

(70) "Monitoring" means any form of collecting data on a routine basis to determine or otherwise assess compliance with emission limitations or standards. Monitoring may include record keeping if the records are used to determine or assess compliance with an emission limitation or standard (such as records of raw material content and usage, or records documenting compliance with work practice requirements). Monitoring may include conducting compliance method tests, such as the procedures in appendix A to 40 CFR part 60, on a routine periodic basis. Requirements to conduct such tests on a one-time basis, or at such times as a regulatory authority may require on a non-regular basis, are not considered monitoring requirements for purposes of this definition. Monitoring may include one or more than one of the following data collection techniques as appropriate for a particular circumstance:

(a) Continuous emission or opacity monitoring systems.

(b) Continuous process, capture system, control device or other relevant parameter monitoring systems or procedures, including a predictive emission monitoring system.

(c) Emission estimation and calculation procedures (e.g., mass balance or stoichiometric calculations).

(d) Maintaining and analyzing records of fuel or raw materials usage.

(e) Recording results of a program or protocol to conduct specific operation and maintenance procedures.

(f) Verifying emissions, process parameters, capture system parameters, or control device parameters using portable or in situ measurement devices.

(g) Visible emission observations and recording.

(h) Any other form of measuring, recording, or verifying on a routine basis emissions, process parameters, capture system parameters, control device parameters or other factors relevant to assessing compliance with emission limitations or standards.

(71) "Netting Basis" means the baseline emission rate MINUS any emission reductions required by rule, orders, or permit conditions required by the SIP or used to avoid SIP requirements, MINUS any unassigned emissions that are reduced from allowable under OAR 340-222-0045, MINUS any emission reduction credits transferred off site, PLUS any emission increases approved through the New Source Review regulations.

(a) With the first permitting action for a source after July 1, 2002, the baseline emissions rate will be frozen and recalculated only if:

(A) A better emission factor is established for the baseline period and approved by the Department;

(B) A currently operating emissions unit that the Department formerly thought had negligible emissions, is determined to have non-de minimis emissions and needs to be added to the baseline emission rate; or

(C) A new pollutant is added to the regulated pollutant list (e.g., PM_{2.5}). For a pollutant that is newly regulated after 11/15/90, the initial netting basis is the actual emissions during any 12 consecutive month period within the 24 months immediately preceding its designation as a regulated pollutant. The Department may allow a prior 12 consecutive month time period to be used if it is shown to be more representative of normal source operation.

(b) Netting basis is zero for:

(A) any source constructed after the baseline period and has not undergone New Source Review;

(B) Any pollutant that has a generic PSEL in a permit;

(C) Any source permitted as portable; and

(D) Any source with a netting basis calculation resulting in a negative number.

(c) If a source relocates to an adjacent site, and the time between operation at the old and new sites is less than six months, the source may retain the netting basis from the old site.

(d) Emission reductions required by rule, order, or permit condition affect the netting basis if the source currently has devices or emissions units that are subject to the rules, order, or permit condition. The baseline emission rate is not affected.

(e) Netting basis for a pollutant with a revised definition will be adjusted if the source is emitting the pollutant at the time of redefining and the pollutant is included in the permit's netting basis.

(f) Where EPA requires an attainment demonstration based on dispersion modeling, the netting basis will be established at no more than the level used in the dispersion modeling to demonstrate attainment with the ambient air quality standard (i.e., the attainment demonstration is an emission reduction required by rule).

(72) "Nitrogen Oxides" or "NO_x" means all oxides of nitrogen except nitrous oxide.

(73) "Nonattainment Area" means a geographical area of the State, as designated by the Environmental Quality Commission or the EPA, that exceeds any state or federal primary or secondary ambient air quality standard.

(74) "Nonattainment Pollutant" means a pollutant for which an area is designated a nonattainment area.

(75) "Normal Source Operation" means operations which do not include such conditions as forced fuel substitution, equipment malfunction, or highly abnormal market conditions.

(76) "Offset" means an equivalent or greater emission reduction that is required before allowing an emission increase from a proposed major source or major modification of an existing source.

(77) "Oregon Title V Operating Permit" means any permit covering an Oregon Title V Operating Permit source that is issued, renewed, amended, or revised pursuant to division 218.

(78) "Oregon Title V Operating Permit program" means a program approved by the Administrator under 40 CFR Part 70.

(79) "Oregon Title V Operating Permit program source" means any source subject to the permitting requirements, OAR 340 division 218.

(80) "Ozone Season" means the contiguous 3 month period during which ozone exceedances typically occur (i.e., June, July, and August).

(81) "Particulate Matter" means all finely divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's Source Sampling Manual, (January, 1992).

(82) "Permit" means an Air Contaminant Discharge Permit or an Oregon Title V Operating Permit.

(83) "Permit modification" means a permit revision that meets the applicable requirements of OAR 340 division 216, 340 division 224, or 340-218-0160 through 340-218-0180.

(84) "Permit revision" means any permit modification or administrative permit amendment.

(85) "Permitted Emissions" as used in OAR division 220 means each assessable emission portion of the PSEL, as identified in an ACDP, Oregon Title V Operating Permit, review report, or by the Department pursuant to OAR 340-220-0190.

(86) "Permittee" means the owner or operator of the facility, authorized by the ACDP or the Oregon Title V Operating Permit to operate the source.

(87) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the State of Oregon and any agencies thereof, and the federal government and any agencies thereof.

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(88) "Plant Site Emission Limit" or "PSEL" means the total mass emissions per unit time of an individual air pollutant specified in a permit for a source. The PSEL for a major source may consist of more than one assessable emission.

(89) "PM10":

(a) When used in the context of emissions, means finely divided solid or liquid material, including condensible particulate, other than uncombined water, with an aerodynamic diameter less than or equal to a nominal 10 micrometers, emitted to the ambient air as measured by an applicable reference method in accordance with the Department's **Source Sampling Manual** (January, 1992);

(b) When used in the context of ambient concentration, means airborne finely divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured in accordance with **40 CFR Part 50, Appendix J**.

(90) "Pollutant-specific emissions unit" means an emissions unit considered separately with respect to each regulated air pollutant.

(91) "Potential to emit" or "PTE" means the lesser of:

(a) The capacity of a stationary source; or

(b) The maximum allowable emissions taking into consideration any physical or operational limitation, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, if the limitation is enforceable by the Administrator.

(c) This definition does not alter or affect the use of this term for any other purposes under the Act or the term "capacity factor" as used in Title IV of the Act and the regulations promulgated thereunder. Secondary emissions are not considered in determining the potential to emit.

(92) "Predictive emission monitoring system (PEMS)" means a system that uses process and other parameters as inputs to a computer program or other data reduction system to produce values in terms of the applicable emission limitation or standard.

(93) "Process Upset" means a failure or malfunction of a production process or system to operate in a normal and usual manner.

(94) "Proposed permit" means the version of an Oregon Title V Operating Permit that the Department or a Regional Authority proposes to issue and forwards to the Administrator for review in compliance with OAR 340-218-0230.

(95) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in **40 CFR Part 60, 61 or 63**.

(96) "Regional Authority" means Lane Regional Air Pollution Authority.

(97) "Regulated air pollutant" or "Regulated Pollutant":

(a) Except as provided in subsections (b) and (c) of this rule, means:

(A) Nitrogen oxides or any VOCs;

(B) Any pollutant for which a national ambient air quality standard has been promulgated;

(C) Any pollutant that is subject to any standard promulgated under section 111 of the Act;

(D) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or

(E) Any pollutant listed under OAR 340-244-0040 or 340-244-0230.

(b) As used in OAR 340 division 220, means any air pollutant as included in subsection (a) of this rule, except the following:

(A) Carbon monoxide;

(B) Any pollutant that is a regulated pollutant solely because it is a Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Federal Clean Air Act; or

(C) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under section 112(r) of the Federal Clean Air Act.

(c) As used in OAR 340 division 224 any pollutant listed under OAR 340-244-0040 or 340-244-0230 is not a regulated pollutant.

(98) "Renewal" means the process by which a permit is reissued at the end of its term.

(99) "Responsible official" means one of the following:

(a) 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 a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

(A) The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or

(B) The delegation of authority to such representative is approved in advance by the Department or Lane Regional Air Pollution Authority.

(b) For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

(c) For a municipality, State, Federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this Division, a principal executive officer of a Federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a Regional Administrator of the EPA); or

(d) For affected sources:

(A) The designated representative in so far as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

(B) The designated representative for any other purposes under the Oregon Title V Operating Permit program.

(100) "Secondary Emissions" means emissions that are a result of the construction and/or operation of a source or modification, but that do not come from the source itself. Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include, but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from off-site support facilities that would be constructed or would otherwise increase emissions as a result of the construction or modification of a source.

(101) "Section 111" means section 111 of the FCAA which includes Standards of Performance for New Stationary Sources (NSPS).

(102) "Section 111(d)" means subsection 111(d) of the FCAA which requires states to submit to the EPA plans that establish standards of performance for existing sources and provides for implementing and enforcing such standards.

(103) "Section 112" means section 112 of the FCAA which contains regulations for Hazardous Air Pollutants (HAP).

(104) "Section 112(b)" means subsection 112(b) of the FCAA which includes the list of hazardous air pollutants to be regulated.

(105) "Section 112(d)" means subsection 112(d) of the FCAA which directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by the EPA when establishing the emission standards.

(106) "Section 112(e)" means subsection 112(e) of the FCAA which directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(107) "Section 112(r)(7)" means subsection 112(r)(7) of the FCAA which requires the EPA to promulgate regulations for the prevention of accidental releases and requires owners or operators to prepare risk management plans.

(108) "Section 114(a)(3)" means subsection 114(a)(3) of the FCAA which requires enhanced monitoring and submission of compliance certifications for major sources.

(109) "Section 129" means section 129 of the FCAA which requires the EPA to establish emission standards and other requirements for solid waste incineration units.

(110) "Section 129(e)" means subsection 129(e) of the FCAA which requires solid waste incineration units to obtain Oregon Title V Operating Permits.

(111) "Section 182(f)" means subsection 182(f) of the FCAA which requires states to include plan provisions in the State Implementation Plan for NOx in ozone nonattainment areas.

(112) "Section 182(f)(1)" means subsection 182(f)(1) of the FCAA which requires states to apply those plan provisions developed for major VOC sources and major NOx sources in ozone nonattainment areas.

(113) "Section 183(e)" means subsection 183(e) of the FCAA which requires the EPA to study and develop regulations for the control of certain VOC sources under federal ozone measures.

(114) "Section 183(f)" means subsection 182(f) of the FCAA which requires the EPA to develop regulations pertaining to tank vessels under federal ozone measures.

(115) "Section 184" means section 184 of the FCAA which contains regulations for the control of interstate ozone air pollution.

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(116) "Section 302" means section 302 of the FCAA which contains definitions for general and administrative purposes in the Act.

(117) "Section 302(j)" means subsection 302(j) of the FCAA which contains definitions of "major stationary source" and "major emitting facility."

(118) "Section 328" means section 328 of the FCAA which contains regulations for air pollution from outer continental shelf activities.

(119) "Section 408(a)" means subsection 408(a) of the FCAA which contains regulations for the Title IV permit program.

(120) "Section 502(b)(10) change" means a change which contravenes an express permit term but is not a change that:

(a) Would violate applicable requirements;

(b) Would contravene federally enforceable permit terms and conditions that are monitoring, recordkeeping, reporting, or compliance certification requirements; or

(c) Is a Title I modification.

(121) "Section 504(b)" means subsection 504(b) of the FCAA which states that the EPA can prescribe by rule procedures and methods for determining compliance and for monitoring.

(122) "Section 504(e)" means subsection 504(e) of the FCAA which contains regulations for permit requirements for temporary sources.

(123) "Significant Air Quality Impact" means an additional ambient air quality concentration equal to or greater than in the concentrations listed in **Table 1**. The threshold concentrations listed in Table 1 are used for comparison against the ambient air quality standard and do not apply for protecting PSD Class I increments or air quality related values (including visibility). For sources of VOC or NO_x, a major source or major modification has a significant impact if it is located within the Ozone Precursor Significant Impact Distance defined in OAR 340-225-0020.

(124) "Significant Emission Rate" or "SER", except as provided in subsections (a) through (c) of this section, means an emission rate equal to or greater than the rates specified in **Table 2**.

(a) For the Medford-Ashland Air Quality Maintenance Area, the Significant Emission Rate for PM₁₀ is defined in **Table 3**.

(b) For regulated air pollutants not listed in **Table 2** or **3**, the significant emission rate is zero unless the Department determines the rate that constitutes a significant emission rate.

(c) Any new source or modification with an emissions increase less than the rates specified in **Table 2** or **3** associated with a new source or modification which would construct within 10 kilometers of a Class I area, and would have an impact on such area equal to or greater than 1 ug/m³ (24 hour average) is emitting at a significant emission rate.

(125) "Significant Impairment" occurs when the Department determines that visibility impairment interferes with the management, protection, preservation, or enjoyment of the visual experience within a Class I area. The Department will make this determination on a case-by-case basis after considering the recommendations of the Federal Land Manager and the geographic extent, intensity, duration, frequency, and time of visibility impairment. These factors will be considered along with visitor use of the Class I areas, and the frequency and occurrence of natural conditions that reduce visibility.

(126) "Source" means any building, structure, facility, installation or combination thereof that emits or is capable of emitting air contaminants to the atmosphere, is located on one or more contiguous or adjacent properties and is owned or operated by the same person or by persons under common control. The term includes all pollutant emitting activities that belong to a single major industrial group (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987) or that support the major industrial group.

(127) "Source category":

(a) Except as provided in subsection (b) of this section, means all the pollutant emitting activities that belong to the same industrial grouping (i.e., that have the same two-digit code) as described in the Standard Industrial Classification Manual, (U.S. Office of Management and Budget, 1987).

(b) As used in OAR 340 division 220, Oregon Title V Operating Permit Fees, means a group of major sources that the Department determines are using similar raw materials and have equivalent process controls and pollution control equipment.

(128) "Source Test" means the average of at least three test runs conducted during operating conditions representative of the period for which emissions are to be determined and in accordance with the Department's Source Sampling Manual or other Department approved methods.

(129) "Startup" and "shutdown" means that time during which an air contaminant source or emission-control equipment is brought into normal operation or normal operation is terminated, respectively.

(130) "State Implementation Plan" or "SIP" means the State of Oregon Clean Air Act Implementation Plan as adopted by the Commission under OAR 340-200-0040 and approved by EPA.

(131) "Stationary source" means any building, structure, facility, or installation at a source that emits or may emit any regulated air pollutant.

(132) "Substantial Underpayment" means the lesser of ten percent (10%) of the total interim emission fee for the major source or five hundred dollars.

(133) "Synthetic minor source" means a source that would be classified as a major source under OAR 340-200-0020, but for limits on its potential to emit air pollutants contained in a permit issued by the Department under OAR 340 division 216 or 218.

(134) "Title I modification" means one of the following modifications pursuant to Title I of the FCAA:

(a) A major modification subject to OAR 340-224-0050, Requirements for Sources in Nonattainment Areas;

(b) A major modification subject to OAR 340-224-0060, Requirements for Sources in Maintenance Areas;

(c) A major modification subject to OAR 340-224-0070, Prevention of Significant Deterioration Requirements for Sources in Attainment or Unclassified Areas;

(d) A modification that is subject to a New Source Performance Standard under Section 111 of the FCAA; or

(e) A modification under Section 112 of the FCAA.

(135) "Total Reduced Sulfur" or "TRS" means the sum of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, dimethyl disulfide, and any other organic sulfides present expressed as hydrogen sulfide (H₂S).

(136) "Typically Achievable Control Technology" or "TACT" means the emission limit established on a case-by-case basis for a criteria pollutant from a particular emissions unit in accordance with OAR 340-226-0130. For existing sources, the emission limit established will be typical of the emission level achieved by emissions units similar in type and size. For new and modified sources, the emission limit established will be typical of the emission level achieved by well controlled new or modified emissions units similar in type and size that were recently installed. TACT determinations will be based on information known to the Department while considering pollution prevention, impacts on other environmental media, energy impacts, capital and operating costs, cost effectiveness, and the age and remaining economic life of existing emission control equipment. The Department may consider emission control technologies typically applied to other types of emissions units where such technologies could be readily applied to the emissions unit. If an emission limitation is not feasible, a design, equipment, work practice, operational standard, or combination thereof, may be required.

(137) "Unassigned Emissions" means the amount of emissions that are in excess of the PSEL but less than the Netting Basis.

(138) "Unavoidable" or "could not be avoided" means events that are not caused entirely or in part by poor or inadequate design, operation, maintenance, or any other preventable condition in either process or control equipment.

(139) "Upset" or "Breakdown" means any failure or malfunction of any pollution control equipment or operating equipment that may cause excess emissions.

(140) "Visibility Impairment" means any humanly perceptible change in visual range, contrast or coloration from that which existed under natural conditions. Natural conditions include fog, clouds, windblown dust, rain, sand, naturally ignited wildfires, and natural aerosols.

(141) "Volatile Organic Compounds" or "VOC" means any compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate, that participates in atmospheric photochemical reactions.

(a) This includes any such organic compound except the following, which have been determined to have negligible photochemical reactivity in the formation of tropospheric ozone: methane; ethane; methylene chloride (dichloromethane); 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC-113); trichlorofluoromethane (CFC-11); dichlorodifluoromethane (CFC-12); chlorodifluoromethane (HCFC-22); trifluoromethane (HFC-23); 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFC-114); chloropentafluoroethane (CFC-115); 1,1,1-trifluoro 2,2-dichloroethane (HCFC-123); 1,1,1,2-tetrafluoroethane (HFC-134a); 1,1-

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dichloro 1-fluoroethane (HCFC-141b); 1-chloro 1,1-difluoroethane (HCFC-142b); 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124); HCFC 225ca and cb; HFC 43-10mee; pentafluoroethane (HFC-125); 1,1,2,2-tetrafluoroethane (HFC-134); 1,1,1-trifluoroethane (HFC-143a); 1,1-difluoroethane (HFC-152a); perchlorobenzotrifluoride (PCBTF); cyclic, branched, or linear completely methylated siloxanes; acetone; perchloroethylene (tetrachloroethylene); difluoromethane (HFC-32); ethylfluoride (HFC-161); 1,1,1,3,3,3-hexafluoropropane (HFC-236fa); 1,1,2,2,3-pentafluoropropane (HFC-245ca); 1,1,2,3,3-pentafluoropropane (HFC-245ea); 1,1,1,2,3-pentafluoropropane (HFC-245eb); 1,1,1,3,3-pentafluoropropane (HFC-245fa); 1,1,1,2,3,3-hexafluoropropane (HFC-236ea); 1,1,1,3,3-pentafluorobutane (HFC-365mfc); chlorofluoromethane (HCFC-31); 1 chloro-1-fluoroethane (HCFC-151a); 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a); 1,1,1,2,2,3,3,4-nonafluoro-4-methoxybutane (C4F9OCH3); 2-(difluoromethoxymethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OCH3); 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane (C4F9OC2H5); 2-(ethoxydifluoromethyl)-1,1,1,2,3,3,3-heptafluoropropane ((CF3)2CFCF2OC2H5); methyl acetate and perfluorocarbon compounds that fall into these classes:

(A) Cyclic, branched, or linear, completely fluorinated alkanes;

(B) Cyclic, branched, or linear, completely fluorinated ethers with no unsaturations;

(C) Cyclic, branched, or linear, completely fluorinated tertiary amines with no unsaturations; and

(D) Sulfur containing perfluorocarbons with no unsaturations and with sulfur bonds only to carbon and fluorine.

(b) For purposes of determining compliance with emissions limits, VOC will be measured by an applicable reference method in accordance with the Department's Source Sampling Manual, January, 1992. Where such a method also measures compounds with negligible photochemical reactivity, the latter may be excluded as VOC if the amount of such compounds is accurately quantified, and the Department approves the exclusion.

(c) The Department may require an owner or operator to provide monitoring or testing methods and results demonstrating, to the Department's satisfaction, the amount of negligibly-reactive compounds in the source's emissions.

(142) "Year" means any consecutive 12 month period of time.

[NOTE: This rule is included in the State of Oregon Clean Air Act Implementation Plan as adopted by the EQC under OAR 340-200-0040.]

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

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 15-1978, f. & ef. 10-13-78; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 47, f. 8-31-72, f. & ef. 9-15-72; DEQ 63, f. 12-20-73, f. & ef. 1-11-74; DEQ 107, f. & ef. 1-6-76; Renumbered from 340-020-0033.04; DEQ 25-1981, f. & ef. 9-8-81; DEQ 5-1983, f. & ef. 4-18-83; DEQ 18-1984, f. & ef. 10-16-84; DEQ 8-1988, f. & cert. ef. 5-19-88 (and corrected 5-31-88); DEQ 14-1989, f. & cert. ef. 6-26-89; DEQ 42-1990, f. 12-13-90, cert. ef. 1-2-91; DEQ 2-1992, f. & cert. ef. 1-30-92; DEQ 7-1992, f. & cert. ef. 3-30-92; DEQ 27-1992, f. & cert. ef. 11-12-92; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 12-1993, f. & cert. ef. 9-24-93; Renumbered from 340-020-0145, 340-020-0225, 340-020-0305, 340-020-0355, 340-020-0460 & 340-020-0520; DEQ 19-1993, f. & cert. ef. 11-4-93; DEQ 20-1993(Temp), f. & cert. ef. 11-4-93; DEQ 13-1994, f. & cert. ef. 5-19-94; DEQ 21-1994, f. & cert. ef. 10-14-94; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 10-1995, f. & cert. ef. 5-1-95; DEQ 12-1995, f. & cert. ef. 5-23-95; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 19-1996, f. & cert. ef. 9-24-96; DEQ 22-1996, f. & cert. ef. 9-9-97; DEQ 14-1998, f. & cert. ef. 9-14-98; DEQ 16-1998, f. & cert. ef. 9-23-98; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 1-1999, f. & cert. ef. 1-25-99; DEQ 6-1999, f. & cert. ef. 5-21-99; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-020-0205, 340-028-0110; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05]

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

340-218-0080

Compliance Requirements

All Oregon Title V Operating Permits must contain the following elements with respect to compliance:

(1) Consistent with OAR 340-218-0050(3), compliance certification, testing, monitoring, reporting, and recordkeeping requirements sufficient to assure compliance with the terms and conditions of the permit.

(2) A requirement that any document (including but not limited to reports) required by an Oregon Title V Operating Permit must contain a certification by a responsible official or the designated representation for the acid rain portion of the permit that meets the requirements of OAR 340-218-0040(5).

(3) Inspection and entry requirements that require that, upon presentation of credentials and other documents as may be required by law, the permittee must allow the Department or an authorized representative to perform the following:

(a) Enter upon the permittee's premises where an Oregon Title V Operating Permit program source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(d) As authorized by the FCAA or state rules, sample or monitor at reasonable times substances or parameters for the purpose of assuring compliance with the permit or applicable requirements.

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(4) A schedule of compliance consistent with OAR 340-218-0040(3)(n)(c).

(5) Progress reports consistent with an applicable schedule of compliance and OAR 340-218-0040(3)(n)(c) to be submitted at least semi-annually, or at a more frequent period if specified in the applicable requirement or by the Department. Such progress reports must contain the following:

(a) Dates for achieving the activities, milestones, or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(b) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

(6) Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits must include each of the following:

(a) The frequency (not less than annually or such more frequent periods as specified in the applicable requirement or by the Department) of submissions of compliance certifications;

(b) In accordance with OAR 340-218-0050(3), a means for monitoring the compliance of the source with its emissions limitations, standards, and work practices;

(c) A requirement that the compliance certification include all of the following (provided that the identification of applicable information may cross-reference the permit or previous reports, as applicable):

(A) The identification of each term or condition of the permit that is the basis of the certification;

(B) The identification of the method(s) or other means used by the owner or operator for determining the compliance status with each term and condition during the certification period. Such methods and other means must include, at a minimum, the methods and means required under OAR 340-218-0050(3). If necessary, the owner or operator also must identify any other material information that must be included in the certification to comply with section 113(c)(2) of the FCAA, which prohibits knowingly making a false certification or omitting material information;

(C) The status of compliance with the terms and conditions of the permit for the period covered by the certification, including whether compliance during the period was continuous or intermittent. The certification must be based on the method or means designated in paragraph (6)(c)(B) of this rule. The certification must identify each deviation and take it into account in the compliance certification. The certification must also identify as possible exceptions to compliance any periods during which compliance is required and in which an excursion or exceedance as defined under OAR 340-200-0020 and 40 CFR part 64 occurred; and

(D) Such other facts as the Department may require to determine the compliance status of the source.

(d) A requirement that all compliance certifications be submitted to the EPA as well as to the Department; and

(e) Notwithstanding any other provision contained in any applicable requirement, the owner or operator may use monitoring as required under OAR 340-218-0050(3) and incorporated into the permit, in addition to any specified compliance methods, for the purpose of submitting compliance certifications.

(7) Annual certification that the risk management plan is being properly implemented, OAR 340-224-0230.

(8) Such other provisions as the Department may require in order to protect human health or the environment.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468.020 & 468A.310

Hist.: DEQ 12-1993, f. & cert. ef. 9-24-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 21-1998, f. & cert. ef. 10-14-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-028-2160; DEQ 6-2001, f. 6-18-01, cert. ef. 7-1-01; DEQ 2-2005, f. & cert. ef. 2-10-05

340-230-0030

Definitions

The definitions in OAR 340-200-0020, 340-238-0040 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-238-0040, the definition in this rule applies to this division. Applicable definitions have the same meaning as those provided in 40 CFR 60.51c including, but not limited to:

(1) "Acid Gases" means any exhaust gas that includes hydrogen chloride and sulfur dioxide.

(2) "Air curtain incinerator" means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of that type can be constructed above or below ground and with or without refractory walls and floor.

(3) "Best Available Control Technology (BACT)" means an emission limitation as defined in OAR 340-200-0020.

(4) "CFR" means Code of Federal Regulations and, unless otherwise expressly identified, refers to the July 1, 2004 edition.

(5) "Chemotherapeutic waste" means waste material resulting from the production or use of antineoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

(6) "Co-fired combustor" means a unit combusting hospital waste and/or medical/infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital waste and medical/infectious waste as measured on a calendar quarter basis. For purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital waste and medical/infectious waste combusted.

(7) "Commercial and industrial solid waste incineration unit (CISWI)" means any combustion device that combusts commercial and industrial waste, as defined in this subpart. The boundaries of a CISWI unit are defined as, but not limited to the commercial or industrial solid waste fuel feed system, grate system, flue gas system, and bottom ash. The CISWI unit does not include air pollution control equipment or the stack. The CISWI unit boundary starts at the commercial and industrial solid waste hopper (if applicable) and extends through two areas:

(a) The combustion unit flue gas system, which ends immediately after the last combustion chamber.

(b) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(8) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air), or solid waste combusted in an air curtain incinerator without energy recovery that is a distinct operating unit of any commercial or industrial facility.

(9) "Continuous Emission Monitoring (CEM)" means a monitoring system for continuously measuring the emissions of a pollutant from an affected incinerator. Continuous monitoring equipment and operation must be certified in accordance with EPA performance specifications and quality assurance procedures outlined in 40 CFR 60, Appendices B and F, and the Department's CEM Manual.

(10) "Crematory Incinerator" means an incinerator used solely for the cremation of human and animal bodies.

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

(12) "Dry Standard Cubic Foot" means the amount of gas that would occupy a volume of one cubic foot, if the gas were free of uncombined water at standard conditions. When applied to combustion flue gases from waste or refuse burning, "Standard Cubic Foot (SCF)" implies adjustment of gas volume to that which would result at a concentration of seven percent oxygen or 50 percent excess air.

(13) "Existing" means constructed or modified before March 13, 1990.

(14) "Emission" means a release into the atmosphere of air contaminants.

(15) "Fluidized bed combustion unit" means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

(16) "Fugitive Emissions" means the same as defined in OAR 340-200-0020(50).

(17) "Hospital" means any facility that has an organized medical staff, maintains at least six inpatient beds, and where the primary function of the institution is to provide diagnostic and therapeutic patient services and continuous nursing care primarily to human inpatients who are not related and who stay on average in excess of 24 hours per admission. This definition does not include facilities maintained for the sole purpose of providing nursing or convalescent care to human patients who generally are not acutely ill but who require continuous medical supervision.

(18) "Hospital/medical/infectious waste incinerator" or HMIWI means any device that combusts any amount of hospital waste and/or medical/infectious waste.

(19) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. This definition does not include

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human corpses, remains and anatomical parts intended for interment or cremation.

(20) "Incinerator" means any structure or furnace in which combustion takes place, the primary purpose of which is the reduction in volume and weight of unwanted material.

(21) "Infectious agent" means any organism such as a virus or bacteria that is capable of being communicated by invasion and multiplication in body tissues and capable of causing disease or adverse health impacts in humans.

(22) "Infectious Waste" means waste as defined in ORS Chapter 763, Oregon Laws 1989, that contains or may contain any disease producing microorganism or material, and includes, but is not limited to the following:

(a) "Biological waste", which includes blood and blood products, and body fluids that cannot be directly discarded into a municipal sewer system, and waste materials saturated with blood or body fluids, but does not include soiled diapers;

(b) "Cultures and stocks", which includes etiologic agents and associated biologicals; including specimen cultures and dishes, devices used to transfer, inoculate and mix cultures, wastes from production of biologicals, and serums and discarded live and attenuated vaccines. "Cultures" does not include throat and urine cultures;

(c) "Pathological waste", which includes biopsy materials and all human tissues, anatomical parts that emanate from surgery, obstetrical procedures, autopsy and laboratory procedures and animal carcasses exposed to pathogens in research and the bedding and other waste from such animals. "Pathological wastes" does not include teeth or formaldehyde or other preservative agents;

(d) "Sharps", which includes needles, IV tubing with needles attached, scalpel blades, lancets, glass tubes that could be broken during handling and syringes that have been removed from their original sterile containers.

(23) "Infectious Waste Facility" or "Infectious Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of infectious waste, including combustion for the recovery of heat, and which utilizes high temperature thermal destruction technologies.

(24) "Large HMIWI", except as provided in Subsection (d)(A) and (B) means:

(a) A HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day;

(d) The following are not large HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 500 pounds per hour; or

(B) A batch HMIWI whose maximum charge rate is less than or equal to 4,000 pounds per day.

(25) "Low-level radioactive waste" means waste material which contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable federal or state standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or by-product material as defined by the **Atomic Energy Act of 1954** (42 U.S.C. 2014(e)(2)).

(26) "Mass burn refractory municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, that includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

(27) "Mass burn rotary waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

(28) "Mass burn waterwall municipal waste combustion unit" means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

(29) "Medical/infectious waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production of testing of biologicals that is listed in paragraphs (a) through (g) of this definition. The definition of medical/infectious waste does not include hazardous waste identified or listed under the regulations in part 261 of Chapter I; household waste as defined in Subsection 261.4(b)(1) of Chapter I; ash from incineration of medical/infectious waste once the incineration process is completed; human corpses, remains, and anatomical parts intended for interment or cremation

and domestic sewage materials identified in Subsection 261.4(a)(1) of Chapter I:

(a) Cultures and stocks of infectious agents and associated biologicals, including: cultures from medical and pathological laboratories; cultures and stocks of infectious agents from research and industrial laboratories; wastes from the production of biologicals; discarded live and attenuated vaccines; and culture dishes and devices used to transfer, inoculate and mix cultures;

(b) Human pathological waste, including tissues, organs, and body parts and body fluids that are removed during surgery or autopsy, or other medical procedures, and specimens of body fluids and their containers;

(c) Human blood and blood products including:

(A) Liquid waste human blood;

(B) Products of blood;

(C) Items saturated and/or dripping with human blood; or

(D) Items that were saturated and/or dripping with human blood that are now caked with dried human blood; including serum, plasma, and other blood components, and their containers that were used or intended for use in either patient care, testing and laboratory analysis or the development of pharmaceuticals. Intravenous bags are also included in this category.

(d) Sharps that have been used in animal or human patient care or treatment or in medical, research, or industrial laboratories, including hypodermic needles, syringes (with or without the attached needle), pasteur pipettes, scalpel blades, blood vials, needles with attached tubing, and culture dishes (regardless of presence of infectious agents). Also included are other types of broken or unbroken glassware that were in contact with infectious agents, such as used slides and cover slips;

(e) Animal waste including contaminated animal carcasses, body parts and bedding of animals that were known to have been exposed to infectious agents during research (including research in veterinary hospitals), production of biologicals or testing of pharmaceuticals;

(f) Isolation wastes including biological waste and discarded materials contaminated with blood, excretions, exudates or secretions from humans who are isolated to protect others from certain highly communicable diseases, or isolated animals known to be infected with highly communicable diseases;

(g) Unused sharps including the following unused, discarded sharps: hypodermic needles, suture needles, syringes and scalpel blades.

(30) "Medium HMIWI", except as provided in (i) means:

(a) A HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day. The following are not medium HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour or more than 500 pounds per hour; or

(B) A batch HMIWI whose maximum charge rate is more than 4,000 pounds per day or less than or equal to 1,600 pounds per day.

(31) "Modification or modified hospital/medical/infectious waste incinerator" means any change to a HMIWI unit after the effective date of these standards such that:

(a) The cumulative costs of the modifications, over the life of the unit, exceed 50 per cent of the original cost of the construction and installation of the unit (not including the cost of any land purchased in connection with such construction or installation) updated to current costs; or

(b) The change involves a physical change or change in the method of operation of the unit that increases the amount of any air pollutant emitted by the unit for which standards have been established under Section 129 or Section 111.

(32) "Modular excess-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

(33) "Modular starved-air municipal waste combustion unit" means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

(34) "Municipal waste combustor plant" means one or more municipal waste combustor units at the same location for which construction was commenced on or before September 20, 1994.

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(35) "Municipal waste combustor plant capacity" means the aggregate municipal waste combustor unit capacity of all municipal waste combustor units at a municipal waste combustor plant for which construction was commenced on or before September 20, 1994.

(36) "New" means constructed or modified on or after March 13, 1990.

(37) "Opacity" means the degree to which an emission reduces transmission of light and obscures the view of an object in the background.

(38) "Particulate Matter" means all solid or liquid material, other than uncombined water, emitted to the ambient air as measured by EPA Method 5 or an equivalent test method in accordance with the Department Source Test Manual. Particulate matter emission determinations by EPA Method 5 must consist of the average of three separate consecutive runs having a minimum sampling time of 60 minutes each and a minimum sampling volume of 30.0 dscf each.

(39) "Parts Per Million (ppm)" means parts of a contaminant per million parts of gas by volume on a dry-gas basis (1 ppm equals 0.0001 percent by volume).

(40) "Pathological waste" means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material and animal bedding (if applicable).

(41) "Person" means individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agencies thereof, and the federal government and any agencies thereof.

(42) "Primary Combustion Chamber" means the discrete equipment, chamber or space in which drying of the waste, pyrolysis, and essentially the burning of the fixed carbon in the waste occurs.

(43) "Pyrolysis" means the endothermic gasification of hospital waste and/or medical/infectious waste using external energy.

(44) "Refuse-derived fuel" means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. That includes all classes of refuse-derived fuel including two fuels:

(a) Low-density fluff refuse-derived fuel through densified refuse-derived fuel

(b) Pelletized refuse-derived fuel.

(45) "Secondary" or "Final Combustion Chamber" means the discrete equipment, chamber, or space in which the products of pyrolysis are combusted in the presence of excess air such that essentially all carbon is burned to carbon dioxide.

(46) "Small hospital/medical/infectious waste incinerator", except as provided in (i), means:

(a) A HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour; or

(b) A continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or

(c) A batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day. The following are not small HMIWI:

(A) A continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour;

(B) A batch HMIWI whose maximum charge rate is more than 1,600 pounds per day.

(47) "Solid Waste" means refuse, more than 50 percent of which is waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials, and noncombustible materials such as metal, glass, and rock.

(48) "Solid Waste Facility" or "Solid Waste Incinerator" means an incinerator that is operated or utilized for the disposal or treatment of solid waste including combustion for the recovery of heat, and that utilizes high temperature thermal destruction technologies.

(49) "Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit" means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

(50) "Standard Conditions" means temperature of 68 degrees Fahrenheit (15.6 degrees Celsius) and a pressure of 14.7 pounds per square inch absolute (1.03 kilograms per square centimeter).

(51) "Startup/Shutdown" means the time during which an air contaminant source or emission control equipment is brought into normal operation and normal operation is terminated, respectively.

(52) "Transmissometer" means a device that measures opacity and conforms to EPA Specification Number 1 in **40 CFR 60, Appendix B**.

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

Stat. Auth.: ORS 183, 468 & 468A

Stats. Implemented: ORS 468A.025

Hist.: [DEQ 22-1998, f. & cert. ef. 10-21-98]; [DEQ 9-1990, f. & cert. ef. 3-13-90; DEQ 4-1993, f. & cert. ef. 3-10-93]; [DEQ 27-1996, f. & cert. ef. 12-11-96]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0750, 340-025-0855, 340-025-0950; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

340-230-0410

Emission Limitations and Citations

(1) Except as provided in subsection (b) of this section, all HMIWI shall comply with the following requirements within one year after EPA approval of the State Plan:

(a) Emission limits:

(A) **Small HMIWI:**

(i) Particulate matter: 115 milligrams per dry standard cubic meter (mg/dscm);

(ii) Carbon monoxide: 40 parts per million by volume (ppm);

(iii) Dioxins/furans: 125 nanograms per dry standard cubic meter (ng/dscm);

(iv) Hydrogen chloride: 100 ppm or 93% reduction;

(v) Sulfur dioxide: 55 ppm;

(vi) Nitrogen oxides: 250 ppm;

(vii) Lead: 1.2 mg/dscm or 70% reduction;

(viii) Cadmium: 0.16 mg/dscm or 65% reduction;

(ix) Mercury: 0.55 mg/dscm or 85% reduction.

(B) **Medium HMIWI:**

(i) Particulate matter: 69 mg/dscm;

(ii) Carbon monoxide: 40 ppm;

(iii) Dioxins/furans: 125 ng/dscm;

(iv) Hydrogen chloride: 100 ppm or 93% reduction;

(v) Sulfur dioxide: 55 ppm;

(vi) Nitrogen oxides: 250 ppm;

(vii) Lead: 1.2 mg/dscm or 70% reduction;

(viii) Cadmium: 0.16 mg/dscm or 65% reduction;

(ix) Mercury: 0.55 mg/dscm or 85% reduction.

(C) **Large HMIWI:**

(i) Particulate matter: 34 mg/dscm;

(ii) Carbon monoxide: 40 ppm;

(iii) Dioxins/furans: 125 ng/dscm;

(iv) Hydrogen chloride: 100 ppm or 93% reduction;

(v) Sulfur dioxide: 55 ppm;

(vi) Nitrogen oxides: 250 ppm;

(vii) Lead: 1.2 mg/dscm or 70% reduction;

(viii) Cadmium: 0.16 mg/dscm or 65% reduction;

(ix) Mercury: 0.55 mg/dscm or 85% reduction.

(b) Stack opacity requirements as provided in **40 CFR Section 60.52c(b) of Subpart Ec;**

(c) Operator training and qualification requirements as provided in **40 CFR Section 60.53c of Subpart Ec;**

(d) Waste management plan as provided in **40 CFR Section 60.55c of Subpart Ec;**

(e) Compliance and performance testing as provided in **40 CFR Section 60.56c of Subpart Ec** excluding the fugitive emissions testing requirements under Section 60.56c(b)(12) and (c)(3) of Subpart Ec;

(f) Monitoring requirements as provided in **40 CFR Section 60.57c of Subpart Ec;**

(g) Reporting and recordkeeping requirements as provided in **40 CFR Section 60.58c(b)-(f) of Subpart Ec** excluding fugitive emissions under **Section 60.58c(b)(2)(ii)** and siting under **Section 60.58c(b)(7);**

(h) Permit requirements. Beginning September 15, 2000, affected facilities must operate pursuant to a permit issued under the EPA-approved state operating permit program.

(2) Small HMIWI that are located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area and which burn less than 2,000 pounds per week of hospital/medical/infectious waste, must comply with the following requirements within one year after EPA approval of the State plan in lieu of the requirements in subsection (a) of this section:

(a) Emission Limits:

(A) Particulate matter: 197 mg/dscm;

(B) Carbon monoxide: 40 ppm;

(C) Dioxins/furans: 800 ng/dscm;

(D) Hydrogen chloride: 3100 ppm;

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- (E) Sulfur dioxide: 55 ppm;
- (F) Nitrogen oxides: 250 ppm;
- (G) Lead: 10 mg/dscm;
- (H) Cadmium: 4 mg/dscm;
- (I) Mercury: 7.5 mg/dscm.

(b) Stack opacity requirements as provided in **40 CFR Section 60.52c(b) of Subpart Ec**;

(c) Initial equipment inspection which, at a minimum includes the following:

(A) Inspect all burners, pilot assemblies, and pilot sensing devices for proper operation; clean pilot flame sensor, as necessary;

(B) Ensure proper adjustment of primary and secondary chamber combustion air, and adjust as necessary;

(C) Inspect hinges and door latches, and lubricate as necessary;

(D) Inspect dampers, fans, and blowers for proper operation;

(E) Inspect HMIWI door and door gaskets for proper sealing;

(F) Inspect motors for proper operation;

(G) Inspect primary chamber refractory lining; clean and repair/replace lining as necessary;

(H) Inspect incinerator shell for corrosion and/or hot spots;

(I) Inspect secondary/tertiary chamber and stack, clean as necessary;

(J) Inspect mechanical loader, including limit switches, for proper operation, if applicable;

(K) Visually inspect waste bed (grates), and repair/seal, as appropriate;

(L) For the burn cycle that follows the inspection, document that the incinerator is operating properly and make any necessary adjustments;

(M) Inspect air pollution control device(s) for proper operation, if applicable;

(N) Inspect waste heat boiler systems to ensure proper operation, if applicable;

(O) Inspect bypass stack components;

(P) Ensure proper calibration of thermocouples, sorbent feed systems and any other monitoring equipment; and

(Q) Generally observe that the equipment is maintained in good operating condition.

(d) Equipment repairs. Within 10 operating days following an equipment inspection, all necessary repairs must be completed unless the owner or operator obtains written approval from the Department establishing a date whereby all necessary repairs of the designated facility must be completed;

(e) Equipment inspection. Equipment inspections must be conducted annually (no more than 12 months following the previous annual equipment inspection), as outlined in (4)(b)(C) and (D) of this section;

(f) Compliance and performance testing requirements as follows:

(A) Compliance and performance testing requirements as provided in **40 CFR Section 60.56c(a)(b)(1) through (b)(9), (b)(11) (Hg only), and (c)(1) of Subpart Ec**. The 2,000 lb/week limitation under (4)(b) of this section does not apply during performance tests;

(B) Establish maximum charge rate and minimum secondary chamber temperature as site-specific operating parameters during the initial performance test to determine compliance with applicable emission limits;

(C) Following the date on which the initial performance test is completed or is required to be completed under **40 CFR Section 60.8**, whichever date comes first, ensure that the designated facility does not operate above the maximum charge rate or below the minimum secondary chamber temperature measured as 3-hour rolling averages (calculated each hour as the average of the previous 3 operating hours) at all times except during periods of startup, shutdown and malfunction. Operating parameter limits do not apply during performance tests. Operation above the maximum charge rate or below the minimum secondary chamber temperature shall constitute a violation of the established operating parameter(s);

(D) Except as provided in Subsection (v) of this section, operation of the designated facility above the maximum charge rate and below the minimum secondary chamber temperature (each measured on a 3 hour rolling average) simultaneously shall constitute a violation of the PM, CO, and dioxin/furan emission limits;

(E) The owner or operator of a designated facility may conduct a repeat performance test within 30 days of violation of applicable operating parameter(s) to demonstrate that the designated facility is not in violation of the applicable emission limit(s). Repeat performance tests conducted pursuant to this paragraph must be conducted using the identical operating parameters that indicated a violation under Subsection (iv) of this section.

(g) Monitoring requirements as follows:

(A) Install, calibrate (to manufacturers' specifications), maintain, and operate a device for measuring and recording the temperature of the sec-

ondary chamber on a continuous basis, the output of which shall be recorded, at a minimum, once every minute throughout operation;

(B) Install, calibrate (to manufacturers' specifications), maintain, and operate a device which automatically measures and records the date, time, and weight of each charge fed into the HMIWI;

(C) The owner or operator of a designated facility must obtain monitoring data at all times during HMIWI operation except during periods of monitoring equipment malfunction, calibration, or repair. At a minimum, valid monitoring data must be obtained for 75 percent of the operating hours per day and for 90 percent of the operating hours per calendar quarter that the designated facility is combusting hospital waste and/or medical/infectious waste.

(h) Reporting and recordkeeping requirements as follows:

(A) Maintain records of the annual equipment inspections, any required maintenance, and any repairs not completed within 10 days of an inspection or the timeframe established by the Department; and

(B) Submit an annual report containing information recorded under subsection (i) of this section no later than 60 days following the year in which data were collected. Subsequent reports must be sent no later than 12 calendar months following the previous report, once the unit is subject to permitting requirements under Title V of the Act, the owner or operator must submit these reports semiannually. The report must be signed by the facilities manager.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99,

Renumbered from 340-025-0750; DEQ 2-2005, f. & cert. ef. 2-10-05

340-238-0040

Definitions

The definitions in OAR 340-200-0020 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020, the definition in this rule applies to this division.

(1) "Administrator" means the Administrator of the EPA or authorized representative.

(2) "Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference or equivalent method but that has been demonstrated to the Department's satisfaction to, in specific cases, produce results adequate for determination of compliance.

(3) "Capital expenditures" means an expenditure for a physical or operational change to an existing facility that exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in Internal Revenue Service (IRS) Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code. However, the total expenditure for a physical or operational change to an existing facility must not be reduced by any "excluded additions" as defined in IRS Publication 534, as would be done for tax purposes.

(4) "CFR" means **Code of Federal Regulations** and, unless otherwise expressly identified, refers to the July 1, 2004 edition.

(5) "Closed municipal solid waste landfill" (closed landfill) means a landfill in which solid waste is no longer being placed, and in which no additional solid wastes will be placed without first filing a notification of modification as prescribed under 40 CFR 60.7(a)(4). Once a notification of modification has been filed, and additional solid waste is placed in the landfill, the landfill is no longer closed. A landfill is considered closed after meeting the criteria of 40 CFR 258.60.

(6) "Commenced", with respect to the definition of "new source" in section 111(a)(2) of the federal Clean Air Act, means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(7) "Construction" means fabrication, erection, or installation of a facility.

(8) "Department" means the Department of Environmental Quality or, in the case of Lane County, the Lane Regional Air Pollution Authority.

(9) "Environmental Protection Agency" or "EPA" means the United States Environmental Protection Agency.

(10) "Existing municipal solid waste landfill" (existing landfill) means a municipal solid waste landfill that began construction, reconstruction or modification before 5/30/91 and has accepted waste at any time since 11/08/87 or has additional design capacity available for future waste deposition.

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(11) "Equivalent method" means any method of sampling and analyzing for an air pollutant that has been demonstrated to the Department's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

(12) "Existing facility", with reference to a stationary source, means any apparatus of the type for which a standard is promulgated in 40 CFR Part 60, and the construction or modification of which commenced before the date of proposal by EPA of that standard; or any apparatus that could be altered in such a way as to be of that type.

(13) "Facility" means all or part of any public or private building, structure, installation, equipment, vehicle or vessel, including, but not limited to, ships.

(14) "Fixed capital cost" means the capital needed to provide all the depreciable components.

(15) "Large municipal solid waste landfill" (large landfill) means a municipal solid waste landfill with a design capacity greater than or equal to 2.5 million megagrams or 2.5 million cubic meters.

(16) "Modification:"

(a) except as provided in subsection (b) of this section, means any physical change in, or change in the method of operation of, an existing facility that increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or that results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted;

(b) As used in OAR 340-238-0100 means an action that results in an increase in the design capacity of a landfill.

(17) "Municipal solid waste landfill" (landfill) means an entire disposal facility in a contiguous geographical space where household waste is placed in or on land. A municipal solid waste landfill may also receive other types of RCRA Subtitle D wastes such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste, and industrial solid waste. Portions of a municipal solid waste landfill may be separated by access roads and may be publicly or privately owned. A municipal solid waste landfill may be a new municipal solid waste landfill, an existing municipal solid waste landfill, or a lateral expansion (modification).

(18) "New municipal solid waste landfill" (new landfill) means a municipal solid waste landfill that began construction, reconstruction or modification or began accepting waste on or after 5/30/91.

(19) "Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by an applicable reference method, or an equivalent or alternative method.

(20) "Reconstruction" means the replacement of components of an existing facility to such an extent that:

(a) The fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable entirely new facility; and

(b) It is technologically and economically feasible to meet the applicable standards set forth in 40 CFR Part 60.

(21) "Reference method" means any method of sampling and analyzing for an air pollutant as specified in 40 CFR Part 60.

(22) "Small municipal solid waste landfill" (small landfill) means a municipal solid waste landfill with a design capacity less than 2.5 million megagrams or 2.5 million cubic meters.

(23) "Standard" means a standard of performance proposed or promulgated under 40 CFR Part 60.

(24) "State Plan" means a plan developed for the control of a designated pollutant provided under 40 CFR Part 60.

(25) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air pollutant subject to regulation under the federal Clean Air Act.

(26) "Volatile organic compounds" or "VOC" means any organic compounds that participate in atmospheric photochemical reactions; or that are measured by a reference method, an equivalent method, an alternative method, or that are determined by procedures specified under any applicable rule.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 4-1993, f. & cert. ef. 3-10-93; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0510; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

340-238-0060

Federal Regulations Adopted by Reference

(1) Except as provided in section (2) of this rule, **40 CFR Part 60 Subparts D through XX and BBB through NNN and PPP through WWW, AAAA and CCCC** are by this reference adopted and incorporated herein, and **40 CFR Part 60 Subpart OOO** is by this reference adopted and incorporated herein for major sources only.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 60, "Department" is substituted, except in any section of 40 CFR Part 60 for which a federal rule or delegation specifically indicates that authority must not be delegated to the state.

(3) 40 CFR Part 60 Subparts adopted by this rule are titled as follows:

(a) Subpart D — Fossil-fuel-fired steam generators for which construction is commenced after August 17, 1971;

(b) Subpart Da — Electric utility steam generating units for which construction is commenced after September 18, 1978;

(c) Subpart Db — Industrial-commercial-institutional steam generating units;

(d) Subpart Dc — Small industrial-commercial-institutional steam generating units;

(e) Subpart E — Incinerators;

(f) Subpart Ea — Municipal waste combustors for which construction is commenced after December 20, 1989 and on or before September 20, 1994;

(g) Subpart Eb — Municipal waste combustors for which construction is commenced after September 20, 1994;

(h) Subpart Ec — Hospital/Medical/Infectious waste incinerators that commenced construction after June 20, 1996, or for which modification is commenced after March 16, 1998;

(i) Subpart F — Portland cement plants;

(j) Subpart G — Nitric acid plants;

(k) Subpart H — Sulfuric acid plants;

(l) Subpart I — Hot mix asphalt facilities;

(m) Subpart J — Petroleum refineries;

(n) Subpart K — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after June 11, 1973, and before May 19, 1978;

(o) Subpart Ka — Storage vessels for petroleum liquids for which construction, reconstruction, or modification commenced after May 18, 1978, and before July 23, 1984;

(p) Subpart Kb — Volatile organic liquid storage vessels (including petroleum liquid storage vessels) for which construction, reconstruction, or modification commenced after July 23, 1984;

(q) Subpart L — Secondary lead smelters;

(r) Subpart M — Secondary brass and bronze production plants;

(s) Subpart N — Primary emissions from basic oxygen process furnaces for which construction is commenced after June 11, 1973;

(t) Subpart Na — Secondary emissions from basic oxygen process steelmaking facilities for which construction is commenced after January 20, 1983;

(u) Subpart O — Sewage treatment plants;

(v) Subpart P — Primary copper smelters;

(w) Subpart Q — Primary Zinc smelters;

(x) Subpart R — Primary lead smelters;

(y) Subpart S — Primary aluminum reduction plants;

(z) Subpart T — Phosphate fertilizer industry: wet-process phosphoric acid plants;

(aa) Subpart U — Phosphate fertilizer industry: superphosphoric acid plants;

(bb) Subpart V — Phosphate fertilizer industry: diammonium phosphate plants;

(cc) Subpart W — Phosphate fertilizer industry: triple superphosphate plants;

(dd) Subpart X — Phosphate fertilizer industry: granular triple superphosphate storage facilities;

(ee) Subpart Y — Coal preparation plants;

(ff) Subpart Z — Ferroalloy production facilities;

(gg) Subpart AA — Steel plants: electric arc furnaces constructed after October 21, 1974 and on or before August 17, 1983;

(hh) Subpart AAa — Steel plants: electric arc furnaces and argon-oxygen decarburization vessels constructed after August 7, 1983;

(ii) Subpart BB — Kraft pulp mills;

(jj) Subpart CC — Glass manufacturing plants;

(kk) Subpart DD — Grain elevators.

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(ll) Subpart EE — Surface coating of metal furniture;
(mm) Subpart GG — Stationary gas turbines;
(nn) Subpart HH — Lime manufacturing plants;
(oo) Subpart KK — Lead-acid battery manufacturing plants;
(pp) Subpart LL — Metallic mineral processing plants;
(qq) Subpart MM — Automobile and light-duty truck surface coating operations;
(rr) Subpart NN — Phosphate rock plants;
(ss) Subpart PP — Ammonium sulfate manufacture;
(tt) Subpart QQ — Graphic arts industry: publication rotogravure printing;
(uu) Subpart RR — pressure sensitive tape and label surface coating operations;
(vv) Subpart SS — Industrial surface coating: large appliances;
(ww) Subpart TT — Metal coil surface coating;
(xx) Subpart UU — Asphalt processing and asphalt roofing manufacture;
(yy) Subpart VV — Equipment leaks of VOC in the synthetic organic chemicals manufacturing industry;
(zz) Subpart WW — Beverage can surface coating industry;
(aaa) Subpart XX — Bulk gasoline terminals;
(bbb) Subpart BBB — Rubber tire manufacturing industry;
(ccc) Subpart DDD — Volatile organic compound (VOC) emissions for the polymer manufacture industry;
(ddd) Subpart FFF — Flexible vinyl and urethane coating and printing;
(eee) Subpart GGG — equipment leaks of VOC in petroleum refineries;
(fff) Subpart HHH — Synthetic fiber production facilities;
(ggg) Subpart III — Volatile organic compound (VOC) emissions from the synthetic organic chemical manufacturing industry (SOCMI) air oxidation unit processes;
(hhh) Subpart JJJ — Petroleum dry cleaners;
(iii) Subpart KKK — Equipment leaks of VOC from onshore natural gas processing plants;
(jjj) Subpart LLL — Onshore natural gas processing; SO₂ emissions;
(kkk) Subpart NNN — Volatile organic compound (VOC) emissions from synthetic organic chemical manufacturing industry (SOCMI) distillation operations;
(lll) Subpart OOO — Nonmetallic mineral processing plants (adopted by reference for major sources only);
(mmm) Subpart PPP — Wool fiberglass insulation manufacturing plants;
(nnn) Subpart QQQ — VOC emissions from petroleum refinery wastewater systems;
(ooo) Subpart RRR — Volatile organic compound emissions from synthetic organic chemical manufacturing industry (SOCMI) reactor processes;
(ppp) Subpart SSS — Magnetic tape coating facilities;
(qqq) Subpart TTT — Industrial surface coating: surface coating of plastic parts for business machines;
(rrr) Subpart UUU — Calciners and dryers in mineral industries;
(sss) Subpart VVV — Polymeric coating of supporting substrates facilities;
(ttt) Subpart WWW — Municipal solid waste landfills, as clarified by OAR 340-238-0100;
(uuu) Subpart AAAA — Small municipal waste combustion units;
(vvv) Subpart CCCC — Commercial and industrial solid waste incineration units.

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

Stat. Auth.: ORS 468.020

Stats. Implemented: ORS 468A.025

Hist.: DEQ 97, f. 9-2-75, ef. 9-25-75; DEQ 16-1981, f. & ef. 5-6-81; sections (1) thru (12) of this rule renumbered to 340-025-0550 thru 340-025-0605; DEQ 22-1982, f. & ef. 10-21-82; DEQ 17-1983, f. & ef. 10-19-83; DEQ 16-1984, f. & ef. 8-21-84; DEQ 15-1985, f. & ef. 10-21-85; DEQ 19-1986, f. & ef. 11-7-86; DEQ 17-1987, f. & ef. 8-24-87; DEQ 24-1989, f. & cert. ef. 10-26-89; DEQ 17-1993, f. & cert. ef. 11-4-93; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 27-1996, f. & cert. ef. 12-11-96; DEQ 8-1997, f. & cert. ef. 5-6-97; DEQ 22-1998, f. & cert. ef. 10-21-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-025-0535; DEQ 22-2000, f. & cert. ef. 12-18-00; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0030

Definitions

The definitions in OAR 340-200-0020, 340-218-0030 and this rule apply to this division. If the same term is defined in this rule and OAR 340-200-0020 or 340-218-0030, the definition in this rule applies to this division.

(1) "Accidental Release" means an unanticipated emission of a regulated substance or other extremely hazardous substance into the ambient air from a stationary source.

(2) "Act" and "FCAA" mean the Federal Clean Air Act, Public Law 88-206 as last amended by Public Law 101-549.

(3) "Actual Emissions" means the mass emissions of a pollutant from an emissions source during a specified time period.

(a) Actual emissions shall equal the average rate at which the source actually emitted the pollutant and which is representative of normal source operation. Actual emissions shall be directly measured with a continuous monitoring system or calculated using a material balance or verified emission factor in combination with the source's actual operating hours, production rates and types of materials processed, stored, or combusted during the specified time period;

(b) For any source which had not yet begun normal operation in the specified time period, actual emissions shall equal the potential to emit of the source;

(c) For purposes of OAR 340-244-0100 through OAR 340-244-0180 actual emissions shall equal the actual rate of emissions of a pollutant, but does not include excess emissions from a malfunction, or startups and shutdowns associated with a malfunction.

(4) "Area Source" means any stationary source which has the potential to emit hazardous air pollutants but is not a major source of hazardous air pollutants.

(5) "Artificially or Substantially Greater Emissions" means abnormally high emissions such as could be caused by equipment malfunctions, accidents, unusually high production or operating rates compared to historical rates, or other unusual circumstances.

(6) "Base Year Emissions" for purposes of Early Reductions only (OAR 340-244-0100), means actual emissions in the calendar year 1987 or later.

(7) "CFR" means **Code of Federal Regulations** and, unless otherwise expressly identified, refers to the July 1, 2004 edition.

(8) "Commission" means the Oregon Environmental Quality Commission.

(9) "Construct a major Source" means to fabricate, erect, or install at any greenfield site a stationary source or group of stationary sources which is located within a contiguous area and under common control and which emits or has the potential to emit 10 tons per year of any HAPs or 25 tons per year of any combination of HAP, or to fabricate, erect, or install at any developed site a new process or production unit which in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, unless the process or production unit satisfies criteria a through f of this paragraph:

(a) All HAP emitted by the process or production unit that would otherwise be controlled under the requirements of this subpart will be controlled by emission control equipment which was previously installed at the same site as the process or production unit;

(b)(A) The permitting authority has determined within a period of 5 years prior to the fabrication, erection, or installation of the process or production unit that the existing emission control equipment represented the best available control technology (BACT), lowest achievable emission rate (LAER) under 40 CFR part 51 or 52, toxics-best available control technology (T-BACT) or MACT based on State air toxic rules for the category of pollutants which includes those HAP to be emitted by the process or production unit; or

(B) The permitting authority determines that the control of HAP emissions provided by the existing equipment will be equivalent to that level of control currently achieved by other well-controlled similar sources (i.e., equivalent to the level of control that would be provided by a current BACT, LAER, T-BACT, or State air toxic rule MACT determination).

(c) The permitting authority determines that the percent control efficiency for emission of HAP from all sources to be controlled by the existing control equipment will be equivalent to the percent control efficiency provided by the control equipment prior to the inclusion of the new process or production unit;

(d) The permitting authority has provided notice and an opportunity for public comment concerning its determination hat criteria in paragraphs (a), (b), and (c) of this definition apply and concerning the continued adequacy of any prior LAER, BACT, T-BACT, or State air toxic rule MACT determination;

(e) If any commenter has asserted that a prior LAER, BACT, T-BACT, or State air toxic rule MACT determination is no longer adequate, the per-

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mitting authority has determined that the level of control required by that prior determination remains adequate; and

(f) Any emission limitations, work practice requirements, or other terms and conditions upon which the above determinations by the permitting authority are predicated will be construed by the permitting authority as applicable requirements under section 504(a) and either have been incorporated into any existing title V permit for the affected facility or will be incorporated into such permit upon issuance.

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

(11) "Director" means the Director of the Department or Regional authority, and authorized deputies or officers.

(12) "Early Reductions Unit" means a single emission point or group of emissions points defined as a unit for purposes of an alternative emissions limit issued under OAR 340-244-0100 through 340-244-0180.

(13) "Emission" means a release into the atmosphere of any regulated pollutant or air contaminant.

(14) "Emissions Limitation" and "Emissions Standard" mean a requirement adopted by the Department or regional authority, or proposed or promulgated by the Administrator of the EPA, which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity, prescribe equipment, set fuel specifications, or prescribe operation or maintenance procedures for a source to assure continuous emission reduction.

(15) "Emissions Unit" means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant.

(a) A part of a stationary source is any machine, equipment, raw material, product, or by-product that produces or emits air pollutants. An activity is any process, operation, action, or reaction (e.g., chemical) at a stationary source that emits air pollutants. Except as described in subsection (d) of this section, parts and activities may be grouped for purposes of defining an emissions unit provided the following conditions are met:

(A) The group used to define the emissions unit may not include discrete parts or activities to which a distinct emissions standard applies or for which different compliance demonstration requirements apply; and

(B) The emissions from the emissions unit are quantifiable.

(b) Emissions units may be defined on a pollutant by pollutant basis where applicable;

(c) The term "emissions unit" is not meant to alter or affect the definition of the term "unit" for purposes of Title IV of the FCAA;

(d) Parts and activities shall not be grouped for purposes of determining emissions increases from an emissions unit under OAR 340-244-0050, 340-244-0070, or 340-218-0190, or for purposes of determining the applicability of a New Source Performance Standard (NSPS).

(16) "EPA" means the Administrator of the United States Environmental Protection Agency or the Administrator's designee.

(17) "EPA Conditional Method" means any method of sampling and analyzing for air pollutants which has been validated by the EPA but which has not been published as an EPA reference method.

(18) "EPA Reference Method" means any method of sampling and analyzing for an air pollutant as described in 40 CFR Part 60, 61, or 63.

(19) "Equipment leaks" means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems in hazardous air pollutant service.

(20) "Existing Source" means any source, the construction of which commenced prior to proposal of an applicable standard under sections 112 or 129 of the FCAA.

(21) "Facility" means all or part of any public or private building, structure, installation, equipment, or vehicle or vessel, including but not limited to ships.

(22) "Fugitive Emissions" means emissions of any air contaminant that escape to the atmosphere from any point or area that is not identifiable as a stack, vent, duct or equivalent opening.

(23) "Generally Available Control Technology (GACT)" means an alternative emission standard promulgated by EPA for non-major sources of hazardous air pollutants which provides for the use of control technology or management practices which are generally available.

(24) "Hazardous Air Pollutant" (HAP) means an air pollutant listed by the EPA pursuant to section 112(b) of the FCAA or determined by the Commission to cause, or reasonably be anticipated to cause, adverse effects to human health or the environment.

(25) "High-Risk Pollutant" means any air pollutant listed in Table 2 of OAR 340-244-0140 for which exposure to small quantities may cause a high risk of adverse public health effects.

(26) "Major Source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants. The EPA may establish a lesser quantity, or in the case of radionuclides different criteria, for a major source on the basis of the potency of the air pollutant, persistence, potential for bioaccumulation, other characteristics of the air pollutant, or other relevant factors.

(27) "Maximum Achievable Control Technology (MACT)" means an emission standard applicable to major sources of hazardous air pollutants that requires the maximum degree of reduction in emissions deemed achievable for either new or existing sources.

(28) "New Source" means a stationary source, the construction of which is commenced after proposal of a federal MACT or January 3, 1993 of this Division, whichever is earlier.

(29) "Not Feasible to Prescribe or Enforce a Numerical Emission Limit" means a situation in which the Department determines that a pollutant or stream of pollutants listed in OAR 340-244-0040 cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any state or federal law or regulation; or the application of measurement technology to a particular source is not practicable due to technological or economic limitations.

(30) "Person" means the United States Government and agencies thereof, any state, individual, public or private corporation, political subdivision, governmental agency, municipality, industry, co-partnership, association, firm, trust, estate, or any other legal entity whatsoever.

(31) "Potential to Emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the EPA. This section does not alter or affect the use of this section for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations promulgated thereunder. Secondary emissions shall not be considered in determining the potential to emit of a source.

(32) "Reconstruct a Major Source" means the replacement of components at an existing process or production unit that in and of itself emits or has the potential to emit 10 tons per year of any HAP or 25 tons per year of any combination of HAP, whenever: the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable process or production unit; and; it is technically and economically feasible for the reconstructed major source to meet the applicable maximum achievable control technology emission limitation for new sources established under 40 CFR Part 63 Subpart B.

(33) "Regional Authority" means Lane Regional Air Pollution Authority.

(34) "Regulated Air Pollutant" as used in this Division means:

(a) Any pollutant listed under OAR 340-200-0400 or 340-244-0230; or

(b) Any pollutant that is subject to a standard promulgated pursuant to Section 129 of the Act.

(35) "Secondary Emissions" means emissions from new or existing sources which occur as a result of the construction and/or operation of a source or modification, but do not come from the source itself. Secondary emissions shall be specific, well defined, and quantifiable, and impact the same general area as the source associated with the secondary emissions. Secondary emissions may include but are not limited to:

(a) Emissions from ships and trains coming to or from a facility;

(b) Emissions from offsite support facilities which would be constructed or would otherwise increase emissions as a result of the construction of a source or modification.

(36) "Section 111" means that section of the FCAA that includes standards of performance for new stationary sources.

(37) "Section 112(b)" means that subsection of the FCAA that includes the list of hazardous air pollutants to be regulated.

(38) "Section 112(d)" means that subsection of the FCAA that directs the EPA to establish emission standards for sources of hazardous air pollutants. This section also defines the criteria to be used by EPA when establishing the emission standards.

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(39) "Section 112(e)" means that subsection of the FCAA that directs the EPA to establish and promulgate emissions standards for categories and subcategories of sources that emit hazardous air pollutants.

(40) "Section 112(n)" means that subsection of the FCAA that includes requirements for the EPA to conduct studies on the hazards to public health prior to developing emissions standards for specified categories of hazardous air pollutant emission sources.

(41) "Section 112(r)" means that subsection of the FCAA that includes requirements for the EPA promulgate regulations for the prevention, detection and correction of accidental releases.

(42) "Section 129" means that section of the FCAA that requires EPA to promulgate regulations for solid waste combustion.

(43) "Solid Waste Incineration Unit" as used in this Division shall have the same meaning as given in Section 129(g) of the FCAA.

(44) "Stationary Source":

(a) As used in OAR 340 division 244 means any building, structure, facility, or installation which emits or may emit any regulated air pollutant;

(b) As used in OAR 340-244-0230 means any buildings, structures, equipment, installations, or substance emitting stationary activities:

(A) That belong to the same industrial group;

(B) That are located on one or more contiguous properties;

(C) That are under the control of the same person (or persons under common control); and

(D) From which an accidental release may occur.

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 22-1995, f. & cert. ef. 10-6-95; DEQ 26-1996, f. & cert. ef. 11-26-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0120; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0040

List of Hazardous Air Pollutants

For purposes of this Division the Commission adopts by reference the pollutants, including groups of substances and mixtures, listed in section 112(b), as Hazardous Air Pollutants (**Table 1**).

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

Stat. Auth.: ORS 468.020 & 468A.025

Stats. Implemented: ORS 468A.040

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 2-1996, f. & cert. ef. 1-2-96; DEQ 20-1997, f. & cert. ef. 9-25-97; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0130; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0120

General Provisions for Compliance Extensions

(1) The Department will, by permit issued in accordance with OAR 340 division 218, allow an existing source to meet an alternative emission limitation for an Early Reductions Unit in lieu of an emission limitation promulgated under Section 112(d) of the FCAA for a period of six years from the compliance date of the otherwise applicable standard, provided the owner or operator demonstrates:

(a) According to the requirements of OAR 340-244-0140 that the Early Reductions Unit has achieved a reduction of at least 90 percent (95 percent or more in the case of HAP that are particulate) in emissions of:

(A) Total HAP from the Early Reductions Unit; or

(B) Total HAP from the Early Reductions Unit as adjusted for high-risk pollutant weighing factors (**Table 2**), if applicable.

(b) That such reduction was achieved before the otherwise applicable standard issued under Section 112(d) of the FCAA was first proposed.

(2) A source granted an alternative emission limitation must comply with an applicable standard issued under Section 112(d) of the FCAA immediately upon expiration of the six-year compliance extension period specified in section (1) of this rule.

(3) For each facility issued a permit under section (1) of this rule, there must be established as part of the permit an enforceable alternative emission limitation for HAP for each Early Reductions Unit reflecting the reduction that qualified the Early Reductions Unit for the alternative emission limitation.

(4) Any source that has received an alternative emissions limit from EPA, either pursuant to **40 CFR 63.75 Enforceable Commitments** dated **December 29, 1992**, or as a Title V specialty permit, must have the alternative emission limit(s) incorporated as an applicable requirement in its operating permit pursuant to OAR 340-218-0150 upon permit issuance or renewal.

(5) If a source fails to submit a timely and complete application according to OAR 340-218-0040, or does not adequately demonstrate the required reductions in emissions pursuant to OAR 340-244-0140, the Department will not approve the source's application for a compliance extension and alternative emission limit, and the source must comply with any applicable emission standard established pursuant to 112(d) of the FCAA by the compliance date prescribed in the applicable standard.

Stat. Auth.: ORS 468.020 & 468A.310

Stats. Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0320; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0210

Emissions Limitation for Existing Sources

(1) Federal MACT. Existing major and area sources must comply with the applicable emissions standards for existing sources promulgated by the EPA pursuant to section 112(d), section 112(n), or section 129 of the FCAA and adopted by rule within this Division.

(2) State MACT. If the EPA fails to meet its schedule for promulgating a MACT standard for a source category or subcategory, the Department must approve HAP emissions limitations for existing major sources within that category or subcategory according to **40 CFR Part 63, Subpart B**.

(a) The owner or operator of each existing major source within that category will file permit applications in accordance with OAR 340-218-0040 and **40 CFR Part 63, Subpart B**.

(b) If, after a permit has been issued, the EPA promulgates a MACT standard applicable to a source that is more stringent than the one established pursuant to this section, the Department may revise the permit upon the next renewal to reflect the standard promulgated by the EPA. The source will be given a reasonable time to comply, but no longer than 8 years after the standard is promulgated;

(c) The Department will not establish a case-by-case State MACT:

(A) For existing solid waste incineration units where an emissions standard will be established for these units by the EPA pursuant to section 111 of the FCAA. These sources are subject to applicable emissions standards under OAR chapter 340, division 25; or

(B) For existing major HAP sources where an emissions standard or alternative control strategy will be established by the EPA pursuant to section 112(n) of the FCAA.

(3) Compliance schedule:

(a) The owner or operator of the source must comply with the emission limitation:

(A) Within the time frame established in the applicable Federal MACT standard, but in no case later than three years from the date of federal promulgation of the applicable MACT requirements; or

(B) Within the time frame established by the Department where a state-determined MACT has been established or a case-by-case determination has been made.

(b) The owner or operator of the source may apply for, and the Commission may grant, a compliance extension of up to one year if such additional period is necessary for the installation of controls;

(c) Notwithstanding the requirements of this section, no existing source that has installed Best Available Control Technology or has been required to meet Lowest Achievable Emission Rate before the promulgation of a federal MACT applicable to that emissions unit is required to comply with such MACT standard until 5 years after the date on which such installation or reduction has been achieved, as determined by the Department.

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

Stat. Auth.: ORS 468 & 468A

Stats. Implemented: ORS 468A.310

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 7-1998, f. & cert. ef. 5-5-98; DEQ 18-1998, f. & cert. ef. 10-5-98, Renumbered from 340-032-2500; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0505; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0220

Federal Regulations Adopted by Reference

(1) Except as provided in sections (2) and (3) of this rule, **40 CFR Part 61, Subparts A through F, I, J, L, N through P, V, Y, BB and FF and 40 CFR Part 63, Subparts A, F, G, H, I, J, L, M, N, O, Q, R, S, T, U, W, X, Y, AA, BB, CC, DD, EE, GG, HH, II, JJ, KK, LL, MM, OO, PP, QQ, RR, SS, TT, UU, VV, WW, XX, YY, CCC, DDD, EEE, GGG, HHH, III, JJJ, LLL, MMM, NNN, OOO, PPP, QQQ, RRR, TTT, UUU, VVV, XXX, AAAA, CCCC, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK**,

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MMMM, NNNN, OOOO, PPPP, QQQQ, RRRR, SSSS, TTTT, UUUU, VVVV, WWWW, XXXX, YYYY, ZZZZ, AAAAA, BBBB, CCCC, EEEE, FFFF, GGGG, HHHH, IIII, JJJJ, KKKK, LLLL, MMMM, NNNN, PPPP, QQQQ, RRRR, SSSS, and TTTT are adopted by reference and incorporated herein.

(2) Where "Administrator" or "EPA" appears in 40 CFR Part 61 or 63, "Department" is substituted, except in any section of 40 CFR Part 61 or 63, for which a federal rule or delegation specifically indicates that authority will not be delegated to the state.

(3) 40 CFR Part 63 Subpart M — Dry Cleaning Facilities using Perchloroethylene: The exemptions in 40 CFR 63.320(d) and (e) do not apply.

(4) 40 CFR Part 61 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart B — Radon Emissions from Underground Uranium Mines;

(c) Subpart C — Beryllium;

(d) Subpart D — Beryllium Rocket Motor Firing;

(e) Subpart E — Mercury;

(f) Subpart F — Vinyl Chloride;

(g) Subpart I — Radionuclide Emissions from Federal Facilities Other than Nuclear Regulatory Commission Licensee and Not Covered by Subpart H;

(h) Subpart J — Equipment Leaks (Fugitive Emission Sources) of Benzene;

(i) Subpart L — Benzene Emissions from Coke By-Product Recovery Plants;

(j) Subpart N — Inorganic Arsenic Emissions from Glass Manufacturing Plants;

(k) Subpart O — Inorganic Arsenic Emissions from Primary Copper Smelters;

(l) Subpart P — Inorganic Arsenic Emissions from Arsenic Trioxide and Metal Arsenic Facilities;

(m) Subpart V — Equipment Leaks (Fugitive Emission Sources);

(n) Subpart Y — Benzene Emissions from Benzene Storage Vessels;

(o) Subpart BB — Benzene Emissions from Benzene Transfer Operations; and

(p) Subpart FF — Benzene Waste Operations.

(5) 40 CFR Part 63 Subparts adopted by this rule are titled as follows:

(a) Subpart A — General Provisions;

(b) Subpart F — SOCM;I;

(c) Subpart G — SOCM;I — Process Vents, Storage Vessels, Transfer Operations, and Wastewater;

(d) Subpart H — SOCM;I — Equipment Leaks;

(e) Subpart I — Certain Processes Subject to the Negotiated Regulation for Equipment Leaks;

(f) Subpart J — Polyvinyl Chloride and Copolymers Production;

(g) Subpart L — Coke Oven Batteries;

(h) Subpart M — Perchloroethylene Air Emission Standards for Dry Cleaning Facilities;

(i) Subpart N — Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks;

(j) Subpart O — Ethylene Oxide Emissions Standards for Sterilization Facilities;

(k) Subpart Q — Industrial Process Cooling Towers;

(l) Subpart R — Gasoline Distribution (Bulk Gasoline Terminals and Pipeline Breakout Stations);

(m) Subpart S — Pulp and Paper Industry;

(n) Subpart T — Halogenated Solvent Cleaning;

(o) Subpart U — Group I Polymers and Resins;

(p) Subpart W — Epoxy Resins and Non-Nylon Polyamides Production;

(q) Subpart X — Secondary Lead Smelting;

(r) Subpart Y — Marine Tank Vessel Loading Operations;

(s) Subpart AA — Phosphoric Acid Manufacturing Plants;

(t) Subpart BB — Phosphate Fertilizer Production Plants;

(u) Subpart CC — Petroleum Refineries;

(v) Subpart DD — Off-Site Waste and Recovery Operations;

(w) Subpart EE — Magnetic Tape Manufacturing Operations;

(x) Subpart GG — Aerospace Manufacturing and Rework Facilities;

(y) Subpart HH — Oil and Natural Gas Production Facilities;

(z) Subpart II — Shipbuilding and Ship Repair (Surface Coating);

(aa) Subpart JJ — Wood Furniture Manufacturing Operations;

(bb) Subpart KK — Printing and Publishing Industry;

(cc) Subpart LL — Primary Aluminum Reduction Plants;

(dd) Subpart MM — Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-Chemical Pulp Mills

(ee) Subpart OO — Tanks — Level 1;

(ff) Subpart PP — Containers;

(gg) Subpart QQ — Surface Impoundments;

(hh) Subpart RR — Individual Drain Systems;

(ii) Subpart SS — Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process;

(jj) Subpart TT — Equipment Leaks — Control Level 1;

(kk) Subpart UU — Equipment Leaks — Control Level 2;

(ll) Subpart VV — Oil-Water Separators and Organic-Water Separators;

(mm) Subpart WW — Storage Vessels (Tanks) — Control Level 2;

(nn) Subpart XX — Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations;

(oo) Subpart YY — Generic Maximum Achievable Control Technology Standards;

(pp) Subpart CCC — Steel Pickling — HCl Process Facilities and Hydrochloric Acid Regeneration Plants;

(qq) Subpart DDD — Mineral Wool Production;

(rr) Subpart EEE — Hazardous Waste Combustors;

(ss) Subpart GGG — Pharmaceuticals Production;

(tt) Subpart HHH — Natural Gas Transmission and Storage Facilities;

(uu) Subpart III — Flexible Polyurethane Foam Production;

(vv) Subpart JJJ — Group IV Polymers and Resins;

(ww) Subpart LLL — Portland Cement Manufacturing Industry;

(xx) Subpart MMM — Pesticide Active Ingredient Production;

(yy) Subpart NNN — Wool Fiberglass Manufacturing;

(zz) Subpart OOO — Manufacture of Amino/Phenolic Resins;

(aaa) Subpart PPP — Polyether Polyols Production;

(bbb) Subpart QQQ — Primary Copper Smelting;

(ccc) Subpart RRR — Secondary Aluminum Production;

(ddd) Subpart TTT — Primary Lead Smelting;

(eee) Subpart UUU — Petroleum Refineries — Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units;

(fff) Subpart VVV — Publicly Owned Treatment Works;

(ggg) Subpart XXX — Ferroalloys Production: Ferromanganese and Silicomanganese;

(hhh) Subpart AAAA — Municipal Solid Waste Landfills;

(iii) Subpart CCCC — Manufacturing of Nutritional Yeast;

(jjj) Subpart EEEE — Organic Liquids Distribution (non-gasoline);

(kkk) Subpart FFFF — Miscellaneous Organic Chemical Manufacturing;

(lll) Subpart GGGG — Solvent Extraction for Vegetable Oil Production;

(mmm) Subpart HHHH — Wet Formed Fiberglass Mat Production;

(nnn) Subpart IIII — Surface Coating of Automobiles and Light-Duty Trucks;

(ooo) Subpart JJJJ — Paper and Other Web Coating;

(ppp) Subpart KKKK — Surface Coating of Metal Cans;

(qqq) Subpart MMMM — Surface Coating of Miscellaneous Metal Parts and Products;

(rrr) Subpart NNNN — Surface Coating of Large Appliances;

(sss) Subpart OOOO — Printing, Coating, and Dyeing of Fabrics and Other Textiles;

(ttt) Subpart PPPP — Surface Coating of Plastic Parts and Products;

(uuu) Subpart QQQQ — Surface Coating of Wood Building Products;

(vvv) Subpart RRRR — Surface Coating of Metal Furniture;

(www) Subpart SSSS — Surface Coating of Metal Coil;

(xxx) Subpart TTTT — Leather Finishing Operations;

(yyy) Subpart UUUU — Cellulose Production Manufacturing;

(zzz) Subpart VVVV — Boat Manufacturing;

(aaaa) Subpart WWWW — Reinforced Plastics Composites Production;

(bbbb) Subpart XXXX — Rubber Tire Manufacturing;

(cccc) Subpart YYYY — Stationary Combustion Turbines;

(dddd) Subpart ZZZZ — Reciprocating Internal Combustion Engines;

(eeee) Subpart AAAAA — Lime Manufacturing;

(ffff) Subpart BBBB — Semiconductor Manufacturing;

(gggg) Subpart CCCCC — Coke Ovens: Pushing, Quenching & Battery Stacks;

(hhhh) Subpart EEEEE — Iron and Steel Foundries;

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(iiii) Subpart FFFFF — Integrated Iron and Steel Manufacturing Facilities;
(jjjj) Subpart GGGGG — Site Remediation;
(kkkk) Subpart HHHHH — Misc. Coating Manufacturing;
(llll) Subpart IIIII — Mercury Cell Chlor-Alkali Plants;
(mmmm) Subpart JJJJJ — Brick and Structural Clay Products Manufacturing;
(nnnn) Subpart KKKKK — Clay Ceramics Manufacturing;
(oooo) Subpart LLLLL — Asphalt Processing & Asphalt Roofing Manufacturing;
(pppp) Subpart MMMMM — Flexible Polyurethane Foam Fabrication Operations;
(qqqq) Subpart NNNNN — Hydrochloric Acid Production;
(rrrr) Subpart PPPPP — Engine Tests Cells/Stands;
(ssss) Subpart QQQQQ — Friction Materials Manufacturing Facilities;
(tttt) Subpart RRRRR — Taconite Iron Ore Processing;
(uuuu) Subpart SSSSS — Refractory Products Manufacturing;
(vvvv) Subpart TTTTT — Primary Magnesium Refining.
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020
Stats. Implemented: ORS 468A.025
Hist.: [DEQ 16-1995, f. & cert. ef. 6-21-95; DEQ 28-1996, f. & cert. ef. 12-19-96; DEQ 18-1998, f. & cert. ef. 10-5-98]; [DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 32-1994, f. & cert. ef. 12-22-94]; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-0510, 340-032-5520; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

340-244-0230

Accidental Release Prevention

(1) List. For purposes of this rule, the Commission adopts by reference the list of regulated substances and thresholds for accidental release prevention codified at **40 CFR Part 68.130** which includes the Department of Transportation Division 1.1 Explosive Standards List (**49 CFR 172.101**). (**Table 3**).

(2) Risk Management Plan. The owner or operator of a stationary source at which a substance listed in Table 3 is present in greater than the threshold quantity must prepare and implement a written risk management plan to detect and prevent or minimize accidental releases, and to provide a prompt emergency response to any such releases in order to protect human health and the environment.

(3) Compliance. The owner or operator of a stationary source required to prepare and implement a risk management plan under section (2) of this rule must:

- (a) Register the risk management plan with the EPA;
- (b) Submit copies of the risk management plan to the U.S. Chemical Safety and Hazard Identification Board, the Department, and the Oregon Office of Emergency Management; and
- (c) Submit as part of the compliance certification required under OAR 340-218-0080, annual certification to the Department that the risk management plan is being properly implemented.

(4) Compliance schedule:

- (a) The owner or operator of a stationary source must prepare and implement a risk management plan under section (2) of this rule according to the schedule promulgated by the EPA;
- (b) The owner or operator of a stationary source that adds a listed substance or exceeds the threshold must prepare and implement a risk management plan according to the schedule promulgated by the EPA.

[ED. NOTE: Tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 468.020 & 468A.310
Stats. Implemented: ORS 468A.025

Hist.: DEQ 13-1993, f. & cert. ef. 9-24-93; DEQ 18-1993, f. & cert. ef. 11-4-93; DEQ 24-1994, f. & cert. ef. 10-28-94; DEQ 18-1998, f. & cert. ef. 10-5-98; DEQ 14-1999, f. & cert. ef. 10-14-99, Renumbered from 340-032-5400; DEQ 11-2000, f. & cert. ef. 7-27-00; DEQ 15-2001, f. & cert. ef. 12-26-01; DEQ 4-2003, f. & cert. ef. 2-06-03; DEQ 2-2005, f. & cert. ef. 2-10-05

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Adm. Order No.: DEQ 3-2005

Filed with Sec. of State: 2-10-2005

Certified to be Effective: 3-1-05

Notice Publication Date: 8-1-04

Rules Amended: 340-012-0060

Subject: These amendments are part of a larger, more comprehensive rulemaking package that amended the Department of Environmental Quality's (the Department) enforcement rules. The remain-

ing amendments to the enforcement rules will become effective on June 1, 2005, but these amendments will become effective on March 1, 2005. These amendments clarify the classifications that apply to the subsurface sewage disposal (on-site) program and reflect new program rules adopted by the Department in December 2004. Those program rules will become effective on March 1, 2005, and these amendments to the enforcement rules will become effective the same date to assist in enforcement of the new rules. One of the amendments reduces the classification for advertising or representing oneself as being in the business of performing sewage disposal services without a current license, from Class I to Class II.

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

340-012-0060

Onsite Sewage Disposal Classification of Violations

(1) Class I:

(a) Performing sewage disposal services without a current license required by ORS 454.695;

(b) Installing or causing to be installed an onsite sewage disposal system or any part thereof, or repairing any part thereof, without first obtaining a permit.

(c) Disposing of septic tank, holding tank, chemical toilet, privy or other treatment facility contents in a manner or location not authorized by the department.

(d) Owning, operating or using an onsite sewage disposal system that is discharging sewage or effluent onto the ground or into waters of the state.

(2) Class II:

(a) Failure to meet the requirements for satisfactory completion within 30 days after written notification or posting of a Correction Notice at the site.

(b) Operating or using a nonwater-carried waste disposal facility without first obtaining a letter of authorization or permit.

(c) Operating or using an onsite sewage disposal system or part thereof without first obtaining a Certificate of Satisfactory Completion.

(d) Advertising or representing oneself as being in the business of performing sewage disposal services without a current license as required by ORS 454.695.

(e) Placing into service, reconnecting to or changing the use of an onsite sewage disposal system and increasing the projected daily sewage flow into the system without first obtaining an authorization notice, construction permit, alteration permit, or repair permit.

(f) Failing to connect all plumbing fixtures to, or failing to discharge wastewater or sewage into, a department-approved system, unless failure results in sewage on the ground or the discharge of sewage to waters of the state.

(g) Licensed sewage disposal business allowing an uncertified installer to supervise or be responsible for the construction or installation of a system, or part thereof.

(h) Failure of a service provider for alternative treatment technologies to submit an annual maintenance report.

(i) Failure of a service provider for alternative treatment technologies to report that a required operation and maintenance contract has been terminated.

(3) Class III:

(a) Failure by an owner of an alternative treatment technology, recirculating gravel filter, commercial sand filter or other alternative system to obtain an operation and maintenance contract from a certified service provider.

(b) In situations where the sewage disposal system design flow is not exceeded, placing an existing system into service or changing the dwelling or type of commercial facility, without first obtaining an authorization notice.

Stat. Auth.: ORS 454.050, 454.625 & 468.020

Stats. Implemented: ORS 454.635, 454.645 & 468.090 - 468.140

Hist.: DEQ 78, f. 9-6-74, ef. 9-25-74; DEQ 4-1981, f. & ef. 2-6-81; 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 19-1998, f. & cert. ef. 10-12-98; DEQ 3-2005, f. 2-10-05, cert. ef. 3-1-05

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Department of Fish and Wildlife Chapter 635

Adm. Order No.: DFW 2-2005(Temp)

Filed with Sec. of State: 1-21-2005

ADMINISTRATIVE RULES

Certified to be Effective: 1-21-05 thru 7-19-05

Notice Publication Date:

Rules Adopted: 635-017-0095

Subject: Adopt rule to announce sturgeon sport fishing seasons in the Willamette River.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-017-0095

Sturgeon Season

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Willamette 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 Willamette River downstream of Willamette Falls (including Multnomah Channel) is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

[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 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05

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

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-20-05 thru 2-28-05

Notice Publication Date:

Rules Amended: 635-041-0030

Subject: Amend rule in order to establish consistency between subsistence and commercial sturgeon harvestable size limits for Treaty Indian fishers in the Columbia River above Bonneville Dam. Modification is consistent with Columbia River Compact action adopted December 16, 2004.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0030

Subsistence Fishing Activities

(1) It is *unlawful* to utilize any fish taken by subsistence fishing for other than subsistence purposes as defined in OAR 635-041-0010 with the exception of shad which may be sold commercially, and with the exception of dip-net-caught fish from main stem Columbia and Klickitat River subsistence areas taken during open commercial fishing seasons.

(2) Only sturgeon between four and five feet in overall length from The Dalles and John Day pools and between 45–60-inches in overall length from the Bonneville Pool may be taken for subsistence purposes.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0030; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; DFW(Temp), 37-2000, f. 6-30-00, cert. ef. 7-1-00 thru 7-10-00; DFW 22-2003(Temp), f. & cert. ef. 3-25-03 thru 9-20-03; DFW 3-2005(Temp), f. & cert. ef. 1-20-05 thru 2-28-05

Adm. Order No.: DFW 4-2005(Temp)

Filed with Sec. of State: 1-31-2005

Certified to be Effective: 1-31-05 thru 4-1-05

Notice Publication Date:

Rules Amended: 635-041-0065

Rules Suspended: 635-041-0065(T)

Subject: Amend rule to extend the times of the winter season for Treaty Indian fishers in the Columbia River above Bonneville Dam. Revision is consistent with action taken January 28, 2005 by the Columbia River Compact.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-041-0065

Winter Salmon Season

(1) Salmon, steelhead, shad, sturgeon, walleye and carp may be taken for commercial purposes from the Columbia River Treaty Indian Fishery, Zone 6, from 6:00 a.m. February 1 to 6:00 p.m. March 21, 2005.

(2) There are no mesh size restrictions.

(3) Closed areas are set forth in OAR 635-041-0045 remain in effect, with the exception of Spring Creek Hatchery.

(4) Sale of platform and hook-and-line caught fish is allowed during open commercial fishing seasons.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79; FWC 13-1979(Temp), f. & ef. 3-30-1979, Renumbered from 635-035-0065; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 3-1988(Temp), f. & cert. ef. 1-29-88; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 13-1989(Temp), f. & cert. ef. 3-21-89; FWC 15-1990(Temp), f. 2-8-90, cert. ef. 2-9-90; FWC 20-1990, f. 3-6-90, cert. ef. 3-15-90; FWC 13-1992(Temp), f. & cert. ef. 3-5-92; FWC 7-1993, f. & cert. ef. 2-1-93; FWC 12-1993(Temp), f. & cert. ef. 2-22-93; FWC 18-1993(Temp), f. & cert. ef. 3-2-93; FWC 7-1994, f. & cert. ef. 2-1-94; FWC 11-1994(Temp), f. & cert. ef. 2-28-94; FWC 9-1995, f. & cert. ef. 2-1-95; FWC 19-1995(Temp), f. & cert. ef. 3-3-95; FWC 5-1996, f. & cert. ef. 2-7-96; FWC 4-1997, f. & cert. ef. 1-30-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 20-1998(Temp), f. & cert. ef. 3-13-98 thru 3-20-98; DFW 23-1998(Temp), f. & cert. ef. 3-20-98 thru 6-30-98; DFW 2-1999(Temp), f. & cert. ef. 2-1-99 through 2-19-99; DFW 9-1999, f. & cert. ef. 2-26-99; DFW 14-1999(Temp), f. 3-5-99, cert. ef. 3-6-99 thru 3-20-99; Administrative correction 11-17-99; DFW 6-2000(Temp), f. & cert. ef. 2-1-00 thru 2-29-00; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 19-2000, f. 3-18-00, cert. ef. 3-18-00 thru 3-21-00; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; Administrative correction 5-22-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 14-2001(Temp), f. 3-12-01, cert. ef. 3-14-01 thru 3-21-01; Administrative correction 6-20-01; DFW 9-2002, f. & cert. ef. 2-1-02; DFW 11-2002(Temp), f. & cert. ef. 2-8-02 thru 8-7-02; DFW 17-2002(Temp), f. 3-7-02, cert. ef. 3-8-02 thru 9-1-02; DFW 18-2002(Temp), f. 3-13-02, cert. ef. 3-15-02 thru 9-11-02; DFW 134-2002(Temp), f. & cert. ef. 12-19-02 thru 4-1-03; DFW 20-2003(Temp), f. 3-12-03, cert. ef. 3-13-03 thru 4-1-03; DFW 131-2003(Temp), f. 12-26-03, cert. ef. 1-1-04 thru 4-1-04; DFW 5-2004(Temp), f. 1-26-04, cert. ef. 2-2-04 thru 4-1-04; DFW 15-2004(Temp), f. 3-8-04, cert. ef. 3-10-04 thru 4-1-04; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 4-2005(Temp), f. & cert. ef. 1-31-05 thru 4-1-05

Adm. Order No.: DFW 5-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 635-010-0020

Subject: Amended the permanent rule to require that duplicate angling harvest tags may only be purchased at and issued from ODFW offices.

Rules Coordinator: Katie Thiel—(503) 947-6033

635-010-0020

Duplicate Documents

(1) An agent may issue duplicate licenses.

(2) Duplicate big game tags, combined angling harvest tags, and turkey tags may be issued only at Department offices.

Stat. Auth.: ORS 496.497 & 498

Stats. Implemented: ORS 496.497 & 498

Hist.: 3WC 2, f. 12-19-73, ef. 1-11-74, Renumbered from 630-030-0031; FWC 124-1990, f. 11-28-90, cert. ef. 1-1-91; FWC 4-1994, f. & cert. ef. 1-25-94; DFW 99-1999(Temp), f. 12-22-99, cert. ef. 1-1-00 thru 6-27-00; DFW 33-2000, f. & cert. ef. 6-19-00; DFW 5-2005, f. 2-14-05, cert. ef. 4-1-05

Adm. Order No.: DFW 6-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 1-1-05

Rules Adopted: 635-003-0077, 635-003-0078, 635-023-0095

Rules Amended: 635-023-0125, 635-041-0030, 635-041-0061, 635-042-0005, 635-042-0022, 635-042-0110, 635-042-0115, 635-042-0145, 635-042-0160, 635-042-0170, 635-042-0180, 635-042-0190

Rules Repealed: 635-003-0076, 635-023-0095(T), 635-041-0030(T), 635-041-0061(T)

Subject: Adopt and amend permanent rules to establish spring chinook, sturgeon and shad seasons for commercial, Tribal and recreational fisheries in the mainstem Columbia River. Adopt rules related to the North of Falcon fisheries.

Rules Coordinator: Katie Thiel—(503) 947-6033

ADMINISTRATIVE RULES

635-003-0077

US-Canada Border to Cape Falcon

All vessels participating in the commercial ocean salmon fishery must land their fish within the area or in Garibaldi, Oregon, and within 24 hours of any closure of this fishery. Oregon licensed limited fish sellers and fishers intending to transport and deliver their catch outside the area must notify ODFW one hour prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: 506.129
Hist: DFW 6-2005, f. & cert. ef. 2-14-05

635-003-0078

Humbog Mountain to the Oregon/California Border

All vessels participating in the commercial ocean salmon fishery must land their fish in Gold Beach, Port Orford, or Brookings, Oregon, and within 24 hours of any closure. Fishers intending to transport and deliver their catch to other locations after first landing in one of these ports must notify ODFW prior to transport away from the port of landing by calling (541) 867-0300 extension 271. Notification shall include vessel name and number, number of salmon by species, location of delivery, and estimated time of delivery.

Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: 506.129
Hist: DFW 6-2005, f. & cert. ef. 2-14-05

635-023-0095

Sturgeon Season

(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) Except as provided in subsections (3) and (4) of this rule, the Columbia River is open to the retention of sturgeon all year with the following restrictions:

(a) Catch limit is one per day, five per year.

(b) There is a 42" minimum length and a 60" maximum length from the mouth upstream to The Dalles Dam.

(c) There is a 48" minimum length and a 60" maximum length from The Dalles Dam upstream to the Oregon-Washington border.

(d) All oversize, undersize, and unwanted legal size sturgeon must be released immediately unharmed into the water.

(e) Oversize sturgeon cannot be removed totally or in part from the water.

(f) Only one single-point, barbless hook may be used for sturgeon angling in the Columbia River Zone including Youngs Bay.

(g) Catch and release of sturgeon may continue after taking the daily or annual limit or when quota is reached.

(3) The Columbia River from Wauna powerlines (River Mile 40) upstream to Bonneville Dam is open to the retention of sturgeon, three days per week, Thursday, Friday, and Saturday, during the following periods:

(a) Saturday, January 1, 2005 through Saturday, July 30, 2005, and

(b) Saturday, October 1, 2005 through Friday, December 31, 2005.

(c) The retention of sturgeon is prohibited July 31, 2005 through September 30, 2005.

(4) The Columbia River from Wauna powerlines (River Mile 40) downstream to the mouth at Buoy 10, including Youngs Bay is open to the retention of sturgeon seven days per week during the following periods:

(a) Saturday, January 1, 2005 through Saturday, April 30, 2005, and

(b) Saturday, May 14, 2005 through Monday, July 4, 2005.

(c) The retention of sturgeon is prohibited May 1, 2005 through May 13, 2005 and from July 5, 2005 through December 31, 2005.

(5) During the fishing period as identified in section (4)(b) of this rule, only sturgeon between 45-60" in overall length may be retained.

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

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162 and 506.129

Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05

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) Effective February 15, 2005 through May 15, 2005, in the main-stem 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.

(6) It is unlawful to continue to angle for jack salmon after retaining a limit of adult salmon or steelhead.

(7) 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

635-041-0030

Subsistence Fishing Activities

(1) It is *unlawful* to utilize any fish taken by subsistence fishing for other than subsistence purposes as defined in OAR 635-041-0010 with the exception of shad which may be sold commercially, and with the exception of dip-net-caught fish from main stem Columbia and Klickitat River subsistence areas taken during open commercial fishing seasons.

(2) Only sturgeon between 48-60" in overall length from between The Dalles and McNary dams and between 45-60" in overall length from between the Bonneville dam and The Dalles dam may be taken for subsistence purposes.

Stat. Auth.: ORS 183.325 & 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 89, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0030; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 26-2000(Temp), f. 5-4-00, cert. ef. 5-6-00 thru 5-28-00; DFW(Temp), 37-2000, f. 6-30-00, cert. ef. 7-1-00 thru 7-10-00; DFW 22-2003(Temp), f. & cert. ef. 3-25-03 thru 9-20-03; DFW 3-2005(Temp), f. & cert. ef. 1-20-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05

ADMINISTRATIVE RULES

635-041-0061

Sturgeon Size

(1) Sturgeon may be taken for commercial purposes by treaty Indian fishers during commercial fishing seasons in which sales of sturgeon are authorized.

(2) Sales are limited to sturgeon between 48-60" in overall length taken from between The Dalles and McNary dams and between 45-60" in overall length from between the Bonneville dam and The Dalles dam.

(3) It is *unlawful* to mutilate or disfigure a sturgeon in any manner which extends or shortens its length to the legal limit, or to possess such sturgeon.

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.129 & 507.030

Hist.: FWC 2-1985, f. & ef. 1-30-85; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 12-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; DFW 8-1998(Temp), f. & cert. ef. 2-5-98 thru 2-28-98; DFW 14-1998, f. & cert. ef. 3-3-98; DFW 130-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 4-1-05; DFW 6-2005, f. & cert. ef. 2-14-05

635-042-0005

Closed Areas

(1) Unless otherwise specified, the following waters of the Columbia River including all Oregon Columbia River tributaries are closed to the taking of fish for commercial purposes:

(2) The Columbia River from the ends of the jetties to a line projected from the knuckle of the south jetty on the Oregon bank to the inshore end of the north jetty on the Washington bank.

(3) An area at Grays Bay northerly of a line projected from the flashing green 4-second light at Rocky Point easterly to Harrington Point.

(4) In September an area at the mouth of Big Creek from the Oregon bank across Knappa Slough to Karlson Island which is about one-quarter of a mile above the east bank of Big Creek, downstream to the east end of Minaker Island which is about three-quarters of a mile below the west bank at the mouth of Big Creek.

(5) The Columbia River within an area at the mouth of the Sandy River which is one-quarter mile in width extending out into the Columbia River from the Oregon bank at a right angle to the thread of the river between a point one mile below and a point at the upper easterly bank at the mouth of the Sandy River.

(6) An area near Elokomin Slough and Steamboat Slough to be described in-season as "Elokomin-A sanctuary" or "Elokomin-B sanctuary."

(a) "Elokomin-A sanctuary" means those waters of Elokomin Slough and the Columbia River lying northerly and easterly of a straight line from light "37" on the Washington shore to light "39" on Hunting Island.

(b) "Elokomin-B sanctuary" means those waters of Elokomin Slough, Steamboat Slough and the Columbia River lying inside, northerly and easterly of a straight line from light "35" (group flashing green) located on Price Island to light "39" (flashing green) on Hunting Island and northerly and easterly of a line between flashing light "33" on Price Island and quick flashing green light "31" on the Washington shore.

(7) An area at the mouth of Abernathy Creek extending out into the Columbia River from the Washington bank at a right angle to the thread of the Columbia River to midstream of the ship channel between points one-half mile above the upper easterly bank at the mouth of Abernathy Creek and 1,300 yards below Abernathy Creek at the 4-second flashing green light "81".

(8) The Columbia River and Carrolls Channel lying inside the center of the shipping channel between a fishing boundary marker at the junction of the Port of Longview docks and international paper docks on the Washington shore approximately one mile downstream from the Cowlitz River mouth and flashing green light "29A" on Cottonwood Island and also those waters of Carrolls Channel downstream of a line between a fishing boundary marker approximately 3,000 feet upstream of the Cowlitz River mouth and a fishing boundary marker on Cottonwood Island.

(9) An area at the mouth of the Kalama River to be described in-season as "Kalama-A sanctuary" or "Kalama-B sanctuary":

(a) "Kalama-A sanctuary" means those waters of the Columbia River between a fishing boundary marker on the Washington shore approximately one mile downstream and a point one-half mile upstream of the mouth of the Kalama River and lying within one-quarter mile of the Washington shore;

(b) "Kalama-B sanctuary" means those waters of the Columbia River between a fishing boundary marker on the Washington shore approximately one mile downstream and a point one-half mile upstream of the mouth of the Kalama River and extending completely across the Columbia River, excepting those waters west of a line projected from Coffin Rock Light

"42" in Oregon to the Kalama Range Light "47A" on the Washington shore.

(10) An area at the mouth of the Lewis River to be described in-season as "Lewis-A sanctuary" or "Lewis-B sanctuary":

(a) "Lewis-A sanctuary" means those waters of the Columbia River between a point one mile downstream and a point one-half mile upstream of the mouth of the Lewis River and lying within one-quarter mile of the Washington shore;

(b) "Lewis-B sanctuary" means those waters of the Columbia River near the mouth of the Lewis River lying easterly of lines projected from light "79" (flashing green) to the Red Buoy No. 4 thence to a fishing boundary marker on Bachelor Island.

(11) The Columbia River and Camas Slough north of Lady Island within the area enclosed by a line from the Washington bank due south to the west end of Lady Island, upstream along the shoreline of Lady Island to the highway bridge at the east end of Lady Island, across such bridge to the Washington bank.

(12) The Columbia River upstream of a line projected 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.

Stat. Auth.: ORS 183.325, 496.118, 506.119

Stats. Implemented: ORS 506.129, 507.030

Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0100; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 4-1984, f. & ef. 1-31-84; FWC 64-1986(Temp), f. & ef. 10-3-86; FWC 79-1986(Temp), f. & ef. 12-22-86; FWC 2-1987, f. & ef. 1-23-87; FWC 10-1988, f. & cert. ef. 3-4-88; FWC 86-1988(Temp), f. & cert. ef. 9-12-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 54-1989(Temp), f. & cert. ef. 8-7-89; FWC 90-1989, f. & cert. ef. 9-6-89; FWC 94-1989 (Temp), f. 9-15-89, cert. ef. 9-17-89; FWC 80-1990(Temp), f. 8-7-90, cert. ef. 8-8-90; DFW 6-2005, f. & cert. ef. 2-14-05

635-042-0022

Spring Chinook Gill Net and Tangle Net Fisheries

(1) Adipose fin-clipped chinook salmon, sturgeon and shad may be taken by gill net or tangle net for commercial purposes from the mouth of the Columbia River upstream to Kelley Point (Zones 1-3 and part of Zone 4).

(a) Individual fishing periods will not exceed sixteen hours in length during small mesh fisheries and twenty-four hours in length during large mesh fisheries. Fishing periods may occur on Tuesdays and Thursdays, depending upon results from test fisheries or full fleet fisheries conducted prior to each specified weekday.

(b) White sturgeon possession and sales restrictions by each participating vessel will be determined inseason based on gear type and number of fish remaining on the fish guideline.

(2) An adipose fin clip salmon is defined as a hatchery salmon with a clipped adipose fin and having a healed scar at the location of the fin. The adipose fin is the small fatty fin on salmonids located between the dorsal fin and tail.

(3) During the spring chinook gill net fishery:

(a) It is *unlawful* to use a gill net having a mesh size less than 9 inches and more than 9-3/4 inches. Use of monofilament nets is allowed.

(b) Mesh size for the fishery is determined as described in OAR 635-042-0010(4).

(4) During the spring chinook tangle net fishery:

(a) It is *unlawful* to use other than a single-wall multi-filament net. Monofilament tangle nets are not allowed. Maximum mesh size is 4-1/4 inches stretched taut.

(b) Mesh size is determined by placing three consecutive meshes under hand tension and the measurement is taken from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact.

(5) Nets shall not exceed 900 feet (150 fathoms) in length. A red cork must be placed on the corkline every 25 fathoms as measured from the first mesh of the net. Red corks at 25-fathom intervals must be in color contrast to the corks used in the remainder of the net.

(6) On tangle nets, an optional use of a steelhead excluder panel of mesh may be hung between the corkline and the 4-1/4 inch maximum mesh size tangle net. The excluder panel web must be a minimum mesh size of 12 inches when stretched taut under hand tension. Monofilament mesh is allowed for the excluder panel. The excluder panel (including any associated hangings) must be a minimum of 5 linear feet in depth and not exceed 10 linear feet in depth, as measured from the corkline to the upper margin of the tangle net mesh as the net hangs naturally from a taut corkline. Weedlines or droppers (bobber-type) may be used in place of the steelhead excluder panel. A weedline-type excluder means the net is suspended below

ADMINISTRATIVE RULES

the corkline by lines of no less than five feet in length between the corkline and the upper margin of the tangle net. A dropper-type excluder means the entire net is suspended below the surface of the water by lines of no less than five feet in length extending from individual surface floats to a submerged corkline. The corkline cannot be capable of floating the net in its entirety (including the leadline) independent of the attached floats. Weedlines or droppers must extend a minimum of 5 feet above the 4-1/4 inch maximum mesh size tangle net.

(a) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, may extend to a maximum length of 1,050 feet (175 fathoms).

(b) Tangle nets constructed with a steelhead excluder panel, weedlines, or droppers, along with a red cork every 25 fathoms as required in (5) above, must have two red corks at each end of the net.

(7) There are no restrictions on the hang ratio. The hang ratio is used to horizontally add slack to the net. The hang ratio is determined by the length of the web per length of the corkline.

(8) There are no restrictions on the use of slackers or stringers to slacken the net vertically.

(9) Nets shall be fished for no longer than 45 minutes per set. The time of fishing is measured from when the first mesh of the net is deployed into the water until the last mesh of the net is fully retrieved from the water.

(10) It is *unlawful* for a net in whole or in part to be anchored, tied, staked, fixed, or attached to the bottom, shore, or a beached boat; left unattended at any time it is fished; or attended by more than one boat while being fished.

(11) It is *unlawful* to fish more than one net from a licensed commercial fishing boat at any one time.

(12) Nets fished from sunset to sunrise shall have lighted buoys on both ends of the net unless the net is attached to the boat then one lighted buoy on the opposite end of the net from the boat is required.

(13) Non-legal sturgeon, nonadipose fin-clipped chinook salmon, and steelhead must be released immediately with care and the least possible injury to the fish to the river without violence or into an operating recovery box.

(a) One operating recovery box with two chambers or two operating recovery boxes with one chamber each to aid survival of released fish must be on board each fishing vessel participating in the fishery. Recovery boxes shall be operating during any time that a net is being retrieved or picked.

(b) All salmon and steelhead that are bleeding, in lethargic condition, or appearing dead must be placed in the recovery box for rehabilitation purposes prior to release to the river.

(c) Each chamber of the recovery box must meet the following dimensions as measured from within the box; the inside length measurement must be at or within 39-1/2 to 48 inches, the inside width measurement must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

(d) Each chamber of the recovery box must include an operating water pumping system capable of delivering a minimum flow of 16 gallons per minute not to exceed 20 gallons per minute of fresh river water into each chamber. The fisher must demonstrate to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river water into each chamber.

(e) Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of chamber and 1-3/4 inches from the floor of the chamber.

(f) Each chamber of the recovery box must include a water outlet that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber, on either the same or opposite end as the inlet.

(g) All fish placed in recovery boxes must be released to the river prior to landing or docking.

(14) At least one fisher on each boat engaged in the fishery must have in possession a valid certificate issued by a representative of the Oregon Department of Fish and Wildlife (ODFW) or the Washington Department of Fish and Wildlife (WDFW) that indicates the fisher had attended a one-day workshop hosted by ODFW or WDFW to educate fishers on regulations and best methods for conduct of the fishery. No individual may obtain more than one tangle net certificate. The certificate must be displayed to ODFW and WDFW employees, fish and wildlife enforcement officers, or other peace officers upon request.

(15) Nothing in this section sets any precedent for any fishery after the 2005 spring chinook fishery. The fact that an individual may hold a tangle net certificate in spring 2005 does not entitle the certificate holder to

participate in any other fishery. If ODFW authorizes a tangle net fishery in spring 2006 or at any other time, ODFW may establish qualifications and requirements that are different from those established for 2005. In particular, ODFW may consider an individual's compliance with these rules in determining that individual's eligibility to participate in any future tangle net fisheries.

(16) As authorized by OAR-006-0140 owners or operators of commercial fishing vessels must cooperate with Department fishery observers, or observers collecting data for the Department, when asked by the Department to carry and accommodate an observer on fishing trips for observation and sampling during an open fishery.

(17) Closed waters, as described in OAR 635-042-0005 for Grays River, Elokomin-B sanctuary, Abernathy Creek, Cowlitz River, Kalama-B sanctuary, and Lewis-B sanctuary are in effect during the open fishing periods identified.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162, 506.129 & 507.030

Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 12-2004(Temp), f. & cert. ef. 3-1-04, thru 7-31-04; DFW 13-2004(Temp), f. & cert. ef. 3-3-04 thru 7-31-04; DFW 16-2004(Temp), f. & cert. ef. 3-8-04 thru 7-31-04; DFW 18-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 20-2004(Temp) f. & cert. ef. 3-15-04 thru 7-31-04; DFW 21-2004(Temp), f. & cert. ef. 3-18-04 thru 7-31-04; DFW 25-2004(Temp), f. 3-22-04, cert. ef. 3-23-04 thru 7-31-04; DFW 26-2004(Temp), f. & cert. ef. 3-25-04 thru 7-31-04; DFW 27-2004(Temp), f. & cert. ef. 3-29-04 thru 7-31-04; Administrative correction 8-19-04; DFW 6-2005, f. & cert. ef. 2-14-05

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: May 16, 2005 through May 20, 2005; May 23, 2005 through May 27, 2005; May 31, 2005 through June 3, 2005; June 6, 2005 through June 10, 2005; June 13, 2005 through June 17, 2005; and June 20, 2005 through June 24, 2005.

(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. 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

635-042-0115

Camas-Washougal Reef Shad Season

(1) Shad may be taken for commercial purposes from the area of the Columbia River described in section (2) daily from 8:00 p.m. to 12:00 Midnight during the following open fishing periods: May 15, 2005 through May 19, 2005; May 22, 2005 through May 26, 2005; May 29, 2005 through June 2, 2005; June 5, 2005 through June 9, 2005; June 12, 2005 through June 16, 2005; and June 19, 2005 through June 23, 2005.

(2) The area of the Columbia River open to fishing is from a line commencing at the green 6-second equal-interval light approximately 3/4-mile east of the Washougal Woolen Mill pipeline and projected westerly to the Washougal blinker light; thence continuing westerly to the green 4-second

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blinker light on the east end of Lady Island; thence easterly and northerly along the shoreline of Lady Island to the State Highway 14 Bridge; thence easterly across State Highway 14 Bridge to the mainland.

(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 30-pound pull or to use a gill net other than a single wall floater net, or to use a gill net having slackers. Rip lines are authorized spaced no 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 183.325 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: FWC 85, f. & ef. 1-28-77; FWC 2-1978, f. & ef. 1-31-78; FWC 7-1978, f. & ef. 2-21-78; FWC 27-1978(Temp), f. & ef. 5-26-78 thru 9-22-78; FWC 2-1979, f. & ef. 1-25-79, Renumbered from 635-035-0280; FWC 6-1980, f. & ef. 1-28-80; FWC 1-1981, f. & ef. 1-19-81; FWC 6-1982, f. & ef. 1-28-82; FWC 2-1983, f. 1-21-83, ef. 2-1-83; FWC 4-1984, f. & ef. 1-31-84; FWC 2-1985, f. & ef. 1-30-85; FWC 4-1986(Temp), f. & ef. 1-28-86; FWC 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 1-1988, f. & cert. ef. 3-4-88; FWC 5-1989, f. 2-6-89, cert. ef. 2-7-89; FWC 41-1989(Temp), f. & cert. ef. 6-26-89; 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 11-1993, f. 2-11-93, cert. ef. 2-16-93; FWC 9-1994, f. 2-14-94, cert. ef. 2-15-94; FWC 36-1994(Temp), f. & cert. ef. 6-20-94; FWC 39-1994(Temp), f. & ef. 6-24-94, cert. ef. 6-27-94; FWC 15-1995, f. & cert. ef. 2-15-95; FWC 6-1996, f. & cert. ef. 2-7-96; FWC 24-1996, f. & cert. ef. 5-14-96; 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 9-2000, f. & cert. ef. 2-25-00; DFW 6-2005, f. & cert. ef. 2-14-05

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.

(B) Spring Season:

6:00 p.m. April 21, 2005 — 6:00 a.m. April 22, 2005;
6:00 p.m. April 25, 2005 — 6:00 a.m. April 26, 2005;
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 10, 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. 11-5-81; 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. 8-22-79; FWC 28-1980, f. & ef. 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 66-2004(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

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.

(B) Blind and Knappa Sloughs:

April 21 — April 22, 2005;
April 25 — April 26, 2005;
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.

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(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. & cert. ef. 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. & cert. ef. 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. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 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 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05

635-042-0170

Tongue Point Basin and South Channel

(1) Tongue Point includes all waters bounded by a line from a yellow marker midway between the red light at Tongue Point and the downstream (northern most) pier (#8) to the flashing green light at the rock jetty on the northwesterly tip of Mott Island, a line from a marker at the south end of Mott Island easterly to a marker on the northwest bank on Lois Island and a line from a marker on the southwest end of Lois Island due westerly to a marker on the opposite bank.

(2) South Channel includes all waters bounded by a line from a marker on John Day Point through the green buoy "7" thence to a marker on the southwest end of Lois Island upstream to an upper boundary line from a marker on Settler Point northwesterly to the flashing red marker "10" thence northwesterly to a marker on the sand bar defining the terminus of South Channel.

(3) Salmon and sturgeon may be taken for commercial purposes in those waters of Tongue Point and South Channel as described in section (1) and section (2) of this rule. Open fishing periods are:

(4) Gear restrictions are as follows:

(a) In waters described in section (1) as Tongue Point basin, gill nets may not exceed 250 fathoms in length and weight limit on the lead line is not to exceed two pounds on any one fathom. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. While fishing during the seasons described in this rule, gillnets with lead line in excess of two pounds per fathom may be stored on boats.

(b) In waters described in section (2) as South Channel, nets are restricted to 100 fathoms in length with no weight restrictions on the lead line. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches. While fishing during the seasons described in this rule, gillnets up to 250 fathoms in length may be stored on boats.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & 507.030
Hist.: FWC 46-1996, f. & cert. ef. 8-23-96; FWC 48-1997, f. & cert. ef. 8-25-97; FWC 61-1997(Temp), f. & cert. ef. 9-23-97, cert. ef. 9-24-97; DFW 15-1998, f. & cert. ef. 3-3-98; DFW 41-1998(Temp), f. & cert. ef. 5-29-98; DFW 42-1998(Temp), f. & cert. ef. 5-29-98, cert. ef. 5-31-98 thru 6-6-98; DFW 45-1998(Temp), f. & cert. ef. 6-6-98 thru 6-10-98; DFW 67-1998, f. & cert. ef. 8-24-98; DFW 86-1998, f. & cert. ef. 10-28-98 thru 10-30-98; DFW 10-1999, f. & cert. ef. 2-26-99; DFW 55-1999, f. & cert. ef. 8-12-99; DFW 9-2000, f. & cert. ef. 2-25-00; DFW 42-2000, f. & cert. ef. 8-3-00; DFW 3-2001, f. & cert. ef. 2-6-01; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 15-2002(Temp), f. & cert. ef. 2-20-02 thru 8-18-02; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 34-2003(Temp), f. & cert. ef. 4-24-03 thru 10-1-03; DFW 36-2003(Temp), f. & cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; Administrative Correction 7-30-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05

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 21 — April 22, 2005;
April 25 — April 26, 2005;
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.

(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. & cert. ef. 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. & cert. ef. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; DFW 11-2004, f. & cert. ef. 2-13-04; DFW 39-2004(Temp), f. & cert. ef. 5-5-04, 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 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05

635-042-0190

Steamboat Slough

(1) Steamboat Slough includes all waters bounded by markers on Price Island and the Washington shore at both ends of Steamboat Slough.

(2) Salmon and sturgeon may be taken for commercial purposes in those waters of Steamboat Slough. Open fishing periods are:

(3) Gill nets may not exceed 100 fathoms in length with no weight limit on the leadline. The attachment of additional weight and anchors directly to the lead line is permitted. It is *unlawful* to use a gill net having a mesh size that is more than 8-inches.

Stat. Auth.: ORS 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 42-2000, f. & cert. ef. 8-3-00; DFW 84-2001(Temp), f. & cert. ef. 8-29-01 thru 12-31-01; DFW 89-2001(Temp), f. & cert. ef. 9-14-01 thru 12-31-01; DFW 106-2001(Temp), f. & cert. ef. 10-26-01 thru 12-31-01; DFW 96-2002(Temp), f. & cert. ef. 8-26-02 thru 12-31-02; DFW 75-2003(Temp), f. & cert. ef. 8-1-03 thru 12-31-03; DFW 89-2003(Temp), f. & cert. ef. 9-9-03 thru 12-31-03; Administrative correction 7-30-04; DFW 79-2004(Temp), f. & cert. ef. 8-2-04, cert. ef. 8-3-04 thru 12-31-04; DFW 95-2004(Temp), f. & cert. ef. 9-17-04, cert. ef. 9-19-04 thru 12-31-04; DFW 109-2004(Temp), f. & cert. ef. 10-19-04 thru 12-31-04; DFW 6-2005, f. & cert. ef. 2-14-05

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

Adm. Order No.: CWP 1-2005(Temp)

Filed with Sec. of State: 1-28-2005

Certified to be Effective: 1-28-05 thru 7-27-05

Notice Publication Date:

Rules Adopted: 413-015-1100, 413-015-1105, 413-015-1110, 413-015-1115, 413-015-1120, 413-015-1125

Rules Amended: 413-120-0440

Subject: Adopting and amending these rules allow for local Child Welfare offices to perform and use criminal records checks for CPS-related decisions and emergency certification purposes.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-1100

Authority And Responsibility

(1) ORS 418.005 provides that, in order to establish, extend, and strengthen welfare services for the protection and care of dependent or neglected children, the Department of Human Services may make all necessary rules and regulations for administering child welfare services. Among other duties outlined by ORS 409.010, the Department is responsible for the delivery and administration of programs and services relating to children and families, including child protective services and foster care. ORS 419B.020 provides that, upon receipt of a report of child abuse, the

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Department or a law enforcement agency is required to immediately cause an investigation to be made to determine the nature and cause of the abuse. In addition, ORS 418.640 requires the Department to adopt rules it deems necessary or advisable to protect the best interests of children in foster homes. Finally, ORS 181.537 authorizes the Department to conduct criminal records checks on subject individuals, as defined by the Department, if deemed necessary by the Department.

(2) The Department of Human Services Child Welfare Program has determined that, in order to protect children from abuse or neglect and to protect the best interests of children in foster homes, it is necessary for the Department to permit local Child Welfare offices to perform criminal records checks on subject individuals when the Department is conducting a child protective services assessment, has an open child welfare case, or determines that emergency foster home certification decisions must be made.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-015-1105

Purpose

(1) The primary purposes of LEADS access in local Child Welfare offices are to assist staff in making child protective services related decisions and for emergency certification purposes as outlined in these rules (OAR 413-015-1100 to 413-015-1125). Criminal history information obtained from LEADS will be considered, along with other risk factors, to:

- (a) assess child safety; or
- (b) determine if behavior that is revealed by criminal history is inconsistent with providing care to children or having access to children.

(2) These rules do not address criminal records checks for non-emergency certification or adoption approval. Criminal records checks for non-emergency certification or adoption approval are governed by OAR 413-120-0400 to 413-120-0470.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-015-1110

Definitions

(1) "Child Protective Services (CPS)" means a specialized social service program that the Department provides on behalf of children who are abused or who are at substantial risk of child abuse by a parent or caregiver.

(2) "Department" means the Department of Human Services Child Welfare Program.

(3) "Law Enforcement Data System (LEADS)" means the computerized criminal history information system maintained by the Oregon State Police.

(4) "LEADS representative" means the staff person in the local DHS office who has been designated by the DHS Assistant Director for Children, Adults and Families and who has completed the training required by Oregon State Police in order to train other employees to be LEADS users.

(5) "LEADS user" means a staff person in the local DHS office who has been trained by a LEADS representative and has been certified by the Oregon State Police to access LEADS information.

(6) "Notice" means a subject individual has been informed in writing that the Department may conduct a criminal records check and that the subject individual may obtain a copy of his or her LEADS record and may challenge information in the record by contacting Oregon State Police. Notice does not imply consent or permission.

(7) "Service Delivery Area (SDA)" means a geographic region of one or more counties served by the Department and managed by an SDA Manager.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-015-1115

Requirements

Each Service Delivery Area must:

- (1) Identify LEADS representatives.
- (2) Identify LEADS users.
- (3) Develop a plan for training and certification of designated LEADS users.
- (4) Ensure LEADS users have:
 - (a) Computer and printer access.
 - (b) User identification.

(5) Complete background checks on all LEADS representatives and LEADS users as provided in OAR 257-015-0050(6).

(6) Implement information security measures as provided in OAR 257-015-0000 to 257-015-0100.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-015-1120

LEADS Use For Child Protective Service Purposes

(1) The local Child Welfare office may perform criminal records checks on subject individuals using the LEADS system available in the local office and use LEADS information pertaining to subject individuals for Child Protective Services purposes when:

(a) A child abuse allegation is being assessed or there is an open Child Welfare case; and

(b) Notice has been provided to a subject individual that the Department will perform a criminal records check on the subject individual.

(2) When conducting criminal records checks for a Child Protective Services purpose under this rule, a subject individual is—

(a) A person who is alleged to be the perpetrator of child abuse or neglect when the allegation is being assessed by Child Protective Services;

(b) A person who resides in or frequents a household where the alleged victim of child abuse resides on a full- or part-time basis; or

(c) A person in the household to which a child is being returned.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-015-1125

LEADS Use for Certification Purposes in Emergency Situations

(1) The local Child Welfare office may perform criminal records checks using the LEADS system available in the local office and use LEADS information pertaining to a subject individual for emergency certification purposes when:

(a) A child abuse allegation is being assessed or there is an open child welfare case;

(b) Staff refer to and comply with OAR 413-120-0400 to 413-120-0470; and

(c) The subject individual has consented to the Department conducting a criminal records check by signing form DHS 1011F, "Consent For Criminal Records & Fingerprint Check."

(2) When conducting criminal records checks for emergency certification purposes under this rule, a subject individual is:

(a) An adult who resides in or plans to reside in a household that is being certified for placement of a child;

(b) An adult who resides in or plans to reside in a household that is being re-certified to place or maintain a child in the household;

(c) A person assisting in the household to enrich the care provided to children placed in the household by tutoring or providing recreation, relief care, or other services such as household chores, whether paid or unpaid; or

(d) A member of the household under 18 years of age if there is reason to believe that member may pose a risk to children placed in the household.

(3) Staff in local Child Welfare offices who access LEADS information for emergency certification purposes as outlined in these rules must refer to and comply with OAR 413-120-0400 to 413-120-0470 and forward fingerprints and consent forms to the Department's Criminal Records Unit if:

(a) LEADS information reveals an arrest or conviction of any kind;

(b) The subject individual discloses an arrest or conviction of any kind; or

(c) It is known that the subject individual has lived outside of Oregon within the last five years.

Stat. Auth.: ORS 181.537, 409.010, 418.005, 419B.020
Stats. Implemented: ORS 181.537, 409.010, 418.005, 419B.020
Hist.: CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

413-120-0440

Limitations of Inquiries

(1) Only DHS employees who have been fingerprinted and cleared by the Oregon State Police shall access or have access to criminal offender information pursuant to a valid agency agreement. All criminal offender information shall be handled in compliance with the agency agreement and rules and procedures of the Oregon State Police relating to the criminal offender information (OAR 257-10-010 to 257-10-050). It is the responsibility of DHS to assure strict compliance with federal and state laws, rules

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and procedures regarding criminal offender information access and dissemination.

(2) Criminal offender information obtained from OSP or the FBI may not be used for any purpose other than that for which it was obtained nor given to unauthorized persons or agencies.

(3) Criminal offender information, including fingerprint-based criminal offender information, shall be obtained by DHS under rules of CAF's program and policy administration to ascertain whether a subject individual has been convicted of a crime that is substantially related to their qualifications as a relative caregiver, foster parent, or adoptive parent, or their suitability to be an other person in the household.

(4) For non-emergency certification and for adoption approval, LEDS checks are processed by the Department's Criminal Records Unit. LEDS checks for emergency certification may be conducted in the local Child Welfare office in accordance with OAR 413-015-1100 to 413-015-1125. All LEDS checks based on a person's fingerprints must be processed by the Criminal Records Unit.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 181.537 & 181.010 - 181.560, 418.016

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 4-1999, f. & cert. ef. 3-22-99; SOSCF 23-2001, f. 6-29-01, cert. ef. 7-1-01; SOSCF 11-2002(Temp), f. & cert. ef. 9-13-02 thru 3-12-03; CWP 21-2003, f. & cert. ef. 3-13-03; CWP 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-27-05

Adm. Order No.: CWP 2-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

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Rules Adopted: 413-010-0710

Rules Amended: 413-010-0705, 413-010-0712, 413-010-0714, 413-010-0715, 413-010-0716, 413-010-0717, 413-010-0718, 413-010-0720, 413-010-0721, 413-010-0722, 413-010-0723, 413-010-0732, 413-010-0735, 413-010-0738, 413-010-0740, 413-010-0743, 413-010-0745, 413-010-0746, 413-010-0748, 413-010-0750

Subject: These Notice and Review of CPS Founded Disposition rules are being changed to reflect both name and number changes to forms and newly created forms that are attachments to these rules. In addition, there are a few minor modifications to clarify the intent of the existing rule. These rules are also being changed to reflect new Department terminology and to correct formatting and punctuation.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-010-0705

Definitions

For the purposes of OAR 413-010-0700 to 0750, the following terms have these meanings:

(1) A "Local Child Welfare Office Review Committee" is a group of three child welfare employees selected by an SDA Child Welfare Manager or a designee. One of the members must be a Manager and one must be staff trained in CPS assessment and dispositions. No one may serve on the Local Child Welfare Office Review Committee in the review of an assessment in which he or she was involved. Further requirements of the Local Child Welfare Office Review Committee are found in OAR 413-010-0735 and 413-010-0738.

(2) A "Central Office Review Committee" is a group of three child welfare employees selected by the Department's Manager for Child Protective Services or a designee, none of whom was involved in either the Local Child Welfare Office Review Committee or in the assessment that resulted in the CPS founded disposition under review. Further requirements of the Central Office Review Committee are found in OAR 413-010-0745 and 413-010-0746. The three child welfare staff on the committee must include:

(a) Either the Assistant Director for the Department's child welfare programs or a designee;

(b) Either the Manager for Child Protective Services or a designee; and

(c) A CPS consultant.

(3) "CPS" refers to the Department's Child Protective Services program, that is responsible for, among other duties, the assessment of alleged child abuse.

(4) "CPS Disposition" is a determination that completes a CPS assessment. Dispositions are discussed in OAR 413-015-1000 and include founded, unfounded, and unable to determine.

(a) "Founded disposition" means there is reasonable cause to believe that child abuse occurred;

(b) "Unfounded disposition" means no evidence of child abuse was identified or disclosed; or

(c) "Unable to Determine" means there are some indications of child abuse, but there is insufficient data to conclude that there is reasonable cause to believe that child abuse or neglect occurred.

(5) "CPS Founded Disposition" means that the Department determined, after completing a CPS assessment, that there is reasonable cause to believe that child abuse occurred.

(6) "Department" means the Department of Human Services.

(7) "Juvenile" means a person younger than the age of 18 years who is identified as a perpetrator. OAR 413-010-0716 provides specific requirements regarding application of these rules to juveniles.

(8) "Legal finding" means a court or administrative finding, judgment, order, stipulation, plea, or verdict that determines who was responsible for the child abuse that is the subject of a CPS founded disposition.

(9) "Legal proceeding" means a court or administrative proceeding that may result in a legal finding.

(10) "Local Child Welfare office" means the Department's child welfare office that conducted the CPS assessment that resulted in the CPS Founded Disposition subject to review under these rules.

(11) "Perpetrator" means the person the Department has reasonable cause to believe is responsible for child abuse in a CPS founded disposition.

(12) "Person Requesting Review" or "Requestor" means a perpetrator, his or her attorney, or, if a juvenile is identified as the perpetrator, the person who may request a review on behalf of the juvenile, who requests a review of the founded disposition because they believe the founded disposition is in error.

(13) "Request for Review by Central Office Review Committee" means a written request for a review by the Central Office Review Committee from a requestor who has received a Local Child Welfare Office Review Committee Decision (Form CF 314) to retain a founded disposition. The specific requirements for a request for review by a Central Office Review Committee are described in OAR 413-010-0740.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; SOSCF 9-2001, f. 6-29-01, cert. ef. 7-1-01; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0710

Required Forms

(1) Several Department forms are referred to by form number in these rules. The forms are available at the Department's website. When use of a form is required by these rules, the current version of the form must be used.

(2) To be effective, a form required by these rules must be complete.

(3) The following forms are required to be used by these rules:

(a) Form CF 313, "Notice of CPS Founded Disposition".

(b) Form CF 314A, "Notice of Local Child Welfare Office Review Committee Decision to Retain as Founded".

(c) Form CF 314B, "Notice of Local Child Welfare Office Review Committee Decision to Change Disposition".

(d) Form CF 314C, "Notice of Local Child Welfare Office Review Committee Decision to Change Abuse Type".

(e) Form CF 315A, "Notice of Central Office Review Committee Decision to Retain as Founded".

(f) Form CF 315B, "Notice of Central Office Review Committee Decision to Change Disposition".

(g) Form CF 315C, "Notice of Central Office Review Committee Decision to Change Abuse Type".

(h) Form CF 316, "Notice of Waived Rights".

(i) Form CF 317, "Notice of Legal Proceeding".

(j) Form CF 318, "Notice of Legal Finding".

(k) Form CF 319, "Notice of CPS Founded Disposition for an Employee".

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0712

Overview of the Procedures Required by These Rules

These rules regulate the following subjects:

(1) Applying Department employee policies if the person identified as responsible in a CPS founded disposition is an employee of the Department (see OAR 413-010-0714);

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(2) Providing notice of a CPS founded disposition as a result of a CPS disposition (see OAR 413-010-0715);

(3) Providing notice of a CPS founded disposition and other documents to juveniles (see OAR 413-010-0716);

(4) Inquiring about a review of CPS founded disposition completed before August 4, 2000, (see OAR 413-010-0717);

(5) Inquiring about a review of a CPS founded disposition when a person believes they have not received a notice (see OAR 413-010-0718);

(6) Local Child Welfare office responsibilities when a person inquires about a review of a CPS founded disposition (see OAR 413-010-0719);

(7) Information included in the notice of CPS founded disposition (Form CF 313) (see OAR 413-010-0720);

(8) Making a Request for a review of a CPS founded disposition (see OAR 413-010-0721);

(9) Determining when legal findings preclude a right to request a review and providing notice of legal proceeding (see OAR 413-010-0722);

(10) Providing a notice of legal finding (see OAR 413-010-0723);

(11) Local Child Welfare office responsibilities related to notices and reviews (see OAR 413-010-0732);

(12) Local Child Welfare office reviews of CPS founded dispositions (see OAR 413-010-0735);

(13) Providing a notice of the local Child Welfare office's decision (see OAR 413-010-0738);

(14) Requesting a Central Office Review Committee review of CPS founded disposition (see OAR 413-010-0740);

(15) Local Child Welfare office responsibilities in the case of a request for Central Office Review Committee review (see OAR 413-010-0743);

(16) Central Office Review Committee review (see OAR 413-010-0745);

(17) Providing notice of Central Office Review Committee decisions (see OAR 413-010-0746);

(18) Discretion of program manager to review CPS founded disposition (see OAR 413-010-0748); and

(19) Revising CPS founded dispositions in the Department's records (see OAR 413-010-0750).

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0714

Department Employee - Application of Department Employee Policies

When the perpetrator is a Department employee, the Department will follow the Department employee policies (see policies in III-E.4.8.12.).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0715

Providing Notice of a CPS Founded Disposition

(1) The local Child Welfare office must deliver a notice of CPS founded disposition (Form CF 313 or CF 319 as appropriate) to the person identified as the perpetrator in the CPS founded disposition, except as provided in (2) below. If the perpetrator is a juvenile, notice must be provided as required by OAR 413-010-0716. If the perpetrator is not a juvenile, the notice must be delivered as follows:

(a) By certified mail, restricted delivery, with a return receipt requested to the last known address of the perpetrator; or

(b) By hand delivery to the perpetrator. If hand delivered, the notice must be addressed to the perpetrator and a copy of the notice must be signed and dated by the perpetrator to acknowledge receipt, signed by the person delivering the notice, and filed in the child welfare case file.

(c) If section (2)(b) below does not apply, the method or process for providing notice of a CPS founded disposition when domestic violence has been identified should maximize the safety of the child, the adult victim, and Department employees. The Department will not use the adult victim to deliver the notice.

(2) A notice of CPS founded disposition (Form CF 313) is not required if:

(a) The CPS founded disposition was made prior to August 4, 2000. Notice will be given on CPS founded dispositions made prior to August 4, 2000 as provided in OAR 413-010-0717.

(b) Domestic violence has been identified and if providing the notice would increase the risk of harm to a child, adult victim, or Department

employee. This exception may only be made with Department management approval based on documentation of risk.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0716

Providing Notice of a CPS Founded Disposition and Other Documents to a Juvenile

(1) The local Child Welfare office that determines a juvenile is the perpetrator must deliver the "Notice of CPS Founded Disposition" (Form CF 313) to one of the following persons who may act on behalf of the juvenile in submitting a request for review based on having legal custody of the juvenile:

(a) The juvenile's parent; or

(b) The juvenile's guardian.

(2) If the juvenile is in the legal custody of the Department or the Oregon Youth Authority, the notice must be sent to both of the following:

(a) The juvenile's attorney; and

(b) The juvenile's parent, unless there is cause to believe such communication will be detrimental to the juvenile (see OAR 413-020-170(2)(c)).

(3) If the juvenile is in the legal custody of the Department and is unrepresented, the Department will ask the juvenile court to appoint an attorney for the juvenile.

(4) The "Notice of a CPS Founded Disposition" (Form CF 313) must be delivered by certified mail, restricted delivery, with a return receipt requested to the last known address of each mandatory recipient identified in sections (1) and (2) of this rule.

(5) Any other notices or documents that must be provided to perpetrators pursuant to these rules must be delivered to the appropriate persons as outlined in this rule if the perpetrator is a juvenile.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0717

Inquiry about a Review When a CPS Founded Disposition was Made Prior to August 4, 2000

(1) The Department will not deliver a "Notice of Founded CPS Disposition" (Form CF 313) to a person identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000, unless a person makes an inquiry to the Department about an opportunity for review and qualifies for a review as described in section (2) of this rule.

(2) An individual identified as a perpetrator in a CPS founded disposition completed prior to August 4, 2000, may contact any local Child Welfare office and inquire about a review of the disposition. If a complete record of the incident, including a complete copy of the CPS assessment and documentation collected during the CPS assessment, is still available, the Department proceeds in accordance with OAR 413-010-0718. If a complete record of the incident is no longer available, the Department will not conduct a review but will provide notice to the individual that a review will not be conducted and the reasons for that determination.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0718

Inquiry about a Review of a CPS Founded Disposition When a Person Believes They Have Not Received a Notice

If a person believes he or she is entitled under these rules to a "Notice of CPS Founded Disposition" (Form CF 313) but has not received one, the person may contact any local Child Welfare office to inquire about a review of the disposition.

(1) If the local Child Welfare office determines that the person making the inquiry has been identified as a perpetrator in a CPS Founded Disposition since August 4, 2000, staff must determine whether a "Notice of CPS Founded Disposition" (Form CF 313) was delivered to the perpetrator or the perpetrator refused the delivery of the notice, as evidenced by the returned receipt.

(2) If a notice was delivered to the perpetrator or the perpetrator refused delivery of the notice, as evidenced by a returned receipt, and the time for requesting review of CPS founded disposition has expired, the

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local Child Welfare office must either prepare and deliver a "Notice of Waived Rights for Review" (Form CF 316) or inform the perpetrator by telephone of the information required in the "Notice of Waived Rights for Review" and document the telephone notification in the child welfare case file.

(3) If the perpetrator is a juvenile, the local Child Welfare office must prepare and deliver a "Notice of Waived Rights" to the appropriate persons identified in OAR 413-010-0716.

(4) If no returned receipt exists or if it appears that notice was not properly provided, the local Child Welfare office must deliver a "Notice of CPS Founded Disposition" as provided in OAR 413-010-0720 or, if the perpetrator is a juvenile, as provided in OAR 413-010-0716.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0720

Information Included in the "Notice of a CPS Founded Disposition" (Form CF 313)

The "Notice of a CPS Founded Disposition" (Form CF 313) must include the following:

(1) The case and sequence numbers assigned to the CPS assessment that resulted in the CPS Founded Disposition;

(2) The full name of the individual who has been identified as responsible for the child abuse as it is recorded in the case record;

(3) A statement that the CPS disposition was recorded as "founded" including a description of the type of child abuse or neglect identified;

(4) A description of the CPS assessment that briefly explains how the CPS founded disposition was determined;

(5) A statement about the right of the individual to submit a request for review of the CPS founded disposition;

(6) Instructions for making a request for review, including the requirement that the requestor provide a full explanation why the requestor believes the CPS founded disposition is in error;

(7) A statement that the Department will not review a CPS founded disposition when a legal proceeding is pending and that the person requesting a review maintains the right to request a review for 30 days following resolution of the pending legal proceeding unless the proceeding results in a legal finding that is consistent with the CPS founded disposition.

(8) A statement that the person waives the right to request a review if the request for review is not received by the local Child Welfare office within 30 calendar days from the date of receipt of the "Notice of CPS Founded Disposition," as documented by a returned receipt.

(9) A statement that the Local Child Welfare Office Review Committee will consider relevant documentary information contained in the Department's case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information submitted with the request for review by the person requesting review.

(10) A statement that the review committee will not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse; and

(11) A statement that the local Child Welfare office will send the requestor a "Notice of Local Child Welfare Office Review Committee Decision" (Form CF 314) within 30 days of receiving a request for review.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0721

Making a Request for a Review of a CPS Founded Disposition

A person requesting a review must use information contained on the "Notice of CPS Founded Disposition" to prepare a written request for review. The written request for review must be delivered to the local Child Welfare office within 30 calendar days of the receipt of the Notice of CPS Founded Disposition and must include the following items:

(1) Date the request for review is written;

(2) Case number and sequence number found on the "Notice of CPS Founded Disposition;"

(3) Full name of the person identified as responsible for abuse or neglect in the CPS founded disposition;

(4) A full explanation, responsive to the information provided in the Department's notice, explaining why the person believes the CPS founded

disposition is in error and providing any additional information and documents the person wants considered during the review;

(5) The person's current name (if it has changed from the name noted in subsection (c) of this section);

(6) The person's current street address and telephone number; and

(7) The person's signature.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0722

Determining When Legal Findings Preclude a Right to Request a Review and Providing Notice of Legal Proceeding (Form CF 317)

(1) The Department does not conduct a review when there is a legal finding consistent with the CPS founded disposition. In that case, a "Notice of Legal Finding" must be provided as provided in OAR 413-010-0723(1).

(2)(a) If the Department is aware that a legal proceeding is pending, the Local Child Welfare Office Review Committee will not review the disposition until the legal proceeding is completed.

(b) If the Department is aware that a legal proceeding is pending, the local Child Welfare office must prepare and deliver a notice of legal proceedings (CF 317), within 30 days after receipt of a request for review. This informs the requestor that the Department will not review the disposition until the legal proceeding is completed and will take no further action on the request.

(c) The requestor may, at the conclusion of the legal proceeding, again submit a request for review within 30 days.

(d) The requestor retains the right to request a review for 30 days following resolution of the legal proceeding.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0723

Providing a Notice of Legal Finding (Form CF 316)

If a requestor inquires about a review of a CPS founded disposition and there is a legal finding consistent with the CPS founded disposition, the local Child Welfare office staff must prepare and deliver a "Notice of Legal Finding" (Form CF 318) that informs the requestor that the Department will not review the disposition.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0732

Local Child Welfare Office Responsibilities Related to Notices and Reviews

(1) If an individual asks to review Department records for the purpose of reviewing a CPS founded disposition, state and federal confidentiality law, including OAR 413-010-0000 to 413-010-0075 and OAR 413-350-0000 to 413-350-0090 govern the inspection and copying of records.

(2) The local Child Welfare office must maintain records to demonstrate the following, when applicable:

(a) Whether the Department delivered a "Notice of CPS Founded Disposition;"

(b) Whether or not the Notice of CPS Founded Disposition was received by the addressee, as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period provided by the United States Postal Service;

(c) The date a Request for a local Child Welfare office review was received by the local Child Welfare office;

(d) If a review is conducted by a Local Child Welfare Office Review Committee, whether the "Notice of the Local Child Welfare Office Review Committee Decision" (Form CF 314) was received by the addressee as evidenced by a returned receipt documenting that the notice was received, refused, or not received within the 15-day period as provided by the United States Postal Service; and

(e) The date a request for review by the Central Office Review Committee was received by the Department.

(3) The Child Welfare supervisor in each local Child Welfare office or designee must maintain a comprehensive record of the reviews completed by the Local Child Welfare Office Review Committee on CPS founded dispositions arising out of the local Child Welfare office to which the supervisor is assigned. The record must include the date, case number, sequence

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number, and the committee decision for each review completed by the Local Child Welfare Office Review Committee.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0735

Local Child Welfare Field Office Review Committees and Reviews of CPS Dispositions

(1) The Local Child Welfare Office Review Committee must conduct a review and issue a "Notice of Local Child Welfare Office Review Committee Decision" (Form CF 314) to the requestor within 30 days from the date the local Child Welfare office receives a request for review of a CPS founded disposition.

(2) If the request for review was delayed because a legal proceeding was pending as provided in OAR 413-010-0720(6), or the proceeding has been completed without a legal finding that would preclude a review, the review must occur within 30 days from the date the local Child Welfare office receives a new request for review.

(3) The Local Child Welfare Office Review Committee must operate as follows:

(a) The committee must consider relevant documentary information contained in the Department's child welfare case file including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review.

(b) The Review Committee may not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect.

(c) A review must be based on current child welfare practice and definitions of child abuse. Procedural rules in place at the time the CPS assessment was completed also must be considered.

(d) All decisions of the committee must be decided by majority vote of the participating committee members.

(e) The Review Committee must determine:

(A) Whether there is reasonable cause to believe that child abuse occurred;

(B) Whether there is reasonable cause to believe that the person requesting review is responsible for the child abuse; and

(C) Whether there is reasonable cause to believe that the type of abuse for which the CPS assessment was founded is correctly identified in the assessment.

(f) Based upon its review of the CPS founded disposition and its determinations under subsection (d) of this section, the Review Committee must either retain the founded disposition or change the disposition to unfounded or unable to determine. The Review Committee also may change the type of abuse (see OAR 413-015-1000(3) for a list of the types of abuse) for which the CPS disposition was founded.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0738

Notice of Local Child Welfare Office Review Committee Decision

(1) The Child Welfare supervisor or designee must prepare a "Notice of Local Child Welfare Office Review Committee Decision" (Form CF 314) as described in OAR 413-010-0738.

(2) The "Notice of Local Child Welfare Office Review Committee Decision" (Form CF 314) must include the following:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe the person requesting the review was responsible for the child abuse;

(c) The decision of the Local Child Welfare Office Review Committee whether to change or retain the CPS founded disposition;

(d) If the CPS founded disposition is changed, whether it will be changed to "unable to determine" or to "unfounded;"

(e) If the Local Child Welfare Office Review Committee decides that the CPS founded disposition should be retained but that the type of abuse for which the disposition was founded should be changed, the type of abuse that should be founded and the reason for this change.

(f) If the CPS founded disposition is retained but the type of abuse is changed, notice that the person requesting the review has the right to request a new local Child Welfare office review of the change;

(g) A summary of the information and reasoning of the Local Child Welfare Office Review Committee upon which its decisions were based;

(h) If a CPS founded disposition is determined to be "unable to determine" or "unfounded," notice that the change will be noted in the CPS assessment narrative;

(i) If the founded disposition is retained, a statement about how to request a review by the Central Office Review Committee, as described in OAR 413-010-0740.

(3) The local Child Welfare office must place the request for review and a copy of the "Local Child Welfare Office Review Committee Decision" (Form CF 314) in the child welfare case file. A change may not be made in the existing written child welfare case file except to add the determinations of the committee.

(4) The Department must send the "Local Child Welfare Office Review Committee Decision" (Form CF 314) by certified mail, restricted delivery, with a return receipt requested, to the person requesting review within 30 days of the request for review.

(5) When a Local Child Welfare Office Review Committee decision is made to change a CPS founded disposition, the Child Welfare supervisor or designee forwards the "Notice of Local Child Welfare Office Review Committee Decision," (Form CF 314) to the Department's Office of Information Services (OIS) or other appropriate organizational unit to make changes in the Department's Integrated Information System (IIS), Families and Child Information System (FACIS), or other appropriate information system.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0740

Requesting a Central Office Review Committee Review

(1) A person entitled to the notice described in OAR 413-010-0738 may, within 30 days of receipt of the notice, request a review by the Central Office Review Committee.

(2) A person requesting a review by the Central Office Review Committee of a CPS founded disposition may use a copy of the request for local Child Welfare office review or prepare a new request for review by the Central Office Review Committee, following the requirements outlined in OAR 413-010-0721.

(3) A person requesting a review by the Central Office Review Committee of a CPS founded disposition must deliver the request to the local Child Welfare office within 30 days of the date the "Notice of Local Child Welfare Office Review Committee Decision" (Form CF 314) was received by the requestor, as evidenced on a United States Postal Service return receipt.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0743

Local Office Responsibilities in a Request for Central Office Review Committee Review

Within 10 calendar days after receiving a request for Central Office Review Committee review, the local Child Welfare office must forward the following documents to the Department's CPS Program Unit:

(1) The request for review; and

(2) A copy of the child welfare case records pertinent to the CPS founded disposition, including the information reviewed by the Local Child Welfare Office Review Committee.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0745

Central Office Review Committee Review

(1) The Central Office Review Committee will conduct a review and issue a "Notice of Central Office Review Committee Decision" (Form CF 315) within 60 days from the date the CPS Program Unit receives a request for a review by the Central Office Review Committee.

(2) The Central Office Review Committee operates as follows:

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(a) The CPS program office schedules a review of the CPS founded disposition when a written request for review and case file information is received from the local Child Welfare office.

(b) The Central Office Review Committee considers relevant documentary information contained in the Department's child welfare case file, including the CPS assessment and disposition, screening information, assessment information and narrative, related police reports, medical reports, and information provided by the person requesting review with the request.

(c) The Central Office Review Committee will not re-interview the victim; interview or meet with the person requesting a review, with others associated with the requestor, or with others mentioned in the assessment; or conduct a field assessment of the allegation of child abuse or neglect.

(d) Reviews must be based on current child welfare practice and definitions of child abuse and neglect. Procedural rules in place at the time the CPS assessment was completed also must be considered.

(e) All decisions of the Central Office Review Committee must be decided by majority vote of the participating committee members.

(f) The Central Office Review Committee determines:

(A) Whether there is reasonable cause to believe that child abuse or neglect occurred;

(B) Whether there is reasonable cause to believe that the person requesting review is responsible for the child abuse or neglect; and

(C) Whether there is reasonable cause to believe that the type of abuse is correctly identified in the assessment.

(g) Based upon its review of the CPS founded disposition and the determinations required by subsection (e) of this section, the Central Office Review Committee will either leave the founded disposition unchanged or change the disposition to "unfounded" or "unable to determine." The Central Office Review Committee also may change the type of abuse for which the CPS disposition was founded.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0746

Notice of Central Office Review Committee Decision

(1) Within 60 calendar days of the date the Central Office Review Committee receives the request for review from the local Child Welfare office, the Central Office Review Committee prepares and sends to the requestor by certified mail, restricted delivery, with a return receipt requested, a "Notice of Central Office Review Committee Decision" (Form CF 315) that includes the following information:

(a) Whether there is reasonable cause to believe that child abuse occurred;

(b) Whether there is reasonable cause to believe that the person requesting review was responsible for the child abuse;

(c) The decision of the Central Office Review Committee whether to change the CPS founded disposition;

(d) If the CPS founded disposition is changed, whether the change will be to "unable to determine" or to "unfounded disposition;"

(e) If the Central Office Review Committee decides that the CPS founded disposition should be retained but the type of abuse for which the disposition was founded should be changed, the new type of abuse and the reason for this change;

(f) If the CPS founded disposition is retained but the type of abuse or neglect is changed, notice that the person requesting the review has the right to request a new Central Office Review Committee review based on the change;

(g) A summary of the information used by the Central Office Review Committee and its reasoning in reaching its decisions; and

(h) If a CPS founded disposition is changed to "unable to determine" or "unfounded," notice that the change will be made to the CPS assessment narrative.

(2) A "Notice of Central Office Review Committee Decision" (Form CF 315) is sent to the person requesting review, the local Child Welfare office for filing in the child welfare case record, the CPS worker, and the supervisor involved in the initial CPS assessment and determination of disposition.

(3) If the Central Office Review Committee determines that the CPS founded disposition should be changed, the Central Office Review Committee sends the decision (Form CF 315) to the CPS Program Coordinator.

(4) The CPS Program Office maintains a comprehensive record of the reviews of CPS founded dispositions conducted by the Central Office

Review Committee. The record includes the date of the review, case number, sequence number, a copy of the materials reviewed by the committee in reaching its decision, and the committee decision for each review conducted by the Central Office Review Committee.

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

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0748

Review Initiated by the Department

The CPS Program Manager may direct that either the Local Child Welfare Office Review Committee or the Central Office Review Committee review a founded disposition if there is good cause to do so, such as a determination that there is a legal finding that contradicts the CPS founded disposition.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 16-2004, f. & cert. ef. 10-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

413-010-0750

Revising Founded Child Abuse Dispositions in the Integrated Information System (IIS)

When a Central Office Review Committee decision is made to change a CPS founded disposition, the CPS Program Coordinator or designee forwards the necessary information to the Department's Office of Information Services (OIS) or other appropriate organizational unit to make changes in the Department's Integrated Information System (IIS), Families and Child Information System (FACIS) or other appropriate information system.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: SOSCF 18-2000, f. & cert. ef. 8-4-00; CWP 1-2003, f. & cert. ef. 1-7-03; CWP 45-2003, f. 12-31-03, cert. ef. 1-1-04; CWP 2-2005, f. & cert. ef. 2-1-05

Adm. Order No.: CWP 3-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 11-1-04

Rules Amended: 413-015-0725

Subject: This Child Protective Services rule is being changed to provide further clarity in regard to practice around the issue of domestic violence. This change will incorporate language that was intended to be included in a prior rulemaking but was omitted from the effective rule in error.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0725

Interviewing the Child's Parents and Caregivers

(1) Whenever practicable, the CPS worker must interview both parents and caregivers in person, as follows:

(a) Interview each person individually.

(b) Ask questions about domestic violence in separate interviews only.

(c) Interview the non-offending parent or caregiver prior to interviewing the parent or caregiver alleged to be the abuser.

(d) Interview the alleged abuser when he or she is the victim's parent or caregiver, unless it is not possible to do so.

(e) When law enforcement is involved in the investigation, the CPS worker must coordinate the interviews of the alleged abuser with LEA.

(2) Non-custodial legal parent. The CPS worker must interview the non-custodial legal parent during the CPS assessment. If the interview would increase the risk of harm to a child or adult victim, a CPS supervisor may authorize an exception to the requirement to conduct the interview based on documented risk.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 3-2005, f. & cert. ef. 2-1-05

Adm. Order No.: CWP 4-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 8-1-04

Rules Amended: 413-015-0115, 413-015-0205, 413-015-0210, 413-015-0215, 413-015-0305, 413-015-0505, 413-015-0511

ADMINISTRATIVE RULES

Subject: These Child Protective Service rules are being changed simultaneous to and in conjunction with the implementation of the revised version of the Guided Assessment Process (GAP). All references to the impending response category have been deleted from these rules. Also changed was a reference to where the safety plan is documented. These rules were originally intended to be effective October 27, 2004, but cannot be effective until the GAP is implemented and subsequently supports the practice change.

Rules Coordinator: Annette Tesch—(503) 945-6067

413-015-0115

Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) “Caregiver” is a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) “Child” means a person under 18 years of age.

(3) “Child abuse” means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) “Child protective services (CPS)” means a specialized social service program that the Department provides on behalf of children who are abused or who are at substantial risk of child abuse by a parent or caregiver.

(5) “Child protective services assessment” means activities and interventions that evaluate potential safety threats, risk influences, and caregiver protective capacity and determine whether or not child abuse has occurred. Activities include development of a safety plan and identification of services.

(6) “Child protective services supervisor (CPS supervisor)” means an employee of the Department trained in child protective services and designated as a supervisor.

(7) “Child protective services worker (CPS worker)” means an employee of the Department who has completed the mandatory department training for child protective service workers.

(8) “Critical case junctures” are events in family development or case work practice that may increase or otherwise affect the risk to a child’s safety, permanency, or well-being.

(9) “Department” means the Department of Human Services Child Welfare Program.

(10) “Department response” means how the Department intends to respond to a report of child abuse after a report of alleged abuse is screened.

(11) “FACIS” means the Family and Child Information System.

(12) “Family Decision Meeting (FDM)” means a family focused intervention facilitated by professional staff that is designed to build and strengthen family supports and the natural care-giving systems for the children. Family decision meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that may include a permanency plan, concurrent permanency plan, placement recommendation, or service recommendation and agreements, which provide for the safety, attachment, and permanency needs of the child. Family decision meetings emphasize the family’s unique plans for its children. The family members collaborate, rather than just participate in the meeting. It is also essential that the professionals in the meeting have direct involvement with the child and the family and are not just members of a committee.

(13) “Guided Assessment Process (GAP)” is a tool used to determine the presence of a safety threat that requires consideration of risk influences and parent or caregiver protective capacity.

(14) “Harm” means impairment, damage, detriment, or injury to a child’s physical, sexual, emotional, or mental development or functioning.

(15) “ICWA” means the Indian Child Welfare Act.

(16) “Immediate safety threat” means behavior, conditions, or circumstances that are presently beyond the parent’s or caregiver’s current ability to manage and are likely to result in harm to a child.

(17) “Multi-disciplinary team (MDT)” is a county investigative team, described in ORS 418.747, that includes law enforcement personnel, child protective service workers, district attorneys, school officials, health department staff, and juvenile department personnel.

(18) “Protective capacity” means a parent’s or caregiver’s strengths or abilities to manage existing safety threats, prevent additional safety threats from arising, or stop risk influences from creating a safety threat.

(19) “Protective custody” means custody authorized by ORS 419B.150.

(20) “Referral” means a report that has been assigned for the purpose of CPS assessment.

(21) “Report” means information provided to the Department that constitutes an allegation of child abuse.

(22) “Risk influences” means those circumstances and situations that contribute to the severity of identified safety threats and that are considered by the CPS worker when a safety plan is developed.

(23) “Safe” means there is an absence of safety threats or there is sufficient protective capacity to manage the existing safety threats.

(24) “Safety assessment” means actions or interventions, which include face-to-face contact with the child and parent, or caregiver, to determine whether a child is safe.

(25) “Safety plan” means a documented set of actions or interventions that describe how a child’s safety is achieved by eliminating or managing a safety threat.

(26) “Safety threat” means behavior, conditions, or circumstances that are likely to result in harm to a child.

(27) “Screener” means a department employee with training required to provide screening services.

(28) “Screening” means the process used by a screener to determine the Department’s response when information alleging abuse is received.

(29) “Substantial harm” means immobilizing impairment, life threatening damage, or significant or acute injury to a child’s physical, sexual, psychological, or mental development or functioning.

(30) “Team Decision Meeting (TDM)” means a facilitated meeting with family, extended family, community members, service providers, and child welfare staff held for the purpose of making child placement-related decisions.

(31) “Third-party abuse” means abuse by a person who is not the child’s parent, not the child’s caregiver or other member of the child’s household, and not a person responsible for the child’s care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0205

Screening Activities

On the same day information alleging child abuse is received by the Department, screeners must complete the following actions unless these rules provide otherwise or an extension is granted as provided in OAR 413-015-0220:

(1) Use the guided assessment process (GAP) screening template to assure critical information is collected and to evaluate the presence of safety threats.

(2) Contact only those collateral sources who can provide firsthand information necessary to evaluate possible safety threats to the child and to determine the appropriate department response.

(3) Research the history of the child and family for essential family data to determine current or previous department involvement related to current child abuse allegations.

(4) Inquire regarding possible Indian or Alaskan Native heritage.

(5) Request from law enforcement agencies (LEA), when available and appropriate, relevant information, including domestic disturbance calls, arrests, and restraining orders.

(6) Determine the location and corresponding legal jurisdiction of the family’s residence and the site where the alleged child abuse may have occurred.

(7) Enter data into the FACIS system:

(a) In situations that require a response by the Department (immediate or response required) on the same day the screening determination is made.

(b) In situations that do not require a response (closed at screening and logged) no later than the next working day after the screening determination is made.

(8) Consult with the CPS supervisor as required by the SDA protocol when determining the Department’s response or assigning the referral. In no case should the supervisory consultation unduly delay the screening or assignment of the report for assessment.

(9) Determine the Department’s response.

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(10) Assign the referral to a CPS worker for a CPS assessment if the screener determines the department response requires a referral.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0210

Determining Department's Response and Required Time Lines

The time line for the Department's response begins when the call is received at screening. Upon completion of the screening activities required by OAR 413-015-0205, the screener must determine whether the information alleging child abuse constitutes a report of child abuse and must determine the Department's response. The Department's response will be either a CPS assessment or no CPS assessment, as explained in sections (1) and (2) of this rule.

(1) CPS assessment required. If the screener determines that information received constitutes a report of child abuse and a safety threat is identified:

(a) An Immediate Response referral is required if there is an immediate safety threat.

(b) A Response Required referral is required if the presence of a safety threat is identified, but the information indicates the child is currently safe.

(2) CPS assessment not required. If the screener determines that the information alleging child abuse meets the following criteria, it will not be assigned to a CPS worker for a CPS assessment:

(a) Close at Screening:

(A) A report is closed at screening if the information alleging child abuse:

- (i) Does not meet the criteria for CPS assessment; or
- (ii) Does not include sufficient information to locate the child.

(B) If a report is closed at screening, the screener must decide whether other services are appropriate and make service or resource referrals as necessary. The screener must document how the information received supports the determination that the child is currently safe and that other services or resources have been identified as needed.

(b) Log: The information is logged if the screener determines that the information does not meet the criteria for CPS assessment or close at screening, but the information may be significant if future related calls are received.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0215

Notifications to Specific Agencies or Entities

The screener must notify specific agencies or entities of referrals that the screener determines meet the criteria described in OAR 413-015-0210(1)(a) or (b) or (2)(a).

(1) LEA. The screener must cross report to LEA as required by OAR 413-015-0305(1).

(2) Child Care Division. The screener must notify the Child Care Division of referrals alleging child abuse in a registered day-care home or in a licensed day-care center, as required by ORS 418.747(2)(e) and 419B.020(1).

(3) Child Caring Agency Licensing Program. The screener must notify the Department's Child Caring Agency Licensing Program when the referral involves a licensed child caring facility.

(4) ICWA. If the screener or assigned CPS worker knows or has reason to know that the child is an Indian child, the screener or CPS worker must give notice to the Indian child's tribe that a CPS assessment is being conducted.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.015, 419B.005 - 419B.050
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0305

Cross Reporting Requirements

(1) The Department screens reports of child abuse in accordance with the screening rules in this division of rules. If the Department's screener determines that information received constitutes a report of child abuse, the screener must cross report the case to an appropriate LEA in the county where the report was made. If the abuse is alleged to have occurred in a different county, the screener may also cross report to an appropriate law enforcement agency in the county where the abuse occurred. The Department must make a cross report even when the Department receives

information alleging abuse of a child who is already the subject of an open department child welfare case.

(2) Cross reporting time frames. Cross reporting must be completed in the manner and within the time lines described in this section.

(a) Cross Report, Immediate. When the screener determines that a report of alleged child abuse requires an immediate response, the screener or CPS worker must cross report without delay by contacting the appropriate LEA by telephone, by providing necessary information to the LEA, and by requesting immediate assistance from the LEA. In addition to the telephone cross report, the CPS worker must provide a completed screening report to the LEA if the Department and LEA do not respond to the report of abuse together. If the Department and LEA respond to the report of abuse together, the CPS worker does not need to provide a completed screening report to the LEA.

(b) Cross Report, Response Required. When the screener determines that the department response should be a response required, the screener must ensure that a cross report is made by fax or other expedited process the same day the Department receives the information alleging child abuse or when the Department's response is determined.

(c) Cross Report, Closed at Screening. When the screener determines that no department response is required and that the report will be closed at screening, the screener must ensure that the cross report is made the same day that the information is entered into the FACIS system.

(3) Cross reporting, supplemental information. The Department may receive information not previously cross reported but apparently related to an allegation of abuse involving the same victim and the same alleged perpetrator that has been previously cross reported. In that event, the screener must proceed as follows:

(a) If the information relates to the same instance of abuse, the screener must make a supplemental cross report of the additional information to each LEA that received the prior cross report. The supplemental information is cross reported using the same time frames used for the original report of abuse, found in section (2) of this rule.

(b) If the information includes a previously unreported instance of abuse or a different reporter of abuse, victim, or alleged perpetrator, the screener must treat the report as a new report of child abuse.

(4) Cross report not required. A cross report is not required:

(a) If, after screening is completed, the screener determines that the information received does not constitute a report of child abuse.

(b) If, after screening is completed, the screener determines that the information received is from a reporter of child abuse who previously made the same allegation regarding the same victim and same alleged perpetrator and that the reporter has provided no additional information.

(5) Contents of cross report. A cross report must include, if known, the names and addresses of the child, the names and addresses of the child's parent or caregiver, the child's age, the nature and extent of the abuse, any evidence of previous abuse, the explanation given for the abuse, and any other information that the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the alleged abuser.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0505

Initial Safety Assessments and Time Frames

(1) To complete a safety assessment, the CPS worker must:

(a) Make efforts to contact the child at home, school, day care, or any other place the worker believes the child may be found. If the worker is unsuccessful, the worker must document in the assessment activities section of the GAP all attempts made to contact the child and the dates of those attempted contacts.

(b) Have face-to-face contact with the child who is the subject of the referral.

(c) Have face-to-face contact with the primary parent or caregiver, if possible.

(d) Determine if other children in the home are safe.

(e) Utilize the GAP and interviewing guidelines set out in OAR 413-015-0700 to 413-015-0740 to:

- (A) Identify safety threats;
- (B) Assess risk influences; and
- (C) Assess parents' or caregivers' protective capacity.

(2) Except as provided in section (3) of this rule, after the screener determines the department response and assigns the referral to a CPS work-

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er, the CPS worker must complete a safety assessment within the following time lines:

(a) Immediate Response: The CPS worker must complete a safety assessment within 24 hours of the time the report alleging child abuse is received by the Department.

(b) Response Required: The CPS worker must make a face-to-face contact with the child within five days of the day the report alleging child abuse is received by the Department and must complete the safety assessment without undue delay after that face-to-face contact.

(3) Exceptions:

(a) Any exception to the time lines given in section (2) of this rule requires CPS supervisor approval, written justification, and an explanation of how the child's safety needs have been considered.

(b) If the screener has been granted an extension to complete the screening process, the CPS supervisor may adjust the safety assessment and CPS assessment time line accordingly.

(4) Documentation requirements. The CPS worker must document, using the GAP:

(a) The initial safety assessment within five working days following face-to-face contact with a child; and

(b) The initial safety plan within the CPS assessment time frames (see OAR 413-015-0400(5)).

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

413-015-0511

Review of Safety Plan

(1) The assigned worker will review child safety and the safety plan:

(a) At critical case junctures. The following are examples of, but not a complete list of, critical case junctures:

(A) At completion of the CPS assessment.

(B) Following transfer of the case by the receiving worker.

(C) When the case moves from supervised to unsupervised visitation.

(D) Prior to a placement change.

(E) One week after the child is returned home.

(F) A significant change in family circumstances or constellation, such as a new live-in companion or a new house mate, new baby, change in employment status, divorce, substance abuse relapse, mental health incident, missed medical appointment by the caregiver for a vulnerable baby, or a change in the protective capacity of a parent or caregiver.

(G) Before dismissal of court jurisdiction is recommended.

(H) Prior to closure of the case.

(b) When face-to-face contact occurs between a child welfare worker and a child, including a mandatory 30-day visitation.

(2) Review of child safety and the safety plan (see Child Welfare policy "Caseworker Contact with Children, Parents, and Caregivers," policy I-B.1, OAR 413-080-0040 to 413-015-0060) at critical case junctures must include face-to-face contact with the child and custodial caregiver. It also must include contact with other persons as necessary to reassess child safety.

(3) Review of child safety and the safety plan, including changes to the plan must be documented in FACIS safety plan screen.

(4) In addition to the other requirements of this rule, the safety plan will be discussed:

(a) When the case is staffed with a supervisor.

(b) At a high-risk staffing.

(c) When the case is reviewed by a Citizen Review Board.

(d) During a juvenile court proceeding.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05

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

Adm. Order No.: OMAP 2-2005

Filed with Sec. of State: 1-31-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 1-1-05

Rules Amended: 410-121-0300

Subject: The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to

clients. OMAP permanently amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This filing updates Transmittal #37, with Title XIX State Agency Letter Number 04-05, changes to the list, effective for services rendered on or after October 28, 2004, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-121-0300

CMS Federal Upper Limits for Drug Payments

(1) The Centers for Medicare and Medicaid Services (CMS) Federal Upper Limits for Drug Payments listing of multiple source drugs meets the criteria set forth in 42 CFR 447.332 and 1927(e) of the Act as amended by OBRA 1993.

(2) Payments for multiple source drugs must not exceed, in the aggregate, payment levels determined by applying to each drug entity a reasonable dispensing fee (established by the State and specified in the State Plan), plus an amount based on the limit per unit. CMS has determined the amount based on the limit per unit to be equal to a 150 percent applied to the lowest price listed (in package sizes of 100 units, unless otherwise noted) in any of the published compendia of cost information of drugs.

(3) The FUL drug listing is published in the State Medicaid Manual, Part 6, Payment for Services, Addendum A. The most current Transmittals and subsequent changes are posted to the CMS website (contact OMAP for most current website address). The FUL price listing will be updated approximately every six months.

(4) The most current CMS Federal Upper Limits for Drug Payments Listing, includes changes to Transmittal #37, Title XIX State Agency Letter Number 04-05, with changes to be effective October 28, 2004, and is available for downloading on OMAP's Website, (contact OMAP for most current website address). To request a hard copy, call OMAP.

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 3-1990(Temp), f. & cert. ef. 2-23-90; HR 13-1990, f. & cert. ef. 4-20-90; Renumbered from 461-16-330; HR 20-1990, f. & cert. ef. 7-9-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 45-1990, f. & cert. ef. 12-28-90; HR 10-1991, f. & cert. ef. 2-19-91; HR 37-1991, f. & cert. ef. 9-16-91; HR 13-1992, f. & cert. ef. 6-1-92; HR 28-1992, f. & cert. ef. 9-1-92; HR 35-1992(Temp), f. & cert. ef. 12-1-92; HR 1-1993(Temp), f. & cert. ef. 1-25-93; HR 3-1993, f. & cert. ef. 2-22-93; HR 5-1993(Temp), f. 3-10-93, cert. ef. 3-22-93; HR 8-1993(Temp), f. & cert. ef. 4-1-93; HR 11-1993, f. 4-22-93, cert. ef. 4-26-93; HR 15-1993(Temp), f. & cert. ef. 7-2-93; HR 20-1993, f. & cert. ef. 9-1-93; HR 25-1993(Temp), f. & cert. ef. 10-1-93; HR 14-1994, f. & cert. ef. 3-1-94; HR 25-1994, f. & cert. ef. 7-1-94; HR 2-1995, f. & cert. ef. 2-1-95; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 14-1995, f. 6-29-95, cert. ef. 7-1-95; HR 23-1995, f. 12-29-95, cert. ef. 1-1-96; HR 22-1997, f. & cert. ef. 10-1-97; HR 27-1997, f. & cert. ef. 12-1-97; OMAP 2-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 43-1998(Temp), f. & cert. ef. 11-20-98 thru 5-1-99; OMAP 5-1999, f. & cert. ef. 2-26-99; OMAP 42-2000(Temp), f. & cert. ef. 12-15-00 thru 5-1-01; OMAP 1-2001(Temp), f. & cert. ef. 2-1-01 thru 6-1-01; OMAP 2-2001(Temp), f. 2-14-01, cert. ef. 2-15-01 thru 7-1-01; OMAP 18-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 23-2001(Temp), f. & cert. ef. 4-16-01 thru 8-1-01; OMAP 26-2001(Temp), f. & cert. ef. 6-6-01 thru 1-2-02; OMAP 51-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-15-01; OMAP 58-2001, f. 11-30-01, cert. ef. 12-1-01; OMAP 67-2001(Temp), f. 12-28-01, cert. ef. 1-1-02 thru 5-15-02; OMAP 3-2002(Temp), f. & cert. ef. 2-15-02 thru 6-15-02; OMAP 5-2002(Temp) f. & cert. ef. 3-5-02 thru 6-15-02; OMAP 19-2002(Temp), f. & cert. ef. 4-22-02 thru 9-15-02; OMAP 29-2002(Temp), f. 7-15-02, cert. ef. 8-1-02 thru 1-1-03; OMAP 71-2002(Temp), f. & cert. ef. 12-1-02 thru 5-15-03; OMAP 10-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 11-2003(Temp), f. 2-28-03, cert. ef. 3-1-03 thru 8-15-03; OMAP 41-2003, f. & cert. ef. 5-29-03; OMAP 51-2003, f. & cert. ef. 8-5-03; OMAP 54-2003(Temp), f. & cert. ef. 8-15-03 thru 1-15-03; OMAP 75-2003, f. & cert. ef. 10-1-03; OMAP 83-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 4-15-04; OMAP 2-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 32-2004(Temp), f. & cert. ef. 5-14-04 thru 10-15-04; OMAP 43-2004, f. 6-24-04 cert. ef. 7-1-04; OMAP 93-2004(Temp), f. & cert. ef. 12-10-04 thru 5-15-05; OMAP 2-2005, f. 1-31-05, cert. ef. 2-1-05

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Adm. Order No.: OMAP 3-2005

Filed with Sec. of State: 2-1-2005

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Rules Adopted: 410-050-0401, 410-050-0411, 410-050-0421, 410-050-0431, 410-050-0441, 410-050-0451, 410-050-0461, 410-050-0471, 410-050-0481, 410-050-0491, 410-050-0501, 410-050-0511, 410-050-0521, 410-050-0531, 410-050-0541, 410-050-0551, 410-050-0561, 410-050-0571, 410-050-0581, 410-050-0591

Subject: Oregon Administrative Rules 410-050-0401 through 410-050-0591, the Long Term Care Facility Provider Tax, established the taxation of Long Term Care Facilities. The rules implement the tax permitted in HB 2747, passed during the 2003 legislative session. These permanent rules supersede the previous Temporary Oregon

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Administrative Rules 410-050-0400 through 410-050-0590, and when effective will be retroactive to July 1, 2003.

Rules Coordinator: Pat Bougher—(503) 945-5844

410-050-0401

Definitions

(1) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the facility. If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(2) "Delinquency" means the facility failed to pay the tax as correctly computed when the tax was due.

(3) "Department" means the Oregon Department of Human Services or its successor organization.

(4) "Director" means the Director of the Oregon Department of Human Services or the Director's designee or agent.

(5) "Gross Revenue" means the revenue paid to a long term care facility for patient care, room, board and services, less contractual adjustments. It does not include revenue derived from sources other than operations, including but not limited to interest and guest meals.

(6) "Long Term Care Facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director, to provide treatment for two or more unrelated patients. "Long term care facility" includes licensed skilled nursing facilities and licensed intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455. Long Term Care Facility does not include any Intermediate Care Facility for the Mentally Retarded.

(7) "Patient Days" means the total number of patients occupying beds in a long term care facility, determined as of 12:01 a.m. of each day, for all days in the calendar period for which an assessment is being reported and paid. For purposes of this subsection, if a Long Term Care facility patient is admitted and discharged on the same day, the patient is deemed present on 12:01 a.m. of that day.

Stat. Auth.: ORS 410 & 411

Stats. Implemented: OL 2003 & ORS 736 §15

Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0411

General Administration

(1) The purpose of these rules is to implement the long term care facility tax imposed on long term care facilities in the State of Oregon.

(2) The Department will administer, enforce and collect the Long Term Care Facility tax.

(3) The Department may assign employees, auditors and such other agents as the Director may designate to assist in the administration, enforcement and collection of the taxes.

(4) The Department may make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce and collect the taxes.

(5) The Department may prescribe such forms and reporting requirements, and change the forms and reporting requirements, as necessary to administer, enforce and collect the taxes.

Stat. Auth.: ORS 410 & 411

Stats. Implemented: OL 2003 & ORS 736 §§15-38

Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0421

Disclosure of Information

(1) Except as otherwise specifically provided by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. "Particulars" includes but is not limited to, social security numbers, employer number or other facility identification number, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties or interest payable or paid, or otherwise administer, enforce or collect a health care assessment to the extent that such information would be exempt from disclosure under ORS 192.501(5).

(2) The Department may:

(a) Furnish any facility, or representative authorized to represent the facility, upon request of the facility or representative, with a copy of the facility's report filed with the Department for any quarter, or with a copy of

any report filed by the facility in connection with the report, or with a copy with any other information the Department considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return; and

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and such other employees of the State or Federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement or collection of these taxes.

Stat. Auth.: ORS 410 & 411

Stats. Implemented: ORS 410 & 411

Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0431

Entities Subject to the Long Term Care Facility Tax

Each Long Term Care Facility in the State of Oregon is subject to the Long Term Care Facility Tax except the Oregon Veterans' Home, and Long Term Care Facilities that have received written notice from the Department that they are exempt under the terms of a waiver. For these facilities, the exemption from the Long Term Care Facility Tax only applies for the specific period of time described in the notice from the Department.

Stat. Auth.: ORS 410 & 411

Stats. Implemented: OL 2003 & ORS 736 §18, §33

Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0441

The Long Term Care Facility Report of Gross Revenues

(1) Each Long Term Care Facility subject to the Long Term Care Facility Tax must submit a statement of its Gross Revenue on a form approved by the Department.

(2) The report may be combined with the quarterly tax assessment report at the discretion of the Department.

(3) The Department may require the facility to provide additional reports in order to calculate the tax rate for the next fiscal year.

(4) The Department will require a report from the facilities of their adjusted net revenue on or before May 30, 2004 in order to determine the rate of tax for the fiscal year beginning July 1, 2004.

(5) For the purposes of this rule, adjusted net revenue includes the facilities' total routine and ancillary revenues, less contractual adjustments, bad debt, and charity care.

(a) Contractual adjustments are the difference between the amounts charged based on the facility's full established charges and the contractual amounts due from the payor;

(b) Charity care is the difference between the amounts charged based on the facility's full established charges and the contractual amount due from the patient based upon the patient's indigence or lack of insurance; and

(c) Bad debt is the total amount of accounts receivables that are analyzed and deemed uncollectible during the quarter. The amount of the deduction is reduced by any payments received on accounts receivables that were deemed uncollectible in a previous quarter.

Stat. Auth.: ORS 410 & 411

Stats. Implemented: OL 2003 & ORS 736 §17

Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0451

The Long Term Care Facility Tax: Calculation, Report, Due Date

(1) The tax is assessed upon each Patient Day at a Long Term Care Facility. The amount of the tax equals the assessment rate times the number of Patient Days at the long term care facility for the calendar quarter. The current rate of the assessment will be determined in accordance with these rules.

(2) The facility must pay the tax and file the report on a form approved by the Department on or before the 30th day of the month following the end of the calendar quarter for which the tax is being reported.

(3) Any report, statement or other document required to be filed under any provision of these rules shall be certified by the Chief Financial Officer of the facility or an individual with delegated authority to sign for the facility's Chief Financial Officer. The certification must attest, based on best knowledge, information and belief, to the accuracy, completeness and truthfulness of the document.

ADMINISTRATIVE RULES

(4) For calendar quarters beginning July 1, 2003, October 1, 2003, and January 1, 2004, the first payment of tax and reports will be due June 30, 2004. These quarters include Patient Days throughout the nine-month period from July 1st, 2003 through April 30, 2004.

(5) Payments may be made electronically and the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form.

(6) The Department may charge the facility a fee of \$100 if, for any reason, the check, draft, order or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0461

Filing an Amended Report

(1) The claims for refunds or payments for additional tax must be submitted by the facility on a form approved by the Department. The facility must provide all information required on the report. The Department may audit the facility, request additional information or request an informal conference prior to granting a refund or as part of its review of a payment of a Deficiency.

(2) Claim for Refund:

(a) If the amount of the tax is less than the amount paid by the facility and the facility does not then owe a tax for any other calendar period, such overpayment may be refunded by the Department to the facility;

(b) The facility may file a claim for refund on a form approved by the Department within 180 days after the end of the calendar quarter to which the claim for refund applies; and

(c) If there is an amount due from the facility for any past due taxes or penalties, the refund otherwise allowable will be applied to the unpaid taxes and penalties and the facility so notified.

(3) Payment of Deficiency:

(a) If the amount of the tax is more than the amount paid by the facility, the facility may file a corrected report on a form approved by the Department and pay the Deficiency at any time. The penalty under OAR 410-050-0491 will stop accruing after the Department receives payment of the total Deficiency for the calendar quarter; and

(b) If there is an error in the determination of the tax due, the facility may describe the circumstances of the late additional payment with the late filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of error; facility explanation of the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the facility has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers/identifies information in the administration of these tax rules that it determines could give rise to the issuance of a Notice of Proposed Action, or the issuance of a refund, DHS will notify the facility. The facility will have 30 calendar days from the date of the Department's notice to respond. It is the facility's responsibility to determine what response, if any, it will make. The facility may request a refund pursuant to subsection (2) of this rule or file an amended report pursuant to subsection (3) of this rule. Nothing in this subsection (4) prevents or limits DHS from issuing a Notice of Proposed Action pursuant to OAR 410-050-0510.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §22
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0471

Determining the Date Filed

For the purposes of these rules, any reports, requests, appeals, payments or other response by the facility must be either received by the Department before the close of business on the date due, or, if mailed, post-marked before midnight of the due date. When the due date falls on a Saturday, Sunday or a legal holiday, the return is due on the next business day following such Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0481

Assessing Tax on Failure to File

In the case of a failure by the facility to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the facility according to the best of its information and belief. "Best of its information and belief" means that the Department will use evidence on which a reasonable person would rely in determining the tax, including, but not limited to, estimating the days of Patient Days based upon the number of licensed beds in the facility. The Department's determination of tax liability will be the basis for the assessment due in a Notice of Proposed Action.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0491

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A Long Term Care Facility that fails to file a report or pay a tax when due under OAR 410-050-0451 is subject to a penalty of \$500 per day of delinquency. The penalty accrues from the date of Deficiency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(3) Penalties imposed under this section will be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Long Term Care Facility tax.

(5) Any penalties arising from a failure to pay or file a timely report on Patient Days from July 1, 2003 through December 31, 2003, will be deposited into the long term care quality assurance suspense account.

(6) If the Department determines that a facility is subject to a penalty under this section, it will issue a Notice of Proposed Action as described in OAR 410-050-0510.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §19
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0501

Departmental Authority to Audit Records

(1) The facility must maintain clinical and financial records sufficient to determine the actual number of Patient Days for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the facility's records at any time for a period of three years following the date the tax is due to verify or determine the number of Patient Days at the facility.

(3) The Department may issue a Notice of Proposed Action or issue a refund based upon its findings during the audit.

(4) Any audit, finding or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the facility or by the facility and a representative of the Department.

(5) The Department may issue a refund and otherwise take such actions as it deems appropriate based upon the findings of the audit.

Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §21
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0511

Notice of Proposed Action

(1) Prior to issuing a Notice of Proposed Action, the Department will notify the facility of a potential deficiency or failure to report that could give rise to the imposition of a penalty and provide the facility with not less than 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any amended report under OAR 410-050-0461 in its Notice of Proposed Action.

(2) The Department will notify the facility if it determines that the facility is subject to the imposition of a penalty for a calendar quarter or if there is a Deficiency for a calendar quarter with a Notice of Proposed Action.

(3) Contents of the Notice of Proposed Action must include:

(a) The applicable calendar quarter;

(b) The basis for determining the corrected amount of tax for the quarter;

(c) The corrected tax due for the quarter as determined by the Department;

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- (d) The amount of tax paid for the quarter by the facility;
 - (e) The resulting Deficiency, which is the difference between the amount received by the Department for the calendar quarter and the corrected amount due as determined by the Department;
 - (f) Statutory basis for the penalty;
 - (g) Amount of penalty per day of Delinquency;
 - (h) Date upon which the penalty began to accrue;
 - (i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;
 - (j) The total penalty accrued up to the date of the notice; and
 - (k) Instructions for responding to the notice, and a statement of the facility's right to a hearing.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0521

Required Notice

- (1) Any notice required to be sent to the facility will be sent to the current licensee and any former licensee who was occupying the property during time period to which the notice relates.
 - (2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the facility.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0531

Hearing Process

- (1) Any facility that receives a Notice of Proposed Action may request a contested case hearing under ORS 183.310 to 183.550.
 - (2) The written request must be received by the Department within 20 days of the date of the notice.
 - (3) Prior to the hearing, the Department and the facility will meet for an informal conference.
 - (4) Nothing in this section shall preclude the Department and the facility from agreeing to an informal disposition of the contested case at any time, consistent with ORS 183.415(5).
 - (5) If the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the Notice of Proposed Action.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §20
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0541

Final Order of Payment

- The Department will issue a Final Order of Payment for deficiencies and/or penalties when:
- (1) Any part of the deficiency or penalty is upheld after a hearing;
 - (2) The facility did not make a timely request for a hearing; or
 - (3) Upon the stipulation of the facility and the Department.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0551

Remedies Available after Final Order of Payment

- (1) Any amounts due and owing under the Final Order of Payment and any interest thereon may be recovered by the State of Oregon as a debt to the State, using any available legal and equitable remedies. These remedies include, but are not limited to:
 - (a) Collection activities including but not limited to deducting the amount of the final Deficiency and/or Penalty from any sum then or later owed to the facility or its owners or operators by the Department, CMS or their designees to the extent allowed by law;
 - (b) Nursing facility license denial, suspension or revocation under OAR 411-089-0040;
 - (c) Restrictions of admissions to the facility under OAR 411-089-0050; and
 - (d) Terminating the provider contract with the owners or operators of the facility under OAR 411-070-0015.
 - (2) Every payment obligation shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the Final Order of Payment and continuing until the payment obligation, including interest has been discharged.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§15-36
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0561

Calculation of the Long Term Care Facility Tax for Periods Beginning on and after July 1, 2004

- (1) The amount of the tax is based on the assessment rate determined by the Director multiplied by the number of Patient Days at the Long Term Care Facility for a calendar quarter.
 - (2) The Director must establish an annual assessment rate for Long Term Care Facilities that applies for each 12-month period beginning July 1. The Director must establish the assessment rate on or before June 15th preceding the 12-month period for which the rate applies.
 - (3) At the time the annual assessment rate is established, the Director may adjust the assessment rate to account for overages and underages in the aggregate amount actually collected during previous assessment periods.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §§17, 27(c)
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0571

Initial Tax for Calendar Quarters Beginning July 1, 2003 and October 1, 2003

- The amount of tax on LTC Facilities for calendar quarters beginning July 1, 2003 and October 1, 2003 must be determined using an assessment rate of \$8.25 per Patient Day.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §28
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0581

Tax for Calendar Quarters Beginning January 1, 2004 and April 1st, 2004

- (1) The amount of tax on LTC Facilities for calendar quarters beginning January 1, 2004 and ending before July 1st, 2004, must be determined using an assessment rate of \$8.25 per Patient Day.
 - (2) This rate may be adjusted by the Department to take into account overages or underages raised under the Initial Assessment Rate under OAR 410-050-0570, including, but not limited to, overages and underages caused by an approval or denial by the Centers for Medicare and Medicaid Services. An adjustment under this subsection may be made at any time.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §27
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

410-050-0591

Limitations On The Imposition of the Long Term Care Facility Tax

- The long term care facility tax may be imposed only in a calendar quarter for which the long term care facility reimbursement rate that is part of the Oregon Medicaid reimbursement system was calculated according to the methodology described in Oregon Laws, ORS 736§ 24.
- Stat. Auth.: ORS 410 & 411
Stats. Implemented: OL 2003 & ORS 736 §29
Hist.: OMAP 3-2005, f. & cert. ef. 2-1-05

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Adm. Order No.: OMAP 4-2005(Temp)

Filed with Sec. of State: 2-9-2005

Certified to be Effective: 2-9-05 thru 7-1-05

Notice Publication Date:

Rules Amended: 410-120-1295

Rules Suspended: 410-120-1295(T)

Subject: 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 doc-

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uments. OMAP intends to permanently amend this rule on or after April 1, 2005.

Rules Coordinator: Darlene Nelson—(503) 945-6927

410-120-1295

Non-Participating Provider

(1) For purposes of this rule, a provider enrolled with the Office of Medical Assistance Programs (OMAP) that does not have a contract with an OMAP-contracted managed care plan is referred to as a non-participating provider.

(2) For covered services that are subject to reimbursement from the managed care plan, a non-participating provider, other than a hospital governed by (3)(b) below, must accept from the OMAP-contracted managed care plan, as payment in full, the amount that the provider would be paid from OMAP if the client was fee-for-service.

(3) The OMAP-contracted FCHP that does not have a contract with a hospital, is required to reimburse, and hospitals are required to accept as payment in full the following reimbursement:

(a) The FCHP will reimburse a non-participating Type A and Type B Hospital fully for the cost of covered services based on the cost-to-charge ratio used for each hospital in setting the capitation rates paid to the FCHP for the contract period (ORS 414.727).

(b) All other non-participating hospitals, not designated as a rural access or Type A and Type B hospital, for dates of service on or after October 1, 2003 reimbursement will be based upon the following:

(A) Inpatient service rates are based upon the capitation rates developed for the budget period, at the level of the statewide average unit cost, multiplied by the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(B) Outpatient service rates are based upon the capitation rates developed for the budget period, at the level of charges, multiplied by the statewide average cost to charge ratio, the geographic factor, the payment discount factor and an adjustment factor of 0.925.

(4) The geographic factor, and the statewide average unit costs for inpatient service rates for subsection (3)(A) and for outpatient service rates for subsection (3)(B), are calculated by the department's contracted actuarial firm.

(a) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2003, is effective for dates of service October 1, 2003 through September 30, 2004.

(b) The FCHP Non-Contracted DRG Hospital Reimbursement Rates document, dated October 1, 2004, is effective for dates of service October 1, 2004 through September 30, 2005. These documents are posted on the department's website at www.dhs.state.or.us/policy/healthplan/guides/hospital/.

Stat. Auth.: ORS 209

Stats. Implemented: ORS 414.743

Hist.: OMAP 10-2001, f. 3-30-01, cert. ef. 4-1-01; OMAP 22-2004, f. & cert. ef. 3-22-04; 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 75-2004(Temp), f. 9-30-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 4-2005(Temp), f. & cert. ef. 2-9-05 thru 7-1-05

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Department of Human Services, Public Health Chapter 333

Adm. Order No.: PH 2-2005

Filed with Sec. of State: 2-3-2005

Certified to be Effective: 2-3-05

Notice Publication Date: 12-1-04

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

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

Subject: Amends OAR's 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and repeals temporary OAR's 333-050-0010, 333-050-0020, 333-050-0030, 333-050-0040, 333-050-0050, 333-050-0060, 333-050-0080, 333-050-0090, 333-050-0100, 333-050-0130, 333-050-0140 and 333-050-0141 relating to school immunization. With the exception

of 333-050-0010, these rule changes were previously submitted to the Secretary of State's office and became effective on December 13, 2002.

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

Rules Coordinator: Christina Hartman—(503) 947-1187

333-050-0010

Definitions Used in the Immunization Rules

As used in OAR 333-050-0010 through 333-050-0140:

(1) "Certificate of Immunization Status" means a form provided or approved by Health Services on which to enter the child's immunization record requiring the following:

(a) Evidence of Immunization signed by the parent, health care practitioner or an authorized representative of the Department; and/or

(b) A written statement of medical or immunity exemption signed by a physician or an authorized representative of the Department; and/or

(c) A written statement of religious exemption signed by the parent; and/or

(d) A written statement of disease history (immunity exemption) for varicella signed by a parent, physician or authorized representative of the Department.

(2) "Certificate of Immunization Status Addendum" means a form provided or approved by Health Services on which to enter the child's immunizations received after the initial series of D/T, polio and MMR. It does not replace the Certificate of Immunization Status form. The Addendum should be attached to the child's original Certificate of Immunization Status form. The dates do not need to be transcribed onto the original Certificate of Immunization Status form.

(3) "Exempted Children's Facility" are those which:

(a) Are primarily supervised training in a specific subject, including, but not limited to, dancing, drama, or music;

(b) Are primarily an incident of group athletic or social activities sponsored by or under the supervision of an organized club or hobby group;

(c) Are operated at a facility where children may only attend on a limited basis not exceeding a total of five days per calendar year; or

(d) Are operated on an occasional basis by a person, sponsor, or organization not ordinarily engaged in providing child care.

(4) "Contraindication" means either a child or a household member's physical condition especially any condition or disease which renders a particular vaccine improper or undesirable in accordance with the current recommendations of the Advisory Committee on Immunization Practices of the U.S. Public Health Services and the current issue of the **Red Book** (The Report of the Committee on Infectious Disease, The American Academy of Pediatrics).

(5) "County Immunization Status Form" means a form provided by Health Services to the Department (or school/facility if there is no Department) to report annually to Health Services the number of children as specified, in the area served, and the number susceptible to the vaccine preventable diseases covered by these rules.

(6) "Department" means the District or County Board of Health, Public Health Officer, Public Health Administrator or Health Department having jurisdiction within the area.

(7) "Evidence of Immunization" means an appropriately signed and dated statement indicating the month and year each dose of each vaccine was received. This is used for the determination of age-specific vaccine(s) requirements.

(8) "Exclude" or "Exclusion" means not being allowed to attend a school/facility pursuant to an exclusion order from the Department based on non-compliance with the requirements of ORS 433.267(1), and these rules. Exclusion occurs when records have not been updated by the starting time of the school/facility on the specified exclusion day.

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(9) "Exclusion Order for Incomplete Immunization or Insufficient Information" means a form provided or approved by Health Services for the Departments' and Health Services' use in excluding a child whose record is in non-compliance with the vaccine requirements of OAR 333-050-0050(2) or who has insufficient information on his/her record. Forms submitted for approval must contain the substantive content of the Health Services form.

(10) "Exclusion Order for No Record" means a form provided or approved by Health Services for the Departments', Health Services' and schools'/facilities' use in excluding a child with no record. Forms submitted for approval must contain the substantive content of the Health Services form.

(11) "Health Care Practitioner" means a practitioner of the healing arts who has within the scope of the practitioner's license, the authority to order immunizations, to include: M.D., D.O., licensed nurse practitioners with prescription writing privileges, and licensed physicians' assistants with prescription writing privileges who are working under the sponsorship of an M.D., D.O., or a registered nurse working under the direction of an M.D. or a D.O.

(12) "Health Services" means the Oregon Department of Human Services, Health Services, Immunization Program.

(13) "Medical or Immunity Exemption" means a written statement signed by a physician or an authorized representative of the Department that the child should be exempted from receiving specified immunization(s). Medical or Immunity exemptions include both of the following:

(a) "Immunity Exemption" means an exemption due to a disease history based on a health care practitioner's diagnosis or the results of an immune titer. Representatives of the Departments will automatically authorize parental signature for verification of history of varicella. Children with an immunity exemption are counted as complete for the vaccine series they are exempt from.

(b) "Medical Exemption" means an exemption based on a specific medical diagnosis resulting from a specific medical contraindication. Children with a medical exemption are counted as having a medical exemption and are considered susceptible to the diseases they have not received immunizations for.

(14) "New Enterer" means a child who meets one of the following criteria:

(a) Initially attending an Oregon facility (no previous attendance at any Oregon facility);

(b) Initially attending a school at the entry level (kindergarten or the first grade, whichever is the entry level);

(c) Initially attending a school/facility from a home-school setting at any grade (preschool through the 12th grade); or

(d) Initially attending a school/facility after entering the United States from a foreign country at any grade (preschool through 12th grade).

(15) "Non-Compliance" means failure to comply with any requirement of ORS 433.267(1) or these rules.

(16) "Primary Review Summary" means a form provided or approved by Health Services to schools/facilities for enclosure with records forwarded to the Department for secondary review and follow up. Forms submitted for approval must contain the substantive content of the Health Services form.

(17) "Private Provider" means any health care practitioner as defined in Section (12) of this rule and not identified as a public provider.

(18) "Public Provider" means county health jurisdictions, their contractees and other governmental entities receiving vaccine from the Immunization Program, Oregon Department of Human Services.

(19) "Record" means a statement relating to compliance with the requirements of ORS 433.267(1)(a) through (d) and these rules.

(20) "Religion" means any system of beliefs, practices or ethical values.

(21) "Religious Exemption" means a statement signed by a parent that the child has not been immunized as prescribed by OAR 333-050-0050(2), because the child is being reared as an adherent to a religion, the teachings of which are opposed to such immunization.

(22) "School Year" or "SY" means an academic year as adopted by the school or school district (usually September through June).

(23) "Susceptible" means being at risk of contracting one of the diseases covered by these rules, by virtue of being in one, or more of the following categories:

(a) Not being complete on the immunizations required by these rules;

(b) Possessing a medical exemption from any of the vaccines required by these rules due to a specific medical diagnosis based on a specific medical contraindication; or

(c) Possessing a religious exemption for any of the vaccines required by these rules.

(24) "These Rules" means OAR 333-050-0010 through 333-050-0140.

(25) "Transferring Child" means a child who:

(a) Moves from one Oregon facility to another Oregon facility. In order to qualify as a transferring child, the facility must request records from the previous facility whose name must be documented on the Exclusion Order for No Record;

(b) Moves from one Oregon school to another Oregon school, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school;

(c) Moves from a school in another state to an Oregon school.

(26) "Up-to-Date" means currently on schedule and not subject to exclusion, based on the immunization schedule for spacing doses, as prescribed in OAR 333-050-0120.

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

Stat. Auth.: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0021; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0020

Purpose and Intent

(1) The purpose of these rules is to implement ORS 433.235 et seq., which requires evidence of immunization or a medical or a religious exemption for each child as a condition of attendance in any school/facility and which requires exclusion from school/facility attendance until such requirements are met.

(2) The intent of the school/facility immunization statutes and these rules is to require that:

(a) A new enterer provide a signed and dated Certificate of Immunization Status form documenting either evidence of immunization or a religious and/or medical or immunity exemption. If age appropriate, required for the child's grade level, and the child has not claimed an exemption, a minimum of one dose each of the following vaccines must be received prior to attendance: Polio, Measles, Mumps, Rubella, Hepatitis B, Varicella, Haemophilus influenzae Type b vaccine and Diphtheria/Tetanus containing vaccine. (See OAR 333-050-0120);

(b) A transferring child provide evidence of immunization or an exemption(s), within 30 days of initial attendance; and

(c) A child currently attending not be allowed to continue in attendance without complete, incomplete but up-to-date evidence of immunization or an exemption(s). Beginning SY 2000/2001, Hepatitis B, Varicella and a second dose of measles containing vaccine will be phased in by grade (see OAR 333-050-0120).

(d) The only exception is for family child care homes, either registered or exempt from registration providing child care, six weeks of age to kindergarten entry, in a residential or nonresidential setting. These programs are exempt from all requirements except an up-to-date Certificate of Immunization Status form on each child in attendance.

(3) Nothing in these rules prohibits a public school from adopting additional or more stringent rules (in accordance with the law) as long as the rules are in compliance with U.S. Public Health Service Advisory Committee on Immunization Practices.

(4) Nothing prohibits a private school, children's facility, or post-secondary educational institution from adopting additional or more stringent requirements than the statutes or rules as long as medical and religious exemptions are included and the requirements are in compliance with the United States Public Health Advisory Committee on Immunization Practices recommendations.

Stat. Auth.: ORS 433.001, 433.004, 443.006 & 433.235 - 433.284

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 29-1994, f. & cert. ef. 12-2-94; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0025; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0030

Visitors, Part-Time Students, and Residents

(1) Any child visiting or attending school for greater than five school days in a given school year or residing on the premises of a school/facility regardless of whether the child attends classes, at any grade preschool

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through Grade 12, shall be subject to the requirements of either a new enterer or transferring child as appropriate. Such residents and visitors for the purposes of these rules are in attendance.

(2) Children receiving child care in a certified child care facility are subject to these immunization requirements unless they attend fewer than five days in a calendar year.

(3) For facilities providing drop-in child care, a child may attend up to four days without a Certificate of Immunization Status on file. Before allowing attendance on the fifth visit, a Certificate of Immunization Status must be provided showing at least one dose of each required vaccine or an appropriately signed exemption.

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

Stats. Implemented: ORS 433.273

Hist.: HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0026; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0040

Statements (Records) Required

(1)(a) The statement initially documenting evidence of immunization or exemption under ORS 433.267(1)(a) through (d) must be on a Certificate of Immunization Status form. Evidence of immunization shall include at least the month and year of each dose of each vaccine received and must be appropriately signed and dated to indicate verification by the signer. Presigned Certificate of Immunization Status forms are not allowable. If a Certificate of Immunization Status form is signed but not dated, the person who receives the form at the school or facility should date the form with the date it was received; or

(b) The school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching an already appropriately completed, signed and dated record. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record; or

(c) The parent or school/facility may choose to complete a Certificate of Immunization Status form by transcribing dates from and attaching one of the following records listed in (A) through (C). The Certificate of Immunization Status form must be signed and dated by the person transcribing the information. A reference should be made to the attached record on the Certificate of Immunization Status form.

(A) A health care practitioner documented immunization record;

(B) An unsigned record on health care practitioner letterhead.

(C) An unsigned record printout from the statewide immunization information system, Oregon Immunization ALERT.

(d) The statements updating the initial evidence of immunization or exemption on a Certificate of Immunization Status form under ORS 433.267(1)(a) through (d) include only the following options:

(A) Entering the updated evidence of immunization or exemption on the initial Certificate of Immunization Status form, insuring that the parent, health care practitioner, or an authorized representative of the Department re-signs and dates the form;

(B) Entering the updated evidence of immunization or exemption on a new Certificate of Immunization Status form, insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the form;

(C) Entering the updated evidence of immunization on a valid county-issued Exclusion Order for Incomplete Immunization or Insufficient Information insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the form (or uses the official department stamp);

(D) Entering the updated evidence of immunization on a piece of paper, insuring that the parent, health care practitioner, or an authorized representative of the Department signs and dates the paper (or uses the official department stamp); or

(E) The school/facility may choose to update the evidence of immunization on a form provided by the school/facility containing the language shown in **Exhibit 3**;

(F) The parent or school/facility may choose to update the Certificate of Immunization Status by transcribing an already appropriately completed, signed and dated record which is attached to the Certificate of Immunization Status. The Certificate of Immunization Status needs to be signed and dated by the person transcribing the information. A reference should be made to the attached record;

(G) The parent may choose to update the evidence of immunization by attaching to a Certificate of Immunization Status form one of the following records:

(i) A health care practitioner documented immunization record;

(ii) An unsigned record on health care practitioner letterhead; or

(iii) An unsigned record printout from the statewide immunization system, Oregon Immunization ALERT.

(e) The statement signed by the parent of a transferring child to a school/facility indicating that the record will be provided within 30 days of initial attendance, under ORS 433.267(1)(d), shall be printed on the top portion of the Exclusion Order for No Record which has been presigned by an authorized representative of the Department.

(A) The administrator shall make every effort to ensure that the parent of a transferring child signs the Exclusion Order for No Record when the parent brings the child to the school/facility to register or brings the child on the first day of attendance;

(B) The administrator shall determine the exclusion date to be used for the Exclusion Order for No Record. The exclusion date must be no sooner than 30 days after initial attendance, but no later than the next mandated "No Record" exclusion (third Wednesday in February). When the parent signs the Exclusion Order for No Record, the administrator provides the parent a copy of the order.

(C) If the parent did not accompany the transferring child to the school/facility to register or accompany the child on the first day of attendance, the administrator will so indicate on the Exclusion Order for No Record. If for some other reason the Exclusion Order for No Record was not signed by the parent, the administrator will so indicate on the order. If the parent did not receive a copy of the Exclusion Order for No Record, the administrator must mail a copy of the Exclusion Order for No Record to the parent no later than 14 days before the exclusion date;

(D) Where the parent does not comply (30 days or more have passed) with the signed statement in subsection (1)(e) of this rule, the administrator shall enforce the presigned Exclusion Order for No Record and exclude the child in accordance with the time schedule in OAR 333-050-0080(1)(b).

(2) If the child transfers to a new school district, except when the move is due to the normal progression of grade levels, such as to a junior high or senior high from a feeder school, the receiving school must assure that the transferred records are on a signed Certificate of Immunization Status form or another Health Services-approved form. The original transferred records that are not on an approved form shall be attached to a Certificate of Immunization Status form and the form shall be marked with a reference to the attached records, signed, and dated by the person transcribing the information on the form.

(3) The records relating to the immunization status of children in schools shall be part of the education record and shall be transferred to the receiving schools pursuant to ORS 326.575(2) within 30 days pursuant to ORS 433.267(1)(d).

(4) When a new enterer is admitted in error to a school or facility without an immunization history or appropriately signed exemption, the school or facility will immediately issue an Exclusion Order for No Record. The exclusion date shall be fourteen days after the date the exclusion order is mailed to the parent.

(5)(a) When a child is determined by the school or school district to be homeless and does not have a completed Certificate of Immunization Status on file with the school, an Exclusion Order for No Record will be issued and a copy will be given to the parent or guardian. The exclusion date will be 30 days from the date of enrollment. If the parent is not at registration, a copy of the Exclusion Order for No Record will be sent to the parent via the student at least fourteen days prior to the exclusion date.

(b) School staff shall make every effort to help the family compile an immunization record for the student, including requesting a record from a previous school, Oregon Immunization ALERT or a previous medical provider.

(6) Where a child attends both a facility and a school, the school is responsible for reporting and for enforcing these rules in accordance with the school/facility vaccine requirements. However, because of the need for outbreak control when school is not in session, the facility administrator will be responsible for requesting that the parent also provide an up-to-date Certificate of Immunization Status to the facility. If the parent doesn't comply, the facility administrator shall inform the parent that in the event of an outbreak the child will be excluded until it is determined that the child is not susceptible.

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

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

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 15-1986, f. & ef. 7-15-86; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0030; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

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333-050-0050

Immunization Requirements

(1) For purposes of this section, the following definitions and procedures apply:

(a) "Diphtheria/Tetanus containing vaccines":

(A) "DTP" — Injectable Diphtheria and Tetanus toxoids combined with whole cell pertussis vaccine. DTP vaccine is for use in children up to the seventh birthday;

(B) "DTaP" — Injectable Diphtheria and Tetanus toxoids combined with acellular pertussis vaccine. DTaP vaccine is for use in children up to the seventh birthday;

(C) "DT" — Injectable combined Diphtheria and Tetanus toxoids. Although Pertussis containing vaccine is recommended (but not required) for children up to the seventh birthday, particularly those in early infancy where the hazard of Pertussis is greatest, pediatric Diphtheria/Tetanus vaccine (DT) may be substituted for DTP and DTaP. DT vaccine is for use in children up to the seventh birthday;

(D) "Td" — Injectable combined Tetanus and Diphtheria toxoids. This is for use in children past their seventh birthday. This vaccine is comparable to DTP, DTaP and DT vaccines for immunization against diphtheria and tetanus.

(b) "Polio vaccines":

(A) "TOPV" — Trivalent oral polio vaccine (Sabin); or

(B) "IPV" — Injectable inactivated polio vaccine.

(c) "Measles, Mumps, and Rubella injectable vaccines":

(A) "MMR" — Combined Measles, Mumps, and Rubella injectable vaccine;

(B) "MR" — Combined Measles and Rubella injectable vaccine;

(C) "Measles" — Single antigen injectable vaccine;

(D) "Mumps" — Single antigen injectable vaccine;

(E) "Rubella" — Single antigen injectable vaccine;

(F) These vaccines may be given in combined forms, and/or as a single antigen vaccine. It is recommended that these vaccines be given at 12 to 15 months of age.

(G) Measles containing vaccines - includes A through C above. Second dose, if required, must be at least 28 days after first dose.

(d) "Haemophilus influenzae Type b (Hib) vaccines"- A Hib vaccine is for use in children up to the fifth birthday.

(e) "Hepatitis B injectable vaccines."

(f) "Varicella (Chickenpox) vaccine."

(g) Interrupted series: If there is a lapse of time between doses longer than that recommended by the standard described in OAR 333-050-0120, the schedule should not be restarted. Immunization may resume with the next dose in the series.

(h) Partial doses: Because the efficacy of immunizing with partial doses of the vaccines listed in subsection (1)(a) through (f) of this rule is not known, this procedure does not satisfy the requirements of these rules.

(2) For purposes of ORS 433.267(1), immunizations are required as follows:

(a) Diphtheria/Tetanus containing vaccine — Four doses, unless:

(A) The fourth dose was received prior to four years of age, in which case a fifth dose is also required*; or

(B) The third dose of Diphtheria/Tetanus containing vaccine was received on or after the seventh birthday, in which case the child is complete with three doses; or

(C) A child enrolled before SY 1998/99 is complete for Diphtheria/Tetanus containing vaccine with three doses of DTaP, DTP or DT, if the first dose of DTaP, DTP or DT was received at or after the first birthday and the third dose was received at or after the child's fourth birthday.

(b) Polio — Four doses* unless:

(A) The third dose was given at or after the fourth birthday, in which case the child is complete with three doses of polio vaccine; or

(B) The student is 18 years of age or older. Polio vaccination at or after the 18th birthday is not required.

(c) Measles — The first dose, must be received at or after 12 months of age. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. Second dose, if required, must be received at least 28 days after first dose (See Table 1);

(d) Rubella — One dose, must be received at or after 12 months of age.

(e) Mumps — One dose, must be received at or after 12 months of age.

(f) Haemophilus influenzae Type b (Hib) vaccine — Up to four doses depending on the child's current age and when previous doses were administered. (See Table 1 to determine the number of required doses.)

(g) Hepatitis B- Up to three doses (See Table 1). If the first dose was received at or after eleven years of age and the second dose is received at least four months after dose one, the child is complete with two doses.

(h) Varicella- Up to two doses, depending on the child's age when the first dose was administered. The first dose must be received at or after 12 months of age and after March 1995, the date the vaccine was licensed in the United States. For the purposes of assessment for compliance with these rules, a dose is considered in compliance if the dose was given in the same month and year as the child's first birthday. (See Table 1 to determine the number of required doses).

* A child cannot be excluded from school for not having the 5th dose of Diphtheria/Tetanus containing vaccine or 4th dose of Polio until kindergarten.

(3) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services shall give notice in writing to all local health departments when the suspension takes effect. Additional written notice shall be given to all local health departments when the suspension is lifted. Local health departments will notify schools/facilities of any temporary suspensions that affect their procedures under these rules. Any waived vaccine doses will be required at the next review cycle following the lifting of the suspension.

(4) The local public health officer, after consultation with Health Services, may allow a child to attend a school or facility without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the parent of the affected student detailing which vaccines the student is being exempted from. The letter must state that the student will receive an exclusion order if the student's record is not updated with the missing doses prior to the next exclusion cycle.

(b) A copy of the letter must be attached to the student's Certificate of Immunization Status on file at the school or facility.

(c) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one child.

(d) If the vaccine is still unavailable at the next exclusion cycle, the Department, with the agreement of Health Services, will not issue exclusion orders for the unavailable vaccine.

(5) Medical or immunity exemptions from immunization requirements are allowed as follows:

(a) The following immunity exemptions satisfy the immunization requirements for the specified vaccines:

(A) Exemption for Measles, Mumps or Rubella vaccination due to a disease history may be certified by a physician or an authorized representative of the Department for a child who has immunity based on a health care practitioner's diagnosis;

(B) Exemption for Measles, Mumps or Rubella vaccination due to a documented immune titer may be certified by a physician or an authorized representative of the Department;

(C) Exemption for Hib conjugate vaccination may be certified by a physician or authorized representative of the Department for a child who experienced invasive Haemophilus influenzae Type b disease at 24 months of age or older.

(D) Exemption for Varicella vaccine may be signed by the parent for history of varicella. The date of the disease is not required. This exemption will be automatically authorized by the Department.

(E) Exemption for Hepatitis B vaccination based on laboratory confirmation of immunity or confirmation of carrier status may be certified by a physician or authorized representative of the Department.

(b) Children possessing the following medical exemptions are susceptible to the diseases for which they are exempt from vaccination:

(A) Exemption for rubella or varicella vaccination may be certified by a physician or an authorized representative of the Department for a post-pubertal female when it is believed that there is a significant risk of her being or becoming pregnant within one month for varicella or three months for rubella;

(B) Exemption for one or more immunization(s), shall be established by a specific diagnosis based on a specific medical contraindication certified by a physician or an authorized representative of the Department. The vaccine(s) and the specific medical diagnosis must be documented on the record.

(c) Exemptions submitted to the school/facility must be in English.

(6) A child may attend a school/facility under ORS 433.267(1) if the child is incomplete but up-to-date and remains up-to-date and in compli-

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ance with immunization schedules for spacing between doses presented in OAR 333-050-0120.

(7) If evidence is presented to the Department that an exclusion order was issued in error because a vaccine was given within the four-day grace period recommended by the Advisory Committee on Immunization Practices as published in the General Recommendations on Immunization, the Department shall rescind the exclusion order. The Department shall notify the child's school or facility when an exclusion order is rescinded.

(8) In situations where a child's vaccine history presents an unusual problem not covered by these rules, the Department shall use its judgment to make a final determination of the child's immunization status.

(9) Religious exemption from immunization requirement is allowed for one or more of the vaccines. Where a specific vaccine is not indicated for the religious exemption, it shall be interpreted that the exemption covers all of the vaccines required by these rules.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Stats. Implemented: ORS 433.273
Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 10-1991, f. & cert. ef. 7-23-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 12-2000, f. & cert. ef. 12-26-00; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0035; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0060

Primary Review of Records

(1) At least annually the administrator will conduct a primary review of each child's record to determine the appropriate category of each child. This review shall be completed no later than five weeks (35 days) prior to the third Wednesday in February (usually the second Wednesday in January) unless otherwise approved in writing first by the Department and then by Health Services.

(2) The administrator shall categorize all children as follows:

(a) "Complete": This category applies to any child whose record indicates that he/she is fully immunized as specified by OAR 333-050-0050(2) or (5)(a);

(b) "Religious Exemption": This category applies to any child whose incomplete immunizations are covered by a religious exemption;

(c) "Medical Exemption": This category applies to any child who is susceptible because of a Medical Exemption Statement on file as specified by OAR 333-050-0050(5)(b);

(d) "Incomplete Immunizations": This category applies to any child whose record indicates that he/she is not fully immunized as specified in OAR 333-050-0050(2). This category only includes a child who is past due on his/her immunizations on or before the date the Primary Review Summary form is due at the Department;

(e) "Insufficient Information": This category applies to any child whose record does not have enough information to make a proper determination about the child's immunization status, including unsigned records, vaccine dates before day of birth, dates out of sequence, missing doses in the middle of a vaccine series, more than two doses of a vaccine series given in the same month and dates before vaccine licensure. This category does not apply to signed but undated records;

(f) "No Record": This category applies to any child with no record on file at the school/facility.

(g) "Children not to be counted": School age children also attending a facility should be counted by the school. Children enrolled in a school but physically attending another school should be counted by the school they physically attend. Children attending a preschool or Head Start program and another facility should be counted by the preschool or Head Start program. Children physically attending more than one child care facility or school should be counted by the facility or school where they attend the most hours.

(3)(a) Five weeks (35 days) prior to the third Wednesday in February, unless otherwise approved in writing first, by the Department and then by Health Services, the administrator shall provide to the Department for secondary review:

(A) Organized alphabetically within category, copies of records or a computer printout of the records of all children with incomplete immunizations or insufficient information, except where the Department has explicitly indicated to the administrator that the child is not yet due for his/her next immunization. In this case the record or computer printout should not be forwarded for review until the specified secondary review date;

(B) Copies of Exclusion Order for No Record for children who have no record on file at the school/facility. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from

a currently Health Services approved system of children with no record is an acceptable alternative;

(C) Copies of records of children with a medical or immunity exemption, except those records which:

(i) Are specified in OAR 333-050-0050(5)(a)(D); or

(ii) Have been certified by the Department as having a permanent medical or immunity exemption and are otherwise complete with no further review required.

(D) A completed Primary Review Summary Form, which includes an alphabetical list, for each category, of children whose records are enclosed, specifying each child's name, current grade level, parent(s) name and current mailing address. Also listed alphabetically should be the names of the children for whom an Exclusion Order for No Record has been attached. If mutually agreed upon by the affected school/facility and the Department, a computer-generated list from a currently Health Services approved system of children with no record is an acceptable alternative;

(E) The administrator shall review the completed Primary Review Summary Form for mathematical accuracy and correct any errors before forwarding the completed Primary Review Summary Form to the Department.

(b) All copies of records provided to the Department for secondary review must contain at least the following: The child's name; date of birth; current grade level; parent(s) name and current mailing address; and evidence of immunization or exemption. A copy of the records or a data processing printout of the records must be used in place of the original record.

(A) The computer printouts and the results from computer generated immunization assessments (computer outputs) must have the prior approval of Health Services. To receive approval to be used for the primary review report in January, computer printouts and computer outputs must be received by Health Services no later than the last working day of November in the year prior to the year in which the primary review reports are due.

(B) The computer printout will be reviewed for essential data elements and the sequence of data elements. Health Services reserves the right to require proof of specific test data and approval by Health Services of the test results as calculated by computerized system.

(C) Provisional approval will be given to a computer tracking system after correct assessment has been confirmed for test data and essential data elements in required reports. Computer tracking systems with provisional approval will be reviewed after use during the annual review and exclusion cycle. Final approval will be given after any programming errors identified during the cycle have been corrected by the tracking system and additional printouts have been approved by Health Services.

(D) Health Services also reserves the right to withdraw computer system approval.

(E) When ORS 433.235 to 433.280 and/or these rules are amended, computer systems must be updated within 120 days. Health Services will then allow 60 days for review, needed changes and final approval. Computer outputs that are not in compliance will not be authorized for use during the annual review and exclusion cycle.

(4) Additional review cycles for incomplete/insufficient records with specific time-frames are allowable if mutually agreed upon in writing by the affected Department and schools/facilities. Exclusion dates shall be no less than 14 days from the date that the Exclusion Orders are mailed.

(5) It is the responsibility of the administrator to see that primary review of immunization records is accomplished according to these rules. All or part of the actual review may be delegated by mutual agreement of parties affected to a third party subject to this requirement.

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

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0040; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0080

Exclusion

(1) The Department may use one of two Exclusion Orders depending upon the reason the child is found to be in non-compliance with ORS 433.267(1) and these rules:

(a) Exclusion Order for Incomplete Immunization or Insufficient Information:

(A) No later than 21 days from the date that the secondary review began, the Department shall send an appropriately completed and signed order of exclusion to the parent of each child with an incomplete or insufficient record. If a student is emancipated or has reached the age of major-

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ity, the Exclusion Order will be sent to him/her. The original copy shall be mailed first class to the parent of the child to be excluded. In the event that the Department has knowledge that the address of the parent, provided on the Primary Review Summary Form is incorrect, the Department shall use all reasonable means to notify the parent, including inquiries to the school/facility administrator and the local Post Office to establish the appropriate mailing address and sending home from the school a copy of the Exclusion Order with the child. After all reasonable means have been exhausted, the administrator shall exclude the child on the stated exclusion date. For all orders issued, one copy of the Exclusion Order shall be sent to the administrator and the Department shall retain one copy. The Department shall also retain copies of the records of children to be excluded until notification from the school/facility that such children are in compliance;

(B) The Department shall indicate on the Primary Review Summary Form, the status of each child whose records it reviewed and shall submit a copy of that form to the administrator along with copies of Exclusion Orders issued;

(C) The date of exclusion shall be 35 days from the date that the secondary review began. Additional exclusion cycles with specific time frames are allowable if mutually agreed upon in writing by the affected Department and school/facilities. Exclusion dates shall be set at no less than 14 days from the date that the Exclusion Orders are mailed;

(D) For children excluded for insufficient information and/or incomplete immunizations, compliance will be achieved by submitting to the administrator one of the statements allowed in OAR 333-050-0040(1)(d)(A) through (G);

(E) When the administrator verifies that the requested information has been provided per the Exclusion Order or that an appropriate medical and/or religious exemption has been provided, the child shall be in compliance with ORS 433.267(1) and these rules and qualified for school/facility attendance.

(F) On the specified date of exclusion, the administrator shall exclude from school/facility attendance all children so ordered by the Department until the requirements specified by the Department are verified by the administrator;

(G) The Department shall maintain copies of immunization records of children excluded and shall maintain contact with administrators regarding the status of such children.

(b) Exclusion Order for No Record:

(A) Where the parent does not comply with the requirements of the Exclusion Order for No Record (30 days or more have passed since initial attendance), the administrator shall enforce the exclusion date indicated on the presigned order and exclude the child.

(B) If the exclusion date used is the mandated date (third Wednesday of February), it is recommended that the administrator mail the parent a second copy of the Exclusion Order for No Record five weeks prior to exclusion day;

(C) Five weeks prior to the mandated exclusion date (third Wednesday in February), a copy of each presigned Exclusion Order for No Record for all students for whom no record exists at that time shall be sent to the Department. If mutually agreed upon by the school/facility and the Department, a computer generated list is an acceptable alternative;

(D) Exclusion may be avoided before the date specified on the Exclusion Order for No Record, by submission to the school of evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a medical or religious exemption. If the Exclusion Order for No Record is enforced and the child is excluded, the child may re-enter school after presenting evidence of immunization(s) which includes at least one dose of each vaccine required for that grade, or a religious or medical or immunity exemption.

(2) If children whose records are not updated on the specified exclusion day arrive at their school/facility, the administrator shall make every effort to contact their parent by phone. The administrator shall place excluded children in a space away from the other children until their parent arrives to pick them up or until they are returned home by regular school district transportation.

(3) If the excluded children do not meet the requirements specified by the Department and do not return to school within four school days, it is the responsibility of the public school administrator, as proper authority, to notify the attendance supervisor of the unexcused absence. The attendance supervisor is required to proceed as required in ORS 339.080 and 339.090.

(4) Children who have been issued an Exclusion Order are not entitled to begin or continue in attendance in any school or facility in Oregon while the Exclusion Order is still in effect. Administrators who receive, or

are otherwise made aware of the records of a child from another school/facility containing an Exclusion Order, which has not been cancelled, shall notify the parent(s) and immediately exclude the child until the requirements specified on the Exclusion Order are met and verified by the administrator.

(5) Twelve days after the mandatory February exclusion date, the administrator shall ensure that the Primary Review Summary Form returned from the Department is updated by appropriately marking the current status of each child as specified (including children listed as having no record); that the mathematics on the Primary Review Summary Form are accurate; and that a copy of the revised Primary Review Summary Form is forwarded to the Department on that day by first class mail or hand delivery. The administrator shall maintain a file copy of the updated Primary Review Summary Form.

(6) The Department shall review the updated Primary Review Summary Form for mathematical accuracy. Any errors should be corrected by contacting the affected school/facility.

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

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 23-1981, f. & ef. 11-17-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 22-1983, f. & ef. 11-1-83; HD 8-1987, f. & ef. 7-15-87; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0050; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0090

Administrative Hearings for Review of Exclusion Orders

(1) Each Exclusion Order issued under OAR 333-050-0080 shall contain a notice informing the recipient of the opportunity to obtain an administrative hearing to review the order, pursuant to this rule.

(2) An administrative hearing provides a parent who believes the order to be in error the opportunity to obtain a review in person before the Department. An administrative hearing is not for the purpose of challenging the propriety or validity of the law or rules, nor is it for the purpose of supplementing an existing record. A record may be supplemented at any time without the necessity of an administrative hearing by presentation of the required documentation, pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D).

(3) A request for an administrative hearing shall be made in writing by the parent and must be received by the Department no later than seven (7) days prior to the date set for the exclusion of the child. If not, the right to a hearing shall be deemed waived, unless proof is provided by the parent that the order was not received at least 11 days prior to the date set for the exclusion of the child or that other good cause for the delay exists as determined by the Department. A parent's request for hearing shall explain in what respect the parent believes the order to be in error. The purpose of this explanation by the parent is to identify the issues to be addressed at the hearing and to determine whether there is a possibility of resolving the matter without a hearing. If the explanation is not provided, the Department shall request the parent to, in advance of the hearing, provide the reason. Unless the reason is provided prior to the date of exclusion, the hearing shall be deemed waived.

(4) If prior to the hearing the order of exclusion is found by the Department to be in error, or if prior to the hearing, compliance is achieved pursuant to OAR 333-050-0080(1)(a)(D) and (b)(D), the Exclusion Order may be rescinded without a hearing and formal decision.

(5) The Department shall schedule a requested hearing to commence prior to the date set for exclusion of the child from the school/facility. If it is not possible to do so, the hearing shall be scheduled to commence as soon as possible after the date set for exclusion. When a hearing is scheduled for on or after the date of exclusion, the Department shall provide written notice to the school/facility that the exclusion of the child should be held in abeyance pending a notification of the decision following the hearing. Notification of the date, time, and place of the administrative hearing shall be provided to the parent, together with a copy of this OAR rule. Notice sent by first class mail will suffice.

(6) The chief administrator of the Department or his or her designee shall be the hearing officer.

(7) The parent or his/her authorized representative shall have the right to:

(a) Inspect in advance of the administrative hearing any documentary evidence leading to the Exclusion Order;

(b) Be represented by legal counsel;

(c) Question and confront witnesses; and

(d) Present evidence that is relevant to the issues in the hearing, either through witnesses or documentary evidence.

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(8) The Department shall present the evidence which is the basis for the Exclusion Order at the hearing.

(9) The hearing may be continued for good cause and for reasonable periods as determined by the hearing officer.

(10) The decision arrived at shall:

(a) Be based solely on the evidence presented at the hearing and such matters as the hearing officer takes judicial notice of;

(b) Be written and in a form and substance which either affirms or rescinds the Exclusion Order and which states the reasons and identifies the evidence relied upon for such affirmation or rescission; and

(c) Be maintained as a record of the Department and a copy provided to the parent and to the administrator of the school/facility if the school/facility has been previously notified to hold the order of exclusion in abeyance pending the decision.

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

Stats. Implemented: ORS 433.273

Hist.: HD 2-1982, f. & ef. 2-4-82; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; HD 16-1997, f. & cert. ef. 12-3-97; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0051; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0100

Follow Up

(1) In the event that any of the records are original documents the Department shall return such records to the administrator.

(2) The administrator shall be responsible for updating records each time the parents, health care practitioner, or an authorized representative of the Department provides evidence of immunization and/or a medical or religious exemption on each child.

(3) When a person is diagnosed as having one of the following school/facility restrictable diseases:

(a) Diphtheria, Measles, Pertussis, Rubella, or, in children's facilities only, Polio, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student and/or employee who is susceptible to that disease.

(b) Varicella, the local health officer (or designee) may exclude from any school or facility in his/her jurisdiction, any student in a grade in which Varicella vaccine or disease history is required, who is susceptible to that disease.

(c) More information on disease restrictions for schools and facilities can be found in OAR 333-019-0010 and 333-019-0014.

(4) The administrator shall maintain a system to track susceptibles, in case of request by the local health department. The local health department may request that the list be sorted by disease susceptibility, classroom, grade, and/or school. The administrator will provide the sorted list within one calendar day in order to facilitate appropriate disease control measures.

(5) The Department and/or Health Services may conduct school/facility record validation surveys to insure compliance with ORS 433.235 through 433.280 and these rules.

(6) The Department and/or Health Services may require, if deemed necessary, that an additional review cycle be conducted on any school/facility records that were found in substantial non-compliance with these rules during the validation survey.

(7) Health Services may issue exclusion orders as needed for compliance with these rules during the validation survey process and when Health Services is the recognized Public Health Authority in the county.

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

Stats. Implemented: ORS 433.273

Hist.: HD 21-1981, f. & ef. 10-21-81; HD 17-1982, f. & ef. 8-13-82; HD 12-1983, f. & ef. 8-1-83; HD 6-1991, f. & cert. ef. 5-15-91; HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0055; OHD 26-2001, f. & cert. ef. 12-4-01; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0130

Second Dose Measles in Post Secondary Educational Institutions

(1) Health Services shall require each post-secondary educational institution, except a community college and a private, proprietary vocational school, to require that each entering full-time student born on or after January 1, 1957, has two doses of measles vaccine prior to the student's second quarter or semester of enrollment on an Oregon campus, using procedures developed by the institution.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between the first and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each post-secondary educational institution under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption

(4) Each post-secondary educational institution under the jurisdiction of the law shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

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

Stats. Implemented: ORS 433.273

Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0080; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

333-050-0140

Second Dose Measles in Community Colleges

(1) Health Services shall require each community college to require that students involved in clinical experiences in allied health programs, practicum experiences in education and child care programs and membership on intercollegiate sports teams have two doses of measles vaccine prior to each student's participation. The requirement shall apply only to those students born on or after January 1, 1957, using procedures developed by the institutions.

(2) The following records may be accepted as adequate proof of two doses of measles vaccine:

(a) Two doses (written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of each dose) on or after the first birthday, with a minimum of 28 days between first dose and second dose; or

(b) No available month and year for the first dose but written documentation by student, health care practitioner, or an authorized representative of the Department of the month and year of the second dose in or after December, 1989.

(3) Each community college under the jurisdiction of the law shall include a medical or immunity exemption and religious exemption.

(4) Each community college shall develop procedures to implement and maintain this requirement.

(5) Health Services may conduct validation surveys to insure compliance.

(6) The State Health Officer shall have the right to suspend temporarily any portion of these requirements due to unforeseen circumstances. Health Services will notify in writing affected educational institutions. The notification will include the details of the suspension, not limited to: the suspended requirements, the anticipated duration of the suspension and policies to be implemented during the suspension.

(7) The local public health officer, after consultation with Health Services, may allow a student to attend an educational institution without meeting the minimum immunization requirements in case of temporary local vaccine shortage.

(a) The Department shall provide a letter signed by the local health officer to the affected student stating that the vaccine requirement is being postponed. The letter must give guidance to the school about when vaccine is expected to be available.

(b) A photocopied form letter signed by the local health officer may be used by the Department when the shortage is expected to affect more than one student.

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Stat. Auth.: ORS 433.001, 433.004, 433.006 & 433.235 - 433.284
Stats. Implemented: ORS 433.273
Hist.: HD 9-1992, f. & cert. ef. 8-14-92; OHD 14-2001, f. & cert. ef. 7-12-01, Renumbered from 333-019-0090; OHD 21-2002, f. & cert. ef. 12-13-02; PH 35-2004(Temp), f. & cert. ef. 11-10-04 thru 5-6-05; PH 2-2005, f. & cert. ef. 2-3-05

Adm. Order No.: PH 3-2005

Filed with Sec. of State: 2-4-2005

Certified to be Effective: 2-4-05

Notice Publication Date: 1-1-05

Rules Amended: 333-505-0007

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

Rules Coordinator: Christina Hartman—(503) 947-1187

333-505-0007

Physician Credentialing, Health Care Service Contractors

(1) The Oregon Practitioner Credentialing application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPCI) on September 28, 2004, are adopted with respect to health care service contractors.

(2) Each health care service contractor shall use the application forms adopted in section (1) of this rule.

(3) This rule is adopted pursuant to the authority of ORS 442.807 for the purpose of enabling the collection of uniform information necessary for health care service contractors to credential physicians seeking designation as a participating provider for a health plan, thereby implementing ORS 442.800 through 442.807 with respect to health care service contractors.

Stat. Auth.: ORS 442.807

Stats. Implemented: ORS 442.800 - 442.807

Hist.: OHD 5-2002, f. & cert. ef. 3-4-02; PH 4-2004, f. & cert. ef. 2-6-04; PH 3-2005, f. & cert. ef. 2-4-05

Department of Human Services, Self-Sufficiency Programs Chapter 461

Adm. Order No.: SSP 1-2005(Temp)

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05 thru 6-30-05

Notice Publication Date:

Rules Amended: 461-140-0040, 461-145-0910, 461-145-0920

Subject: Rules 461-140-0040, 461-145-0910 and 461-145-0920 are being amended to clarify gross income for self-employment is the gross sales and receipts and that newspaper carriers may be considered self-employed for all programs if the business considers them to be independent contractors.

Rules Coordinator: Annette Tesch—(503) 945-6067

461-140-0040

Determining Availability of Income

This rule describes the date income is considered available, what amount of income is considered available and situations in which income is considered unavailable.

(1) Income is considered available the date it is received or the date a member of the financial group has a legal right to the payment and the legal ability to make it available, whichever is earlier, except as follows:

(a) Income usually paid monthly or on some other regular payment schedule is considered available on the regular payment date if the date of payment is changed because of a holiday or weekend.

(b) Earned income withheld or diverted at the request of an employee is considered available on the date the wages would have been paid without the withholding or diversion.

(c) An advance or draw of earned income is considered available on the date it is received.

(d) Income that is averaged, annualized, converted, or prorated is considered available throughout the period for which the calculation applies.

(e) A payment due to a member of the financial group, but paid to a third party for a household expense, is considered available when the third party receives the payment.

(2) The amount of income considered available is the gross before deductions, such as garnishments, taxes, or other payroll deductions. The following income is not considered available:

(a) Wages withheld by an employer in violation of the law.

(b) Income received by another person who does not pay the client his or her share.

(c) Income received by a member of the financial group after he or she has left the household.

(d) Moneys withheld from or returned to the source of the income to repay an overpayment from that source, if the repayment is not countable under OAR 461-145-0105 or is excluded in section (4)(b) of this rule.

(e) For a client who is not self-employed, income required to be expended on an ongoing, monthly basis on an expense necessary to produce the income, such as supplies or rental of work space.

(f) In the FS program, income received by the financial group but intended and used for the care of someone not in the financial group as follows:

(A) If the income is intended both for someone in the financial group and someone not in the financial group, the portion of the income intended for the care of the person not in the financial group is considered unavailable.

(B) If the portion intended for the care of the person not in the financial group cannot readily be identified, the income is prorated evenly among the people for whom the income is intended. The prorated share intended for the care of the person not in the financial group is then considered unavailable.

(g) In the EXT, FS, MAA, MAF, OHP, and TANF programs, the client is a victim of domestic violence and the client's abuser controls the income and will not make the money available to the filing group.

(3) In the OHP program, an expenditure by a business entity that benefits a principal is considered available when the expenditure is made. A principal is a person with significant authority in a business entity. This includes a sole proprietor, a self-employed person (see OAR 461-145-0910), a partner in a partnership, a member or manager of a limited liability company, and an officer or principal stockholder of a closely held corporation.

(4) The following income is considered available even if not received:

(a) Deemed income.

(b) In the GA, GAM, MAA, MAF, OSIP, OSIPM, QMB, and TANF programs, the portion of a payment from an assistance program, such as public assistance, unemployment compensation, or social security, withheld to repay an overpayment.

Stat. Auth.: ORS 409.050, 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.117, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05

461-145-0910

Self-Employment; General

(1) Self-employment income is income resulting from one's own business, trade, or profession, rather than from a specified salary or wage paid by an employer. A client is considered self-employed if he or she meets the criteria in sections (2) and (3) of this rule. If a client has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) A shareholder in a corporation is not self-employed by virtue of the ownership interest in the corporation but only by meeting the requirements of section (3) of this rule.

(3) A person is self-employed for the purposes of this division of rules if he or she meets at least five of the following criteria:

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(a) Is engaged in an enterprise for the purpose of producing income.
(b) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(c) Has principal responsibility for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(d) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(e) Is not covered under an employer's liability or workers' compensation insurance policy.

(f) Contracts for a site or works out of another's business location.

(4) Notwithstanding sections (2) and (3) of this rule:

(a) Home care providers paid by the Department are not self-employed.

(b) Child care providers paid by the Department, adult foster care providers paid by the Department, realty agents, and clients who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(c) Newspaper carriers are self-employed if the business considers them to be independent contractors.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is annualized or averaged if it meets the following criteria:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Self-employment income is averaged when a financial group begins self-employment and is unable to determine what the income and costs will be during the budget month.

(6) In the GA, OSIP, OSIPM, and QMB programs, self-employment income is considered available upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

Stat. Auth.: ORS 411.060, 411.816, 418.040

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05

461-145-0920

Self-Employment; Costs That Are Excluded To Determine Countable Income

This rule explains how to determine which costs are excluded from gross self-employment income.

(1) Unless prohibited by section (2) of this rule, and subject to the provisions of sections (3) and (4) of this rule and to OAR 461-145-0930, the necessary, verifiable costs of producing self-employment income are excluded from gross sales and receipts, including but not limited to:

(a) Labor (wages paid to an employee or work contracted out);

(b) Materials used to make a product;

(c) In the Food Stamp program – principal and interest paid to purchase income-producing property, such as real property, equipment or capital assets. In all other programs, interest paid to purchase income-producing property, such as equipment or capital assets;

(d) Insurance premiums, taxes, assessments, and utilities paid on income-producing property;

(e) Service, repair, and rental of business equipment (including motor vehicles) and property that is owned, leased or rented;

(f) Advertisement and business supplies;

(g) Licenses, permits, legal, or professional fees;

(h) Transportation costs at 20 cents per mile, if the cost is part of the business expense. Commuting expenses to and from the worksite are not part of the business expense;

(i) Charges for telephone service that are a necessary cost for self-employment;

(j) Meals and snacks provided by family day care providers receiving USDA meal reimbursements for children in their care (including their own). Use the actual cost of the meals if the provider can document the cost. If they cannot document the actual cost, use the following figures:

(A) Breakfast — \$.83;

(B) Lunch — \$1.51;

(C) Dinner — \$1.51;

(D) Snacks — \$.45.

(k) Materials purchased for resale, such as Avon products. For newspaper carriers, this includes the cost of newspapers, bags, and rubber bands.

(2) The following costs are not excluded:

(a) Business losses from previous months;

(b) Except in the Food Stamp program, payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods;

(c) Federal, state and local income taxes, draws or salaries paid to any financial group member, money set aside for personal retirement, and other work-related personal expenses (such as transportation, personal business, and entertainment expenses);

(d) Depreciation. Depreciation is a prorated lessening of value assigned to a capital asset based on its useful life expectancy and initial cost;

(e) Costs related to traveling to another area to seek business when there is no reasonable possibility of deriving income from the trip;

(f) Interest or fees on personal credit cards;

(g) Personal telephone charges;

(h) Additionally for MAF and OHP, the costs of real property used as both a home and a business, unless the real property (including utilities) used for business is separate from the dwelling in which the financial group lives; and

(i) Shelter or utility costs associated with the client's home, except as authorized by section (3) of this rule.

(3) The exclusions for items used for both business and personal purposes, such as automobiles and real property (including utilities), are limited by the following rules:

(a) For MAF and OHP, the costs of real property (including utilities) are prorated if a separate office or shop is located on the property used as a home. No expense is allowed if the office or shop is part of the dwelling in which the client lives. For other items, the portion of the expense that is for business use only is excluded;

(b) For ERDC, GA, GAM, OSIP, OSIPM and QMB, the portion of the expense that is for business use only is excluded;

(c) For FS, costs are excluded for a separate office or shop located on the property used as a home, unless the office or shop is part of the dwelling in which the client lives. Costs for other items used for both business and personal use are excluded.

(4) If no member of the financial group has been self-employed for a sufficiently long period to ascertain the costs of self-employment, they may be estimated.

(5) For a client participating in the microenterprise component of the JOBS program, costs are excluded according to general accounting principals, as applied by a certified public accountant, bookkeeping firm, or other entity approved by the Department, and this rule.

Stat. Auth.: ORS 411.060, 411.816 & 418.040

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 24-1998(Temp), f. 11-30-98, cert. ef. 12-1-98 thru 3-31-99; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05

Department of Justice Chapter 137

Adm. Order No.: DOJ 2-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 12-1-04

Rules Amended: 137-008-0010

Subject: In part, the rule establishes the prices of Department publications. Amendment is necessary to reflect changing the name of the Attorney General's Model Public Contract Rules Manual to "Attorney General's Public Contracts Manual," and to reflect an increase in the price of the Manual. This rule replaces an identical temporary rule that was adopted on and in effect since November 1, 2004.

Rules Coordinator: Carol Riches—(503) 378-6313

ADMINISTRATIVE RULES

137-008-0010

Fees for Public Records and Publications

(1)(a) The Department of Justice may charge a fee reasonably calculated to reimburse the department for costs of providing and conveying copies of public records. The department shall charge 25¢ per page for the first 20 pages and 15¢ per page thereafter to recover the costs of photocopying and normal and reasonable staff time to locate, separate, photocopy and return document(s) to file and to prepare/mail public record(s) to requestors. If, for operational or other reasons, the Department uses the services of an outside facility or contractor to photocopy requested records, the department shall charge the actual costs incurred.

(b) "Page" refers to the number of copies produced, either 8 1/2 x 11 or 8 1/2 x 14. Staff will not reduce the copy size or otherwise manipulate records in order to fit additional records on a page, unless staff concludes that it would be the most effective use of their time. Consistent with ORS 192.240, all copies will be double-sided. A double-sided copy consists of two pages. Because of the increased staff time involved in double-sided copying, there is no reduction in the per page fee.

(c) "Normal and reasonable" staff time is 10 minutes or less per request.

(2) Additional charges for staff time may be made when responding to record requests that require more than the "normal and reasonable" time for responding to routine record requests. Staff time shall be charged at the department's hourly billing rate, by position, as follows:

- (a) Assistant Attorney General; \$98/hr;
- (b) Alternative Dispute Resolution Coordinator; \$80/hr;
- (c) Investigator; \$76/hr;
- (d) Paralegal; \$69/hr;
- (e) Law Clerk; \$46/hr;
- (f) General Clerical; \$44/hr;
- (g) These charges are for staff time in excess of 10 minutes spent locating, compiling, sorting and reviewing records to prepare them for inspection, as well as all time required to segregate or redact exempt information or to supervise inspection of documents.

(3) The Department shall estimate the costs of making records available for inspection or providing copies of records to requestors. All estimated fees and charges must be paid before public records will be made available for inspection or copies provided.

(4) The Department may charge a fee reasonably calculated to reimburse the department for costs of department publications, Oregon District Attorneys Association publications prepared by the Department and other Department materials intended for distribution. A listing of such available publications and materials shall be maintained by the Department librarian. The Department shall charge the following for its regular publications:

- (a) Attorney General's Public Law Conference Papers; \$65;
- (b) Attorney General's Administrative Law Manual and Uniform and Model Rules of Procedure Under the APA; \$40;
- (c) Attorney General's Public Contracts Manual; \$65;
- (d) Attorney General's Public Records and Meetings Manual; \$20;
- (e) Attorney General Opinions:
 - (A) Bound Volumes; Volume 20 (1940-42) through Volume 49 (1997-2001) including 2-volume index; \$921;
 - (B) Future Bound Volumes; \$70;
 - (C) Slip Opinion Service (yearly); \$60;
 - (D) Letters of Advice Index, 1969-83; \$20;
 - (E) Letters of Advice Index, 1983-88; \$40;
 - (F) Letters of Advice Index, 1988-93; \$40;
 - (G) Future Letters of Advice Indices; \$40.

Stat. Auth.: ORS 192.430(2) & 192.440(3)
Stats. Implemented: ORS 192.440(3)

Hist.: JD 1-1982, f. & ef. 1-7-82; JD 1-1983(Temp), f. & ef. 5-3-83; JD 7-1983, f. & ef. 11-2-83; JD 4-1984(Temp), f. & ef. 11-7-84; JD 1-1985, f. & ef. 1-23-85; JD 3-1986, f. & ef. 1-27-86; JD 2-1990, f. & cert. ef. 2-14-90; JD 6-1994, f. 10-31-94, cert. ef. 11-1-94; JD 1-1998, f. & cert. ef. 2-4-98; DOJ 9-1999, f. & cert. ef. 12-8-99; DOJ 11-2001, f. & cert. ef. 12-10-01; DOJ 16-2003, f. & cert. ef. 12-9-03; DOJ 18-2003(Temp), f. & cert. ef. 12-10-03 thru 6-1-04; DOJ 13-2004(Temp), f. & cert. ef. 11-1-04 thru 1-31-05; DOJ 1-2005, f. & cert. ef. 1-13-05; DOJ 2-2005, f. & cert. ef. 2-1-05

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

Adm. Order No.: OSFM 2-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 11-1-04

Rules Amended: 837-012-0750

Subject: Revise OAR 837-012-0750 to change the permit fee from \$50 to \$75. A previous advisory committee meeting of February 9, 2005, and an administrative rule hearing on December 16, 2004, have been held with industry members, fire service, and the Office of State Fire Marshal.

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0750

Display Permit Application Fees

(1) Display Permit Application fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Display Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Display Permit Application until the check has cleared the bank.

(3) The Display Permit Application fee for a Display Permit is \$75.

(4) Display Permit Application fees are non-refundable and non-transferable.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 2-2005, f. & cert. ef. 2-15-05

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Adm. Order No.: OSFM 3-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 12-1-04

Rules Amended: 837-012-0610, 837-012-0615, 837-012-0620, 837-012-0625, 837-012-0645, 837-012-0650, 837-012-0670

Subject: Upon reviewing the existing permanent rules pertaining to retail fireworks, the following corrections and updates were made:

Revise OAR 837-012-0610(2) to update the acronym for the Bureau of Alcohol, Tobacco, and Firearms, formerly known as BATF. This federal agency is now known as the Bureau of Alcohol, Tobacco, Firearms and Explosives; therefore, the acronym should be changed to BATFE. Revise OAR 837-012-0610(3) 1998 edition to 2004 edition, revise OAR 837-012-0610(11)(b) 1998 edition to 2004 edition, and revise OAR 837-012-0610(24) to include specific examples of novelty items to include party poppers, pop-its, snappers, and sparklers.

Revise OAR 837-012-0615(2)(c) and (d) to change Oregon Uniform Fire Code, 1998 edition to Oregon Fire Code, 2004 edition.

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

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

Revise OAR 837-012-0645(9)(c) and (d) to change Oregon Uniform Fire Code, 1998 edition to Oregon Fire Code, 2004 edition. Revise OAR 837-012-0645(16)(a) 1998 edition to 2004 edition. Revise OAR 837-012-0645(16)(b) to the 2001 edition.

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

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

Rules Coordinator: Pat Carroll—(503) 373-1540, ext. 276

837-012-0610

Definitions

For purposes of ORS 480.110 through 480.165 and OAR 837-12-600 through 837-12-675, the following definitions apply:

(1) "Agricultural Fireworks" shall mean Fireworks used for the purpose of scaring away or repelling birds or animals pursuant to ORS 480.122 or controlling predatory animals pursuant to ORS 480.124.

(2) "BATFE" shall mean the Bureau of Alcohol, Tobacco, Firearms, and Explosives.

(3) "Building" shall have the meaning provided in the **Oregon Structural Specialty Code, 2004 Edition**. The term does not include a Tent, Canopy, Stand or trailer.

ADMINISTRATIVE RULES

(4) "Canopy" shall mean a temporary structure, enclosure or shelter; constructed of fabric or pliable materials; supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(5) "Carton, Container, or Case" shall mean any box, parcel, bundle, or other package used to hold or contain Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks for purposes of transportation and/or storage. The term does not include:

(a) The wrapping and/or packaging used to hold or contain a single, or small number of, Fireworks, Retail Fireworks, Public Display Fireworks or Agricultural Fireworks; or

(b) A vehicle or other mobile container used to transport Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

(6) "Combination Item" shall mean a device that contains combinations of two or more of the effects described in ORS 480.127(4)(b) to (g). See ORS 480.127(4)(a).

(7) "Cone Fountain" shall mean a cardboard or heavy paper cone containing not more than 50 grams of pyrotechnic composition. The effect upon ignition is the same as that of a cylindrical fountain. See ORS 480.127(4)(b).

(8) "Cylindrical Fountain" shall mean a cylindrical tube not more than three-fourths inch (19mm) inside diameter and containing not more than 75 grams of pyrotechnic composition. Upon ignition, a shower of colored sparks and sometimes a whistling effect is produced. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(c).

(9) "Employee" shall mean an Individual hired by a Retail Permit holder to Sell Retail Fireworks from a Retail Sales Outlet, or to otherwise engage in Retail Operations.

(10) "Exempt Fireworks" shall mean Novelties and Trick Noisemakers.

(11) "Exit" shall mean an opening or passageway that:

(a) Provides a means of leaving an enclosed space or area and

(b) Is required to be constructed and/or maintained by the **Oregon Structural Specialty Code, 2004 Edition**. The term may include a check stand Exit.

(12) "Fire Protection District" shall mean any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas. See ORS 480.110(2).

(13) "Fireworks" shall have the meaning provided in ORS 480.110(1). The term includes Retail Fireworks, Public Display Fireworks, and Agricultural Fireworks. The term does not include Exempt Fireworks.

(14) "Flitter Sparkler" shall mean a narrow paper tube containing not more than 100 grams of pyrotechnic composition that produces colored sparks upon ignition. The paper at one end of the tube is ignited to make the device function. See ORS 480.127(4)(d).

(15) "Ground Spinner" shall mean a small device similar to a Wheel in design and effect and containing not more than 60 grams of pyrotechnic composition. When placed on the ground and ignited, a shower of colored sparks is produced by the rapidly spinning device. See ORS 480.127(4)(e). The term does not include "Crazy Jacks", "Jumping Jacks" and similar spinning devices that do not have a means to prevent uncontrolled and unpredictable behavior during discharge, and due to uncontrolled and unpredictable behavior, present a severe hazard of fire and injury. The sale of such devices is therefore prohibited.

(16) "Illegal Fireworks" shall mean any Fireworks other than those described in ORS 480.127(4) including but not limited to, any Firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(17) "Illuminating Torch" shall mean a cylindrical tube containing not more than 100 grams of pyrotechnic composition. This device may be provided with a spike for insertion into the ground, a wood or plastic base for placing on the ground or a wood or cardboard handle if intended to be hand-held. See ORS 480.127(4)(f).

(18) "Individual" shall mean a single human being.

(19) "Individual Member of the General Public" shall mean any Person who has not been issued a wholesale permit, a general, limited or special effects public display permit, a Retail Permit or an agricultural permit by the Office of State Fire Marshal.

(20) "Individual Responsible for Sales" shall mean the Individual identified on the Permit Application who is responsible for the operation of the Retail Sales Outlet listed on the Permit Application.

(21) "Indoor Sales" shall mean sales of Retail Fireworks from inside a Building or Tent.

(22) "Local Fire Authority" shall mean the local fire official having jurisdiction over the Retail Site and/or the Retail Fireworks storage location.

(23) "NFPA" shall mean the National Fire Protection Association.

(24) "Novelties and Trick Noisemakers" shall mean those items described in **NFPA 1124, Section 1.4, 2004 Edition**. It also means Exempt Fireworks Novelty items include party poppers, pop-its, snappers, and sparklers.

(25) "Outdoor Sales" shall mean sales of Retail Fireworks from a Tent, Canopy, Stand or trailer.

(26) "Permit Application" shall mean the application form(s) and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a Retail Permit.

(27) "Public Display Fireworks" shall mean Fireworks that are authorized under a general, limited, or special effects public display permit issued pursuant to ORS 480.130, 480.140 and 480.150.

(28) "Retail Fireworks" shall mean those items described in ORS 480.127(4), specifically Combination Items, Cone Fountains, Cylindrical Fountains, Flitter Sparklers, Ground Spinners, Illuminating Torches, and Wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(29) "Retail Operations" shall mean the sale of Retail Fireworks from a Retail Sales Outlet to Individual Members of the General Public and related activities, including the purchase, possession, storage and transportation of Retail Fireworks.

(30) "Retail Permit" shall mean the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storage and sale of Retail Fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.110 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to fireworks.

(31) "Retail Sales Outlet" shall mean a permanently or temporarily erected structure or enclosure located at the Retail Site and from which Retail Fireworks are sold to Individual Members of the General Public. The term includes Stands, Tents, Canopies, Buildings, and trailers.

(32) "Retail Site" shall mean the physical location or address of the Retail Sales Outlet listed on the Retail Permit where Retail Fireworks are sold.

(33) "Retailer" shall mean any Person who Sells, transfers, or provides by any other means, or intends to Sell, transfer or provide by any other means, Retail Fireworks to Individual Members of the General Public.

(34) "Sales Display" shall mean the placement at a Retail Sales Outlet of Retail Fireworks to allow Individual Members of the General Public to view, handle and/or purchase the Retail Fireworks.

(35) "Sell" shall mean to transfer possession of property from one Person to another Person for consideration.

(36) "Stand" shall mean a booth temporarily erected and used for the sale of Retail Fireworks to Individual Members of the General Public.

(37) "Tent" shall mean a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects and is in compliance with Uniform Fire Code requirements for tents.

(38) "Volunteer" shall mean a member of a non-profit organization that has applied for and obtained a Retail Permit.

(39) "Wheel" shall mean a pyrotechnic device attached to a post or tree by means of a nail or string. Each wheel may contain not more than six driver units or tubes not exceeding one-half inch (12.5mm) inside diameter and containing not more than 60 grams of pyrotechnic composition. Upon ignition, the wheel revolves and produces a shower of colored sparks, and sometimes a whistling effect. See ORS 480.127(4)(g).

(40) "Wholesaler" shall mean any Person who Sells or provides by any other means, or intends to Sell or provide by any other means Fireworks, Retail Fireworks, Public Display Fireworks, or Agricultural Fireworks.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef.

ADMINISTRATIVE RULES

12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0615

General

(1) Retailers desiring to engage in other types of Fireworks activities, including wholesale sales, public displays or agricultural use, must meet all applicable requirements in ORS 480.110 through 480.165 and OAR chapter 837, division 12, including those pertaining to obtaining permits for such activities from local and state authorities.

(2) Retail Permit holders shall comply with all applicable federal, state and local laws, rules and regulations, pertaining to Fireworks, including:

- (a) ORS 480.110 through 480.165;
- (b) All applicable requirements of OAR chapter 837, division 12;
- (c) **Oregon Fire Code, 2004 Edition**; and
- (d) **Oregon Structural Specialty Code, 2004 Edition**.

(3) Retail Permit holders shall notify the Office of State Fire Marshal, verbally or in writing, within 24 hours of the date of change, of:

(a) The Retail Permit holder's mailing address or telephone number; or

(b) The mailing address or 24-hour contact number for the Individual Responsible for Sales.

(4) Retail Permit holders shall notify the Office of State Fire Marshal and the Local Fire Authority, in writing of a change in the identity of the Individual Responsible for Sales at least 24 hours before the new Individual becomes the Individual Responsible for Sales. Such a change is subject to the prior approval of the Local Fire Authority and the Office of State Fire Marshal.

(5) Exempt Fireworks are exempt from the permit requirements set forth in ORS 480.110 through 480.165 and OAR chapter 837, division 12. Exempt Fireworks may be sold and purchased without either the seller or purchaser having to first obtain a permit issued by the Office of State Fire Marshal.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0620

Retail Permit Applications

(1) Any Person engaged in, or intending to engage in, the sale or provision by any other means of Retail Fireworks to Individual Members of the General Public shall apply for and obtain a Retail Permit issued by the Office of State Fire Marshal.

(2) A separate Retail Permit shall be applied for and obtained for each Retail Sales Outlet that may conduct sales of Retail Fireworks in Oregon.

(3) Only one application for a Retail Permit may be made for each Retail Site except pursuant to OAR 837-012-0630(3).

(4) The application for a Retail Permit shall be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the Permit Application shall be true and correct to the applicant's knowledge.

(6) In addition to completion of the application form, applicants shall submit copies of a sketch of the Retail Site in accordance with subsection (7) of this rule.

(7) The sketch of the Retail Site, required pursuant to subsection (6) of this rule, shall include without limitation, the following:

(a) A diagram of the Retail Sales Outlet and its relationship to adjacent areas located at the Retail Site;

(b) For all Outdoor Sales, the location and distances of all structures, Buildings, highways, streets, trees, and other vegetation within 50 feet of the Retail Sales Outlet;

(c) For all Indoor Sales, the location of the Sales Display and the location and distances of all highly combustible materials within a 20-foot radius of the Sales Display;

(i) For Retail Sales Outlets located within structures or Buildings of less than 1,000 square feet, all Exits from the Building or structure;

(ii) For Retail Sales Outlets located in structures or Buildings of greater than 1,000 square feet, all Exits from the Building or structure located within 75 feet of the Sales Display;

(iii) For tents, all exits from the tent.

(iv) A list of the general types of merchandise located within 20 feet of the Sales Display. This requirement does not apply to Tents.

(d) The location of any open flames, exposed heating elements or other direct sources of ignition, including, but not limited to, coffee makers, food warmers, cookers and broilers located inside the Retail Sales Outlet or, for Indoor Sales, within 20 feet of the Sales Display.

(8) Any applicant for a Retail Permit, other than an Individual, shall list on the application form the name, address, and phone number of one Individual holding a management position within the permit holder's company or organization. See definition of "Person" in ORS 174.100(4) and "Individual" in OAR 837-012-0610(18).

(9) As part of the Permit Application process, the applicant shall apply for and obtain, in writing when available;

(a) All required local and state building code, fire code and business licensing inspections, approvals, permits and/or licenses; and

(b) All required state and local land use and zoning permits, licenses and/or approvals for the Retail Site.

(10) Applicants shall submit their completed Permit Application to the Local Fire Authority for review and signature approving the Retail Site prior to submission of the Permit Application to the Office of State Fire Marshal.

(11) The required Local Fire Authority signatures are:

(a) For retail sales conducted inside city limits, the Permit Application must be signed by the city Fire Chief or his authorized representative;

(b) For retail sales conducted outside city limits, but inside a rural Fire Protection District, the Permit Application must be signed by the district Fire Chief or his authorized representative;

(c) For retail sales conducted outside both city limits and a rural Fire Protection District, the Permit Application must be signed by the District Deputy State Fire Marshal.

(d) Applicants must also obtain the signature of the Local Fire Authority with jurisdiction over the Retail Fireworks storage location, regardless of whether the storage location is the same as the Retail Site.

(12) Proof of identification of the Individual Responsible for Sales shall be provided to the Local Fire Authority at the time the Permit Application is submitted to the Local Fire Authority for review and signature. The proof of identification shall be a current and recognizable photographic identification.

(13) Permit Applications shall not be submitted to the Office of State Fire Marshal prior to January 1 of the year for which the permit is sought.

(14) Permit Applications shall be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than April 15th of the year for which the permit is sought. If April 15th falls on a day when a postmark cannot be obtained, the applications shall be postmarked on the preceding business day when a postmark can be obtained. If April 15 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it shall be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day prior to the close of the regular business hours.

(15) Permit Applications postmarked or received after the deadline set forth under subsection (14) of this rule shall be returned to the applicant unprocessed.

Stat. Auth.: ORS 476 & ORS 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; Administrative correction 6-14-01; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0625

Retail Permit Fees

(1) Permit fees shall be paid at, or mailed to, the Office of State Fire Marshal and shall accompany the Permit Application.

(2) Payment shall be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal. If the fee is paid by either personal or business check, the Office of State Fire Marshal shall not take any action on the Permit Application until the check has cleared the bank.

(3) The permit fee for each Permit Application shall be \$75.

(4) Permit fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05

ADMINISTRATIVE RULES

837-012-0645

Sales and Storage of Retail Fireworks

(1) A Retail Sales Outlet shall never be left unattended during the business hours of the outlet. Any Retail Sales Outlet in violation of these rules may be subject to closure.

(2) The Retail Permit holder or the Individual Responsible for Sales shall be present at the Retail Sales Outlet at least 50% of the outlet's business hours each day. When not present at the outlet, the Individual Responsible for Sales shall be readily available, day or night, by telephone or other reliable means of communication. The Individual Responsible for sales may be absent from the Retail Sales Outlet for up to 48 consecutive hours twice during the period of time the Retail Permit is valid. The two 48-hour time periods shall not be consecutive. The Individual Responsible for sales, when not at the Retail Site, shall be available through their 24-hour contact number listed on their Permit Application.

(3) Any time the Individual Responsible for Sales is not present at the Retail Sales Outlet during the business hours of the outlet, at least one Individual, 18 years of age or older, shall be present at the outlet. Such Individual shall be an Employee or Volunteer of the Retail Permit holder's volunteer non-profit organization. Such Individual shall be directly responsible for, and in charge of, the Retail Sales Outlet and shall be present in the Retail Sales Outlet at all times.

(4) The Individual Responsible for Sales shall be:

(a) The Retail Permit holder listed on the Retail Permit; or

(b) An Employee of the Retail Permit holder; or

(c) If the Retail Permit holder is a volunteer, non-profit organization, an Individual who is a member of the Retail permit holder's volunteer non-profit organization.

(5) The Individual Responsible for Sales shall be responsible for only the Retail Sales Outlet listed on the Retail Permit.

(6) The Retail Site may be changed if:

(a) The new Retail Site is located in the same fire jurisdiction as the Retail Site listed in the Retail Permit;

(b) The Local Fire Authority approves the new Retail Site and indicates that approval in writing; and

(c) The Office of State Fire Marshal is notified of the change at least 24 hours prior to the commencement of retail sales.

(7) Retail Fireworks shall be sold only at a Retail Sales Outlet for which a Retail Permit has been issued.

(8) Retail Fireworks shall not be sold or otherwise provided from an establishment or business that serves alcoholic beverages, single or multi-family residences, an Internet site, or automobiles.

(9) All Retail Sales Outlets shall comply with all applicable federal, state and local laws, rules and regulations pertaining to Fireworks including:

(a) ORS 480.110 through 480.165;

(b) OAR chapter 837, division 12;

(c) **Oregon Structural Specialty Code, 2004 Edition**; and

(d) **Oregon Fire Code, 2004 Edition**.

(10) All Retail Fireworks not sold during the time the Retail Permit is valid, shall be returned to the supplying Wholesaler no later than July 31 of the year in which the permit is valid.

(11) At all times during the business hours of the Retail Sales Outlet, no Exits shall be locked or blocked and all exits shall be passable.

(12) No Fireworks shall be discharged within 100 feet of any Retail Sales Outlet.

(13) The Retail Permit holder, Individual Responsible for Sales, and any Employees or Volunteers of the Retail Permit holder shall ensure that all Retail Fireworks sold or otherwise provided, possessed, transported, stored or offered for sale comply with ORS 480.110 through 480.165 and these rules.

(14) The type of Retail Sales Outlet (Tent, Stand, Canopy or trailer) to be utilized shall be described on the Permit Application, including its outside dimensions. The dimensions of the Retail Sales Outlet listed on the Permit Application shall not increase, but they may decrease, after the Permit Application is submitted to the Office of State Fire Marshal.

(15) Retail Permit holders may store their Retail Fireworks from June 1 through July 31 of the year in which their Retail Permit is valid. The Local Fire Authority shall approve the storage and the storage location of the Retail Fireworks and indicate that approval by signing the Permit Application.

(16) Retail Fireworks shall be stored:

(a) In compliance with the **Oregon Structural Specialty Code, 2004 Edition**; or

(b) In an explosives magazine pursuant to NFPA 495, 2001 Edition.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2005, f. & cert. ef. 2-15-05

837-012-0650

Outside Sales

(1) The location of an outdoor Retail Sales Outlet shall not present a significant risk of fire or injury to those Individuals conducting sales of Retail Fireworks, Individual Members of the General Public, and any surrounding property.

(2) Every outdoor Retail Sales Outlet shall maintain at least one Exit opening, or outward swinging Exit door, for each 1,000 square feet of area covered or each 20 feet of structure length. The Exit opening shall be at least two feet wide and five feet high or as required by the Local Fire Authority.

(3) Trailers shall have their wheels blocked or removed, or the tongue locked. Trailers shall be disconnected from any power source which can potentially move the trailer any distance. Any fuel tanks or other ignition sources, including those for propane, shall be removed and placed a minimum of 20 feet from the trailer. Individual Members of the General Public shall not have access to the interior of the trailer.

(4) Tent and Canopy fabrics and any materials used on the floor of the Tent or Canopy, such as sawdust, shall be treated to be fire retardant.

(5) Tents having three or more enclosing sides shall comply with the requirements for both Indoor Sales and Outdoor Sales.

(6) Fire extinguishers shall be provided at each outdoor Retail Sales Outlet. At a minimum, at least one 2A rated water type extinguisher, or an equivalent water type extinguishing system as approved by the Local Fire Authority shall be placed at each Retail Sales Outlet.

(7) All electrical wiring, lighting and other electrical fixtures and installations shall be in accordance with the **Oregon Electrical Code, 1999 Edition** and any other applicable state or local requirements.

(8) Outdoor Retail Sales Outlets that operate at night shall erect and maintain sufficient light fixtures to enable customers and those Individuals selling Retail Fireworks to see all areas of the outlet. Standard electrical installations, battery powered lanterns, street or parking lot lighting or nearby Building interior and exterior lighting may be used for this purpose.

(9) Outdoor Retail Sales Outlets shall be located:

(a) At least 50 feet from any dispensary of flammable liquids or gases;

(b) At least 15 feet, or as otherwise specified by the Local Fire Authority, from any street or public right-of-way;

(c) At least 10 feet from any combustible structures;

(d) At least 10 feet from any entrances to, or Exits and openings from, any surrounding Buildings or structures; and

(e) At least 20 feet from exposed heating elements or any other such sources of ignition including fuel-powered electrical generators.

(10) A Stand including any vertical extensions shall not be more than one story in height unless it has sufficient size, weight or tie-downs to prevent toppling in the wind.

(11) "No Smoking" signs shall be posted on the outside of all enclosing sides of an outdoor Retail Sales Outlet. The signs shall be visible to all Individuals located at the Retail Sales Outlet. Sign lettering shall be red and at least 2-1/2 inches high on a white background.

(12) Smoking, open flames, and other such ignition sources or the use of Fireworks are prohibited within 100 feet of the Retail Sales Outlet.

(13) All fuel used to power electrical generators shall be stored in containers listed and approved by Underwriter's Laboratories.

(14) Heaters having exposed electrical elements or open flames shall not be used at any Outdoor Retail Sales Outlet.

(15) Outdoor Retail Sales Outlets, and parking for customers of the Retail Sales Outlet, shall not impede or endanger the normal flow of traffic on public streets or highways, or parking lots.

(16) The Retail Permit holder, Individual Responsible for Sales and/or any Employees or Volunteers of the Retail Permit holder shall be responsible for maintaining the grounds within 20 feet of the Retail Sales Outlet in a clean and orderly manner.

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

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05

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837-012-0670

Prohibited Acts and Limitations

(1) Retail Permit holders shall not create, maintain or allow the existence of a fire hazard at any location under their control where Retail Fireworks are stored, transported, sold, or used.

(2) No Retail Permit holder shall Sell or provide by any other means including donation:

(a) Retail Fireworks to any Individual Member of the General Public under 16 years of age;

(b) Illegal Fireworks to any Individual Member of the General Public;

(c) Any Retail Fireworks that have been altered;

(d) Any Retail Fireworks not supplied and/or distributed to the Retail Permit holder by a Wholesaler who possesses a valid and current wholesale permit issued by the Office of State Fire Marshal pursuant to OAR 837-12-635(1) through (3).

(3) No Person who has been convicted of a violation of ORS 480.110 through 480.165 or OAR chapter 837, division 12, or who has had any Fireworks permit or operator certificate suspended, denied or revoked, shall participate in any manner in the storage, distribution, transportation or sale of Retail Fireworks for a period not to exceed three years.

(4) Retail Permit holders shall not Sell, provide, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any Retail Firework that has not been approved, certified or listed for transport by the United States Department of Transportation and/or the United States Consumer Product Safety Commission, or does not have a United States Bureau of Explosives Temporary Transfer Permit.

(5) No Retail Sales Outlet shall be erected prior to the issuance of a Retail Permit for that Retail Sales Outlet location.

(6) No Person shall Sell, transfer or otherwise provide Retail Fireworks to Individual Members of the General Public without first obtaining a Retail Permit.

(7) A Retail Permit holder shall not employ or have direct business ties with any Person whose Fireworks permit or operator certificate has been revoked, denied, or suspended within the last three years.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05

Department of Public Safety Standards and Training Chapter 259

Adm. Order No.: DPSST 1-2005(Temp)

Filed with Sec. of State: 1-28-2005

Certified to be Effective: 1-28-05 thru 7-26-05

Notice Publication Date:

Rules Adopted: 259-009-0060

Subject: Requires minimum standards for employment as a Fire Service Professional; requires minimum age of 18 for certification as a Fire Service Professional.

Rules Coordinator: Bonnie Salle—(503) 378-2431

259-009-0060

Minimum Standards for Employment as a Fire Service Professional.

No person may be certified as a Fire Service Professional who has not yet attained 18 years of age.

Stat. Auth.: ORS 181.640

Stats. Implemented: ORS 181.610, 181.640

Hist.: DPSST 1-2005(Temp), f. & cert. ef. 1-28-05 thru 7-26-05

Department of State Lands Chapter 141

Adm. Order No.: DSL 1-2005

Filed with Sec. of State: 2-11-2005

Certified to be Effective: 2-28-05

Notice Publication Date: 11-1-04

Rules Adopted: 141-073-0118, 141-073-0119

Rules Amended: 141-073-0100, 141-073-0105, 141-073-0110, 141-073-0115, 141-073-0125, 141-073-0215

Rules Repealed: 141-073-0120, 141-073-0130, 141-073-0150, 141-073-0155, 141-073-0160, 141-073-0165, 141-073-0170, 141-073-0175, 141-073-0180, 141-073-0185, 141-073-0190, 141-073-0195,

141-073-0205, 141-073-0210, 141-073-0220, 141-073-0235, 141-073-0245, 141-073-0255, 141-073-0260, 141-073-0265, 141-073-0270, 141-073-0275, 141-073-0280

Rules Transferred: 141-073-0225 to 141-073-0215, 141-073-0230 to 141-073-0215, 141-073-0240 to 141-073-0215, 141-073-0250 to 141-073-0215

Subject: The changes to these rules were developed to ensure that the processes proposed for use by the Department of State Lands (Department) to determine whether to sell, exchange or reserve mineral rights owned by any agency of the State of Oregon (other than the Department of State Lands) are easily understandable. Changes of a "housekeeping" nature are also included to, for example, clarify terms used or eliminate unnecessary text/provisions.

SB 311 (Chapter 253 Oregon Laws), enacted during the session, changed the name of the Division of State Lands to the Department of State Lands (DSL).

Rules Coordinator: Nicole Kielsmeier—(503) 378-3805, ext. 239

141-073-0100

Purpose and Applicability

(1) These rules govern the release, sale or exchange of mineral rights held by agencies of the State of Oregon other than the State Land Board and the Department of State Lands.

(2) The procedures contained in these rules shall be used by the State Land Board and the Department to review proposed releases, sales or exchanges of properties by state agencies to determine if the state should release, sell or exchange the mineral rights that may be a part of these properties.

(3) These rules do not apply to the release, sale or exchange of mineral rights held by the State Land Board and administered by the Department. These activities are governed by the Rules Governing the Sale, Exchange and Purchase of Land (OAR 141-067).

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0105

Definitions

(1) "Agency" or "State Agency" as defined in ORS 291.002(9) means every state officer, board, commission, department, institution, branch or agency of the state government whose costs are paid wholly or in part from funds held in the State Treasury, except:

(a) The Legislative Assembly, the courts and their officers and committees;

(b) The Public Defense Services Commission; and

(c) The Secretary of State and the State Treasurer in the performance of the duties of their constitutional offices.

(2) "Department" means the Department of State Lands.

(3) "Director" means the Director of the Department of State Lands or designee.

(4) "Geothermal Resource" as defined in ORS 522.005(11) means the natural heat of the earth, the energy, in whatever form, below the surface of the earth present in, resulting from, or created by, or which may be extracted from the natural heat, and all minerals in solution or other products obtained from naturally heated fluids, brines, associated gases, and steam, in whatever form, found below the surface of the earth, exclusive of helium or oil, hydrocarbon gas or other hydrocarbon substances, but including, specifically:

(a) All products of geothermal processes, embracing indigenous steam, hot water and hot brines;

(b) Steam and other gases, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(c) Heat or other associated energy found in geothermal formations; and

(d) Any by-product derived from them.

(5) "In-Depth Evaluation" is a comprehensive review conducted by a mineral resource consultant of the economic geology of the area where a mineral right occurs. The purpose of this evaluation is to determine if significant mineral and/or geothermal resources exist in or proximate to the mineral right, and to establish a value for the mineral right. This evaluation involves a comprehensive review of geologic reports and maps as well as any publicly available exploration data. It may also involve a field visit to examine the geology of the area where the mineral right occurs; the taking and analysis of samples; and the performance of other mineral exploration

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field techniques. The mineral resource consultant will present the results of an in-depth evaluation to the Department in writing.

(6) "Mineral Reservation" is a clause in a deed that specifically retains all, or a portion of a mineral right.

(7) "Mineral Resource" refers to a concentration of naturally occurring solid, liquid, or gaseous material in or on the Earth's crust in such form and amount that economic extraction of a mineral commodity is currently or potentially feasible at some time in the future.

(8) "Mineral Resource Consultant" refers to the Oregon Department of Geology and Mineral Industries; a registered geologist with expertise in mineral resource appraisal or economic geology; or a state certified appraiser with expertise in mineral appraisal.

(9) "Mineral Right" is an ownership interest in the mineral and/or geothermal resources of a parcel of land. The owner of a mineral right may or may not be the owner of the surface of the parcel. A mineral right may include all metallic, non-metallic, and energy minerals (including oil and gas) as well as geothermal resources, or may specify/exclude some particular types of minerals (for example, limit mineral ownership to just the metallic and non-metallic minerals, or exclude ownership to the sand and gravel).

(10) "Non-Geothermal" refers to a parcel of land that is not known to contain geothermal resources based on geothermal exploration and other geologic information or is not located in a geologic setting that appears to be favorable for the occurrence of geothermal resources.

(11) "Non-Mineral" refers to a parcel of land that is not known to contain mineral resources based on mineral exploration and other geologic information, or is not located in a geologic setting that appears to be favorable for the occurrence of mineral resources.

(12) "Person" is an individual at least eighteen (18) years old; a political subdivision or public agency; or any corporation, association, firm, partnership, joint stock company; or quasi-public corporation registered to do business in the State of Oregon.

(13) "Preliminary Evaluation" is an initial, cursory review conducted by a mineral resource consultant of the economic geology/mineral potential of the area where a mineral right occurs. This evaluation involves a brief review of geologic reports and maps as well as what exploration data may be available. The purpose of this evaluation is to determine if potentially significant mineral and/or geothermal resources may exist in or proximate to the mineral right, and if an in-depth evaluation is warranted. The mineral resource consultant will present the results of a preliminary evaluation to the Department in writing.

(14) "Relative Value" is an estimate of the non-monetary value of a mineral and/or geothermal resource relative to another mineral or geothermal resource. A relative value may be expressed in terms of how closely the geologic characteristics of the mineral and geothermal resources of one mineral right compare to another.

(15) "Release" means the transfer of ownership of a mineral right to another person.

(16) "Significant Mineral or Geothermal Resources" means that the Department determines, based on a preliminary or in-depth evaluation, that mineral and/or geothermal resources could be economically developed in the future.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0110

Policies

(1) ORS 273.780 requires that:

(a) The mineral rights in property owned by any agency of the State of Oregon, or retained by a state agency after the sale or exchange of such property, are the property of the State of Oregon.

(b) Except as provided in ORS 273.785:

(A) Proceeds from the mineral rights held by the state shall accrue to the Common School Fund, and

(B) The State Land Board shall act for the state in any transaction involving the exploration for, or development, sale or exchange of mineral rights belonging to the State of Oregon.

(C) All mineral rights owned by the State of Oregon shall be retained by the state unless the State Land Board determines that the sale or exchange of the rights is for the purpose of "...obtaining the greatest benefit for the people of this state consistent with the conservation of lands under its jurisdiction under sound techniques of land management..." as provided by Article 8, Section 5(2) of the Oregon State Constitution.

(2) The Department shall administer these rules to ensure to the greatest extent possible that agencies applying for a release of state-owned mineral rights receive timely, consistent, predictable and fair treatment.

(3) The Land Board will not authorize a release, sale or exchange of a mineral right without first making a finding that the release, sale or exchange is for the purpose of obtaining the greatest benefit for the people of this state, consistent with the conservation of lands under its jurisdiction under sound techniques of land management.

(4) No mineral right shall be released, sold or exchanged without Land Board review and approval.

(5) The evaluation of mineral and geothermal resources is often difficult and costly. The accuracy of an evaluation or determination of the value of a mineral right is highly contingent on how much geologic and exploration data are available for review. Unless the Department determines that:

(a) There is a good possibility based on a preliminary evaluation by a mineral resource consultant that significant mineral and/or geothermal resources could occur in the land bounded by a mineral right; and

(b) Significant revenue would be received by the Common School Fund from the sale of the mineral right, the Department will not spend its financial resources to retain the services of a mineral resource consultant to conduct a more in-depth evaluation of the value of the mineral right.

(6) The Department will proceed with the processing of applications for the release, sale, or exchange of mineral rights only to the extent that staff availability and budget permit.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0115

Mineral Right Release, Sale and Exchange Application Process

(1) State agencies that want to release, sell or exchange mineral rights shall notify the Department in writing of the details of the proposed release, sale or exchange at least sixty days prior to the date of the proposed transaction. This notification shall include:

(a) The legal description of the subject mineral rights to be conveyed as contained in the deed;

(b) A legal description of the property limits on which the subject mineral rights occur;

(c) A tax lot map on which the boundaries of the subject property and mineral rights are identified;

(d) A map showing the location of the subject property and mineral rights relative to urban growth boundaries;

(e) The zoning of the land on which the mineral right is located;

(f) Any appraisals that have been conducted of the property, particularly those that address the value of the subject mineral rights;

(g) Any geologic reports, mineral and geothermal resource evaluations, appraisals, and other relevant information concerning the subject mineral rights held by the agency requesting the release, sale or exchange of the mineral rights;

(h) The reason(s) the agency wants to release, sell or exchange the mineral rights;

(i) The name, address, and telephone number of the person who wants to acquire the subject state-owned mineral rights;

(j) The consideration being offered by the person requesting the release, sale or exchange of the state-owned mineral rights; and

(k) Documentation that the agency requesting the release, sale or exchange has completed the Department of Administrative Services' surplus property process (OAR 125-045).

(2) Upon receipt of the written notification, the Department will review it for completeness. If the notification is determined by the Department to be incomplete, the Department will contact the agency to advise it of what additional information is required.

(3) If the notification is determined by the Department to be complete, the Department shall process it in accordance with the procedures provided in OAR 141-073-0118 and 141-073-0119.

(4) The Department may, at its discretion, use any geologic reports or mineral and geothermal resource evaluations and appraisals provided by an agency requesting the release, sale or exchange of mineral rights instead of retaining a mineral resource consultant as provided in OAR 141-073-0118 through 141-073-0119.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

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141-073-0118

Mineral Right Release or Sale Process

(1) If the subject mineral right proposed for release or sale is owned by an agency other than the Department:

(a) The Department shall request a mineral resource consultant to conduct a preliminary evaluation of the mineral right. This evaluation will be the opinion of the mineral resource consultant regarding the actual or possible presence, extent and grade of, and demand for the mineral resources within the mineral right, and will be presented in writing to the Department.

(b) If no significant mineral or geothermal resources are believed by the mineral resource consultant to exist, the Department will submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them.

(2) If the mineral resource consultant's preliminary evaluation to the Department indicates that significant mineral and/or geothermal resources exist within the limits of the mineral right, and any revenue derived from the mineral right would:

(a) Not accrue to the Common School Fund, the agency submitting the request for release or sale of the mineral right shall, at their own cost, retain a mineral resource consultant to conduct an in-depth evaluation to determine a value for the mineral and geothermal resources.

(b) Accrue to the Common School Fund, the Department may either retain a mineral resource consultant to conduct an in-depth evaluation to determine a value for the mineral and geothermal resources, or advise the agency that it will not release the mineral right for sale or exchange.

(3) If the mineral resource consultant's in-depth evaluation indicates the presence of significant mineral and/or geothermal resources within the limits of the mineral right, the Department may either:

(a) Advise the agency that it will reserve the mineral right, or

(b) After receipt of Land Board approval, sell the mineral right at a value based on either the mineral resource consultant's in-depth evaluation plus any cost incurred by the Department to retain the consultant, or for a price negotiated by the Department.

(4) If the mineral consultant's in-depth evaluation determines that no significant mineral and/or geothermal resources exist within the limits of the mineral right, the Department shall submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them.

(5) As provided in OAR 141-073-0115(4), the Department may, at its discretion, use information provided by the agency requesting the release or sale of mineral rights instead of using/requiring a mineral resource consultant for some or all of the reports and evaluations required.

Stat. Auth.: ORS 273.045, 273.775 - 273.79, Or. Const, Art. VIII, Sec. 5

Stats. Implemented: ORS 273.775 - 273.79

Hist.: DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0119

Mineral Right Exchange Process

(1) If the subject mineral right proposed for exchange is owned by an agency other than the Department:

(a) The Department shall request a mineral resource consultant to conduct a preliminary evaluation of the state-owned mineral right(s) as well as the right(s) being offered for exchange. This preliminary evaluation will be the opinion of the mineral resource consultant regarding the actual or possible presence of mineral resources within the mineral rights, and will be presented in writing to the Department.

(b) If the mineral consultant's preliminary evaluation to the Department indicates that no significant mineral or geothermal resources exist within the mineral rights held by the state or those being offered for exchange, the Department will submit the request to the Land Board for its consideration. If Land Board approval is granted, the Department will release the state-owned mineral rights to the agency/person applying for them in exchange for their mineral rights.

(c) If the mineral resource consultant's preliminary evaluation to the Department indicates that significant mineral and/or geothermal resources may occur within the limits of any of the mineral rights proposed for exchange, the Department may either:

(A) Advise the agency proposing the exchange that it will reserve the state-owned mineral right; or

(B) Request that the agency retain at its own cost a mineral resource consultant to conduct an in-depth evaluation of each of the mineral rights proposed for exchange. The purpose of this evaluation will be for the mineral resource consultant to develop a relative value for each mineral right.

To establish this relative value, the following factors, at a minimum, are to be considered:

(i) Types of minerals reserved;

(ii) Geologic setting and the likelihood that mineral or geothermal resources could occur in that setting;

(iii) The location of the mineral right relative to the infrastructure required to develop it; and

(iv) Possible markets for any mineral or geothermal resources. This in-depth evaluation will not be an appraisal of the monetary value of each mineral right, but rather the opinion of the mineral resource consultant regarding the actual or possible presence, extent and grade of, and demand for the mineral resources within each mineral right, and a comparison of one mineral right to another.

(d) If the mineral resource consultant's preliminary or in-depth evaluation indicates that the mineral rights of the parcels to be exchanged are of approximately equivalent relative value, the Department may either advise the agency that it will not exchange the mineral rights, or submit the request to the Land Board for its consideration. If the Land Board approves an exchange, the Department will authorize the exchange to proceed and release the state-owned mineral rights to the agency/person applying for them in exchange for their mineral rights.

(e) If the mineral resource consultant's preliminary or in-depth evaluation to the Department indicates that the value of one mineral right is substantially greater than the other, the Department will advise the agency proposing the exchange of this inequality and the possible need to make adjustments to the trade.

(f) The Department will not release state-owned mineral rights having a value that is greater than those being offered in exchange unless it finds that the greatest benefit for the people of this state is obtained through the exchange.

(2) As provided in OAR 141-073-0115(4), the Department may, at its discretion, use information provided by the agency requesting the release or sale of mineral rights instead of using/requiring a mineral resource consultant for some or all of the reports and evaluations required.

Stat. Auth.: ORS 273.045, 273.775 - 273.79, Or. Const, Art. VIII, Sec. 5

Stats. Implemented: ORS 273.775 - 273.79

Hist.: DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0125

Form of Reservation

Whenever mineral or geothermal resources rights are retained in lands, the deed executed by the state agency selling or exchanging the surface rights shall contain the following reservation clause:

"Excepting and reserving to itself, its successors, and assigns all minerals as defined in ORS 273.775(1), including soil, clay, stone, sand, and gravel*, and all geothermal resources, as defined in ORS 273.775(2), together with the right to make such use of the surface as may be reasonably necessary for prospecting for, exploring for, mining, extracting, reinjecting, storing, drilling for, and removing, such minerals, materials*, and geothermal resources. In the event use of the premises by a surface rights owner would be damaged by one or more of the activities described above, then such owner shall be entitled to compensation from state's lessee to the extent of the diminution in value of the real property, based on the actual use by the surface rights owner at the time the state's lessee conducts any of the above activities."

NOTE: *To be deleted in the individual case, as approved by the State Land Board.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; LB 45, f. & ef. 10-21-77; LB 2-1982(Temp), f. & ef. 3-17-82; LB 8-1982, f. & ef. 8-25-82; LB 3-1984(Temp), f. & ef. 4-26-84; LB 5-1984, f. & ef. 10-10-84; DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

141-073-0215

Minerals Registry

(1) Pursuant to the provisions of ORS 273.790, the Department shall establish and maintain a registry of mineral and geothermal resource rights placed under the jurisdiction of the State Land Board.

(2) This registry shall be used by the Department, all state agencies, and the public to know:

(a) The location of mineral rights owned by the State of Oregon; and

(b) The availability of these rights for exploration and mineral leasing.

(3) The registry shall identify the surface owner wherever possible.

(4) State-owned mineral and geothermal resource rights in parcels of less than 40 acres shall not be listed in the registry.

(5) All state agencies owning mineral and geothermal resource rights shall report changes in the ownership status of those rights in writing to the Department within 30 days of such changes. Changes include, but are not limited to the purchase, sale or exchange of mineral rights or parcels containing mineral rights. The Department shall add data concerning such pur-

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chases, sales or exchanges of mineral rights or parcels containing mineral rights to the registry upon receipt of written notification.

(6) The Department shall maintain a record of the issuance, expiration, or cancellation of each mineral or geothermal resource lease.

Stat. Auth.: ORS 273.045, 273.551 & 273.775 - 273.790

Stats. Implemented: ORS 273.780 - 273.790

Hist.: LB 23, f. 4-18-75, ef. 5-11-75; Renumbered from 141-073-0225, 141-073-0230, 141-073-0240, 141-073-0250, DSL 1-2005, f. 2-11-05, cert. ef. 2-28-05

Department of Transportation Chapter 731

Adm. Order No.: DOT 1-2005

Filed with Sec. of State: 1-20-2005

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Rules Adopted: 731-070-0055

Rules Repealed: 731-070-0055(T)

Subject: Rules were adopted August 26, 2004, for the implementation of ORS 367.800 to 367.826, which establish the Oregon Innovative Partnerships Program (OIPP). This action included adoption of temporary OAR 731-070-0055. The program allows for acceptance of unsolicited proposals for transportation projects from private entities or units of government. ORS 367.804(3) allows the department to charge an administrative fee for evaluation of the proposals received. OAR 731-070-0055 is now being adopted as a permanent rule to establish fees that will be charged for evaluation of unsolicited proposals, provide for assessment of additional fees and provide for a waiver of fees. The fee structure was approved by the Department of Administrative Services in accordance with ORS 291.055 on 8/13/04. The fees set forth in this rule will recoup some of the department's costs. The requirement to pay an evaluation fee will also encourage only legitimate proposals to be submitted.

Rules Coordinator: Brenda Trump—(503) 945-5278

731-070-0055

Fees to Accompany Unsolicited Proposals

(1) The proposal review fees required by OAR 731-070-0050(2) are as follows, unless otherwise specified in sections (2) or (3) of this rule:

(a) For initial Conceptual Proposals, as defined in OAR 731-070-0010(4):

(A) A \$5,000 non-refundable fee for a project under \$100 million; and

(B) A \$20,000 non-refundable fee for a project \$100 million or more.

(b) If the Commission elects to invite competing Conceptual Proposals as described in OAR 731-070-0120, all subsequent submittals shall be accompanied by the fees in (1)(a).

(c) For Detailed Proposals, as defined in OAR 731-070-0010(6):

(A) A \$10,000 non-refundable fee for a project under \$100 million; and

(B) A \$40,000 non-refundable fee for a project \$100 million or more.

(2) If the cost of evaluating an unsolicited proposal exceeds the fees assessed under section (1) of this rule, the Director may assess additional fees that reflect the reasonable expected costs to be incurred by ODOT in evaluating the unsolicited proposal that exceed the amount deposited in section (1) of this rule.

(3) The Director may waive the fees specified in sections (1) and (2) of this rule if the interests of the state or the specific merits of the project would warrant such a waiver. In considering whether to grant a waiver the Director will consider the magnitude of costs versus benefits of such a waiver.

Stat. Auth.: ORS 184.616, 184.619, 367.822 & 367.824

Stat. Implemented: ORS 367.800 - 367.824

Hist.: DOT 6-2004(Temp), f. & cert. ef. 8-26-04 thru 2-21-05; DOT 1-2005, f. & cert. ef. 1-20-05

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

Adm. Order No.: DMV 1-2005

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-20-05

Notice Publication Date: 11-1-04

Rules Amended: 735-074-0140, 735-074-0150, 735-074-0170, 735-074-0180

Rules Repealed: 735-074-0005, 735-074-0045

Subject: On June 1, 2003, DMV adopted new mandatory reporting requirements for physicians and health care providers of persons with cognitive or functional impairments that may affect a person's ability to safely operate a motor vehicle. The new requirements were implemented in four phases based on the regions and dates identified in OAR 735-074-0045. As of June 1, 2004 all physicians and health care providers who are required to report are subject to the new mandatory reporting requirements. As a result, OAR 735-074-0005 and 735-074-0045 became obsolete on June 1, 2004, and need to be repealed. Other rules are amended to remove now incorrect references to OAR 735-074-0005 and a DMV form; OAR 735-074-0150 is amended to clarify that voluntary reports should address the person's ability to safely operate a motor vehicle; and OAR 735-074-0180(3) is amended to clarify that the action DMV will take is a cancellation.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-074-0140

DMV Response to Mandatory Report — Suspension, Opportunity to Re-Test, Reinstatement

(1) DMV will review a report received under OAR 735-074-0120 to determine if sufficient information has been provided. If the report does not contain the information required by OAR 735-074-0120 it may be returned to the reporting physician or health care provider for completion. If DMV is unable to determine from the report whether the person is able to safely operate a motor vehicle, the report will be submitted to the State Health Office for review.

(2) Using the standards set forth in OAR 735-074-0130, or upon recommendation of the State Health Officer, DMV will suspend driving privileges or the right to apply for driving privileges under ORS 809.419(3), if it is determined from the report submitted under 735-074-0120 that the person has a functional or cognitive impairment that renders it unsafe for the person to operate a motor vehicle. Driving privileges or the right to apply for driving privileges will be immediately suspended if DMV has reason to believe the person may endanger people or property if not immediately suspended.

(3) If DMV receives a report that indicates that a person's vision does not meet the vision standards set forth in OAR 735-062-0050, DMV will immediately suspend the person's driving privileges or right to apply for driving privileges under ORS 809.419(3). To be eligible for reinstatement of driving privileges the person must: submit proof from a licensed optometrist or physician who specializes in the diagnosis and treatment of eye diseases that the person's vision, with or without corrective lenses, meets the vision standards set forth in OAR 735-062-0050, and pass a knowledge and drive test. Proof that vision meets DMV standards is only valid for six months from the date DMV receives the Certificate of Vision form and the person must pass the knowledge and drive test within this time period for reinstatement of driving privileges.

(4) A person whose driving privileges and right to apply for driving privileges are suspended because of a functional impairment may request to be tested by DMV to demonstrate that notwithstanding the impairment, the person is qualified to safely operate a motor vehicle. If the request is granted, DMV will administer a vision screening under OAR 735-062-0050, a knowledge test under OAR 735-062-0040 and a DMV drive test under OAR 735-062-0070. DMV will deny the request if it has reason to believe the person is unable to safely operate a motor vehicle during a drive test. If the request is denied, DMV may give the person tests if the person:

(a) Obtains a Certificate of Medical Eligibility for Testing from the State Health Officer authorizing testing;

(b) Submits proof of successful completion of a driver rehabilitation program conducted by a rehabilitation specialist;

(c) Submits proof of successful completion of a driver training course conducted by an ODOT certified commercial driver training school; or

(d) Submits proof that the person's motor vehicle is equipped with an appropriate adaptive device(s), such as hand controls, and provides documentation that the person knows how to use and has practiced with the adaptive device(s).

(5) A person whose driving privileges and right to apply for driving privileges are suspended because of a cognitive impairment or a cognitive impairment in conjunction with a functional impairment reported under OAR 735-074-0110 may request to be tested by DMV to demonstrate that

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notwithstanding the disorder or the impairment, the person is qualified to safely operate a motor vehicle. Before DMV will grant the request to be tested, the person must obtain a Certificate of Medical Eligibility for Testing from the State Health Officer authorizing testing. If testing is authorized, the person must pass a vision screening under OAR 735-062-0050, a knowledge test under OAR 735-062-0040 and a DMV drive test under OAR 735-062-0070.

(6) The following apply to a request for testing under sections (4) and (5) of this rule:

(a) The request must be made by contacting DMV headquarters; and
(b) For a cognitive impairment or a cognitive impairment in conjunction with a functional impairment, testing must be completed within six months of the date of the DMV receives the State Health Officer's authorization.

(7) DMV may issue a no-fee identification card if a person whose driving privileges are suspended pursuant to this rule, voluntarily surrenders his or her valid driver license or driver permit.

(8) DMV will notify the reporting physician or health care provider if the person's driving privileges are reinstated.

(9) If the person reinstates his or her driving privileges, DMV may require the person to provide periodic medical information based on the recommendation of the State Health Officer or obtain periodic vision exams based on the recommendation of the person's vision specialist. DMV may send the Medical Impairment Referral and case file to the State Health Officer for review on those with functional impairments who are reinstated for determination of whether the person should be medically recertified at a later date. The State Health Officer will include a determination if medical re-certification is needed on cognitive impairments at the time a determination on testing is made. If periodic medical information is required, DMV will send the person a Medical Impairment Recertification form and require the person to obtain information from his or her physician, nurse practitioner or physician assistant and return that to DMV within 30 days of the date on the requirement letter. If a periodic vision exam must be obtained, DMV will send the person a Certificate of Vision form which must be completed by the person's vision specialist and returned to DMV within 30 days of the date on the requirement letter.

(10) A person may be required to successfully complete DMV testing or may have driving privileges suspended based on information contained in the Medical Impairment Recertification form or periodic vision information report submitted under section (9) of this rule.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619, 807.340, 807.710 & 809.410
Stat. Implemented: ORS 807.340 & 807.710
Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 1-2005, f. & cert. ef. 1-20-05

735-074-0150

Voluntary Reporting of Mental or Physical Conditions or Impairments

(1) DMV receives voluntary reports regarding a person's mental or physical condition or impairment that the reporter believes may affect the person's ability to safely operate a motor vehicle. This information can be provided by many sources, including, but not limited to a police officer, physician or other health care provider, a court, a DMV employee, a family member of the person being reported, or a member of the public. The information may be reported to DMV in many forms including, but not limited to a DMV referral form, a police report, an accident report, or a letter or memo.

(2) In order for DMV to process a voluntary report it must contain:

(a) The name of the person making the report, including a signature if the report is from a family member or member of the general public;

(b) The name and date of birth of the person being reported or a description of the person being reported that is sufficient for DMV to identify the reported person from its records; and

(c) Sufficient information for DMV to determine whether further action is necessary.

(3) All written documentation voluntarily submitted under this rule, including the name of the person submitting the documentation, will be kept confidential and not released to any person unless:

(a) DMV determines the documentation, or any portion thereof, must be released pursuant to the Public Records Law, ORS 192.410 to 192.505, or the Attorney General or a court orders disclosure in accordance with the Public Records Law; or

(b) The documentation is determined by DMV to be necessary evidence in an administrative proceeding involving the suspension or cancellation of the person's driving privileges or right to apply for driving privileges.

(4) DMV will attempt to obtain more information if DMV has reason to believe there is inaccurate information in the report before taking further action on the report.

Stat. Auth.: ORS 184.616, 184.619, 807.340 & 809.410
Stat. Implemented: ORS 807.340
Hist.: DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; DMV 1-2005, f. & cert. ef. 1-20-05

735-074-0170

When a Certificate of Medical Eligibility may be Required

(1) A person may be required to obtain a Certificate of Medical Eligibility under ORS 807.090(1)(b) if:

(a) DMV receives a voluntary report as described in OAR 735-074-0150 that indicates a person has, or may have, a mental or physical condition that makes it unsafe for the person to drive a motor vehicle;

(b) The Health Services or Senior and People with Disabilities Services of the Department of Human Services, a court or a licensed physician, nurse practitioner or physician assistant, who is not required to file a report under OAR 735-074-0110, recommends a medical examination to determine the person's ability to safely operate a motor vehicle;

(c) A person reports on an application for a driver license, driver permit or endorsement that the person has a mental or physical condition that may make it unsafe for the person to drive a motor vehicle; or

(d) DMV determines a medical clearance is required.

(2) When DMV determines a Certificate of Medical Eligibility is required, DMV will send the person a Certificate of Medical Eligibility form and a letter explaining that the form must be completed and returned to DMV.

(3) In determining whether to issue a Certificate of Medical Eligibility the State Health Officer may request additional information from the person and/or a physician, nurse practitioner, or physician assistant. In this case, DMV may send another letter to the person requesting the additional information that is required.

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

Stat. Auth.: ORS 184.616, 184.619 & 807.090
Stat. Implemented: ORS 807.090

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0405; MV 37-1989, f. & cert. ef. 10-3-89; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0010; DMV 1-2005, f. & cert. ef. 1-20-05

735-074-0180

When a Suspension or Cancellation of Driving Privilege Occurs

(1) DMV may issue an immediate suspension of driving privileges in the following situations:

(a) As set forth in OAR 735-074-0140, if DMV has reason to believe from the information provided in a mandatory report submitted under OAR 735-074-0120 that the person may endanger people or property if not immediately suspended;

(b) If DMV determines from a report as described in OAR 735-074-0150 that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended;

(c) If based upon information included in a police accident report or other law enforcement report, DMV has reason to believe that a person may endanger people or property due to the possibility of a sudden loss of consciousness or control;

(d) The State Health Officer, upon review of medical information on a driver, recommends an immediate suspension;

(e) Information contained in a required Medical Impairment Recertification form submitted as required under OAR 735-074-0140 indicates that the person has a mental or physical condition that makes it unsafe for the person to operate a motor vehicle and DMV has reason to believe the person may endanger people or property if not immediately suspended; or

(f) Information contained in a required Certificate of Vision form submitted as required under OAR 735-074-0140 indicates the person's vision does not meet minimum vision standards under OAR 735-062-0050 and DMV has reason to believe the person may endanger people or property if not immediately suspended.

(2) DMV will suspend driving privileges in the following situations:

(a) DMV will suspend the person's driving privilege under ORS 809.419(2) for failure to obtain a medical clearance if the Certificate of Medical Eligibility form is not completed by the person and the person's physician, nurse practitioner, or physician assistant, submitted to and received by DMV within 30-days of the date on the letter sent from DMV. In applicable cases, an additional questionnaire regarding alcohol, drug and/or inhalant use must be completed and received by DMV for the

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Certificate of Medical Eligibility form to be considered complete. DMV may grant an extension if the person can show that an appointment with their physician, nurse practitioner or physician assistant was requested in a timely manner, but the earliest appointment available exceeded the 30 days. DMV may grant an extension (not to exceed four months) if the person is seriously ill or injured and the person's physician, nurse practitioner or physician assistant must recommend an extension in writing. DMV may grant a 30-day extension to a person who is out of state if a written request is received from the person;

(b) If the State Health Officer has requested additional information for determining whether to issue a Certificate of Medical Eligibility and the required additional information is not mailed or faxed to DMV within 30 days from the date of the letter requesting additional information. DMV may grant an extension if the required additional information is from a physician, nurse practitioner, or physician assistant, and the person can show that an appointment was requested in a timely manner, but the earliest appointment available exceeded the 30 days;

(c) If the State Health Officer does not issue a Certificate of Eligibility to a person required to obtain the certificate under ORS 807.090;

(d) If the person fails to submit a Medical Impairment Recertification form as required under OAR 735-074-0140, unless an extension, as described in subsection (a) of this section, is granted by DMV; or

(e) If the person fails to submit a Certificate of Vision form when the person is required to obtain a periodic vision exam under OAR 735-074-0140, unless an extension, as described in subsection (a) of this section, is granted by DMV.

(3) DMV will immediately cancel a person's driving privileges if DMV has reason to believe that the person may endanger people or property if not immediately canceled. If DMV has reason to believe a person is unable to safely operate a motor vehicle and may endanger people or property, DMV may immediately cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person does not meet minimum vision standards set forth in OAR 735-062-0050;

(b) DMV determines the person no longer meets the qualifications for a driver license, permit or endorsement because of a physical or mental disability or disease; a condition which brings about loss of consciousness or control that is chronic or may become chronic; or a problem condition involving alcohol, inhalants or controlled substances; or

(c) The person is denied a drive test by DMV or the State Health Officer because of a physical or mental condition that affects the person's ability to safely operate a motor vehicle.

(4) DMV may cancel driving privileges pursuant to ORS 807.350 and OAR 735-070-0010, 735-070-0020 and 735-074-0220 if:

(a) The person's vision does not meet the minimum vision standards set forth in OAR 735-062-0050;

(b) DMV determines the person no longer meets the qualifications for a driver license, driver permit or endorsement because of a physical or mental disability or disease; a condition which brings about loss of consciousness or control that is chronic or may become chronic; or a problem condition involving alcohol, inhalants or controlled substances; or

(c) The person is denied a drive test by DMV or the State Health Officer because of a physical or mental condition that affects the person's ability to safely operate a motor vehicle.

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

Stat. Auth.: ORS 184.616, 184.619, 807.340, 807.350 & 809.410

Stat. Implemented: ORS 807.350 & ORS 809.410

Hist.: MV 19-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0410; MV 14-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 14-2002, f. 8-14-02 cert. ef. 9-1-02; DMV 24-2002, f. 12-13-02 cert. ef. 1-1-03; DMV 8-2003, f. 5-14-03, cert. ef. 6-1-03; Renumbered from 735-074-0020; DMV 1-2005, f. & cert. ef. 1-20-05

Adm. Order No.: DMV 2-2005

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Rules Amended: 735-062-0000, 735-062-0085, 735-062-0090, 735-062-0110, 735-062-0150, 735-062-0160, 735-062-0200, 735-074-0260

Rules Repealed: 735-062-0090(T)

Subject: Amendments to several rules add language relating to inquiry to national data bases (NDR/PDPS and/or CDLIS) to determine the applicant's commercial driver license status prior to issuance or renewal in Oregon. Amendments also: clarify when

DMV may waive the examination requirements for a farm endorsement; clarify how the applicant can clear a problem in another jurisdiction so DMV may proceed with the requested transaction; bring rules into compliance with federal standards for driving privilege restriction when issuing a CDL with a passenger endorsement; and require DMV to suspend a CDL if notified that a CDL holder no longer meets necessary medical standards. Other amendments adopt current federal regulations and make necessary housekeeping changes.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0000

Driver Permits or Driver Licenses

(1) Before the Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a driver permit or driver license, the person applying for the driver permit or driver license must:

(a) Satisfy all requirements set forth in ORS 807.040, and 807.060(2)(a) if under the age of 18. For purposes of ORS 807.060 and this subsection:

(A) Mother means the biological or adoptive mother of the applicant;

(B) Father means the biological or adoptive father of the applicant;

and

(C) Guardian means an individual, or the authorized representative of an entity, private or public institution or agency appointed as guardian of the applicant by a court having jurisdiction.

(b) Satisfy all requirements set forth in ORS 807.065 and 807.066 to receive a driver license (provisional) if under 18 years of age;

(c) Present to DMV documentary proof of the person's age and identity as described in OAR 735-062-0020;

(d) Present to DMV documentary proof of the person's residence address as described in OAR 735-062-0030;

(e) Present to DMV proof, as described in OAR 735-016-0070, that the person is domiciled in or a resident of Oregon;

(f) Surrender to DMV all driver permits and driver licenses in the person's possession that have been issued by:

(A) Another state;

(B) A Canadian province or territory; or

(C) A U.S. territory.

(g) In addition to all requirements in subsections (a) through (f) of this section, a person who holds a commercial driver license from another jurisdiction must satisfy all requirements set forth in ORS 807.045 and OAR 735-062-0200.

(2) Upon receipt of an application for a driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. For issuance of a commercial driver license (CDL), DMV will also make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(3) DMV may require the applicant to provide a clearance letter in compliance with OAR 735-062-0160, indicating the applicant has valid driving privileges from any jurisdiction in which an inquiry with the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS) or both indicates the applicant's driving privilege is not fully valid.

(4) DMV will not issue driving privileges to a person until his or her driving privilege is reinstated in all jurisdictions, unless the only remaining reinstatement requirement in the other jurisdiction is proof of financial responsibility. Nothing in this section prohibits DMV from issuing a regular Class C driver license to a person whose CDL driving privileges are not valid as long as the person's regular Class C or equivalent driving privileges are valid.

(5) DMV will not issue a driver license or permit to a person with a current, valid Oregon identification card (ID card). To become eligible, the person must surrender the ID card before DMV may issue the Oregon driver license or permit. If the person's ID card is lost or destroyed, the person must make a statement that the card is lost or destroyed and that it will be returned to DMV if found.

(6) A driver license of an applicant with a February 29th birth date expires:

(a) On February 29th if the expiration year is a leap year; or

(b) On March 1st if the expiration year is not a leap year.

Stat. Auth.: ORS 184.616, 184.619, 807.040, 807.050, 807.060, 807.120, 809.310

Stats. Implemented: ORS 807.040, 807.060 & 807.066

ADMINISTRATIVE RULES

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0000; MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 12-2000, f. & cert. ef. 9-21-00; DMV 3-2003, f. & cert. ef. 4-21-03; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0085

Good Driving Record for Farm Endorsement

DMV may waive the examination requirements of an applicant for a farm endorsement if the applicant meets the qualifications specified in ORS 807.072(4) or (5). If the applicant has an accident(s) appearing on his or her driving record in the two years prior to the date of application, DMV may still waive the examination requirements if the applicant was not convicted of any offense relating to the accident(s).

Stat. Auth.: ORS 802.010, 802.200, 807, Ch. 185, OL 1991 & Ch. 636, OL 1989

Stats. Implemented: ORS 807.170

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 16-1991, f. 9-18-91, cert. ef. 9-29-91; MV 10-1992, f. 8-21-92, cert. ef. 9-1-92; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0090

Renewal Driver Licenses and Identification Cards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will renew the driver license of a person satisfying the requirements set forth in ORS 807.150.

(2) An applicant for the renewal of a driver license or identification card must present to DMV proofs of age and/or identity as set forth in OAR 735-062-0020.

(3) An applicant for the renewal of a driver license or identification card that includes a change of residence address must present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. (Current residence address is the residence address to be included on the license or identification card to be issued.) Such documentation is not required if the license or identification card is renewed by mail.

(4) If a driver license has been expired more than one year, the applicant must re-apply for an original driver license and meet the requirements set forth in OAR 735-062-0000.

(5) An applicant for a renewal of a commercial driver license with a hazardous materials endorsement must retake and pass the hazardous materials knowledge test and meet the requirements set forth in OAR 735-062-0190 to retain the hazardous materials endorsement on the commercial driver license.

(6) An applicant for a renewal of a commercial driver license must meet the requirements set forth in OAR 735-074-0290.

(7) Before processing a driver license renewal, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a commercial driver license (CDL) renewal, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in any other jurisdiction.

(8) If the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction, the applicant may not renew an Oregon driver license until the applicant submits a clearance letter that complies with OAR 735-062-0160 and shows the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(9) Notwithstanding section (8) of this rule, DMV will renew the driving privileges of an applicant whose driving privileges are suspended, revoked, canceled or otherwise not valid in another jurisdiction if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(10) DMV will not renew an Oregon driver license or permit if the applicant has a current, valid Oregon identification card. To become eligible, the person must surrender the Oregon identification card before DMV will renew the Oregon driver license or permit. If the person's identification card is lost or the person no longer has the identification card in his or her possession, the person must provide a statement attesting to this fact.

Stat. Auth.: ORS 184.616, 184.619, 802.012 & 807.040

Stats. Implemented: ORS 802.012, 802.540, 807.040 - 807.060, 807.100, 807.150 & 807.400

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0009; MV 14-1992, f. & cert. ef. 10-16-92; MV 16-1992, f. & cert. ef. 12-16-92; DMV 11-1998, f. & cert. ef. 9-14-98; DMV 21-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0110

Duplicate Driver Permits, Driver Licenses, and Identification Cards

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will issue a duplicate or replacement

driver permit or driver license to a person who meets the requirements set forth in ORS 807.160.

(2) An applicant for a duplicate or replacement driver license, driver permit, or identification card must present to DMV proofs of age and/or identity as set forth in OAR 735-062-0020.

(3) An applicant at a DMV field office for a duplicate or replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(4) Before issuing a duplicate or replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a duplicate or replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(5) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a duplicate or replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(6) Notwithstanding section (5) of this rule, DMV will issue a duplicate or replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

Stat. Auth.: ORS 184.616 & 184.619

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

Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0150

Commercial Driver License with Passenger Endorsement

(1) On or after October 4, 1997, until October 4, 2005, a restricted Class B Commercial Driver License (CDL) is deemed to be the equivalent of a Class B CDL having a passenger endorsement, with the following restriction: The holder may operate only a school bus or school activity vehicle with the gross vehicle weight rating noted on the School Bus Driver Certificate issued pursuant to OAR 581-053-0006 and any vehicle that may be operated by the holder of a Class C license.

(2) On or after October 4, 1997, but prior to January 31, 2005, whenever the holder of a restricted Class B CDL is required to appear or voluntarily appears in person at a DMV office to renew or replace the license, DMV will issue a Class B CDL or a Class C CDL, as qualified below:

(a) To qualify for a Class B CDL, the holder of a restricted Class B CDL must possess a School Bus Driver Certificate that authorizes operation of a vehicle with a gross vehicle weight rating of 26,001 pounds or more. The School Bus Driver Certificate must be valid or have been expired for less than one year.

(b) To qualify for a Class C CDL, the holder of a restricted Class B CDL must possess a School Bus Driver Certificate that authorizes operation of a vehicle designed to transport 16 or more persons, including the driver, with a gross vehicle weight rating of less than 26,001 pounds. The School Bus Driver Certificate must be valid or have been expired for less than one year.

(3) Upon renewal or replacement of a restricted Class B CDL as described in section (2) of this rule, the holder of a restricted Class B CDL who possesses a School Bus Driver Certificate that has been expired for one year or more is not qualified to be issued a CDL. DMV shall issue the holder a Class C non-commercial driver license.

(4) On or after January 31, 2005 an applicant who passes the passenger skills test in a Class B passenger vehicle will have an M restriction placed on the applicant's commercial driving privileges and CDL. The M restriction allows the person to operate only a Class B or C passenger vehicle.

(5) On or after January 31, 2005 an applicant who passes the passenger skills test in a Class C passenger vehicle will have an N placed on the applicant's commercial driving privileges and CDL. The N restriction allows the person to operate only a Class C passenger vehicle.

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(6) On or after January 31, 2005, the commercial driving privileges of the holder of a CDL with a passenger endorsement are restricted as follows:

(a) The holder of a Class A CDL will have an M restriction, except as provided in section (7) of this rule;

(b) The holder of a Class B CDL will have an M restriction; and

(c) The holder of a Class C CDL will have an N restriction.

(7) On or after January 31, 2005, DMV will not place an M restriction on the commercial driving privileges of a person who passes a passenger skills test in a Class A passenger vehicle.

(8) On or after January 31, 2005, whenever the holder of a CDL with a passenger endorsement is required to appear or voluntarily appears in person at a DMV office to renew or replace the license, DMV will place an M or N passenger restriction on the holder's CDL as set forth in section (6) of this rule.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Stats. Implemented: 807.031, 807.070 & 807.120, 49 CFR § 383.117

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 9-1997, f. & cert. ef. 10-16-97; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0160

Clearance Letter

(1) A clearance letter referred to in OAR 735-062-0000, 735-062-0030(3)(h)(I), 735-062-0080(1)(c) or (3)(c) and 735-062-0090 is a letter or Request for Verification of Driver License Status (DMV Form 6600) completed by another jurisdiction indicating the status of the person's driving privileges in that jurisdiction.

(2) A clearance letter, as provided in section (1) of this rule, must include the:

(a) Applicant's name;

(b) Applicant's date of birth;

(c) Out-of-jurisdiction license number;

(d) Expiration date of the out-of-jurisdiction license;

(e) Status of person's driving privilege including any endorsements, i.e., valid, expired, suspended, revoked, canceled or otherwise not valid. The letter must include the reason for the suspension, cancellation or revocation, the beginning date of suspension, revocation or cancellation, requirement(s) for reinstatement and the date the person's license will be eligible for reinstatement;

(f) A means of identifying the jurisdiction providing the clearance letter such as letterhead stationery; and

(g) The date the clearance letter was completed.

(3) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will allow a person whose driving privilege is suspended, revoked, canceled or otherwise not valid to complete certain requirements in this state if the other jurisdiction will accept the Oregon results and issue a clearance letter stating the person's driving privilege is valid in that jurisdiction. The person may complete:

(a) Vision, knowledge or behind-the-wheel tests;

(b) Remedial training or schools;

(c) Medical, alcohol or other evaluation.

(4) It is the applicant's responsibility to provide a clearance letter as required by this rule. A facsimile of a clearance letter is acceptable only if the clearance letter is received by DMV directly from the driver licensing agency in the other jurisdiction. Telephone clearances and Law Enforcement Data System (LEDS) teletype clearances are not acceptable.

(5) A clearance letter submitted to DMV will only be valid for issuance of a driver license for 60 days following the date it was completed by the other jurisdiction.

Stat. Auth.: ORS 802.010, 802.200, 802.540, 807.040, 807.045, 807.050, 807.060, 807.070, 807.150, 807.170 & 809.310

Stats. Implemented: ORS 807.050

Hist.: MV 14-1992, f. & cert. ef. 10-16-92; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-062-0200

Conversion From Another Jurisdiction's Commercial Driver License

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will require an applicant for a commercial driver license in this state who currently holds a CDL issued by another jurisdiction to:

(a) Take and pass the Class C knowledge test and a vision screening; and

(b) Take and pass the pre-trip inspection, drive test and knowledge test required, if the person applies for a higher class license.

(2) DMV may waive the drive tests or knowledge tests, except the Class C knowledge test and the hazardous materials endorsement knowledge test, if the applicant applies for a license equal to the CDL the appli-

cant has been issued by another jurisdiction and the CDL has not been expired for more than one year.

(3) DMV may require any applicant to take a knowledge or drive test prior to issuing a CDL.

(4) When a person has surrendered his or her Oregon CDL to obtain a CDL from another jurisdiction, DMV may replace or renew the Oregon CDL without requiring a drive test or knowledge test if:

(a) The applicant has moved back to Oregon and can provide proof of residence address in Oregon; and

(b) The Oregon CDL is not currently expired, or if expired, has not been expired for more than one year. Rather than issue a replacement CDL, DMV will renew the Oregon CDL if it is due to expire within the next 13 months.

(5) DMV will not renew an Oregon CDL unless the applicant meets the requirements of OAR 735-062-0090 and 735-074-0290.

(6) DMV will submit an inquiry through the Commercial Driver License Information System (CDLIS) and the National Driver Register (NDR)/ Problem Driver Pointer System (PDPS) before issuing, replacing or renewing an Oregon CDL. DMV will not issue, replace or renew an Oregon CDL if the inquiry shows:

(a) The applicant has a current and valid CDL, issued by another jurisdiction unless the CDL is surrendered to DMV or the applicant certifies it has been lost or destroyed;

(b) The applicant's driving privileges are suspended, revoked or canceled in another jurisdiction; or

(c) The applicant is disqualified from operating a commercial motor vehicle in another jurisdiction.

(7) The driving record of the applicant from another jurisdiction will become a part of the Oregon driving record as provided in OAR 735-062-0210.

(8) A person whose driving privileges have been suspended, revoked, or canceled in another jurisdiction or who has been disqualified from operating a commercial motor vehicle in another jurisdiction, must be eligible for valid driving privileges in the other jurisdiction before an Oregon CDL may be issued. When the person is eligible for valid driving privileges in the other jurisdiction, he or she may ask that DMV check CDLIS and NDR/PDPS to verify the eligibility.

Stat. Auth.: ORS 184.616, 184.619, 807.045, 807.050 & 807.070

Stat. Implemented: ORS 807.045

Hist.: MV 6-1990, f. & cert. ef. 4-2-90; MV 14-1992, f. & cert. ef. 10-16-92; MV 12-1993, f. 10-22-93, cert. ef. 11-4-93; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0015; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

735-074-0260

Medical Standards for Drivers of Commercial Motor Vehicles

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) adopts the United States Department of Transportation regulations contained in 49 CFR §§ 391.41 through 391.49 (2004) pertaining to physical qualifications and medical examination of drivers of commercial motor vehicles. Except as provided in section (2) of this rule, to qualify for a Class A, B, or C commercial driver license a person must obtain an approved medical certificate meeting the requirements of these federal regulations.

(2) DMV may issue a Class A, B, or C commercial driver license to a person who does not qualify for a medical certificate under section (1) of this rule if the person is issued:

(a) A Waiver of Physical Disqualification, by the Motor Carrier Transportation Division of the Oregon Department of Transportation (MCTD) under OAR 740-100-0140; or

(b) An exemption by the Federal Motor Carrier Safety Administration pursuant to 49 USC §§ 31136 and 31135, and 49 CFR §§ 381.300 to 381.330.

(3) DMV will issue a restricted Class A, B or C commercial driver license if a Skills Performance Evaluation Certificate issued by FMSCA under the regulations described in section (1) of this rule, or the waiver or exemption described in section (2) of this rule indicate any applicable restrictions, conditions or limitations for issuance of a commercial license.

(4) DMV will suspend a Class A, B or C commercial driver license if notified that MCTD has suspended or revoked a Waiver of Physical Disqualification for any reason or for any length of time.

(5) DMV will suspend a Class A, B or C commercial driver license if notified that the Federal Motor Carrier Safety Administration (FMCSA) has revoked the Skills Performance Evaluation Certificate issued to the driver under the provisions of 49 CFR § 391.49.

(6) DMV will suspend a Class A, B or C commercial driver license if notified that FMCSA has revoked an exemption to physical qualifications

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issued to a driver under the provisions of 49 U.S.C. §§ 31135 and 31136(e) and 49 CFR §§ 381.300 to 381.330.

(7) A person suspended under section (4), (5), or (6) of this rule may reinstate commercial driving privileges if the person obtains a medical certificate as described in section (1) of this rule or is reissued a waiver by MCTD or an exemption by FMCSA as described in section (2) of this rule.

Stat. Auth.: ORS 184.616, 184.619 & 807.040
Stats. Implemented: ORS 807.040 & 807.100, 49 CFR § 391.41 - § 391.49, 49 CFR § 381.300 - § 381.330, 49 USC 31135, 49 USC 31136(e)
Hist.: MV 11-1986, f. 6-27-86, ef. 7-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0730; MV 24-1988, f. & cert. ef. 7-1-88; MV 6-1990, f. & cert. ef. 4-2-90; MV 11-1992, f. & cert. ef. 9-28-92; DMV 16-2003, f. & cert. ef. 11-18-03, Renumbered from 735-060-0140; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05

Adm. Order No.: DMV 3-2005

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-31-05

Notice Publication Date: 10-1-04

Rules Adopted: 735-062-0190

Rules Amended: 735-070-0020

Subject: Federal law, specifically 49 USC 5103a (Section 1012 of the USA Patriot Act of 2003) and the Federal Motor Carrier Safety Administration regulations implementing this law, prohibit states from issuing, renewing, upgrading or transferring a hazardous materials endorsement for a commercial driver license (CDL) unless the driver obtains a security clearance from the Transportation Security Administration (TSA). The deadline for state compliance with this federal law is January 31, 2005. OAR 735-062-0190 is adopted to implement the federal requirements. OAR 735-070-0020 is amended to clarify that DMV will not rescind a cancellation pending the outcome of a hearing for a driver with a hazardous materials endorsement who does not pass a TSA security clearance.

Rules Coordinator: Brenda Trump—(503) 945-5278

735-062-0190

Requirements for Issuance and Retention of a Hazardous Materials Endorsement

(1) To obtain, retain or renew a hazardous materials endorsement on an Oregon commercial driver license (CDL), a person must be qualified. To qualify for a hazardous materials endorsement a person must:

(a) Qualify for commercial driving privileges and be issued or have a valid Oregon CDL;

(b) Pass a hazardous materials endorsement knowledge test for an original endorsement, a renewal, or a transfer of the endorsement from another state's CDL;

(c) Complete and pass a security threat assessment (security check) from the Transportation Security Administration (TSA) in accordance with 49 CFR Part 1572, including receipt by DMV of a notice from TSA which shows the person does not pose a security threat. A person must pass a TSA security check at the following times:

(A) Beginning on January 31, 2005, before DMV will issue an original hazardous materials endorsement;

(B) Beginning on May 31, 2005, four years prior to the date the CDL with a hazardous materials endorsement expires. Four years and six months prior to the expiration of a hazmat endorsement, DMV will notify the person that he or she must complete and pass a TSA security check within six months in order to retain commercial driving privileges with a hazardous materials endorsement;

(C) Beginning May 31, 2005, at the time of renewal of the CDL with a hazardous materials endorsement. Six months prior to expiration, DMV will notify the person that he or she must complete and pass a TSA security threat assessment before expiration of the CDL in order to retain commercial driving privileges with a hazardous materials endorsement; and

(D) Beginning May 31, 2005, a person who transfers a CDL with a hazardous materials endorsement from another state to Oregon will be required to pass another TSA security check at the renewal or interim time period required by the original state of issuance.

(E) Any other time required by DMV.

(d) Pay all required fees, which include, but may not be limited to, any applicable issuance fee and a hazardous materials knowledge test fee.

(2) To complete a TSA security check, a person must complete a security check application, submit fingerprints, provide proof of citizenship or lawful immigration status, and payment of fees as specified by TSA. To pass a TSA security check, DMV must receive a notice from TSA which shows the person does not pose a security threat.

(3) While waiting to receive the results of the security check from TSA, DMV may issue a CDL without a hazardous materials endorsement to a person required to obtain a TSA security check. A person issued a CDL without a hazardous materials endorsement is not authorized to transport hazardous materials. Upon receipt of a notice from TSA showing the person poses no security threat, DMV will issue, at no charge, a replacement CDL with a hazardous materials endorsement when the person surrenders the CDL that was issued pending the security check.

(4) A person is no longer qualified for a hazardous materials endorsement if:

(a) DMV receives a notice of threat assessment from TSA requiring immediate cancellation of the hazardous materials endorsement; or

(b) DMV receives notice from TSA indicating the person did not pass the security threat assessment.

(5) If DMV determines a person is no longer qualified for a hazardous materials endorsement, DMV must immediately cancel the person's hazardous materials endorsement. Upon cancellation of the hazardous materials endorsement, the person must:

(a) Immediately surrender to DMV the CDL showing the hazardous materials endorsement; and

(b) Pay the required fee for issuance of a replacement driver license. DMV will issue a commercial driver license without a hazardous materials endorsement if the person qualifies for commercial driving privileges.

(6) A person is no longer qualified for commercial driving privileges with a hazardous materials endorsement if when required, the person fails to complete and pass a TSA security check as described in section (2) of this rule. DMV will cancel the person's commercial driving privileges as set forth in OAR 735-070-0020.

(7) If the person does not surrender his or her CDL showing the hazardous materials endorsement within 60 days of the date of the notice of immediate or final cancellation, DMV will cancel the person's commercial driver license pursuant to ORS 809.310(2).

(8) The person may request a contested case hearing on the immediate cancellation of his or her hazardous materials endorsement. The hearing request must be in writing and must be postmarked or received by DMV within 20 days of the date of notice or the person waives the right to a hearing except as provided in OAR 137-003-0528. The issues at the hearing are limited to whether:

(a) When required, the person completed and passed a TSA security check as described in section (3) of this rule;

(b) DMV received a notice from TSA showing the person does not qualify for a hazardous materials endorsement; and

(c) Whether the person is the same person named on the notice.

(9) When the results of the TSA security check are received, DMV will update the person's driving record to indicate the results of the security check and whether a hazardous materials endorsement was issued or denied. DMV will also notify the Commercial Drivers License Information System (CDLIS) of the results of the security check.

Stat. Auth.: ORS 184.616, 184.619, 802.010

Other Auth.: 49 CFR Part 1572

Stat. Imp.: ORS 807.170, 807.350, 807.370, 49 USC § 5103a

Hist.: DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05

735-070-0020

Hearing Following a Cancellation

(1) The Driver and Motor Vehicle Services Division of the Department of Transportation (DMV) will grant a contested case hearing for cancellation actions in accordance with sections (5) and (6) of this rule.

(2) A request for a hearing on the cancellation of a driver permit, driver license or identification card must comply with the requirements established in OAR 735-070-0110.

(3) When DMV receives a timely request for a hearing on the cancellation of a driver permit, driver license, or identification card, the cancellation will not go into effect pending the outcome of the hearing, except in the following situations:

(a) When DMV determines that there is a serious danger to the public health, safety, or welfare;

(b) When the cancellation is for withdrawal of parent's consent;

(c) When the cancellation is for failing to pass a security threat assessment under OAR 735-062-0190; or

(d) When the cancellation has gone into effect.

(4) For the purposes of this rule, a serious danger to the public health, safety or welfare includes, but is not limited to, the following:

(a) A false or fraudulent driver permit, driver license or identification card has been issued and it could be used to facilitate:

(A) A minor's acquisition of alcoholic beverages;

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- (B) The cashing of forged checks;
- (C) The acquisition of property under false pretenses; or
- (D) Any other unlawful activity.

(b) A driver permit or driver license is issued to a person whose driving privileges are suspended or revoked at the time the driver permit or driver license is issued. This applies to a situation where DMV would not have issued the driver permit or driver license had it known at the time that the person's driving privileges were suspended or revoked.

(c) A person determined by DMV to be an endangerment to persons or property and denied further testing through cancellation of driving privileges under ORS 807.350 and OAR 735-062-0073(5).

(5) The Office of Administrative Hearings will conduct hearings held on identification card cancellations under ORS 807.400 as contested cases in accordance with ORS 183.310 to 183.550.

(6) The Office of Administrative Hearings will conduct hearings held on driver permit or driver license cancellations under ORS 809.310 not based on a conviction as contested cases in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 183.415, 184.616, 814.619, 802.010, 809.440
Stats. Implemented: ORS 809.310

Hist.: MV 16-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0067; MV 9-1989, f. & cert. ef. 2-1-89; MV 5-1992, f. & cert. ef. 4-16-92; DMV 3-2002, f. & cert. ef. 3-14-02; DMV 3-2005, f. 1-20-05, cert. ef. 1-31-05

***** Employment Department Chapter 471

Adm. Order No.: ED 1-2005

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-20-05

Notice Publication Date: 12-1-04

Rules Amended: 471-015-0020

Subject: The Employment Department is amending: OAR 471-015-0020 to reflect that standards of aggregation have been revised from 6 units records to 3 unit records.

Rules Coordinator: Richard L. Luthe—(503) 947-1724

471-015-0020

Disclosure of Performance Reporting Information System Data

(1) Data from the Performance Reporting Information System shall only be disclosed in the aggregate consisting of no fewer than three unit records, and according to the protocols established by agreement with the system administrator, based on the objectives articulated in ORS 657.734. All disclosures must comply with applicable federal and state law, including any written agreement between the system participants and the system administrator.

(2) The system administrator shall make available that aggregate data necessary for the comprehensive workforce system-wide performance indicators. This data will be made available to all system participants, customers such as employers and job seekers, workforce investment boards and the general public.

(3) System participants may view the individual records input by the system participant for their own customers, provided that such viewing complies with applicable federal and state law.

(4) System participants and the system administrator shall take appropriate, necessary and prudent steps to prevent unauthorized disclosure or identification of an individual's data, including use of the protocols established by agreement. Any individual who, without proper authority, discloses confidential information under ORS 657.734 may be disqualified from holding any appointment or employment with the State of Oregon.

Stat. Auth.: ORS 657.610

Stats. Implemented: ORS 657.610 & 657.734

Hist.: ED 15-2001, f. 12-19-01, cert. ef. 12-23-01; ED 13-2003, f. 12-12-03 cert ef. 12-14-03; ED 1-2005, f. & cert. ef. 1-20-05

***** Employment Relations Board Chapter 115

Adm. Order No.: ERB 1-2005

Filed with Sec. of State: 1-24-2005

Certified to be Effective: 1-24-05

Notice Publication Date: 1-1-05

Rules Amended: 115-045-0005, 115-045-0010, 115-045-0020, 115-045-0021, 115-045-0023, 115-045-0025

Subject: Adopt rules regarding change in time period for filing appeals, change in what constitutes a timely filing of the appeal, and

change in a hearing's postponement past the 30-day requirement on agreement between the parties; rules necessitated by enactment of House Bill 2474, adopted by 2003 Legislature.

Rules Coordinator: Joanne Lay—(503) 378-3808, ext. 236

115-045-0005

Filing of Appeals

Filing of appeals must be in accordance with these rules. An appeal must be in writing and filed not later than 30 days after the effective date of the action being appealed. An appeal shall be considered filed when it is received by the Board or postmarked, if mailed postpaid and properly addressed. Amendments or supplements to appeals will be accepted only on a showing of good cause.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(1)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

115-045-0010

Regular Employee Appeals from Suspension, Reduction in Pay, Demotion and Dismissal Actions

(1) A regular employee who is suspended, reduced in pay, demoted or dismissed may appeal

the action to the Board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why appellant believes the action was not in good faith for cause or was taken for political, religious or racial reasons, sex, marital state or age; and

(c) The correction action being requested.

(3) Notice of appeal must be filed with the Board no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & ORS 243

Stats. Implemented: ORS 240.086(1) & 240.560

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

115-045-0020

Other Appeals from Other Personnel Actions

(1) A classified employee may appeal any personnel action affecting the person (including trial service removals) that is alleged to be arbitrary or contrary to law, rule or policy, or taken for political reasons.

(2) The appeal must be in writing, and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was arbitrary, contrary to law, rule or policy, or taken for political reasons; and

(c) The corrective action being requested.

(3) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240 & 243

Stats. Implemented ORS 240.086(1)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0015; ERB 1-2001, f. 2-16-01, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

115-045-0021

Dismissal Appeals by Management Service Employees with Immediate Prior Regular Classified Service

(1) A management service employee with immediate prior regular classified service status who is dismissed from state service may appeal the dismissal to the board.

(2) The appeal must be in writing and must contain a detailed statement specifying:

(a) The action being appealed;

(b) The reasons why the employee believes the action was not in good faith for cause or was taken for political, religious or racial reasons, sex, marital status or age; and

(c) The corrective action being requested.

(3) The written appeal must be filed with the board no later than 30 days after the effective date of such action

Stat. Auth.: ORS 240 & 243

Stats. Implemented: ORS 240.560

ADMINISTRATIVE RULES

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 1-1982, f. & ef. 1-19-82; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01, Renumbered from 115-045-0010; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

115-045-0023

Other Management Service Employee Appeals

(1) Disciplinary Actions. A management service employee who is reprimanded, reduced in pay, suspended, demoted or removed from management service may appeal such action to the Board.

(2) Nondisciplinary actions. A management service employee who is removed from the management service for nondisciplinary reasons, assigned, reassigned or transferred may appeal such action to the Board.

(3) Appeals must be in writing and must contain a statement specifying:

(a) The action being appealed;

(b) The reasons why the appellant believes the action was contrary to ORS 240.570(3) (for disciplinary actions) or ORS 240.570(2) (for nondisciplinary actions); and

(c) The corrective action being requested.

(4) The written appeal must be filed no later than 30 days after the effective date of such action.

Stat. Auth.: ORS 240.086(3) & 243
Stats. Implemented: ORS 240.570

Hist.: ERB 1-1982, f. & ef. 1-19-82; ERB 1-1985(Temp), f. & ef. 8-19-85; ERB 9-1985, f. 10-29-85, ef. 10-31-85; ERB 3-1993, f. & cert. ef. 12-15-93; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; Renumbered from 115-045-0024; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

115-045-0025

Hearings

(1) The Board agent may investigate and attempt to resolve the dispute with the parties. If the case cannot be resolved within a reasonable time, it will be scheduled for public hearing and an order of the Board.

(2) Time and Place of Hearings. The time and place of hearing will be set by the Board agent. Notice of the hearing shall be served personally or by registered or certified mail on the agency head and all other interested parties at least ten days in advance of the hearing date. For disciplinary actions, the hearing will be set no later than 30 days from the date the appeal was filed, unless the parties to the hearing agree to a postponement.

(3) Postponements. When the parties to a hearing agree to a postponement, they shall promptly submit a written request for postponement to the Board agent. For good cause shown, the Board agent may grant a postponement. A hearing on an appeal under ORS 240.560 will not be postponed beyond 30 days from the date the appeal was filed, unless the parties to the hearing and the Board agent agree to a postponement.

Stat. Auth.: ORS 243

Stats. Implemented: ORS 240.086(3)

Hist.: ERB 1-1980, f. & ef. 1-9-80; ERB 6-1995, f. 11-30-95, cert. ef. 12-1-95; ERB 2-2000, f. 12-1-00, cert. ef. 7-1-01; ERB 1-2002, f. & cert. ef. 5-21-02; ERB 1-2003(Temp), f. & cert. ef. 8-1-03 thru 1-31-04; Administrative correction 8-2-04; ERB 1-2005, f. & cert. ef. 1-24-05

Land Conservation and Development Department Chapter 660

Adm. Order No.: LCDD 1-2005

Filed with Sec. of State: 2-11-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 11-1-04, 12-1-04

Rules Amended: 660-011-0060, 660-015-0000

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

Rules Coordinator: Shelia Preston—(503) 373-0050, ext. 222

660-011-0060

Sewer Service to Rural Lands

(1) As used in this rule, unless the context requires otherwise:

(a) "Establishment of a sewer system" means the creation of a new sewage system, including systems provided by public or private entities;

(b) "Extension of a Sewer System" means the extension of a pipe, conduit, pipeline, main, or other physical component from or to an existing sewer system in order to provide service to a use, regardless of whether the use is inside the service boundaries of the public or private service provider.

The sewer service authorized in section (8) of this rule is not an extension of a sewer;

(c) "No practicable alternative to a sewer system" means a determination by the Department of Environmental Quality (DEQ) or the Oregon Health Division, pursuant to criteria in OAR chapter 340, division 071, and other applicable rules and laws, that an existing public health hazard cannot be adequately abated by the repair or maintenance of existing sewer systems or on-site systems or by the installation of new on-site systems as defined in OAR 340-071-0100;

(d) "Public health hazard" means a condition whereby it is probable that the public is exposed to disease-caused physical suffering or illness due to the presence of inadequately treated sewage;

(e) "Sewage" means the water-carried human, animal, vegetable, or industrial waste from residences, buildings, industrial establishments or other places, together with such ground water infiltration and surface water as may be present;

(f) "Sewer system" means a system that serves more than one lot or parcel, or more than one condominium unit or more than one unit within a planned unit development, and includes pipelines or conduits, pump stations, force mains, and all other structures, devices, appurtenances and facilities used for treating or disposing of sewage or for collecting or conducting sewage to an ultimate point for treatment and disposal. The following are not considered a "sewer system" for purposes of this rule:

(A) A system provided solely for the collection, transfer and/or disposal of storm water runoff;

(B) A system provided solely for the collection, transfer and/or disposal of animal waste from a farm use as defined in ORS 215.303.

(2) Except as provided in sections (3), (4), (8), and (9) of this rule, and consistent with Goal 11, a local government shall not allow:

(a) The establishment of new sewer systems outside urban growth boundaries or unincorporated community boundaries;

(b) The extension of sewer lines from within urban growth boundaries or unincorporated community boundaries in order to serve uses on land outside those boundaries;

(c) The extension of sewer systems that currently serve land outside urban growth boundaries and unincorporated community boundaries in order to serve uses that are outside such boundaries and are not served by the system on July 28, 1998.

(3) Components of a sewer system that serve lands inside an urban growth boundary (UGB) may be placed on lands outside the boundary provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) Such placement is necessary to:

(A) Serve lands inside the UGB more efficiently by traversing lands outside the boundary;

(B) Serve lands inside a nearby UGB or unincorporated community;

(C) Connect to components of the sewer system lawfully located on rural lands, such as outfall or treatment facilities; or

(D) Transport leachate from a landfill on rural land to a sewer system inside a UGB; and

(b) The local government.

(A) Adopts land use regulations to ensure the sewer system shall not serve land outside urban growth boundaries or unincorporated community boundaries, except as authorized under section (4) of this rule; and

(B) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

(4) A local government may allow the establishment of a new sewer system, or the extension of an existing sewer system, to serve land outside urban growth boundaries and unincorporated community boundaries in order to mitigate a public health hazard, provided that the conditions in subsections (a) and (b) of this section are met, as follows:

(a) The DEQ or the Oregon Health Division initially:

(A) Determines that a public health hazard exists in the area;

(B) Determines that the health hazard is caused by sewage from development that existed in the area on July 28, 1998;

(C) Describes the physical location of the identified sources of the sewage contributing to the health hazard; and

(D) Determines that there is no practicable alternative to a sewer system in order to abate the public health hazard; and

(b) The local government, in response to the determination in subsection (a) of this section, and based on recommendations by DEQ and the Oregon Health Division where appropriate:

(A) Determines the type of sewer system and service to be provided, pursuant to section (5) of this rule;

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(B) Determines the boundaries of the sewer system service area, pursuant to section (6) of this rule;

(C) Adopts land use regulations that ensure the sewer system is designed and constructed so that its capacity does not exceed the minimum necessary to serve the area within the boundaries described under paragraph (B) of this subsection, except for urban reserve areas as provided under OAR 660-021-0040(6);

(D) Adopts land use regulations to prohibit the sewer system from serving any uses other than those existing or allowed in the identified service area on the date the sewer system is approved;

(E) Adopts plan and zone amendments to ensure that only rural land uses are allowed on rural lands in the area to be served by the sewer system, consistent with Goal 14 and OAR 660-004-0018, unless a Goal 14 exception has been acknowledged;

(F) Ensures that land use regulations do not authorize a higher density of residential development than would be authorized without the presence of the sewer system; and

(G) Determines that the system satisfies ORS 215.296(1) or (2) to protect farm and forest practices, except for systems located in the subsurface of public roads and highways along the public right of way.

(5) Where the DEQ determines that there is no practicable alternative to a sewer system, the local government, based on recommendations from DEQ, shall determine the most practicable sewer system to abate the health hazard considering the following:

(a) The system must be sufficient to abate the public health hazard pursuant to DEQ requirements applicable to such systems; and

(b) New or expanded sewer systems serving only the health hazard area shall be generally preferred over the extension of a sewer system from an urban growth boundary. However, if the health hazard area is within the service area of a sanitary authority or district, the sewer system operated by the authority or district, if available and sufficient, shall be preferred over other sewer system options.

(6) The local government, based on recommendations from DEQ and, where appropriate, the Oregon Health Division, shall determine the area to be served by a sewer system necessary to abate a health hazard. The area shall include only the following:

(a) Lots and parcels that contain the identified sources of the sewage contributing to the health hazard;

(b) Lots and parcels that are surrounded by or abut the parcels described in subsection (a) of this section, provided the local government demonstrates that, due to soils, insufficient lot size, or other conditions, there is a reasonably clear probability that onsite systems installed to serve uses on such lots or parcels will fail and further contribute to the health hazard.

(7) The local government or agency responsible for the determinations pursuant to sections (4) through (6) of this rule shall provide notice to all affected local governments and special districts regarding opportunities to participate in such determinations.

(8) A local government may allow a residential use to connect to an existing sewer line provided the conditions in subsections (a) through (h) of this section are met:

(a) The sewer service is to a residential use located on a parcel as defined by ORS 215.010(1), or a lot created by subdivision of land as defined in ORS 92.010;

(b) The parcel or lot is within a special district or sanitary authority sewer service boundary that existed on January 1, 2005, or the parcel is partially within such boundary and the sewer service provider is willing or obligated to provide service to the portion of the parcel or lot located outside that service boundary;

(c) The sewer service is to connect to a residential use located within a rural residential area, as described in OAR 660-004-0040, which existed on January 1, 2005;

(d) The nearest connection point from the residential parcel or lot to be served is within 300 feet of a sewer line that existed at that location on January 1, 2005;

(e) It is determined by the local government to be practical to connect the sewer service to the residential use considering geographic features or other natural or man-made constraints;

(f) The sewer service authorized by this section shall be available to only those parcels and lots specified in this section, unless service to other parcels or lots is authorized under sections (4) or (9) of this rule;

(g) The existing sewer line, from where the nearest connection point is determined under subsection (8)(d) of this rule, is not located within an urban growth boundary or unincorporated community boundary; and

(h) The connection of the sewer service shall not be relied upon to authorize a higher density of residential development than would be authorized without the presence of the sewer service, and shall not be used as a basis for an exception to Goal 14 as required by OAR 660-004-0040(6).

(9) A local government may allow the establishment of new sewer systems or the extension of sewer lines not otherwise provided for in section (4) of this rule, or allow a use to connect to an existing sewer line not otherwise provided for in section (8) of this rule, provided the standards for an exception to Goal 11 have been met, and provided the local government adopts land use regulations that prohibit the sewer system from serving any uses or areas other than those justified in the exception. Appropriate reasons and facts for an exception to Goal 11 include but are not limited to the following:

(a) The new system, or extension of an existing system, is necessary to avoid an imminent and significant public health hazard that would otherwise result if the sewer service is not provided; and

(b) There is no practicable alternative to the sewer system in order to avoid the imminent public health hazard.

(10) This rule, as amended, shall immediately apply to local land use decisions made subsequent to February 11, 2005.

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

Stat. Auth.: ORS 183 & ORS 197

Stats. Implemented: ORS 197.712

Hist.: LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05

660-015-0000

Statewide Planning Goals and Guidelines #1 through #14

(1) #1 — Citizen Involvement;
(2) #2 — Land Use Planning;
(3) #3 — Agricultural Lands;
(4) #4 — Forest Lands;
(5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;

(6) #6 — Air, Water, and Land Resources Quality;

(7) #7 — Areas Subject to Natural Hazards;

(8) #8 — Recreational Needs;

(9) #9 — Economy of the State;

(10) #10 — Housing;

(11) #11 — Public Facilities and Services;

(12) #12 — Transportation;

(13) #13 — Energy Conservation; and

(14) #14 — Urbanization.

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

Stat. Auth.: ORS 183, 197 & 215

Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240 & 197.245

Hist.: LCDC 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05

Landscape Architect Board Chapter 804

Adm. Order No.: LAB 1-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 12-1-04

Rules Adopted: 804-025-0000, 804-025-0010, 804-025-0020

Rules Amended: 804-001-0002, 804-001-0014, 804-001-0015, 804-003-0000, 804-010-0000, 804-010-0010, 804-020-0055, 804-030-0011, 804-030-0015, 804-030-0020, 804-040-0000

Rules Repealed: 804-030-0060

Subject: These rules establish requirements for the registration of landscape architect businesses, landscape architects in training, and 'emeritus' status; requirements for continuing education; fees for the new designations; a change in the requirements for taking the landscape architect registration exam; qualifications for board members; and aligning civil penalty with statute amount.

Rules Coordinator: Susanna R. Knight—(503) 589-0093

ADMINISTRATIVE RULES

804-001-0002

Biennial Budget

The Board will adopt a biennial budget prior to the beginning of the biennium.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 291 superseded by 1997 SB 546

Hist.: LAB 1-1997(Temp), f. & cert. ef. 9-3-97; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 1-2001(Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-001-0014

Nomination and Selection of Board Members

(1) Appointment of Board Members:

(a) A vacancy exists when a board member completes the term for that position, resigns, becomes incapacitated, or otherwise is incapable of performing the duties of a board member, or is removed from office or is not reappointed by the Governor prior to the expiration of the member's current term.

(b) A vacancy does not exist when an actively sitting board member completes the member's first or second full or partial term, so long as the member is reappointed by the Governor to a second or third term. A member who is eligible for reappointment to a second or third term shall give the board and the Governor written notice of intention to seek reappointment before the expiration of the member's term.

(2) Qualifications for Licensee Membership on the Board:

(a) A licensee is qualified to seek nomination for board membership if the licensee is registered by the board and has lived in the State of Oregon for a least the five years preceding appointment to the board.

(b) A licensee is not qualified for nomination to board membership if the licensee has been convicted, plead guilty, or plead nolo contendere to any criminal charge if the relationship of the facts which support the charge and all intervening circumstances tend to show that the licensee is not fit to hold the position, in the discretion of the board.

(c) A licensee is not qualified for nomination to board membership if the licensee, within the previous five years, has been disciplined by the board for a violation of ORS Chapter 671 or the rules adopted by the board.

Stat. Auth.: ORS 671.415

Stats. Implemented: 1997 SB 546

Hist.: LAB 3-1998, f. & cert. ef. 5-20-98 Suspended by LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-001-0015

Election of Officers

The board may elect a Chair, Vice Chair and Treasurer once a year at the first board meeting held after July 1. The new Chair, Vice-Chair and Treasurer's terms will begin at the end of the meeting at which they are elected.

Stat. Auth.: ORS 183 & 671

Stats. Implemented: ORS 671.459

Hist.: LAB 1-1984, f. & ef. 1-5-84; Renumbered from 804-030-0025; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-003-0000

Definitions

The definitions of terms used in ORS 671.310 to 671.459, and the rules of this chapter are:

(1) "Assumed or Fictitious Name" — A false name taken as one's own.

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

(3) "Emeritus" — Retired but retaining an honorary title corresponding to that held immediately before retirement.

(4) "Employing" — Hiring a person, not an independent contractor, for compensation.

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

(6) "Grossly Negligent" — Reckless and wanton disregard for exercising care and caution.

(7) "Impersonate" — To assume, without authority or with fraudulent intent, the identity of another person.

(8) "Material Misrepresentation" — An untrue statement that is significant under the circumstances.

(9) "Renewal of Registration" — To annually maintain the current status of a valid registration or to bring a lapsed or expired registration to current, valid status.

Stat. Auth.: ORS 183 & ORS 671

Hist.: LAB 1-1984, f. & ef. 1-5-84; LAB 1-1985, f. & ef. 7-1-85; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-2005, f. & cert. ef. 2-14-05

804-010-0000

Qualifications

(1) A candidate for registration must have a degree from a program accredited and accepted by the Landscape Architecture Accreditation Board (LAAB). That program must be listed in LAAB's Accreditation Report current at the time of the candidate's graduation.; and

(2) The candidate must have passing scores on all sections of the L.A.R.E.; and

(3) The candidate must provide verification of three years of work experience under the direct supervision of a registered Landscape Architect. Work experience shall be accrued after satisfying the education requirement.

(a) A candidate for registration may substitute up to two years of experience under the direct supervision of a civil engineer, architect or credential planner for 2 years of experience under a registered Landscape Architect.

(b) The Board may consider other experience related to the practice of landscape architecture as submitted by the candidate for up to one year of the experience requirements.

(c) All experience and training equivalency shall be based on a full-time workweek of 40 hours and a work year of 2,000 hours. Part-time work shall be given only proportional credit.

(d) Experience of less than ten weeks duration will not be recognized.

Stat. Auth.: ORS 183, 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-010-0010

Equivalent Education and Experience

(1) In lieu of the degree specified in OAR 804-010-0000, an applicant may satisfy the education requirement by accumulating five years of credit through one or more of the following:

(a) Non-accredited B.L.A or M.L.A., four years credit;

(b) NAAB-accredited B.Arch. or M. Arch, four years credit;

(c) ABET-accredited degree in Civil Engineering, four years credit;

(d) Any Bachelor's degree, two years credit;

(e) Diversified experience in landscape architecture under the direct supervision of a licensed landscape architect, three years credit.

(2) In allowing credit for education and experience in fulfilling the minimum qualification requirements established by statute, the board will apply the following evaluation criteria:

(a) Degrees listed in (1) above cannot be combined to satisfy the education credit requirement.

(b) The work experience applied as education credit may not also be used to satisfy experience requirements.

(c) Any degree awarded less than two years prior to the accreditation of the program will be accepted as an accredited degree.

(d) Any degree awarded after a program has ceased to be accredited will not be accepted as an accredited degree.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 1-1982(Temp), f. & ef. 5-6-82; LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 2-1998, f. & cert. ef. 4-22-98; Suspended by LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-020-0055

Completion of Exam

(1) A candidate who has successfully completed two or more sections of the LARE shall register with the Board as a Landscape Architect in Training (LAIT). The LAIT shall continue to register annually until such time as the LAIT is eligible for registration as a Landscape Architect.

(2) Affidavit of Understanding — After the applicant has successfully completed the LARE, the applicant shall obtain and become familiar with the requirements of the Oregon Revised Statutes and the Oregon Administrative Rules governing the practice of landscape architecture prior to appearing before the board for an Oral Exam/Interview. The applicant shall provide the board with a notarized affidavit stating that they have read and understand the Oregon Statutes and the Oregon Administrative Rules governing the practice of landscape architecture.

(3) Oral Exam/Interview — Prior to registration, each applicant for registration by examination shall appear before the board for an Oral Exam/Interview. The Oral Exam/Interview will be held after the applicant has successfully completed the LARE and has submitted the required application, fees, and notarized statement. The Oral Exam/Interview is held

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before the board and may include questions on the Oregon Revised Statutes and the Oregon Administrative Rules.

Stat. Auth.: ORS 671

Stats. Implemented: ORS 671.335

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1986, f. & ef. 1-3-86; LAB 3-1989, f. 6-23-89, cert. ef. 7-1-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-025-0000

Effective Date for Compliance with Continuing Education Requirements

The criteria and guidelines set forth in these rules for compliance with Continuing Education Requirements shall take full effect on July 1, 2006. At that time each registrant may be required to submit proof to the Board that they have met the requirements of this section in the manner prescribed.

Stat. Auth.: ORS 671.415

Stat. Implemented: ORS 671.395

Hist.: LAB 1-2005, f. & cert. ef. 2-14-05

804-025-0010

Continuing Education Requirements

(1) Exemptions: A registrant may be exempt, upon board review and approval, from continuing education requirements in any of the following situations:

(a) The new registrant's first renewal period is less than two years from the original date of licensure.

(b) A registrant is called to active duty in the armed forces of the United States for a period of time exceeding 120 consecutive days in a calendar year. This individual may be exempt from obtaining one-half of the required continuing education during that renewal period.

(c) A registrant experiences physical disability, illness, or other extenuating circumstances that prevents the registrant from practicing landscape architecture. The registrant shall provide supporting documentation for the board's review and approval. If the registrant elects to return to practice, the registrant shall complete all professional development hours required for one renewal cycle, in addition to those required for the next licensure renewal.

(2) Records: each registrant shall maintain:

(a) A log showing the subject and type of activity claimed, the sponsoring organization, location, duration and instructor's or speaker's name.

(b) Documentation sufficient to prove completion of the activity claimed such as attendance verification records, completion certificates or other documents;

(c) Required log and documentation for at least four (4) years.

(3) Audit: Upon request, each registrant shall provide proof of satisfying the continuing education requirements. If the registrant fails to furnish the information as required by the board or if the information is not sufficient to satisfy the requirements, the license shall not be renewed.

(4) Disallowance: If the board disallows one or more continuing education activities claimed, the board may, at its discretion, allow the registrant up to 120 days after notification to substantiate the original claim or to complete other continuing education activities sufficient to meet the minimum requirements.

Stat. Auth.: ORS 671.415

Stat. Implemented: ORS 671.395

Hist.: LAB 1-2005, f. & cert. ef. 2-14-05

804-025-0020

Uniform Continuing Education Standards

(1) Definitions:

(a) Activity — any course or educational endeavor that has a clear purpose and objective and maintains, improves or expands the professional knowledge or skill of the registrant.

(b) Professional development hour (PDH) — one hour (with no less than 50 minutes of direct involvement, commonly referred to as a contact hour) of an activity that meets the requirements of these regulations.

(c) Structured educational activity — any activity that: has a sponsor other than the registrant, has evidence of pre-planning including a written objective and format, has an assessment component, and is documented and verifiable.

(d) Health, safety and welfare issue — any issue related to the practice of landscape architecture exemplified by the most current examination required for licensure.

(e) Common conversions:

(A) One university quarter credit hour = 30 hours.

(B) One university semester credit hour = 45 hours

(C) One IACET Continuing Education Unit (CEU) = 10 hours

(2) Basic Requirements

(a) Beginning with applications for renewal of licenses that expire on July 1, 2006, each landscape architect shall have completed 24 PDH units of acceptable continuing education requirements during the two-year period immediately preceding each biennial renewal date as a condition for license renewal.

(b) At least 18 PDH units of the continuing education requirement shall be earned by completing structured educational activities that directly address the health, safety, and welfare issues of the public as related to the practice of landscape architecture.

(c) If a registrant exceeds the total continuing education requirement in any renewal period, the registrant may carry a maximum of 12 PDH units forward into the next renewal period.

(3) Conditions For Acceptance:

(a) To be accepted as a PDH, a structured educational activity must be: related to the practice of landscape architecture, performed outside of the normal performance of one's occupation, and contemporaneously documented.

(A) Professional or Technical presentations; making professional or technical presentations at recognized professional meetings, conventions or conferences shall be the equivalent of one PDH.

(B) Teaching or instructing a qualified presentation shall constitute two PDH for each contact hour spent in the classroom. Teaching credits shall be valid for teaching a course or seminar in its initial presentation only. Teaching credits shall not apply to full-time faculty of any college or university.

(C) Authoring; Authoring (publishing) or presenting an original paper, article or book shall be the equivalent of preparation time spent, not to exceed 20 PDH per publication. Credit shall be given for authorship or presentation of that activity, but not for both. Credit cannot be claimed until actually published or presented. Credit shall be valid for authorship or presentation in its initial version only.

(D) Professional societies or organizations; Serving as an elected officer or appointed chair of a committee of an organization in a professional society or organization shall be the equivalent of 4 PDH. Professional development hours shall be limited to 4 PDH per organization and shall not be earned until the completion of each year of service.

(E) Professional boards or commissions; Serving as an elected officer or appointed member of a professional board or commission shall be the equivalent of 4 PDH. Professional development hours shall be limited to 4 PDH per organization and shall not be earned until the completion of each year of service.

(F) Professional examination grading or writing; Serving as an exam grader or on a committee writing exam materials for a professional registration examination shall be the equivalent of 4 PDH. A maximum of 8 professional development hours per biennium may be applied from this source.

(G) Attaining specialty certifications through examination from a qualified professional society or organization shall be the equivalent PDH's equal to two times the allotted examination time (i.e. 4 PDH's shall be granted for a certification exam of 2 hours in length). A maximum of 4 PDH credits shall be allowed where there is no specific limit on the examination time.

(4) The board has final authority with respect to approval for courses, specific activities, and credit given.

Stat. Auth.: ORS 671.415

Stat. Implemented: ORS 671.395

Hist.: LAB 1-2005, f. & cert. ef. 2-14-05

804-030-0011

Advertising

(1) A registered landscape architect employed by a professional corporation may advertise landscape architecture under the registrant's own name. A business entity registered with the State to provide landscape architectural services may advertise under the registered name.

(2) Qualifications for a Certificate of Authorization for Business Entities

(a) A business entity formed for the purpose of offering to provide or providing landscape architectural services is required to obtain a certificate of authorization from the board. Each business entity shall meet the following requirements:

(A) At least one partner, member or shareholder, and one director in the case of a corporation or professional association, shall be a licensed landscape architect.

(B) Each business entity shall designate one or more licensed landscape architects as being in responsible charge of the landscape architect

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tural services and decisions of the firm. In the case of multiple offices, each office shall have a designated licensed landscape architect in responsible charge of that office.

(C) Each landscape architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions shall file a notarized affidavit of responsibility with the board.

(b) A business entity shall submit an application to the board, accompanied by the appropriate fee. The application shall be on forms prescribed by the board and shall contain the following information:

(A) Name and address of each partner, manager, officer, member, director or shareholder, indicating the professional status of each and their jurisdiction's license number.

(B) Name and address of each landscape architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions.

(C) Affidavit of responsibility from each landscape architect designated as being in responsible charge of the business entity's landscape architectural activities and decisions.

(D) A copy of the business entity's articles of incorporation, partnership agreement, limited liability operating agreement, or other document forming the business entity, and any amendments, as well as the most recently filed annual report, may be requested by the Board.

(c) Upon satisfactory completion of all application requirements, the board will issue a certificate of authorization.

(A) A certificate of authorization issued by the board shall be displayed at the business entity's principal place of business where the public can readily view it.

(B) The certificate is valid for two years and must be renewed prior to its expiration date.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.315
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98
Hist.: LAB 2-1984, f. & ef. 5-1-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-030-0015

Effective Date of Registration

(1) The initial date of registration shall be the date of the meeting during which the board approved the application. The initial registration shall be effective for one calendar year. The registration will be subject to renewal on an annual basis.

(2) Payment of the initial registration fee must be submitted with the application for registration.

(3) A registered landscape architect may petition the board for 'emeritus' status upon retirement from the profession.

(a) An emeritus registrant may no longer practice landscape architecture; and

(b) Is subject to the same re-application process as a lapsed registrant in order to resume the practice of landscape architecture; and

(c) Is not subject to continuing education requirements.
Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.376
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1984, f. & ef. 5-1-84; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2005, f. & cert. ef. 2-14-05

804-030-0020

Civil Penalties

Civil Penalties shall be \$5,000 for each offense. Such offenses include, but are not limited to:

(1) Unregistered individuals representing themselves as landscape architects.

(2) Registered landscape architects violating any of the provisions of ORS 671.310 through 671.459 or any rule adopted by the board.

Stat. Auth.: ORS 671
Stats. Implemented: ORS 671.435
Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

804-040-0000

Fees

The following are fees established by the board:

(1) Landscape Architect Registration Examination: an amount equal to the cost of purchasing the exam, or portions of the exam, from CLARB, plus the cost of postage, handling, examination site facilities and staff time for administration of the exam.

(2) Initial Landscape Architect registration: \$225.00.

- (3) Initial Landscape Architect in Training registration: \$50.00.
- (4) Registration renewal for Landscape Architect: \$225.00.
- (5) Registration renewal for Landscape Architect in Training: \$50.00.
- (6) Exam application fee (required to review qualifications to sit for each exam): \$50.00.
- (7) Reciprocity application fee: \$100.00.
- (8) Duplicate certificate: \$50.00.
- (9) Late renewal fee: \$100.00: Lapsed Registration Fee to equal the full renewal fee plus late fee for each year the license has lapsed.
- (10) Initial certification as an Authorized Business Entity in Landscape Architecture: \$225.00.
- (11) Renewal fee for an Authorized Business Entity in Landscape Architecture: \$225.00.

(12) Emeritus Annual fee: \$25.00.

Stat. Auth.: ORS 671.415

Stats. Implemented: ORS 671.365 superseded by 1997 SB 546, section 15

Hist.: LAB 2-1982, f. & ef. 6-24-82; LAB 1-1983, f. & ef. 2-1-83; LAB 3-1983(Temp), f. 10-14-83, ef. 11-1-83; LAB 1-1984, f. & ef. 1-5-84; LAB 2-1986, f. & ef. 3-5-86; LAB 1-1987, f. & ef. 1-5-87; LAB 1-1989, f. 4-4-89, cert. ef. 4-7-89; LAB 1-1992, f. 3-23-92, cert. ef. 4-1-92; LAB 1-1993, f. & cert. ef. 7-1-93; LAB 1-1998, f. & cert. ef. 2-5-98; LAB 2-1998, f. & cert. ef. 4-22-98; LAB 1-1999, f. & cert. ef. 10-22-99; LAB 1-2001 (Temp), f. 12-24-01 cert. ef. 1-1-02 thru 5-1-02; Administrative correction 12-2-02; LAB 1-2005, f. & cert. ef. 2-14-05

Landscape Contractors Board Chapter 808

Adm. Order No.: LCB 1-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 1-1-05

Rules Adopted: 808-002-0325, 808-004-0195, 808-004-0211, 808-008-0051, 808-008-0291, 808-008-0511, 808-008-0521

Rules Amended: 808-001-0005, 808-001-0030, 808-002-0260, 808-002-0540, 808-002-0725, 808-004-0250, 808-004-0300, 808-004-0440, 808-004-0510, 808-004-0520, 808-008-0020, 808-008-0030, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0180, 808-008-0280, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500, 808-009-0100

Rules Repealed: 808-008-0240, 808-004-0211(T), 808-008-0051(T), 808-008-0291(T), 808-008-0511(T), 808-008-0521(T), 808-002-0540(T), 808-008-0020(T), 808-008-0030(T), 808-008-0060(T), 808-008-0085(T), 808-008-0140(T), 808-008-0280(T), 808-008-0400(T), 808-008-0420(T), 808-008-0425(T), 808-008-0430(T), 808-008-0440(T), 808-008-0460(T), 808-008-0500(T)

Subject: 808-002-0540, 808-008-0020, 808-004-0211, 808-008-0030, 808-008-0051, 808-008-0060, 808-008-0085, 808-008-0140, 808-008-0240, 808-008-0280, 808-008-0291, 808-008-0400, 808-008-0420, 808-008-0425, 808-008-0430, 808-008-0440, 808-008-0460, 808-008-0500, 808-008-0511, 808-008-0521 are adopted or amended to implement HB 2279 (chapter 598, Oregon Laws 2003).

808-001-0005 - Amended to adopt the new revised January 15, 2004 version of the Attorney General's Uniform and Model Rules of Procedure.

808-001-0030 - Amended to update cite since temporary rule.

808-002-0325 - Adopt a new definition to implement the Board's policy regarding direct contractual relationship.

808-002-0260 - Amended to clarify that this definition includes arbitration. Add the concept that a court must be of competent jurisdiction if this definition applies. This extends this concept to all rules using this definition (OAR 808-004-0250, 808-004-0510 and 808-004-0520).

808-002-0725 - Amended to correct cite.

808-004-0195 - Adopt the rule to allow the agency to request that a party submitting exhibits that cannot be easily reproduced on an

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agency copier to submit copies for the agency file, investigator, other side and Office of Administrative Hearings.

808-004-0250 - Amended rule to conform to change in definition of "court, arbitrator or other entity." Substitutes a better description of the damages excluded under the phrase "administrative damages."

808-004-0300 - Amended to establish the filing date of a claim.

808-004-0440 - Amended section (1)(c) to clarify agency procedure. This amendment emphasizes the need for respondent to initiate mediation or arbitration if respondent wants to maintain a contractual right to mediation or arbitration.

808-004-0510 - Amended to conform to a change in definition of "court, arbitrator or other entity."

808-004-0520 - Amend rule to conform to a change in definition of "court, arbitrator or other entity." In section (3)(d) provides that claimant must deliver a certified copy of a final judgment to the LCB in order for the LCB to continue processing the claim.

808-008-0020 - Amended to delete unnecessary language to include applicable section of the revised Uniform Arbitration Act related to the effective date of the Act. Rearrange order of sections in rule so temporary section can be deleted later without renumbering sections.

808-008-0060 - Amended to correct cite since temporary rule filing.

808-008-0140 - Amended to clarify statute cite since temporary rule filing.

808-008-0180 - Amended to clarify which statute controls representation by an attorney. This is necessary because both ORS Chapter 671 and the Revised Uniform Arbitration Act cover this subject.

808-008-0420 - Amended to:

Delete section (8). Payment from a bond is covered I OAR 808-004-0600.

Correct internal cites in sections (6) and (10).

Amend section (11) new (10) to adjust for amendments in law relating to arbitration awards made by 2003 legislature.

808-008-0425 - Amended to add section (7)(b) to expand what an arbitrator may reconsider on a petition to modify or correct an arbitration award to include reconsideration on the grounds that the arbitrator made an award on a claim not submitted to the arbitrator. Under the state arbitration law, only a court may modify or correct an award on these grounds, unless the arbitration agreement provides otherwise. We do not see any reason for limiting this decision to a petition to the court.

808-008-0440 - Amends the procedure to collection money to simplify the process.

808-008-0460 - Amended to delete provisions that do not apply anymore under the revised Uniform Arbitration Act enacted by the 2003 legislature and rewrite rule to comply with that act.

808-008-0500 - Amended to correct cite since temporary rule filing.

808-009-0100 - Amended to clarify statute cite.

Rules Coordinator: Kim Gladwill-Rowley—(503) 986-6570

808-001-0005

Model Rules

The Landscape Contractors Board adopts the Attorney General's Uniform and Model Rules of Procedure under the Administrative Procedures Act in effect January 15, 2004, with the following exceptions: OAR 137-003-0015, 137-005-0050, 137-005-0060, and 137-005-0070.

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

Stat. Auth.: ORS 671

Stats. Implemented: ORS 183.341 & 279

Hist.: LC 2, f. & ef. 5-18-76; LC 3, f. & ef. 2-7-77; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 4-1988, f. 11-23-88, cert. ef. 12-1-88; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 1-1995, f. & cert. ef. 2-2-95; LSCB 1-1996, f. & cert. ef. 6-18-96; LCB 2-1999, f. & cert. ef. 5-4-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-001-0030

When Mail Deemed Delivered; Response Time to Notices

(1) Except as provided in section (2) of this rule, mail shall be considered delivered to a person when deposited in the United States mail with

the correct amount of postage and addressed to the last known address of record of the person.

(2) If the agency directs mail to a person who is not a licensee or a claimant under Division 4 of these rules, the mail shall not be deemed delivered if it is returned as undeliverable because the person moved with no forwarding address.

(3) Time for responses to all notices to a person delivered by placement in the United States mail with the correct amount of postage and addressed to the last known address of the person shall run from the date of mailing, unless otherwise specified in the notice.

(4) OAR 137-003-0520(10) shall apply to the computation of time to respond to a notice under this rule, whether the notice is related to a contested case, arbitration or any other matter.

Stat. Auth.: ORS 183.415, 670.310 & 671.670

Stats. Implemented: ORS 183.415 & 671

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2005, f. & cert. ef. 2-15-05

808-002-0260

Court, Arbitrator or other entity

"Court, arbitrator or other entity" means a court of competent jurisdiction or an arbitrator or other entity authorized by law or the parties to a dispute to effect a resolution to the dispute.

Stat. Auth.: ORS 183.325 - 183.410, 670.310, 671.670

Stats. Implemented: ORS 671.545, 671.578, 671.610, 671.625, 671.703, 671.707 & 671.710

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 1-2005, f. & cert. ef. 2-15-05

808-002-0325

Direct Contractual Relationship

"Direct Contractual Relationship" as used in OAR 808-004-0320 has the following meanings:

(1) For a negligent or improper work claim or a breach of contract claim, "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that respondent performs landscape construction work in return for valuable consideration conveyed directly from claimant to respondent.

(2) For a material claim or subcontractor claim, "direct contractual relationship" means a relationship created by a contract between claimant and respondent providing that claimant provide labor, material or rental equipment in return for valuable consideration conveyed directly from respondent to claimant.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670

Stats. Implemented: ORS 671.610 & 670.600

Hist.: LCB 1-2005, f. & cert. ef. 2-15-05

808-002-0540

Last-Known Address of Record

(1) "Last-known address of record" for a landscape contractor, a landscaping business or for a claimant, as used in ORS 671.603(2), means the most recent of:

(a) The mailing address provided by the landscape contractor, landscaping business or claimant in writing to the agency, designated by the landscape contractor, landscaping business or claimant as the landscape contractor's, landscaping business' or claimant's mailing address; or

(b) The forwarding address for the landscape contractor, landscaping business or claimant, so designated by the United States Postal Service, except as provided in section 2 of this rule.

(2) A forwarding address is not effective as a "last known address of record" until the address is entered into agency records or seven calendar days after the agency receives notice of the forwarding address, whichever occurs first.

Stat. Auth.: ORS 670.310, 671.670

Stats. Implemented: ORS 671.603

Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-002-0725

Office of Administrative Hearings

"Office of Administrative Hearings" means the Office of Administrative Hearings established under ORS 183.605.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implements ORS 671.703

Hist.: LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0195

Exhibits

If a party to a claim submits a document that is larger than 8-1/2 inches by 14 inches or a photograph as an exhibit, the agency may require that the party submit four copies of the document or photo.

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Stat. Auth.: ORS 36, 87, 183, 670, 671.670, HB 2279, Ch. 598, OL
Stats. Implemented: ORS 36, 87, 183, 671
Hist.: LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0211

Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 10 days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.603

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0250

Exclusion of Certain Damages from Award

(1) Except as provided in section (2) of this rule, an order of the board awarding monetary damages in a claim, including but not limited to an order of the Board arising from a court judgment, award or decision by a court, arbitrator or other entity may not include an award for:

- (a) Attorney fees;
- (b) Court costs;
- (c) Interest;
- (d) Costs to pursue litigation or the claim;
- (e) Service charges or fees; or
- (f) Other damages not directly related to negligent or improper work under the contract or breach of the contract that is the basis of the claim.

(2) An order of the board may include attorney fees, court costs, other costs and interest included in a court order or award of a court, arbitrator or other entity that are related to the portion of the court judgment or award of a court, arbitrator or other entity that is within the jurisdiction of the board if the court order or award of the court, arbitrator or other entity arises from litigation, arbitration or other proceedings authorized by law or the parties to effect a resolution to the dispute:

- (a) That was initiated by the respondent; or
- (b) That the agency required the claimant to initiate under ORS 671.703(12) due to the nature or complexity of the claim.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415 & 183.460

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0300

Filing Date of Claims

(1) A claim shall be deemed to have been filed when a Statement of Claim is received by the agency that:

- (a) Is in substantial compliance with OAR 808-004-0340; and
- (b) Contains information that is sufficient to identify the claimant and respondent.

(2) A claim form that does not fully comply with the requirement of OAR 808-004-0340 is subject to 808-004-0350

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.700 & 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 5-2003, f. & cert. ef. 8-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0440

Contracts With Mediation or Arbitration Agreements

(1) If a claim is received that is based upon a contract that contains an agreement by the parties to mediate or arbitrate disputes arising out of the contract, the specific terms of the mediation or arbitration agreement supersede agency rules except as provided in this rule. Unless the contract requires mediation or arbitration by the agency, the agency will take the following action:

(a) The agency shall inform the claimant by written notice that complies with the requirements of OAR 808-004-0260 that the agency will

close the claim unless the agency receives within 60 days of the date of the notice:

(A) A written waiver of mediation or arbitration under the contract signed by the claimant and respondent; or

(B) Evidence that the claimant or respondent initiated mediation or arbitration under the contract to resolve the same facts and issues raised in the claim.

(b) If the agency does not receive the written waiver or evidence of initiation of mediation or arbitration required under subsection (a) of this section from the claimant within 60 days of the date of the written notice described in subsection (a) of this section, the agency may close the claim under OAR 808-004-0260. The agency may not close the claim under this section if the respondent initiates mediation or arbitration under the contract prior to the expiration of the 60-day period for providing the waiver or evidence of initiation of mediation or arbitration.

(c) The agency shall inform the respondent by written notice that:

(A) Respondent must initiate mediation or arbitration under the contract within the time allowed under ORS 671.703 and that failure to initiate mediation or arbitration within this time period is a waiver of respondent's right to mediation or arbitration under the contract;

(B) The agency will continue to process the claim if respondent fails to initiate mediation or arbitration under the contract within the time allowed under ORS 671.703 or if respondent signs a written waiver of mediation or arbitration; and

(C) The agency will suspend processing of the claim if respondent or claimant initiates mediation or arbitration under the contract.

(d) If the respondent fails to submit evidence to the agency that respondent initiated mediation or arbitration under the contract commenced within the time allowed under section 1 of this rule and if the claimant waived mediation or arbitration within the time allowed under section 1 of this rule, the agency will continue to process the claim.

(e) If mediation or arbitration under the contract is properly commenced under this rule, the agency may suspend processing the claim until the mediation or arbitration is complete.

(2) If a claim is based on a contract that contains an agreement by the parties to mediate and/or arbitrate disputes arising out of the contract, the claim shall be processed as required under section (1) of this rule, except that the respondent will be deemed to have commenced mediation and/or arbitration within the time allowed under section (1) of this rule if:

(a) The respondent commences mediation within the time allowed under section (1) of this rule; and

(b) If the claim is not resolved in mediation, the respondent submits to arbitration within 60 days of the completion of mediation, unless the parties to the claim mutually agree on a different schedule.

(3) Nothing in this rule prevents the parties from mutually agreeing to have the agency arbitrate the dispute, rather than process the claim as a contested case.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0510

Court Judgments and Other Authorized Entity Determinations

(1) As used in this rule "a court judgment, arbitration award or other entity determination" means a judgment, award or determination by a court, arbitrator or other entity, as that phrase is defined in Division 2.

(2) A court judgment, arbitration award or other entity determination may constitute the basis for a claim if a statement of claim is filed under OAR 808-004-0300 and 808-004-0340 within the time limitation in OAR 808-004-0320(2) and all or a portion of the judgment is within the jurisdiction of the board.

(3) Facts and issues within the jurisdiction of the agency previously determined by a court, arbitrator or other entity will not be relitigated unless a party shows there was not a full and fair opportunity to be heard in the prior proceeding. A party contesting a prior determination must specify the facts and issues involved and provide a copy of appropriate parts of the record of the prior proceeding.

(4) A claim based on a court judgment, arbitration award or other entity determination shall be processed under OAR 808-004-0520. An award of damages on the claim based on a court judgment, arbitration award or other entity determination may be limited under OAR 808-004-0250.

Stat. Auth.: ORS 183.325 - 183.410, 670.310, 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0040; LCB 2-2000(Temp), f. 5-31-00,

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cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 4-2002, f. & cert. ef. 12-4-02; Renumbered from 808-004-0200; LCB 1-2005, f. & cert. ef. 2-15-05

808-004-0520

Processing of Claim Submitted to Court, Arbitrator or Other Entity

(1) "Court, arbitrator or other entity" has the meaning given that phrase in division 2 of this chapter.

(2) The agency may suspend processing a claim if:

(a) The respondent submits a complaint against claimant to a court, arbitrator or other entity that relates to same facts and issues contained in the statement of claim filed against respondent, including but not limited to a breach of contract claim or a suit to foreclose a lien involving the same contract at issue in the claim;

(b) Claimant submits a complaint against respondent to a court, arbitrator or other entity that relates to same facts and issues contained in the statement of claim filed against respondent; or

(c) The agency requires the claimant to submit the claim to a court because the agency determined that a court is the appropriate forum for the adjudication of the claim because of the nature or complexity of the claim.

(3) If the agency suspends processing a claim under subsection (2) of this rule, the agency shall notify the claimant on the date it suspends processing the claim that processing has been suspended. The following provisions apply to the agency and the claimant if processing is suspended:

(a) The notice of suspension of processing shall include notification of the requirements contained in subsections (b) and (d) of this section and shall comply with the requirements of OAR 808-004-0260.

(b) Beginning six months after the date that the agency suspends processing the claim and no less frequently than every sixth month thereafter, the claimant shall deliver to the agency a written report describing the current status of the action before the court, arbitrator or other entity.

(c) The agency may, at any time, demand from the claimant a written report describing the current status of any action before a court, arbitrator or other entity. Such demand must be in writing and must comply with the requirements of OAR 808-004-0260. The claimant shall deliver a written response to the agency within 30 days of the date the demand letter is mailed by the agency.

(d) Within 30 days of the date of final action by the court, arbitrator or other entity, the claimant shall deliver to the agency a certified copy of the final judgment; a copy of the arbitration award or decision by another entity and a copy of the complaint or other pleadings on which the judgment, award or decision is based.

(e) If claimant complies with subsections (b), (c) and (d) of this section, the agency may resume processing the claim. If the claimant fails to comply with subsections (b), (c) or (d) of this section, the agency may close the claim under OAR 808-004-0260.

(4) If the agency suspends processing a claim under subsection (2)(a) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant that the claimant must file the claim as a counter-suit, complaint, or counter-claim in the court, arbitration or other proceeding and submit evidence, including a copy of the counter-suit, complaint or counter-claim, to the agency that the claimant has done so within 30 days of notification. The notice shall comply with the requirements of OAR 808-004-0260.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(5) If the agency suspends processing a claim under subsection (2)(c) of this rule, the following provisions apply in addition to the provisions in section (3) of this rule:

(a) The agency shall notify the claimant, in a notice that complies with the requirements of OAR 808-004-0260, that agency has suspended processing the claim and that the claimant must:

(A) File the claim as a complaint in a court of competent jurisdiction within 90 days of notification that the agency has suspended processing the claim; and

(B) Submit evidence, including a copy of the complaint, to the agency that the claimant complied with paragraph (A) of this subsection within 21 days of filing the complaint.

(b) If the claimant fails to submit the evidence as required under subsection (a) of this section, the agency may close the claim under OAR 808-004-0260.

(6) If the agency resumes processing a claim under section (3) of this rule:

(a) The agency shall accept a final judgment, award or decision of the court, arbitrator or other entity as the final determination of the merits of the claim.

(b) Based on the judgment, award or decision, the agency shall issue a proposed default order to pay damages or to dismiss or refer the claim to the Office of Administrative Hearings for a hearing. The following apply to proceedings under this subsection:

(A) The provisions of OAR 808-004-0560 apply to a proposed default order or a referral for the Office of Administrative Hearings.

(B) A proposed default order to pay damages issued under this section must include a statement of the portion of the final judgment, award or decision of the court, arbitrator or other entity that the agency finds is within the jurisdiction of the agency.

(C) If the agency refers the claim to the Office of Administrative Hearings for a hearing, the administrative law judge shall determine the portion of the final judgment, award or decision if any, that is within the jurisdiction of the agency.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183.415, 183.460, 671.703 & 671.575

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0020

Applicability of Rules; Application of ORS 36.600-36.740

(1) The rules in this division shall apply when:

(a) A claim is referred to the Office of Administrative Hearings for arbitration under OAR 808-004-0590;

(b) The parties to the arbitration agree that the Landscape Contractors Board may arbitrate a landscape dispute and the agency accepts the dispute for arbitration under ORS 671.703;

(c) A timely claim is filed relative to work performed under a contract that contains an arbitration clause specifying that the Landscape Contractors Board shall arbitrate disputes arising from the contract and the agency accepts the dispute for arbitration under ORS 671.703; or

(d) Arbitration by the Landscape Contractors Board is ordered by a court under ORS 36.600 or 36.625.

(2) Except as otherwise provided in the rules in division 8 of this chapter, an arbitration conducted under this division shall be governed by ORS 36.600 to 36.740, and sections 3 and 31, chapter 598, Oregon Laws 2003.

(3) The amendments to the rules in division 8 of this chapter that became effective on or after January 1, 2004 apply only to disputes referred to the Office of Administrative Hearings for an arbitration:

(a) On or after January 1, 2004; and

(b) Before January 1, 2004, if each party to the dispute files a written consent to the application of these amendments to the arbitration.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0030

Incorporation of Office of Administrative Hearings Rules

(1) The following rules related to the contested case hearings conducted by administrative law judges assigned to the Office of Administrative Hearings are incorporated into these rules by this reference and apply to arbitrations conducted under the rules in this division:

(a) OAR 137-003-0590 (Qualified interpreters); and

(b) OAR 137-003-0605 (Telephone testimony).

(2) In interpreting rules incorporated under section (1) of this rule:

(a) "Hearing" in the incorporated rule shall be given the same meaning as "arbitration" in these rules; and

(b) "Administrative law judges" in the incorporated rule shall be given the same meaning as "arbitrator" in these rules.

Stat. Auth.: ORS 670.310, & 671.670

Stats. Implemented: ORS 183, 671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

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808-008-0051

Application for Judicial Relief

An application to the court for judicial relief under the rules in division 8 of this chapter or under ORS 36.600 to 36.740 shall be subject to ORS 36.615.

Stat. Auth.: ORS 670.310, & 671.670

Stats. Implemented: Ch. 598, OL 2003

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0060

Appointment of Arbitrator

Appointment of arbitrator shall be as provided in ORS 671.703 and shall be subject to a request for a different administrative law judge to act as arbitrator under ORS 183.645 and OAR 471-060-0005.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.703, 183.645

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0085

Filing and Service of Pleadings and Other Documents

(1) Unless otherwise provided by these rules, documents, correspondence, motions, pleadings, rulings and orders filed in an arbitration under these rules shall be filed as follows:

(a) With the agency before a claim or dispute is referred by the agency to the Office of Administrative Hearings.

(b) With the Office of Administrative Hearings or assigned arbitrator after the agency refers the claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award.

(c) With the agency after the arbitrator issues an award.

(2) After the agency refers a claim or dispute to the Office of Administrative Hearings and before the arbitrator issues an award, a person who files a document such as a correspondence, motion, pleading, ruling or order with the Office of Administrative Hearings or arbitrator in an arbitration shall serve copies of the document filed on the parties to the claim or dispute or their counsel if the parties are represented. Service under this section shall be by hand delivery, by facsimile or by mail.

(3) In addition to the requirements of OAR 808-004-0210, after the agency refers the claim or dispute to the Office of Administrative hearings and before the arbitrator issues an award a party must notify the Office of Administrative Hearings or arbitrator, and other parties to the claim or dispute of any change in the party's address, withdrawal or change of party's attorney or change of address of the party's attorney.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183.671

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0140

Qualifications of Arbitrator

(1) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator.

(2) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the arbitration proceeding any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(a) A financial or personal interest in the outcome of the arbitration proceeding; and

(b) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator in the proceeding.

(3) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators in the proceeding any facts that the arbitrator learns after accepting appointment that a reasonable person would consider likely to affect the impartiality of the arbitrator.

(4) If an arbitrator discloses a fact required by subsection (2) or (3) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objec-

tion may be a ground under ORS 36.705(1)(b) for vacating an award made by the arbitrator.

(5) If the arbitrator did not disclose a fact as required by subsection (2) or (3) of this section, upon timely objection by a party, the court under ORS 36.705(1)(b) may vacate an award.

(6) An arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party, the party's counsel or representatives, a witness or another arbitrator in the proceeding is presumed to act with evident partiality under ORS 36.705(1)(b).

(7) Substantial compliance with the procedures in this division 8 of this chapter for challenges to an arbitrator before an award is made is a condition precedent to a petition to vacate an award on that ground under ORS 36.705(1)(b).

(8) Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final. Upon objection of a party to the continued service of an arbitrator, the agency administrator or a person designated by the agency administrator shall determine whether the arbitrator should be disqualified. This decision shall be final.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0180

Representation by Counsel

Any party may be represented at an arbitration by an attorney. A corporation, partnership or other business entity may appear or be represented at an arbitration as provided under ORS 183.457.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703(3)

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0280

Conduct of Hearing; Authority of Arbitrator

(1) An arbitrator may conduct arbitration in such a manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(2) The oral hearing may be waived and held by briefs and documents if the parties so stipulate. The arbitrator shall determine whether to grant waiver of oral hearing and that determination shall be final.

Stat. Auth.: ORS 183.310-183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0291

Summary Disposition

An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding, if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

Stat. Auth.: ORS 183.310-183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0400

Services of Notices and Other Communications

(1) Communication, including, but not limited to the initial notice of an arbitration hearing directed by the arbitrator, Office of Administrative Hearings, or agency to the last-known address of record shall be considered delivered when deposited in the United States mail

(2) If the agency did not serve a contested case notice, referral to the Office of Administrative Hearings or other notice of the dispute by registered, certified or post office receipt secured mail prior to the initial notice

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of the arbitration hearings, the notice of hearings shall be sent by registered, certified or post office receipt secured mail.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0420

Time, Form, and Scope of Award; Limitation on Award

(1) The award shall be rendered promptly by the arbitrator and, unless otherwise agreed by the parties, not later than thirty days from the date of the closing of the arbitration hearing.

(2) The agency may extend the time to issue an award under section (1) of this rule.

(3) The award shall be in writing and shall be signed or otherwise authenticated by the arbitrator.

(4) The award shall fully dispose of all issues presented to the arbitrator that are required to resolve the dispute. The arbitrator may summarily dismiss issues that raise no substantive factual or legal questions. The award shall contain sufficient rulings on issues and explanations of the reasoning of the arbitrator so that a party may reasonably understand the basis of the decision and evaluate the award to determine if filing a petition for to modify or correct the award would be appropriate.

(5) Subject to section (10) of this rule an arbitrator may not issue an award in an amount greater than the total amount a party alleges another party owes the party in:

(a) The most recent declaration of damages or amended declaration of damages filed by the party under OAR 808-004-0540, 808-004-0550 or 808-008-0110; or

(b) The Statement of Claim filed by the party under OAR 808-004-0340, if no declaration of damages was filed.

(6) When a claimant makes a claim against a respondent's surety bond required under ORS 671.690 and the parties to an arbitration have not agreed that the arbitrator may award damages against the claimant, only the claimant may assert damages. The arbitrator may award damages to claimant, but not to respondent. Respondent may assert amounts owed to it as an offset under section (6) of this rule.

(7) An arbitrator shall consider any amounts owed by a party claiming damages to another party under the terms of the contract at issue in the arbitration and reduce the amount of an award of damages to the party claiming the damages by the amount owed as an offset to the damages, regardless of whether the other party asserting the offset filed a declaration of damages. If the party asserting the offset did not file a declaration of damages, the amount of the offset may not exceed the amount of the award.

(8)(a) Except as provided in section (4) of this rule, the arbitrator may dismiss a claim or may grant to any party any remedy or relief, including equitable relief, that the arbitrator deems just and equitable, consistent with the parties' contract or their agreement to arbitrate.

(b) If the award contains an award of monetary amounts that are payable from the respondent's bond required under ORS 671.690 and other amounts that are not payable from the bond under OAR 808-004-0250 or any other law, the award shall segregate these amounts.

(c) If the parties to the arbitration mutually consent to the arbitration in a written agreement and the contract as issue in the arbitration provides for an award of attorney fees, court costs, other costs or interest, the arbitrator may include these fees, costs, or interest in the award, subject to subsection (b) of this section.

(9) If a limitation on damages under section (5) of this rule is based on a declaration of damages or Statement of Claim that includes an itemization of claim items and the total of those items is different from the total damages claimant alleges is due from the respondent, the limitation on damages shall be based on the larger of the two totals.

(10) If the award requires the payment of money, including but not limited to payment of costs or attorney fees, the award must comply with ORS 36.685(1).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0425

Petition to Modify or Correct an Award

(1) A party to an arbitration may petition the arbitrator to modify or correct an award. A party may file only one petition of an award under this rule.

(2) The petition to modify or correct an award must be in writing and substantially conform to the requirements of OAR 808-008-0430.

(3) To be considered, a petition to modify or correct an award must be received by the arbitrator within 21 days of mailing the proposed award.

(4) If the arbitrator receives a timely petition to modify or correct an award, the arbitrator shall mail copies of the petition to the other parties to the arbitration and the agency.

(5) A party may respond to the petition to modify or correct an award. To be considered, a response to the petition must be received by the arbitrator no later than 14 days after the arbitrator mailed a copy of the petition to the party.

(6) The arbitrator may waive or extend the time limitations in sections (3) and (5) of this rule on a showing of good cause by the person requesting the waiver or extension.

(7) The arbitrator may modify or correct an award:

(a) If there was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(b) If the arbitrator made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision on the claims submitted;

(c) If the award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted;

(d) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(e) To clarify the award.

(8) The arbitrator shall consider the petition and any response received from a non-petitioning party, except that the arbitrator may not consider evidence that was not introduced at the arbitration.

(9) The arbitrator shall issue an amended award that addresses each substantial issue raised in the petition. The amended award may summarily dismiss issues as appropriate. The arbitrator may:

(a) Affirm the original award and incorporate it in the amended award by reference; or

(b) Issue a new award.

(10) The agency may extend the time to issue an amended award.

(11) If the arbitrator who prepared the award is not available to consider a petition to modify or correct the award, the Chief Administrative Law Judge or a person designated by the Chief Administrative Law Judge may assign another arbitrator to review the tapes and exhibits of the arbitration, the award, the petition and any response and render a decision on the petition. If the new arbitrator is unable to render a decision on the petition, the petition shall be deemed denied.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.670

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0430

Form of Petition to Modify or Correct an Award

(1) A petition to modify or correct an award filed by a party to an arbitration under OAR 808-008-0425 shall conform to the following requirements:

(a) The petition shall be typed or legibly printed on 8-1/2 by 11" sheets of paper.

(b) The first page of the petition shall be titled "Petition to modify or correct an Arbitration Award" and shall show the names of the parties to the arbitration and the party submitting the petition at the top of the page. If the petition is filed in a claim, the first page shall show the claim number.

(c) Each page of the petition shall be numbered at the bottom of the page.

(d) For each modification or correction sought by petitioner, the following information should be included in the petition:

(A) The page or pages that petitioner asks to be modified or corrected;

(B) The text that petitioner asks to be modified or corrected; and

(C) An explanation or argument supporting petitioner's request for the modification or correction.

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(e) The party submitting the petition shall sign and date the petition. The date shall be the date the petition is served on the arbitrator and on the other parties to the arbitration.

(2) The arbitrator may refuse to consider a petition that does not substantially meet the requirements of section (1) of this rule.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.673

Hist.: LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0440

Payments from Licensee's Bond

If an award or amended award requires payment by a licensee and the licensee fails to pay the award, the award is payable from the surety bond or deposit of the business to the extent payment is authorized under ORS 671.710. Payments from the bond or deposit shall be subject to the laws in ORS chapter 671 and rules in division 4 of this chapter, including but not limited to OAR 808-004-0600.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183, 671.703, 671.707 & 671.710

Hist.: LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0460

Filing with Court; Exceptions

(1) A party may petition the court to confirm an award under ORS 36.700. The petitioning party shall serve the agency with a copy of a petition filed under this section.

(2) A party may petition the court to vacate, modify or correct an award under ORS 36.705 or 36.710. The petitioning party shall serve the agency with a copy of the petition filed under this section.

(3) Failure of a party to serve the agency under section (2) and (3) of this rule constitutes a waiver of any objection to transmittal of the award to respondent's surety company for payment under OAR 808-004-0600

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 2-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0500

Immunity of Arbitrator

Immunity of arbitrator and the Office of Administrative Hearings are subject to ORS 36.660(1) to (3).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LCB 1-1993, f. & cert. ef. 1-19-93; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0100; LCB 8-2003(Temp), f. 12-23-03, cert. ef. 1-1-04 thru 6-27-04; Administrative correction 8-5-04; LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0511

Competency of Arbitrator to Testify

Competency of an arbitrator to testify and produce records is subject to ORS 36.660(4).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-008-0521

Attorney Fees and Costs

If a person commences a civil action against an arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings, arising from the services of the arbitrator, the Office of Administrative Hearings or a representative of the Office of Administrative Hearings or if a person seeks to compel an arbitrator or representative of the Office of Administrative Hearings to testify or produce records in violation of OAR 808-008-0-510, the court may award attorney fees and costs as provided in ORS 36.660(5).

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.703

Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05

808-009-0100

Burden of Proof and Failure to Meet Burden

(1) A claimant must submit sufficient credible evidence into the record to prove that:

(a) The claimant suffered damages;

(b) Respondent caused those damages by performing negligent or improper work or a breach of contract in performing work subject to ORS 671.510 to 671.710; and

(c) The monetary value of those damages is substantiated on the record.

(2) If the claimant fails to carry the burden of proof described in section (1) of this rule, the administrative law judge shall dismiss the claim.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 183 & 671.703

Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 2-2000(Temp), f. 5-31-00, cert. ef. 5-31-00 thru 11-26-00; Administrative correction 6-21-01; LCB 3-2000, f. & cert. ef. 7-26-00; LCB 6-2003, f. & cert. ef. 10-1-03; LCB 1-2005, f. & cert. ef. 2-15-05

Oregon Board of Dentistry Chapter 818

Adm. Order No.: OBD 1-2005

Filed with Sec. of State: 1-28-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 10-1-04

Rules Adopted: 818-026-0055

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

Subject: Rule changes bring the Board's anesthesia rules in line with the recommendations of the American Dental Association, "Guidelines for the Use of Conscious Sedation, Deep Sedation and General Anesthesia for Dentists." Specifically, Class 2 permit requirements are changed to cover any combination of sedative agents that produce conscious sedation and Class 3 permit is amended to require a higher level of life support training and certification (ACLS or PALS). 818-026-0055 is added to allow dental hygienists and dental assistants to provide care within the scope of their license/certification for patients under Conscious Sedation. Clarification is made in the rules that Health Care Provider BLS/CPR certification may be "or equivalent" and that the certification must be kept current. Changes are also made regarding the continuing education requirements for maintaining an anesthesia permit. Other minor changes are made to add definitions, to clarify the Board's position that no anesthesia permit is required when a single sedative is provided for anxiolysis only, and to further conform the Board's rules with the ADA "Guidelines" referred to above.

A Certificate and Order for Filing Permanent Administrative Rules to adopt and amend these rules was filed with the Secretary of State on September 15, 2003, with an effective date of October 1, 2003. This Certificate and Order for Filing Permanent Administrative Rules is required because the September 15, 2003 Certificate was not filed with the Legislative Counsel Committee within the ten-day period required by ORS 183.715.

Rules Coordinator: Sharon Ingram—(503) 229-5520

818-026-0000

Purpose

(1) These rules apply to the administration of substances that produce general anesthesia, deep sedation, conscious sedation, or nitrous oxide sedation in patients being treated by licensees in facilities not accredited by the Joint Commission on Accreditation of Health Care Organizations. These regulations are not intended to prohibit training programs for licensees or to prevent persons from taking necessary action in case of an emergency.

(2) Nothing in this Division relieves a licensee from the standards imposed by ORS 679.140(1)(e) and 679.140(4).

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0010

Definitions

As used in these rules:

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(1) "Anesthesia Monitor" means a person trained in monitoring patients under sedation and capable of assisting with procedures, problems and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(2) "Anxiolysis" means the diminution or elimination of anxiety.

(3) "General Anesthesia" means an induced controlled state of unconsciousness in which the patient experiences complete loss of protective reflexes, as evidenced by the inability to independently maintain an airway, the inability to respond purposefully to physical stimulation, or the inability to respond purposefully to verbal command.

(4) "Deep Sedation" means an induced controlled state of depressed consciousness in which the patient experiences a partial loss of protective reflexes, as evidenced by the inability to respond purposefully either to physical stimulation or to verbal command but the patient retains the ability to independently and continuously maintain an airway.

(5) "Conscious Sedation" means an induced controlled state of minimally depressed consciousness in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(6) "Nitrous Oxide Sedation" means an induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.

(7) "Central Nervous System Anesthesia" means an induced controlled state of unconsciousness or depressed consciousness produced by a pharmacologic method.

(8) "Titration" means the administration of small incremental doses of a drug until a desired clinical effect is observed.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0020

Presumption of Degree of Central Nervous System Depression

(1) In any hearing where a question exists as to the degree of central nervous system depression a licensee has induced (i.e., general anesthesia, deep sedation, conscious sedation, or nitrous oxide sedation), the Board may base its findings on, among other things, the types, dosages and routes of administration of drugs administered to the patient and what result can reasonably be expected from those drugs in those dosages and routes administered in a patient of that physical and psychological status.

(2) The following drugs are conclusively presumed to produce general anesthesia and may only be used by a licensee holding a Class 4 Permit:

- (a) Ultra short acting barbiturates including, but not limited to, sodium methohexital, thiopental, thiamylal;
- (b) Alkylphenols — propofol (Diprivan);
- (c) Neuroleptic agents;
- (d) Dissociative agents — ketamine;
- (e) Etomidate; and
- (f) Rapidly acting steroid preparations.

(3) No permit holder shall have more than one person under any form of sedation or general anesthesia at the same time exclusive of recovery.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0030

Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor

(1) A permit holder who administers sedation shall assure that drugs and/or techniques used to produce sedation shall carry a margin of safety wide enough to prevent unintended deeper levels of sedation.

(2) No dentist or dental hygienist shall induce central nervous system anesthesia without first having obtained an anesthesia permit under these rules for the level of anesthesia being induced.

(3) Persons serving as Anesthesia Monitors in a dental office shall maintain current certification in Health Care Provider Basic Life Support training, or its equivalent, shall be trained in monitoring patient vital signs, and be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience.)

(4) When a dentist utilizes a single dose oral agent to achieve anxiolysis only, no anesthesia permit is required.

(5) The applicant for an anesthesia permit must pay the appropriate permit fee, submit a completed Board-approved application and consent to an office evaluation.

(6) Permit fees may be prorated based on the 24-month renewal cycle.

(7) Permits shall be issued to coincide with the applicant's licensing period.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0035

Classes of Anesthesia Permit

The Board shall issue the following classes of permits:

(1) Class 1 Permit: A Class 1 Permit authorizes a dental hygienist or a dentist to induce nitrous oxide sedation.

(2) Class 2 Permit: A Class 2 Permit authorizes a dentist to induce conscious sedation and nitrous oxide sedation.

(3) Class 3 Permit: A Class 3 Permit authorizes a dentist to induce deep sedation, conscious sedation, and nitrous oxide sedation.

(4) Class 4 Permit: A Class 4 Permit authorizes a dentist to induce general anesthesia, deep sedation, conscious sedation, and nitrous oxide sedation.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0040

Qualifications, Standards Applicable, and Continuing Education Requirements for Anesthesia Permits: Class 1 Permit

Class 1 Permit: nitrous oxide sedation.

(1) The Board shall issue a Class 1 Permit to an applicant who:

(a) Is either a licensed dentist or licensed hygienist in the State of Oregon;

(b) Holds a valid and current Health Care Provider BLS/CPR level certificate, or its equivalent; and

(c) Has completed a training course of at least 14 hours of instruction in the use of nitrous oxide from a dental school or dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association, or as a postgraduate.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedure and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow delivery of appropriate care in an emergency situation;

(b) An operating table or chair which permits the patient to be positioned so that the patient's airway can be maintained, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face masks and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system; and

(g) Sphygmomanometer and stethoscope.

(3) Before inducing nitrous oxide sedation, a permit holder shall:

(a) Evaluate the patient;

(b) Give instruction to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian;

(c) Certify that the patient is an appropriate candidate for nitrous oxide sedation; and

(d) Obtain informed consent from the patient or patient's guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient's record.

(4) A patient under nitrous oxide sedation shall be visually monitored by the permit holder or by an anesthesia monitor at all times. The patient shall be monitored as to response to verbal stimulation, oral mucosal color and preoperative and postoperative vital signs.

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(5) The permit holder or anesthesia monitor shall record the patient's condition. The record must include documentation of all medications administered with dosages, time intervals and route of administration.

(6) The person administering the nitrous oxide sedation may leave the immediate area after initiating the administration of nitrous oxide sedation only if a qualified anesthesia monitor is continuously observing the patient.

(7) The permit holder shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(b) The patient can talk and respond coherently to verbal questioning;

(c) The patient can sit up unaided or without assistance;

(d) The patient can ambulate with minimal assistance; and

(e) The patient does not have nausea, vomiting or dizziness.

(8) The permit holder shall make a discharge entry in the patient's record indicating the patient's condition upon discharge.

(9) Permit renewal. In order to renew a Class 1 Permit, the permit holder must provide proof of having a current Health Care Provider BLS/CPR level certificate, or its equivalent. In addition, Class 1 Permit holders must also complete four (4) hours of continuing education in one or more of the following areas every two years: sedation, nitrous oxide, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current Health Care Provider BLS/CPR level certification, or its equivalent, may not be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060 and 818-021-0070.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0050

Class 2 Permit

Class 2 Permit: conscious sedation and nitrous oxide sedation.

(1) The Board shall issue a Class 2 Permit to an applicant who:

(a) Is a licensed dentist in Oregon;

(b) Holds a valid and current Health Care Provider BLS/CPR level certificate, or its equivalent; and

(c) Has completed a training course of at least 20 hours of either predoctoral dental school accredited by the Commission on Dental Accreditation of the American Dental Association, or postgraduate instruction, or the equivalent of that required in graduate training programs, in sedation, recognition and management of complications and emergency care.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) Sphygmomanometer, stethoscope, and pulse oximeter; and

(h) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) Before inducing conscious sedation, a dentist who induces conscious sedation shall:

(a) Evaluate the patient;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian;

(c) Certify that the patient is an appropriate candidate for conscious sedation; and

(d) Obtain written informed consent from the patient or patient's guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient's record.

(4) No permit holder shall have more than one person under conscious sedation at the same time.

(5) While the patient is being treated under conscious sedation, an anesthesia monitor shall be present in the room in addition to the treatment provider. The anesthesia monitor may be the chairside assistant.

(6) A patient under conscious sedation shall be visually monitored at all times, including recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be taken if they can reasonably be obtained. If the information cannot be obtained, the reasons shall be documented in the patient's record. The record must also include documentation of all medications administered with dosages, time intervals and route of administration.

(b) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(8) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(g) A dentist shall not release a patient who has undergone conscious sedation except to the care of a responsible third party.

(9) Permit renewal. In order to renew a Class 2 Permit, the permit holder must provide documentation of having a current Health Care Provider BLS/CPR level certificate, or its equivalent. In addition, Class 2 Permit holders must also complete four (4) hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current Health Care Provider BLS/CPR level certification, or its equivalent, may not be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0055

Dental Hygiene and Dental Assistant Procedures Performed Under Conscious Sedation

(1) Under indirect supervision, dental hygiene procedures may be performed for a patient who is under conscious sedation under the following conditions:

(a) A dentist holding a Class 2, 3 or 4 Permit administers the sedative agents;

(b) The dentist permit holder performs the appropriate pre- and postoperative evaluation and discharges the patient in accordance with 818-026-0050(7) and (8); and

(c) An anesthesia monitor, in addition to the dental hygienist performing the authorized procedures, is present with the patient at all times.

(2) Under direct supervision, a dental assistant may perform those procedures for which the dental assistant holds the appropriate certification for a patient who is under conscious sedation under the following conditions:

(a) A dentist holding the Class 2, 3 or 4 Permit administers the sedative agents;

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(b) The dentist permit holder, or an anesthesia monitor, monitors the patient; and

(c) The dentist permit holder performs the appropriate pre- and post-operative evaluation and discharges the patient in accordance with 818-026-0050(7) and (8).

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0060

Class 3 Permit

Class 3 Permit: deep sedation, conscious sedation, and nitrous oxide sedation.

(1) The Board shall issue or renew a Class 3 Permit to an applicant who:

(a) Is a licensed dentist in Oregon,

(b) Holds a current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certificate, whichever is appropriate for the patient being sedated, and

(c) Satisfies one of the following criteria:

(A) Completion of a comprehensive training program in parenteral conscious sedation that satisfies the requirements described in Part III of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced.

(B) Completion of an ADA accredited postdoctoral training program (e.g., general practice residency) which affords comprehensive and appropriate training necessary to administer and manage parenteral conscious sedation, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in deep sedation anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full facemask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope or capnograph, pulse oximeter, oral and nasopharyngeal airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under deep sedation or conscious sedation at the same time.

(4) During the administration of deep sedation, and at all times while the patient is under deep sedation, an anesthesia monitor and one other person holding a Health Care Provider BLS level certificate, or its equivalent shall be present in the operatory in addition to the dentist performing the dental procedures.

(5) Before inducing deep sedation, a dentist who induces deep sedation shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under deep sedation shall be visually monitored at all times, including the recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals but at least every 15 minutes, and these recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation shall be continuously monitored;

(b) During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from deep sedation.

(8) A dentist shall not release a patient who has undergone deep sedation except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Class 3 Permit, the permit holder must provide documentation of having current ACLS or PALS certification and must complete 14 hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current ACLS or PALS certification may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 1-1999, f. 2-26-99, cert. ef. 3-1-99; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0070

Class 4 Permit

Class 4 Permit: general anesthesia, deep sedation, conscious sedation, and nitrous oxide sedation.

(1) The Board shall issue a Class 4 Permit to an applicant who:

(a) Is a licensed dentist in Oregon,

(b) Holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, whichever is appropriate for the patient being sedated, and

(c) Satisfies one of the following criteria:

(A) Completion of an advanced training program in anesthesia and related subjects beyond the undergraduate dental curriculum that satisfies the requirements described in Part II of the *ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry* at the time training was commenced.

(B) Completion of an ADA accredited postdoctoral training program which affords comprehensive and appropriate training necessary to administer and manage general anesthesia, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in general anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedure and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least three individuals to freely move about the patient;

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(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope or capnograph, pulse oximeter, electrocardiograph monitor, defibrillator, laryngoscope with endotracheal tubes, oral and nasopharyngeal airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, intravenous medications for treatment of cardiac arrest, narcotic antagonist, antihistaminic, antiarrhythmics, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under general anesthesia, deep sedation or conscious sedation at the same time.

(4) During the administration of general anesthesia, and at all times while the patient is under general anesthesia, an anesthesia monitor and one other person holding a Health Care Provider BLS level certificate, or its equivalent, shall be present in the operatory in addition to the dentist performing the dental procedures.

(5) Before inducing general anesthesia the dentist who induces the general anesthesia shall:

(a) Evaluate the patient and document, using the *American Society of Anesthesiologists Patient Physical Status Classifications*, that the patient is an appropriate candidate for general anesthesia or deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under general anesthesia shall be visually monitored at all times, including recovery phase. A dentist who induces general anesthesia or anesthesia monitor trained in monitoring patients under general anesthesia shall monitor and record the patient's condition on a contemporaneous record.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring of their heart rate, oxygen saturation levels and respiration. The patient's blood pressure, heart rate and oxygen saturation shall be assessed every five minutes, and shall be contemporaneously documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. The person administering the anesthesia and the person monitoring the patient may not leave the patient while the patient is under general anesthesia;

(b) During the recovery phase, the patient must be monitored, including the use of pulse oximetry, by an individual trained to monitor patients recovering from general anesthesia.

(8) A dentist shall not release a patient who has undergone general anesthesia except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made in the patient's record by the dentist indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Class 4 Permit, the permit holder must provide documentation of having current ACLS or PALS certification and complete 14 hours of continuing education in one or more of the following areas every two years: general anesthesia, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, pharmacology of drugs and agents used in anesthesia. Training taken to maintain current ACLS or PALS certification may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

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

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; Administrative correction 6-21-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0080

Standards Applicable When a Dentist Performs Dental Procedures and a Qualified Provider Induces Anesthesia

(1) A dentist who does not hold an anesthesia permit may perform dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist licensed by the Oregon Board of Medical Examiners, another Oregon licensed dentist holding an appropriate anesthesia permit, or a Certified Registered Nurse Anesthetist (CRNA) licensed by the Oregon Board of Nursing.

(2) A dentist who performs dental procedures on a patient who receives anesthesia induced by a physician anesthesiologist, another dentist holding an anesthesia permit, or a CRNA shall hold a current and valid Health Care Provider BLS/CPR level certificate, or equivalent, and have the same personnel, facilities, equipment and drugs available during the procedure and during recovery as required of a dentist who has a permit for the level of anesthesia being provided.

(3) The qualified anesthesia provider who induces anesthesia shall monitor the patient's condition until the patient is discharged and record the patient's condition at discharge in the patient's dental record as required by the rules applicable to the level of anesthesia being induced. The anesthesia record shall be maintained in the patient's dental record and is the responsibility of the dentist who is performing the dental procedures.

(4) A dentist who intends to use the services of a qualified anesthesia provider as described in section 1 above, shall notify the Board in writing of his/her intent. Such notification need only be submitted once every licensing period.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0100

Effective Date

Every licensee holding an anesthesia permit issued by the Board prior to October 1, 2003 will have one year from that date to be in compliance with the requirements for the permit level held.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0110

Office Evaluations

(1) By obtaining an anesthesia permit or by using the services of a physician anesthesiologist, CRNA, or another dentist to administer anesthesia, a licensee consents to in-office evaluations by the Oregon Board of Dentistry, to assess competence in central nervous system anesthesia and to determine compliance with rules of the Board.

(2) The in-office evaluation shall include:

(a) Observation of one or more cases of anesthesia to determine the appropriateness of technique and adequacy of patient evaluation and care;

(b) Inspection of facilities, equipment, drugs and records; and

(c) Confirmation that personnel are adequately trained, hold current Health Care Provider Basic Life Support level certification, or its equivalent.

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lent, and are competent to respond to reasonable emergencies that may occur during the administration of anesthesia or during the recovery period.

(3) The evaluation shall be performed by a team appointed by the Board and shall include:

(a) A permit holder who has the same type of license as the licensee to be evaluated and who holds a current anesthesia permit in the same class or in a higher class than that held by the licensee being evaluated,

(b) A member of the Board's Anesthesia Committee; and

(c) Any licensed dentist, deemed appropriate by the Board President, may serve as team leader and shall be responsible for organizing and conducting the evaluation and reporting to the Board.

(4) The Board shall give written notice of its intent to conduct an office evaluation to the licensee to be evaluated. Licensee shall cooperate with the evaluation team leader in scheduling the evaluation which shall be held no sooner than 30 days after the date of the notice or later than 90 days after the date of the notice.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0120

Reporting of Death, Serious Complications or Injury

If a death, any serious complication or any injury occurs which may have resulted from the administration of general anesthesia, deep sedation, conscious sedation, or nitrous oxide sedation, the licensee performing the dental procedure must submit a written detailed report to the Board within five days of the incident along with the patient's original complete dental records. If the anesthetic agent was administered by a person other than the person performing the dental procedure, that person must also submit a detailed written report. The detailed report(s) must include:

(1) Name, age and address of patient;

(2) Name of the licensee and other persons present during the incident;

(3) Address where the incident took place;

(4) Type of anesthesia and dosages of drugs administered to the patient;

(5) A narrative description of the incident including approximate times and evolution of symptoms; and

(6) The anesthesia record and the signed informed consent form for the anesthesia when required.

Stat. Auth.: ORS 679 & ORS 680

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

818-026-0130

Anesthesia Committee

(1) The Board hereby creates a committee to be known as the Anesthesia Committee. The chairperson shall be a dentist who is a member of the Board. All other members shall hold a Class 3 or Class 4 Permit. At least one member, other than the chairperson, shall be a practicing specialist who holds a Class 4 Permit. Members serve at the pleasure of the Board and shall be appointed by the President of the Board. The Board President shall insure that the committee includes representatives of all dental specialty groups as well as general dentists.

(2) The Anesthesia Committee shall, upon request of the Board, advise the Board on policies and procedures related to the regulation of general anesthesia, deep sedation, conscious sedation, and nitrous oxide sedation.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.280

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05

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Adm. Order No.: OBD 2-2005

Filed with Sec. of State: 1-31-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 1-1-05

Rules Adopted: 818-021-0088

Rules Amended: 818-001-0002, 818-001-0005, 818-001-0087, 818-026-0030, 818-026-0050, 818-026-0060, 818-035-0025, 818-035-0030, 818-042-0116

Subject: 818-001-0002 is amended to create a definition for a Volunteer Licensee.

The amendment of 818-001-0087 Fees creates the categories Volunteer Dentist and Volunteer Dental Hygienist and sets the current fees at \$0 and also eliminates the words "minimal" and "conscious" from the fee schedule to be consistent with amendments made previously in Division 26.

The adoption of 818-021-0088 will detail the specific requirements of a Volunteer Licensee.

818-001-0005 Model Rules of Procedure is amended to always have the Board in compliance with the most current version of the Attorney General's Model Rules of Procedures under the Administrative Procedures Act.

818-026-0030 is amended to clarify that a dentist or dental hygienist must maintain current certification in Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR), or its equivalent, or hold a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, when holding an Anesthesia Permit.

The amendment of 818-026-0050 Class 2 Anesthesia Permit clarifies the appropriate training requirements for application for anesthesia permits and creates separate designations on those permits for parenteral use, enteral use, or both parenteral and enteral use.

818-026-0060 Class 3 Anesthesia Permit is amended to eliminate the word "conscious" which was missed when the rule was previously amended.

The amendment of 818-035-0025 Prohibitions allows Dental Hygienists to diagnose and treatment plan for dental hygiene services, allows for certain drugs within the scope of dental hygiene to be prescribed, and removes the prohibition of taking permanent impressions.

818-035-0030 Additional Functions of Dental Hygienists is amended to remove the conflict in language that would occur with changes to 818-035-0025.

818-042-0116 Certification - Oral Surgery Assistant is amended to update the list of accepted examinations and organizations who administer the examinations and to provide for successor examinations or organizations.

Rules Coordinator: Sharon Ingram—(503) 229-5520

818-001-0002

Definitions

As used in OAR Chapter 818:

(1) "Board" means the Oregon Board of Dentistry, the members of the Board, its employees, its agents, and its consultants.

(2) "Dental Practice Act" means ORS Chapter 679 and 680.010 to 680.170 and the rules adopted pursuant thereto.

(3) "Dentist" means a person licensed pursuant to ORS Chapter 679 to practice dentistry.

(4) "Direct Supervision" means supervision requiring that a dentist diagnose the condition to be treated, that a dentist authorize the procedure to be performed, and that a dentist remain in the dental treatment room while the procedures are performed.

(5) "General Supervision" means supervision requiring that a dentist authorize the procedures, but not requiring that a dentist be present when the authorized procedures are performed. The authorized procedures may also be performed at a place other than the usual place of practice of the dentist.

(6) "Hygienist" means a person licensed pursuant to ORS 680.010 to 680.170 to practice dental hygiene.

(7) "Indirect Supervision" means supervision requiring that a dentist authorize the procedures and that a dentist be on the premises while the procedures are performed.

(8) "Informed Consent" means the consent obtained following a thorough and easily understood explanation to the patient, or patient's guardian, of the proposed procedures, any available alternative procedures and any risks associated with the procedures. Following the explanation, the licensee shall ask the patient, or the patient's guardian, if there are any questions. The licensee shall provide thorough and easily understood answers to all questions asked.

(9) "Licensee" means a dentist or hygienist.

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(a) "Volunteer Licensee" is a dentist or dental hygienist licensed according to rule to provide dental health care without receiving or expecting to receive compensation.

(10) "Limited Access Patient" means a patient who, due to age, infirmity, or handicap is unable to receive regular dental hygiene treatment in a dental office.

(11) "Specialty." Specialty areas of dentistry are as defined by the American Dental Association, Council on Dental Education. The specialty definitions are added to more clearly define the scope of the practice as it pertains to the specialty areas of dentistry.

(a) "Dental Public Health" is the science and art of preventing and controlling dental diseases and promoting dental health through organized community efforts. It is that form of dental practice which serves the community as a patient rather than the individual. It is concerned with the dental health education of the public, with applied dental research, and with the administration of group dental care programs as well as the prevention and control of dental diseases on a community basis.

(b) "Endodontics" is the branch of dentistry which is concerned with the morphology, physiology and pathology of the human dental pulp and periradicular tissues. Its study and practice encompass the basic and clinical sciences including biology of the normal pulp, the etiology, diagnosis, prevention and treatment of diseases and injuries of the pulp and associated periradicular conditions.

(c) "Oral Pathology" is the specialty of dentistry and discipline of pathology that deals with the nature, identification, and management of diseases affecting the oral and maxillofacial regions. It is a science that investigates the causes, processes, and effects of these diseases. The practice of oral pathology includes research and diagnosis of diseases using clinical, radiographic, microscopic, biochemical, or other examinations.

(d) "Oral and Maxillofacial Surgery" is the specialty of dentistry which includes the diagnosis, surgical and adjunctive treatment of diseases, injuries and defects involving both the functional and esthetic aspects of the hard and soft tissues of the oral and maxillofacial region.

(e) "Orthodontics" is the area of dentistry concerned with the supervision, guidance and correction of the growing or mature dentofacial structures, including those conditions that require movement of teeth or correction of malrelationships and malformations of their related structures and the adjustment of relationships between and among teeth and facial bones by the application of forces and/or the stimulation and redirection of functional forces within the craniofacial complex. Major responsibilities of orthodontic practice include the diagnosis, prevention, interception and treatment of all forms of malocclusion of the teeth and associated alterations in their surrounding structures; the design, application and control of functional and corrective appliances; and the guidance of the dentition and its supporting structures to attain and maintain optimum occlusal relations in physiologic and esthetic harmony among facial and cranial structures.

(f) "Pediatric Dentistry" is an age-defined specialty that provides both primary and comprehensive preventive and therapeutic oral health care for infants and children through adolescence, including those with special health care needs.

(g) "Periodontics" is the specialty of dentistry which encompasses the prevention, diagnosis and treatment of diseases of the supporting and surrounding tissues of the teeth or their substitutes and the maintenance of the health, function and esthetics of these structures and tissues.

(h) "Prosthodontics" is the branch of dentistry pertaining to the restoration and maintenance of oral functions, comfort, appearance and health of the patient by the restoration of natural teeth and/or the replacement of missing teeth and contiguous oral and maxillofacial tissues with artificial substitutes.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.010 & 680.010

Hist.: DE 11-1984, f. & ef. 5-17-84; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0001; DE 3-1997, f. & cert. ef. 8-27-97; OBD 7-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-001-0005

Model Rules of Procedure

Pursuant to the provisions of ORS 183.341, the Oregon Board of Dentistry adopts the Attorney General's Model Rules of Procedure under the Administrative Procedures Act current edition; these rules of procedure shall be controlling except as otherwise required by statute or rule.

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

Stat. Auth.: ORS 183, 192, 670 & 679

Stats. Implemented: ORS 183.341(1)

Hist.: DE 20, f. 12-19-73, ef. 1-11-74; DE 26, f. & ef. 2-6-76; DE 1-1978, f. & ef. 4-27-78; DE 3-1981, f. & ef. 12-16-81; DE 3-1983, f. & ef. 10-19-83; DE 11-1984, f. & ef. 5-17-84; DE 4-1986, f. & ef. 5-23-86; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, DE 1-1989, f. 1-27-

89, cert. ef. 2-1-89; DE 1-1997, f. & cert. ef. 1-2-97; OBD 1-2000, f. & cert. ef. 1-26-00; OBD 3-2000, f. & cert. ef. 6-2-00; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-001-0087

Fees

(1) The Board adopts the following fees:

(a) Biennial License Fees:

(A) Dental — \$210;

(B) Dental — retired — \$0;

(C) Dental Faculty — \$210;

(D) Volunteer Dentist — \$0;

(E) Dental Hygiene — \$100;

(F) Dental Hygiene — retired — \$0;

(G) Volunteer Dental Hygienist — \$0.

(b) Biennial Permits or Certificates:

(A) Anesthesia Class 1 Permit (Nitrous Oxide) — \$40;

(B) Anesthesia Class 2 Permit (Conscious Sedation) — \$75;

(C) Anesthesia Class 3 Permit (Deep Sedation) — \$75;

(D) Anesthesia Class 4 Permit (General Anesthesia) — \$140;

(E) Radiology — \$75;

(F) Expanded Function Dental Assistant — \$50;

(G) Expanded Function Orthodontic Assistant — \$50;

(H) Instructor Permits — \$40;

(I) Dental Hygiene, Limited Access Permit — \$50.

(c) Applications for Licensure:

(A) Dental — General and Specialty — \$305;

(B) Dental Faculty — \$305;

(C) Dental Hygiene — \$140;

(D) Licensure Without Further Examination -- Dental and Dental Hygiene -- \$750.

(d) Examinations:

(A) Jurisprudence — \$0;

(B) Dental Specialty:

(i) \$750 at the time of application; and

(ii) If only one candidate applies for the exam, an additional \$1,250 due ten days prior to the scheduled exam date;

(iii) If two candidates apply for the exam, an additional \$250 (per candidate) due ten days prior to the scheduled exam date;

(iv) If three or more candidates apply for the exam, no additional fee will be required.

(e) Duplicate Wall Certificates — \$50.

(2) Fees must be paid at the time of application and are not refundable.

(3) The Board shall not refund moneys under \$5.01 received in excess of amounts due or to which the Board has no legal interest unless the person who made the payment or the person's legal representative requests a refund in writing within one year of payment to the Board.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 293.445, 679.060, 679.120, 680.050, 680.200, 680.205

Hist.: DE 6-1985(Temp), f. & ef. 9-20-85; DE 3-1986, f. & ef. 3-31-86; DE 1-1987, f. & ef. 10-7-87; DE 1-1988, f. 12-28-88, cert. ef. 2-1-89, corrected by DE 1-1989, f. 1-27-89, cert. ef. 2-1-89; Renumbered from 818-001-0085; DE 2-1989(Temp), f. & cert. ef. 11-30-89; DE 1-1990, f. 3-19-90, cert. ef. 4-2-90; DE 1-1991(Temp), f. 8-5-91, cert. ef. 8-15-91; DE 2-1991, f. & cert. ef. 12-31-91; DE 1-1992(Temp), f. & cert. ef. 6-24-92; DE 2-1993, f. & cert. ef. 7-13-93; OBD 1-1998, f. & cert. ef. 6-8-98; OBD 3-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction, 8-2-99; OBD 5-2000, f. 6-22-00, cert. ef. 7-1-00; OBD 8-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-021-0088

Volunteer License

(1) An active licensed dentist or dental hygienist who will be practicing for a supervised volunteer dental clinic, as defined in ORS 679.020(3)(e) and (f), may be granted a volunteer license provided licensee completes the following:

(a) Licensee must register with the Board as a health care professional and provide a statement as required by ORS 676.345.

(b) Licensee will be responsible to meet all the requirements set forth in ORS 676.345.

(c) Licensee must provide the health care service without compensation.

(d) Licensee shall not practice dentistry or dental hygiene for remuneration in any capacity under the volunteer license.

(e) Licensee must comply with all continuing education requirements for active licensed dentist or dental hygienist.

(f) Licensee must agree to volunteer for a minimum of 40 hours per calendar year.

ADMINISTRATIVE RULES

(2) Licensee may surrender the volunteer license designation at any time and request a return to an active license. The Board will grant an active license as long as all active license requirements have been met.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 676.345, 679.010, 679.020, 679.025, 679.090, 680.010, 680.020, 680.050 & 680.072

Hist.: OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-026-0030

Requirement for Anesthesia Permit, Standards and Qualifications of an Anesthesia Monitor

(1) A permit holder who administers sedation shall assure that drugs and/or techniques used to produce sedation shall carry a margin of safety wide enough to prevent unintended deeper levels of sedation.

(2) No dentist or dental hygienist shall induce central nervous system anesthesia without first having obtained an anesthesia permit under these rules for the level of anesthesia being induced.

(3) Persons serving as anesthesia monitors in a dental office shall maintain current certification in Health Care Provider Basic Life Support (BLS)/Cardio Pulmonary Resuscitation (CPR) training, or its equivalent, shall be trained in monitoring patient vital signs, and be competent in the use of monitoring and emergency equipment appropriate for the level of sedation utilized. (The term "competent" as used in these rules means displaying special skill or knowledge derived from training and experience.)

(4) No dentist or dental hygienist holding an anesthesia permit shall administer anesthesia unless they hold a current Health Care Provider BLS/CPR level certificate or its equivalent, or holds a current Advanced Cardiac Life Support (ACLS) Certificate or Pediatric Advanced Life Support (PALS) Certificate, whichever is appropriate for the patient being sedated.

(5) When a dentist utilizes a single dose oral agent to achieve anxiolysis only, no anesthesia permit is required.

(6) The applicant for an anesthesia permit must pay the appropriate permit fee, submit a completed Board-approved application and consent to an office evaluation.

(7) Permit fees may be prorated based on the 24-month renewal cycle.

(8) Permits shall be issued to coincide with the applicant's licensing period.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.250(7) & (10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-026-0050

Class 2 Permit

Class 2 Permit: conscious sedation and nitrous oxide sedation.

(1) The Board shall issue a Class 2 Permit to an applicant who:

(a) Is a licensed dentist in Oregon;

(b) Holds a valid and current Health Care Provider BLS/CPR level certificate, or its equivalent; and

(c) Completion of a comprehensive training program that satisfies the requirements in Part III of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced or postgraduate instruction, or the equivalent of that required in graduate training programs, in sedation, recognition and management of complications and emergency care. Permits will be issued for parenteral use, enteral use, or both parenteral and enteral use.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full facemask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) Sphygmomanometer, stethoscope, and pulse oximeter; and

(h) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) Before inducing conscious sedation, a dentist who induces conscious sedation shall:

(a) Evaluate the patient;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian;

(c) Certify that the patient is an appropriate candidate for conscious sedation; and

(d) Obtain written informed consent from the patient or patient's guardian for the anesthesia. The obtaining of the informed consent shall be documented in the patient's record.

(4) No permit holder shall have more than one person under conscious sedation at the same time.

(5) While the patient is being treated under conscious sedation, an anesthesia monitor shall be present in the room in addition to the treatment provider. The anesthesia monitor may be the chairside assistant.

(6) A patient under conscious sedation shall be visually monitored at all times, including recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be taken if they can reasonably be obtained. If the information cannot be obtained, the reasons shall be documented in the patient's record. The record must also include documentation of all medications administered with dosages, time intervals and route of administration.

(b) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(8) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(g) A dentist shall not release a patient who has undergone conscious sedation except to the care of a responsible third party.

(9) Permit renewal. In order to renew a Class 2 Permit, the permit holder must provide documentation of having a current Health Care Provider BLS/CPR level certificate, or its equivalent. In addition, Class 2 Permit holders must also complete four (4) hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current Health Care Provider BLS/CPR level certification, or its equivalent, may not be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-026-0060

Class 3 Permit

Class 3 Permit: deep sedation, conscious sedation, and nitrous oxide sedation.

(1) The Board shall issue or renew a Class 3 Permit to an applicant who:

(a) Is a licensed dentist in Oregon,

(b) Holds a current Advanced Cardiac Life Support (ACLS) or Pediatric Advanced Life Support (PALS) certificate, whichever is appropriate for the patient being sedated, and

(c) Satisfies one of the following criteria:

ADMINISTRATIVE RULES

(A) Completion of a comprehensive training program in parenteral sedation that satisfies the requirements described in Part III of the ADA Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry at the time training was commenced.

(B) Completion of an ADA accredited postdoctoral training program (e.g., general practice residency) which affords comprehensive and appropriate training necessary to administer and manage parenteral sedation, commensurate with these Guidelines.

(C) In lieu of these requirements, the Board may accept equivalent training or experience in deep sedation anesthesia.

(2) The following facilities, equipment and drugs shall be on site and available for immediate use during the procedures and during recovery:

(a) An operating room large enough to adequately accommodate the patient on an operating table or in an operating chair and to allow an operating team of at least two individuals to freely move about the patient;

(b) An operating table or chair which permits the patient to be positioned so the operating team can maintain the patient's airway, quickly alter the patient's position in an emergency, and provide a firm platform for the administration of basic life support;

(c) A lighting system which permits evaluation of the patient's skin and mucosal color and a backup lighting system of sufficient intensity to permit completion of any operation underway in the event of a general power failure;

(d) Suction equipment which permits aspiration of the oral and pharyngeal cavities and a backup suction device which will function in the event of a general power failure;

(e) An oxygen delivery system with adequate full face mask and appropriate connectors that is capable of delivering high flow oxygen to the patient under positive pressure, together with an adequate backup system;

(f) A nitrous oxide delivery system with a fail-safe mechanism that will insure appropriate continuous oxygen delivery and a scavenger system;

(g) A recovery area that has available oxygen, adequate lighting, suction and electrical outlets. The recovery area can be the operating room;

(h) Sphygmomanometer, precordial/pretracheal stethoscope or capnograph, pulse oximeter, oral and nasopharyngeal airways, intravenous fluid administration equipment; and

(i) Emergency drugs including, but not limited to: pharmacologic antagonists appropriate to the drugs used, vasopressors, corticosteroids, bronchodilators, antihistamines, antihypertensives and anticonvulsants.

(3) No permit holder shall have more than one person under deep sedation or conscious sedation at the same time.

(4) During the administration of deep sedation, and at all times while the patient is under deep sedation, an anesthesia monitor, and one other person holding a Health Care Provider BLS level certificate or its equivalent, shall be present in the operatory, in addition to the dentist performing the dental procedures.

(5) Before inducing deep sedation, a dentist who induces deep sedation shall:

(a) Evaluate the patient and document, using the American Society of Anesthesiologists Patient Physical Status Classifications, that the patient is an appropriate candidate for deep sedation;

(b) Give written preoperative and postoperative instructions to the patient or, when appropriate due to age or psychological status of the patient, the patient's guardian; and

(c) Obtain written informed consent from the patient or patient's guardian for the anesthesia.

(6) A patient under deep sedation shall be visually monitored at all times, including the recovery phase. The dentist or anesthesia monitor shall monitor and record the patient's condition.

(7) The patient shall be monitored as follows:

(a) Patients must have continuous monitoring using pulse oximetry. The patient's blood pressure, heart rate, and respiration shall be recorded at regular intervals but at least every 15 minutes, and these recordings shall be documented in the patient record. The record must also include documentation of preoperative and postoperative vital signs, all medications administered with dosages, time intervals and route of administration. If this information cannot be obtained, the reasons shall be documented in the patient's record. A patient under deep sedation shall be continuously monitored;

(b) During the recovery phase, the patient must be monitored by an individual trained to monitor patients recovering from deep sedation.

(8) A dentist shall not release a patient who has undergone deep sedation except to the care of a responsible third party.

(9) The dentist shall assess the patient's responsiveness using preoperative values as normal guidelines and discharge the patient only when the following criteria are met:

(a) Vital signs including blood pressure, pulse rate and respiratory rate are stable;

(b) The patient is alert and oriented to person, place and time as appropriate to age and preoperative psychological status;

(c) The patient can talk and respond coherently to verbal questioning;

(d) The patient can sit up unaided;

(e) The patient can ambulate with minimal assistance; and

(f) The patient does not have uncontrollable nausea or vomiting and has minimal dizziness.

(10) A discharge entry shall be made by the dentist in the patient's record indicating the patient's condition upon discharge and the name of the responsible party to whom the patient was discharged.

(11) After adequate training, an assistant, when directed by a dentist, may introduce additional anesthetic agents to an infusion line under the direct visual supervision of a dentist.

(12) Permit renewal. In order to renew a Class 3 Permit, the permit holder must provide documentation of having current ACLS or PALS certification and must complete 14 hours of continuing education in one or more of the following areas every two years: sedation, physical evaluation, medical emergencies, monitoring and the use of monitoring equipment, or pharmacology of drugs and agents used in sedation. Training taken to maintain current ACLS or PALS certification may be counted toward this requirement. Continuing education hours may be counted toward fulfilling the continuing education requirement set forth in OAR 818-021-0060.

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

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7) & 679.250(10)

Hist.: OBD 2-1998, f. 7-13-98, cert. ef. 10-1-98; OBD 1-1999, f. 2-26-99, cert. ef. 3-1-99; OBD 6-1999, f. 6-25-99, cert. ef. 7-1-99; Administrative correction 8-12-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 3-2003, f. 9-15-03, cert. ef. 10-1-03; OBD 1-2005, f. 1-28-05, cert. ef. 2-1-05; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-035-0025

Prohibitions

A dental hygienist may not:

(1) Diagnose and treatment plan other than for dental hygiene services;

(2) Cut hard or soft tissue with the exception of root planing;

(3) Extract any tooth;

(4) Fit or adjust any correctional or prosthetic appliance except as provided by OAR 818-035-0040(1)(c);

(5) Prescribe any drug, other than fluoride, fluoride varnish, antimicrobial solutions for mouth rinsing or resorbable antimicrobial agents;

(6) Administer or dispense any drugs except as provided by OAR 818-035-0030, 818-035-0040, 818-026-0060(11) and 818-026-0070(11);

(7) Place, condense, carve or cement permanent restorations or operatively prepare teeth;

(8) Irrigate or medicate canals; try in cones, or ream, file or fill canals;

(9) Use the behavior management techniques of Hand Over Mouth (HOM) or Hand Over Mouth Airway Restriction (HOMAR) on any patient.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.020(1)

Hist.: DE 2-1992, f. & cert. ef. 6-24-92; DE 2-1997, f. & cert. ef. 2-20-97; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 2-2000(Temp), f. 5-22-00, cert. ef. 5-22-00 thru 11-18-00; OBD 2-2001, f. & cert. ef. 1-8-01; OBD 15-2001, f. 12-7-01, cert. ef. 1-1-02; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-035-0030

Additional Functions of Dental Hygienists

In addition to functions set forth in ORS 679.010, a dental hygienist may perform the following functions under the general supervision of a licensed dentist:

(1) Make preliminary intra-oral and extra-oral examinations and record findings;

(2) Place periodontal dressings;

(3) Remove periodontal dressings or direct a dental assistant to remove periodontal dressings;

(4) Perform all functions delegable to dental assistants and expanded function dental assistants providing that the dental hygienist is appropriately trained;

(5) Administer and dispense antimicrobial solutions or resorbable antimicrobial agents in the performance of dental hygiene functions.

Stat. Auth.: ORS 679 & 680

Stats. Implemented: ORS 679.025(2)(j)

Hist.: DE 5-1984, f. & ef. 5-17-84; DE 3-1986, f. & ef. 3-31-86; DE 2-1992, f. & cert. ef. 6-24-92; OBD 7-1999, f. 6-25-99, cert. ef. 7-1-99; OBD 1-2001, f. & cert. ef. 1-8-01; OBD 15-

ADMINISTRATIVE RULES

2001, f. 12-7-01, cert. ef. 1-1-02; OBD 1-2004, f. 5-27-04, cert. ef. 6-1-04; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

818-042-0116

Certification — Oral Surgery Assistant

The Board may certify a person as an Oral Surgery Assistant if the applicant submits a completed application, pays the certification fee and shows satisfactory evidence of:

(1) Successful completion of:

(a) The "Oral and Maxillofacial Surgery Anesthesia Assistants Program" or successor program, conducted by the American Association of Oral and Maxillofacial Surgeons; or

(b) The "Oral and Maxillofacial Surgery Assistants Course" or successor course, conducted by the California Association of Oral and Maxillofacial Surgeons (CALAOMS), or a successor entity; or

(c) The "Certified Oral and Maxillofacial Surgery Assistant" examination, or successor examination, conducted by the Dental Assisting National Board or other Board approved examination; and

(2) Holding valid and current documentation showing successful completion of a Health Care Provider BLS/CPR course, or its equivalent.

Stat. Auth.: ORS 679

Stats. Implemented: ORS 679.250(7)

Hist.: OBD 1-2001, f. & cert. ef. 1-8-01; OBD 2-2005, f. 1-31-05, cert. ef. 2-1-05

Oregon Department of Education Chapter 581

Adm. Order No.: ODE 1-2005(Temp)

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05 thru 8-1-05

Notice Publication Date:

Rules Amended: 581-024-0215

Subject: The amendment to the rule will define a process to allow the Superintendent to respond to constituent complaints and other alleged violations of standards by an ESD, other than through the regular, cyclical standardization review. The amendment will allow the Superintendent to respond promptly and appropriately in all cases of alleged noncompliance.

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

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-024-0215

Assignment of Standardization Classification

(1) The district's designation as standard, conditionally standard or nonstandard is determined by the State Superintendent of Public Instruction and is based on the district's compliance with the rules set out in division 24 of chapter 581 of the Oregon Administrative Rules.

(2) The Superintendent will review a district's compliance with division 24 standards as part of a comprehensive, regular review of the district, or may review a district in response to a public complaint alleging non-compliance with one or more of the division 24 standards, or upon the Superintendent's own initiative at any time as may be necessary to ensure compliance with the division 24 standards.

(3) During a review, the district shall cooperate with the Superintendent and provide any and all evidence the Superintendent considers necessary for the review. If as a result of a review of the district by the Superintendent it is determined that the district does not comply with one or more of the division 24 standards, the Superintendent will notify the district of the initial determination of noncompliance and give the district 15 days to respond.

(4) If after reviewing the district's response, the Superintendent determines that the district is in compliance with all division 24 standards, the Superintendent will within 15 days from the receipt of the district's response designate the district as standard.

(5) If after reviewing the district's response, the Superintendent determines that the district is not in compliance with one or more division 24 standards, the Superintendent will within 15 days from the receipt of the district's response designate the district as nonstandard and require from the district a plan to correct all deficiencies. The district will have 30 days to provide the Superintendent with the plan. The Superintendent may accept, reject or modify the plan within 30 days from the receipt of the district's plan and will order the district to comply with the plan as approved. The

district will have 180 days from the approval of the plan to correct all identified deficiencies.

(6) If a plan is not submitted to the Superintendent within 30 days, the Superintendent will designate the district nonstandard.

(7) When a plan to correct deficiencies is approved by the Superintendent, the district is designated conditionally standard.

(8) When the district corrects all identified deficiencies, the district is designated standard.

(9) If after 180 days from the approval of the plan, the district has not corrected all identified deficiencies, the Superintendent will designate the district nonstandard.

(10) The Superintendent may impose sanctions on a nonstandard district, including requiring merger with a contiguous, standard district, withholding state school fund allocations and the sanctions described in ORS 342.173. The determination of sanction is left to the discretion of the Superintendent.

Stat. Auth.: ORS 334

Stats. Implemented: ORS 334.125

Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 16-1994, f. & cert. ef. 11-14-94; ODE 1-2005(Temp), f. & cert. ef. 2-14-05 thru 8-1-05

Adm. Order No.: ODE 2-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 12-1-04

Rules Amended: 581-011-0118

Subject: ORS 337.035 requires the State Board of Education to adopt criteria for the selection and adoption of instructional materials.

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

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-011-0118

Criteria for Selection and Adoption of Instructional Materials for the Arts, 2005-2012

The State Board of Education adopts by reference the Criteria for the Selection and Adoption of Instructional Materials for the Arts in the following categories:

(1) Visual Art Education — Grades K-5/6;

(2) Visual Art Education — Grades 6-8;

(3) Music Education — Grades K-5/6;

(4) Music Education — Grades 6-8; and

(5) Visual/Performing Arts — Grades 9-12.

Stat. Auth.: ORS 337.035

Stats. Implemented: ORS 337.035

Hist.: 1EB 1-1984, f. & ef. 1-20-84; EB 34-1989, f. & cert. ef. 12-20-89; EB 1-1997, f. & cert. ef. 3-12-97; ODE 1-1998, f. & cert. ef. 2-27-98; ODE 2-2005, f. & cert. ef. 2-14-05

Adm. Order No.: ODE 3-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 8-1-04

Rules Amended: 581-022-1111

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

If you have questions regarding this rule, please contact Phyllis Rock at (503) 378-3600, ext. 2258 or e-mail Phyllis.rock@state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail debby.ryan@state.or.us.

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-022-1111

Requesting an Alternative to State Assessment Testing Procedures for Meeting Grade Level Performance Standards

(1) A student in grades 3 through 12 may request a juried assessment, an accommodation to the statewide CIM Benchmark assessment procedures, when he or she has mastered the standards for one or more assessed content areas, but is unable to demonstrate mastery through related statewide assessments.

ADMINISTRATIVE RULES

Oregon Public Employees Retirement System Chapter 459

(2) Each school district shall develop a process for reviewing information and pursuing requests.

(3) The school district shall review each case, determine the merits, and make appropriate recommendations.

(4) A request for a juried assessment, to the Oregon Department of Education must include the following:

(a) A body of student work that demonstrates the student's mastery of the content and performance standards,

(b) Two individual teacher evaluations of the student work that confirm that the work demonstrates mastery, plus

(c) A letter from the district superintendent or designee to the Oregon Department of Education requesting a formal review by an impartial Review Panel.

(5) An impartial review panel will be established by the Oregon Department of Education to consider requests and make decisions regarding each request.

(6) The Review Panel will inform the student, parent and school district of their decision to accept or deny the request in writing within 45 days.

(7) The review panel will be made up of members from outside the requesting student's district(s) of enrollment and attendance and will include the following:

(a) One educator who is a content specialist for grade and content area(s) covered by the request,

(b) One educator knowledgeable about the unique characteristics of the requesting student such as disability, English proficiency, assistive device use etc,

(c) One district test coordinator or assessment specialist knowledgeable about measuring academic performance, and

(d) One Department of Education Assessment Specialist knowledgeable in the content covered by the request.

(8) The costs for the Review Panel shall be the responsibility of the district except for the ODE staff.

(9) If denied, the parent and student may submit a request to the State Superintendent for reconsideration of the decision.

(10) The decision of the State Superintendent to accept or deny the request will be final.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 329.075, ORS 329.465 & ORS 329.485

Hist.: ODE 25-2000, f. & cert. ef. 10-16-00; ODE 3-2005, f. & cert. ef. 2-14-05

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Adm. Order No.: ODE 4-2005

Filed with Sec. of State: 2-14-2005

Certified to be Effective: 2-14-05

Notice Publication Date: 11-1-04

Rules Amended: 581-021-0041

Subject: Senate Bill 393 was enacted during the 2003 Legislative Session and authorized licensed naturopaths to conduct school sports pre-participation physical examinations. The State Board adopted the form and protocol for sports physicals in 2002 pursuant to ORS 339.479. This amendment updates the reference in the rule to the current June 2004 form and protocol and includes reference to naturopaths.

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

Rules Coordinator: Debby Ryan—(503) 378-3600, ext. 2348

581-021-0041

Form and Protocol for Sports Physical Examinations

The State Board of Education adopts by reference the form entitled "School Sports Pre-Participation Examination June 2004 that must be used to document the physical examination and the document entitled "School Sports Pre-Participation Examination Protocol June 2004 that sets out the protocol for conducting the physical examination.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 336.479

Hist.: ODE 24-2002, f. & cert. ef. 11-15-02; ODE 29-2004(Temp), f. & cert. ef. 9-15-04 thru 2-25-05; ODE 4-2005, f. & cert. ef. 2-14-05

Adm. Order No.: PERS 1-2005

Filed with Sec. of State: 1-31-2005

Certified to be Effective: 1-31-05

Notice Publication Date: 11-1-04

Rules Adopted: 459-070-0050

Subject: The Oregon Public Service Retirement Plan (OPSRP) allows new employers to begin participating in the PERS system. This rule outlines the process for new employers to begin providing OPSRP credit and contributions and to continue providing coverage for PERS Chapter 238 program members they may hire.

Rules Coordinator: David K. Martin—(503) 603-7713

459-070-0050

Participation of Public Employers

(1) Any public employer that does not already provide benefits under the Oregon Public Service Retirement Plan (OPSRP) may apply to participate in the OPSRP Pension Program, the OPSRP IAP, or both, only for service by eligible employees performed on or after the date the employer's participation becomes effective.

(2) The application to participate in either or both OPSRP programs must contain, at a minimum, the following information:

(a) A true copy of the resolution, motion or other official action by which the employer's governing board or equivalent decided to apply to participate;

(b) A designated person or position authorized to represent the employer on PERS matters;

(c) Whether the employer will participate for one or more designated groups of employees or for all employees. If the employer already provides coverage for some but not all employees, the application must designate which additional group(s) will be added to the program or programs;

(d) Whether the employer will offer the OPSRP Pension Program, the OPSRP IAP, or both;

(e) Whether the employer will offer the PERS Chapter 238 plan to qualifying employees that it currently employs or may hire in the future;

(f) If the employer elects to participate in the PERS Chapter 238 plan for qualifying employees, whether the employer will provide the unused sick leave benefit for those employees; and

(g) The date on which the employer proposes to commence coverage under the specified program or programs.

(3) If the employer elects to participate in the PERS Chapter 238 plan for qualifying employees, and the employer also elects to participate in the State and Local Government Rate Pool (SLGRP) for those employees, the employer shall provide PERS with a resolution electing to participate in the SLGRP before the coverage agreement is signed by the parties.

(4) Upon receipt of the properly completed application, PERS will prepare a coverage agreement, which will be forwarded to the person designated by the employer under (2)(b) above. In no event will coverage commence before the agreement has been executed on behalf of the employer's governing body (or equivalent), the PERS Executive Director, and the PERS Board.

(5) The employer will provide any and all information requested by PERS to ensure that the employer is eligible to participate, including whatever information PERS deems necessary to determine that the employer qualifies as a public employer. Factors to be addressed in that determination include but are not limited to:

(a) If the employer is a public corporation, whether a governmental entity retains essential control over the employer's activities, with delegated powers for administration or discharge of public duties;

(b) Whether a state or local governmental body controls management of the employer;

(c) If the employer is a public corporation, whether it generates profits for private investors or stockholders;

(d) Where the employer derives its funding for operations;

(e) Whether the employer performs a governmental function; and

(f) Any information deemed necessary to determine that the employer's coverage will not adversely affect PERS' status as a qualified governmental retirement plan under the Internal Revenue Code.

(6) Unless the coverage agreement specifically provides otherwise, no retirement or service credit will be provided under OPSRP or the PERS Chapter 238 plan for the service performed with that employer prior to the employer becoming a participating employer, including service towards the member's six-month waiting period.

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(7) An employee who is employed in a qualifying position with a newly participating employer and who had previously established membership in the PERS system as of August 29, 2003, shall be an active member of the applicable OPSRP or PERS Chapter 238 program(s) as of the coverage agreement effective date, to the extent eligible under OAR 459-075-0010 and 459-080-0010.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.070
Hist.: PERS 1-2005, f. & cert. ef. 1-31-05

Adm. Order No.: PERS 2-2005
Filed with Sec. of State: 1-31-2005
Certified to be Effective: 1-31-05
Notice Publication Date: 11-1-04
Rules Adopted: 459-080-0050

Subject: The Oregon Public Service Retirement Plan Individual Account Program includes an option for participating employers to contribute an additional one to six percent of salary to an employer account for some or all of its employees. This rule outlines the process for employers to begin contributions to those accounts if they so choose.

Rules Coordinator: David K. Martin—(503) 603-7713

459-080-0050

IAP Employer Account Contributions

(1) Employers shall not begin employer contributions under ORS 238A.340 to the employer account of a member under the OPSRP Individual Account Program (IAP) until the agreement by which those contributions will be made has been provided to PERS. The agreement must, at a minimum, provide the following information:

- (a) The date those contributions are to commence; and
- (b) The percentage of salary to be contributed.

(2) ORS 238A.340(1) allows participating public employers to agree to provide these employer contributions for specific groups of employees. The employer will be solely responsible for reporting which groups of employees are eligible for the employer contributions, so long as those employees are eligible for membership under ORS 238A.300 and OAR 459-080-0010. PERS will rely on the employer's records to determine whether an employee was in a group that should have received employer contributions.

(3) Employer contributions made on behalf of a person who fails to meet the standards for IAP employee contributions under OAR 459-080-0150 will be returned pursuant to section (5) of that rule.

(4) Employer contributions made in error for an employee who is not entitled to those contributions under the employer's agreement will be returned less any fees or losses incurred since the contributions were submitted. Any earnings on these contributions will be credited to the forfeiture account established under OAR 459-080-0150.

(5) Whether contributions were erroneous will be based upon the employer's records as reported to PERS.

Stat. Auth.: ORS 238A.450
Stats. Implemented: ORS 238A.340
PERS 2-2005, f. & cert. ef. 1-31-05

Adm. Order No.: PERS 3-2005
Filed with Sec. of State: 1-31-2005
Certified to be Effective: 1-31-05
Notice Publication Date: 11-1-04
Rules Amended: 459-005-0591

Subject: ORS 237.650, enacted as part of House Bill 2020, provides that legislators must elect, within 30 days of taking office, to participate in the OPSRP Pension and IAP Programs, or the OSGP, or neither. If a legislator fails to make an election, they will default to membership in the OSGP.

If a legislator elects to participate in the OSGP, ORS 237.655(2) allows the legislator to roll over their PERS Chapter 238 regular account. Similarly, ORS 237.650(3) provides for a rollover of the legislator's PERS Chapter 238 regular account if they elect to participate in the OPSRP IAP.

These provisions require OAR 459-005-0591 to be amended to clarify and implement these statutory options.

Rules Coordinator: David K. Martin—(503) 603-7713

459-005-0591

Definitions — Direct Rollovers

As used in OAR 459-005-0590 to 459-005-0599 the following words and phrases shall have the following meanings:

(1) "Code" means the Internal Revenue Code of 1986, as amended.

(2) A "direct rollover" means the payment of an eligible rollover distribution by PERS to an eligible retirement plan specified by the distributee.

(3) A "distributee" includes a PERS member, the surviving spouse of a deceased PERS member, and the current or former spouse of a PERS member who is the alternate payee under a domestic relations order that satisfies the requirements of ORS 238.465 and the rules adopted thereunder.

(4) An "eligible retirement plan" means any one of the following:

(a) An individual retirement account or annuity described in Code Section 408(a) or (b), but shall not include a Roth IRA as described in Code Section 408A;

(b) An annuity plan described in Code Section 403(a) that accepts the distributee's eligible rollover distribution;

(c) A qualified trust described in Code Section 401(a) that accepts the distributee's eligible rollover distribution;

(d) An eligible deferred compensation plan described in Code Section 457(b) which is maintained by an eligible employer described in Code Section 457(e)(1)(A) and accepts the distributee's eligible rollover distribution.

(e) An annuity contract described in Code Section 403(b) that accepts the distributee's eligible rollover distribution.

(f) Solely for purposes of receiving rollovers described in ORS 237.650(3), the individual employee account maintained for a member under the Individual Account Program as set forth under ORS 238A.350(2); and

(g) Solely for purposes of receiving rollovers described in ORS 237.655(2), the state deferred compensation program.

(5) An "eligible rollover distribution" means any distribution of all or any portion of a distributee's PERS benefit, except that an eligible rollover distribution shall not include:

(a) Any distribution that is one of a series of substantially equal periodic payment made no less frequently than annually for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; or

(b) Any distribution to the extent that it is a required or minimum distribution under Code Section 401(a)(9).

(6) A "recipient plan" means an eligible retirement plan that is designated by a distributee to receive a direct rollover.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.005-238.715

Hist.: PERS 11-1998, f. & cert. ef. 12-17-98; PERS 1-2002(Temp), f. & cert. ef. 1-11-02 thru 6-28-02; PERS 3-2002, f. & cert. ef. 3-26-02; PERS 31-2004(Temp), f. & cert. ef. 12-15-04 thru 6-1-05; PERS 3-2005, f. & cert. ef. 1-31-05

Adm. Order No.: PERS 4-2005
Filed with Sec. of State: 1-31-2005
Certified to be Effective: 1-31-05
Notice Publication Date: 11-1-04

Rules Amended: 459-005-0310, 459-005-0350, 459-005-0370

Subject: House Bill 2020, the legislation that established the Oregon Public Service Retirement Plan (OPSRP), amended ORS 243.800 and 353.250 to incorporate references to OPSRP. ORS 243.800 sets forth the provisions for an Optional Retirement Plan for employees of the Oregon University System. ORS 353.250 sets forth the provisions for an Alternative Retirement Plan for employees of the Oregon Health and Science University. These rules deal with coordination between the PERS plans and these other retirement programs, so these rule changes are intended to address issues created by the addition of OPSRP.

OAR 459-005-0310 sets forth the process for notifying PERS of an OUS employee's election to participate in an optional retirement plan and the request to transfer the member's account(s).

OAR 459-005-0350 clarifies the membership and eligibility status of OUS employees who are concurrently employed by the OUS and a PERS or OPSRP participating employer.

OAR 459-005-0370 sets forth the process for notifying PERS of an Oregon Health and Science University (OHSU) employee's elec-

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tion to participate in an optional retirement plan and the request to transfer the member's account(s).

Rules Coordinator: David K. Martin—(503) 603-7713

459-005-0310

Date of Participation and Transfer of Employee Funds to the Oregon University System – OUS

(1) The effective date of an election by an administrative or academic employee of the Oregon State University System of Higher Education (OUS) to participate in an Optional Retirement Plan authorized under ORS 243.800 is the first of the month following the employee's election to participate in the Optional Retirement Plan.

(a) Unless otherwise agreed upon, notice of the effective date of an election to participate in the Optional Retirement Plan will be provided to PERS by the OUS within 30 days of the election date.

(b) If the employee is a member of PERS or the Oregon Public Service Retirement Plan (OPSRP) Pension Program or Individual Account Program (IAP), and is eligible to transfer their PERS or OPSRP accounts to the Optional Retirement Plan, the OUS will forward a copy of that election at the time of the notification required in subsection (a) of this section.

(2) The date of transfer will be:

(a) For a member's PERS member account, variable account, or OPSRP Pension account, the first working day of the calendar month following the date of the notification by OUS to PERS of the employee's election to participate in an Optional Retirement Plan authorized under ORS 243.800.

(b) For a member's OPSRP IAP account, the actual date of distribution.

(3) For purposes of sections (1) and (2) of this rule, the date of notification shall be the date on which PERS headquarters receives the written notification of the election to participate in an Optional Retirement Plan under ORS 243.800.

(4) For the purposes of this rule:

(a) "PERS member account" means the member's regular account in the fund as defined in ORS 238.250; and

(b) "PERS variable account" means the member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260.

(c) "OPSRP pension account" means the member's benefit eligible for withdrawal under the provisions of ORS 238A.120; and

(d) "IAP Account" means the member's account, to the extent the member is vested, as set forth under ORS 238A.350.

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 243.775

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005, f. & cert. ef. 1-31-05

459-005-0350

Membership Status of Persons in Concurrent Employment Eligible to Participate in an Optional or Alternative Retirement Plan

(1) For the purpose of this rule, concurrent employment means employment with two or more different employers participating in the Public Employees Retirement System (PERS) at the same time.

(2) If a person employed by the Oregon University System or by the Oregon Health and Science University is concurrently employed by another PERS or Oregon Public Service Retirement Plan (OPSRP) participating employer, eligibility for PERS or OPSRP membership shall be based on the following:

(a) If the person elects to participate in an Optional Retirement Plan offered by the Oregon University System under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers in a non-qualifying position(s) as defined in OAR Chapter 459, the person:

(A) Shall not be eligible to establish membership in PERS or OPSRP as an employee of the Oregon University System or the Oregon Health and Science University, and

(B) Shall not be eligible to establish membership in PERS or OPSRP as an employee of the other concurrent PERS employer or employers.

(b) If the person elects to participate in an Optional Retirement Plan offered by the Oregon University System under ORS 243.800, or an alternative retirement plan offered by the Oregon Health and Science University under ORS 353.250, and concurrently employed with other PERS or OPSRP participating employers in a qualifying position(s) as defined in OAR Chapter 459, the person:

(A) Shall not be eligible to establish membership in PERS or OPSRP as an employee of the Oregon University System or the Oregon Health and Science University; and

(B) Shall establish membership in OPSRP as an employee of the other concurrent PERS or OPSRP employer or employers.

(3) A member of PERS or OPSRP who is concurrently employed and establishes PERS or OPSRP membership under the provisions of paragraph (2)(b)(B) of this rule shall not be eligible to have the member's account transferred to an Optional or an alternative Retirement Plan as described in ORS 243.800(6) and (7).

Stat. Auth: ORS 238.650

Stats. Implemented: ORS 238.015, 243.775 & 353.250(3)

Hist.: PERS 3-1996, f. & cert. ef. 6-11-96; PERS 4-2005, f. & cert. ef. 1-31-05

459-005-0370

Date of Participation and Transfer of Employee Funds to an Alternative Retirement Plan — OHSU

(1) For the purposes of this rule:

(a) "PERS account" means the member's regular account in the Fund as defined in ORS 238.250, and the member's account in the Variable Annuity Account in the Fund as defined in ORS 238.260;

(b) "OPSRP pension account" means the member's benefit eligible for withdrawal under the provisions of ORS 238A.120; and

(c) "IAP account" means the member's accounts, to the extent the member is vested, as set forth under ORS 238A.350.

(2) If an employee elects to participate in an alternative retirement plan authorized under ORS 353.250:

(a) Unless otherwise agreed upon, the effective date of an election to participate in an alternative retirement plan shall be certified by Oregon Health and Science University (OHSU) to PERS within 30 days of that effective date.

(b) If the employee is a member of PERS, and is eligible for and elects to transfer the balance of the member's PERS, OPSRP Pension, or IAP accounts to the alternative retirement plan, OHSU shall forward a copy of that election together with the certification required in subsection (a) of this section.

(c) In the event an eligible employee is disabled or deceased and an election to participate in an alternative retirement plan has not been signed by the employee, the employee shall be deemed to be an active member of PERS, if all other conditions of ORS 238.015 are met.

(3) In accordance with ORS 238A.100 and 238A.300:

(a) An employee who is serving a six-month waiting period shall establish active membership in accordance with ORS 238A.100 and 238A.300 unless PERS receives notification of an election to participate in an alternative retirement plan prior to the completion of that six-month waiting period.

(b) Notwithstanding subsection (a) of this section, if PERS receives a notification of an election to participate in an alternative retirement plan, active membership in PERS or OPSRP shall cease as of the effective date of the election.

(4) A PERS or OPSRP member electing to participate in an alternative retirement plan, authorized under ORS 353.250, and who is not concurrently an active member of PERS or OPSRP with another PERS or OPSRP participating employer, may petition PERS to have the member's PERS, OPSRP Pension, or IAP accounts transferred directly to an alternative retirement plan.

(a) A transfer of a member's account as provided in this section shall be transferred directly to the alternative retirement plan by PERS and shall not be made available to the employee while remaining in the employ of OHSU.

(b) A transfer of a member's PERS OPSRP Pension, or IAP accounts as provided in subsection (a) of this section shall not include any reserves of any PERS-participating employer.

(5) A PERS or OPSRP member electing to participate in an alternative retirement plan who has not separated from service in any position at OHSU shall be not be eligible to withdraw the member's accounts, except as provided in section (4) of this rule.

(6) A transfer of a member's PERS, OPSRP Pension, or IAP accounts to an alternative retirement plan established under provisions of ORS 353.250 shall be in compliance with all applicable Internal Revenue Code provisions and related Treasury regulation governing qualified pension plans. The transfer may occur only if the alternative retirement plan:

(a) Is a qualified plan under the Internal Revenue Code;

(b) Is capable of accepting funds transferred under provisions of section (4) of this rule without the transfer being treated as a taxable event under the Internal Revenue Code; and

(c) Is willing to accept those transfers.

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(7) The date of distribution of a member's PERS or OPSRP Pension accounts to an alternative retirement plan, authorized under ORS 353.250, as provided for in section (4) of this rule shall be the later of:

(a) The first of the calendar month following the date of receipt by PERS of a copy of the election if such copy is received by PERS on or before the fifteenth of a calendar month; or

(b) The first of the second calendar month following the date of receipt by PERS of a copy of the election if such copy is received on or after the 16th of a calendar month.

(8) The date of distribution of a member's OPSRP IAP account(s) to an alternative retirement plan, authorized under ORS 353.250, as provided for in section (4) of this rule will be the date of the actual distribution.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015 & 353.250(3)

Hist.: PERS 5-1998, f. & cert. ef. 5-22-98; PERS 2-1999, f. & cert. ef. 5-13-99; PERS 4-2005, f. & cert. ef. 1-31-05

Oregon State Marine Board Chapter 250

Adm. Order No.: OSMB 1-2005

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-20-05

Notice Publication Date: 11-1-04

Rules Amended: 250-010-0057

Subject: The periodic review of Marine Board Rules revealed the rules had not been revised to include the current fee schedule adopted by the 2003 Legislature. This is a housekeeping amendment to correct the discrepancy.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-010-0057

Issuance and Duplication Fees

(1) Fees for the title issuance and duplication fee shall be:

(a) Title original issuance — \$30;

(b) Title duplication without change when original has been lost, mutilated, destroyed or stolen — \$15;

(c) Title reissued with change of ownership — \$30.

(2) Fees for duplication of certificate of number, certificate or registration and/or duplication of validation stickers — \$10. The agency shall waive the fee for duplicate decal if the original decal issued is found to be defective.

Stat. Auth.: ORS 830

Stats. Implemented: ORS 830.110 & 830.820

Hist.: MB 19-1983, f. 11-29-83, ef. 12-1-83; OSMB 1-2002, f. 4-15-02 cert. ef. 6-1-02; OSMB 6-2002, f. & cert. 10-15-02; OSMB 1-2005, f. & cert. ef. 1-20-05

Adm. Order No.: OSMB 2-2005

Filed with Sec. of State: 1-20-2005

Certified to be Effective: 1-20-05

Notice Publication Date: 11-1-04

Rules Amended: 250-020-0280

Subject: The Division of State Lands requested the Board to amend boating rules in the Oregon Slough (North Portland Harbor) to protect a sediment cap over contaminated state owned submerged and submersible land. The Board considered the request on January 12 and voted to restrict boating in the area to be marked by the Division of State Lands with buoys and informational signs.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-020-0280

Boat Operations in Multnomah County

(1) No person shall operate a boat in excess of 5 MPH:

(a) In North Portland Harbor (Oregon Slough):

(A) From the east end of North Portland Harbor (Oregon Slough) to a point 800 yards west of the Burlington Northern Railroad Bridge, as marked;

(B) Within 200 feet of a launching ramp, moorage or houseboat from the east end of North Portland Harbor (Oregon Slough) eastward along the south shore to the Lower Airport wing dike.

(b) Within 300 feet of the entrance to and in Rooster Rock boat channel;

(c) Within 200 feet of west shore, as buoyed, between the southern boundary of Willamette Park Launch Ramp and the northern boundary of the Willamette Sailing Club;

(d) Within Hayden Bay. The Bay is considered to be all waters south and west of a line 200 feet north of the Northeast point of Hayden Island and 200 feet north of the Northwest point of Tomahawk Island as marked;

(e) Within 200 feet of the Oregon Yacht Club floating home moorage as buoyed (a distance of approximately 1,500 feet);

(f) Within 200 feet of houseboat moorages in the Government Island South Channel;

(g) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River south of the buoys along the northern shore of Government Island in the waters adjacent to the I-205 Bridge, commonly referred to as Commodore's Cove, as marked;

(h) Within 100 feet of the Landing Boat Club at RM 15, Willamette River.

(2) No person shall operate a boat in excess of a maximum 5 MPH, "Slow-No Wake" speed on the Columbia River within 300 feet of shore between the Big Eddy Wing dike and the wing dike east of the entrance to the Chinook Landing boat Basin and within the Chinook Landing Boat Basin, as marked.

(3) A "pass-through" zone is established in the south channel of the Columbia River, adjacent to McGuire Island between the east end of Big Eddy Marina and the west end of McGuire Point Marina as marked.

(a) No person shall operate a motorboat pulling a water skier or towed device in this zone.

(b) No person shall operate a personal watercraft, as defined in OAR 250-21-020, in continuous operation above 5 MPH in this area, except to transit directly through this zone.

(c) No person shall operate any motorboat in excess of slow-no wake maximum 5 MPH speed within 200 feet of any houseboat moorage within the "pass-through" zone.

(4) No person shall operate a boat in excess of 3 MPH in Rooster Rock Boat Basin.

(5) The following locations are designated racing motorboat testing areas:

(a) On the Willamette River in Swan Island Lagoon. Testing is limited to the hours of 3-6 p.m. on Thursdays, Fridays, and Saturdays;

(b) On the Columbia River between the county launching ramp at 43rd Street and Buoy #18 (NOS Chart #18531). Testing is limited to the hours of 8 a.m. – 12 noon, Tuesday through Friday.

(6) No person shall operate a motorboat on Benson Lake.

(7) No person shall operate a boat for any reason within any restricted area at any time without first obtaining permission from the District Engineer, Corps of Engineers, U.S. Army, or his duly authorized representative.

(8) At Bonneville Dam.

(a) The Waters restricted to only Government vessels are described as all waters of the Columbia River and Bradford Slough within 1,000 feet above and 2,000 feet below the powerhouse. The restricted areas will be designated by signs;

(b) No person shall operate a boat, including a commercial recreational tour boat subject to inspection and licensing by the U.S. Coast Guard, within the Boating Restricted Zone located below Bonneville lock and dam bounded by a line commencing from the westernmost tip of Robins Island on the Oregon side of the Columbia River and running at a South 65 degrees West direction a distance of approximately 2100 feet to a point 50 feet upstream of the Hamilton Island Boat Ramp on the Washington side of the Columbia River, as marked.

(9) No person shall operate or anchor a boat in the following described zone in Oregon Slough (North Portland Harbor):

(a) Commencing at the northwesterly corner of that tract of land described in a Bargain and Sale Deed to RHODIA, Inc., recorded as Document No. 98028586, Multnomah County Deed Records; Thence, along the northeasterly line of said tract, S 47o46' E, 513.54 feet to the northwest corner of the Alexander Brown Donation Land Claim; Thence, along the north line of said Claim S 48o30' E, 764.51 feet to the POINT OF BEGINNING of the SITE AREA being described herein; Thence, N 29o58'25" E, 133.84 feet; Thence, S 62o44'22" E, 461.47 feet; Thence, S 29o58'25" W, 227.76 feet to the northeasterly line of said tract; Thence, along said northeasterly line, N 61o15' W, 60.85 feet; Thence, along said northeasterly line, N 52o30' W, 115.5 feet; Thence, along said northeasterly line, N 48o30' W, 291.49 feet to the POINT OF BEGINNING as marked.

(b) This area of land contains 2.0 acres (87,008 sq. Ft.), more or less.

(c) The intent of this description is to describe a line that surrounds the limits of the sediment cap location, plus a buffer zone.

(d) Bearings based on Document No. 98028586, Multnomah County Deed Records.

Stat. Auth.: ORS 830.110, 830.175 & 830.195

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Stats. Implemented: ORS 830.110 & 830.175
Hist.: MB 23, f. 9-24-63; MB 26, f. 7-20-64; MB 51, f. 5-3-73, ef. 5-15-73; MB 61, f. 7-26-74, ef. 7-26-74(Temp) & 8-25-74(Perm); Renumbered from 250-020-0155; MB 10-1982, f. 10-13-82, ef. 10-15-82; MB 12-1982, f. 12-29-82, ef. 12-31-82; MB 6-1983, f. 9-28-83, ef. 10-3-83; MB 17-1984, f. & ef. 12-3-84; MB 6-1985, f. & ef. 2-5-85; MB 10-1985, f. & ef. 4-24-85; MB 15-1985, f. 10-18-85, ef. 10-21-85; MB 20-1987, f. 11-4-87, ef. 11-15-87; MB 5-1990, f. & cert. ef. 7-19-90; MB 11-1992, f. & cert. ef. 9-16-92; MB 2-1993, f. & cert. ef. 2-3-93; MB 13-1996, f. & cert. ef. 12-4-96; OSMB 7-1998(Temp), f. & cert. ef. 5-19-98 thru 11-15-98; OSMB 7-1999, f. & cert. ef. 6-18-99; OSMB 2-2005, f. & cert. ef. 1-20-05

Adm. Order No.: OSMB 3-2005

Filed with Sec. of State: 1-24-2005

Certified to be Effective: 1-24-05

Notice Publication Date: 12-1-04

Rules Adopted: 250-015-0011, 250-015-0025, 250-015-0026, 250-015-0027, 250-015-0028, 250-015-0029, 250-015-0031, 250-015-0032, 250-015-0033

Rules Amended: 250-015-0010, 250-015-0016, 250-015-0019, 250-015-0024

Rules Repealed: 250-015-0030

Subject: When rules covering ocean charter vessels were adopted they included a table of equipment listed in the United States Coast Guard CFR (Code of Federal Regulations). Later when Tables were no longer printed in Administrative Rules the Table was available in the Marine Board office. A recent review of charter vessel rules provided an opportunity to incorporate the complete information in the CFRs that was formerly abbreviated in the Table.

Rules Coordinator: Jill E. Andrick—(503) 373-1405, ext. 243

250-015-0010

Equipment Requirements

(1) The following Titles and Parts of the **Code of Federal Regulations (CFR)**, are by this reference hereby adopted and made part of this rule for all ocean charter vessels. Title 33 CFR Part 84; Title 46 CFR Parts 15.401, 15.605, 15.905; Title 46 CFR Parts 25.25-1, 25.25 -5, 25.30(b), 25.30-10(d), 25.30-20(a) & (b)(1), 25.35-1 & 25.40; Title 46 CFR Part 26.20-1(a); Title 46 CFR Parts 28.145 & 28.400(b); Title 46 CFR Part 130.330; Title 46 CFR Part 160.054-4(b); Title 46 CFR Parts 180.15, 180.64 & 180.70; Title 46 CFR Parts 182.520, 182.520(a) & 180.530; Title 46 CFR Parts 184.300, 184.402, 184.404 & 184.410; Title 47 CFR Parts 80, 80.901, 80.905(a)(1) & (2), 80.933(b) & 80.1051.

(2) Specific safety equipment requirements are dependent upon a vessel's operational distance from the nearest port. All required equipment shall be in proper working order. The Code of Federal Regulations is available online and in the Library

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

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460

Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0011

Exemptions

(1) Open construction, dory-styled craft of less than 23 feet in length, departing from and returning to beach sites shall be exempt from requirement to carry an Anchor, Anchor Chain or Anchor Line as specified in 250-015-0020.

(2) Vessels carrying six or fewer passengers not required by federal law to carry an EPIRB are exempt from the requirement specified in 250-15-0023. The Code of Federal Regulations is available online and in the Library

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

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460 - Title 33 CFR, Title 46 CFR, Title 47 CFR

Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0016

First Aid Kit

Each vessel shall carry on board a first aid kit containing at least the items specified in this section.

(1) The first aid kit shall be plainly marked and shall consist of a weatherproof container with individual sealed packages for each type of item.

(2) Contents of such kit shall contain a sufficient quantity of at least the following types of items:

(a) Bandage compress, 4 inch, (1pkg)

(b) Bandage compress, 2 inch, (4 pkgs)

(c) Waterproof adhesive compress, 1 inch, (16 pkgs)

(d) Eye dressing, 1/8th oz. ophthalmic ointment, adhesive strips, cotton pads, (3 pkgs)

(e) Bandage, gauze, compressed, 2 inches x6 yards, (2 pkgs)

(f) Tourniquet (1), forceps (1), scissors (1), safety pins (12)

(g) Wire splint (1 ea)

(h) Ammonia inhalants, (10 ea)

(i) Iodine applicators, (10 ea)

(j) Aspirin, phenacetin & caffeine compound, 6\1\2\ Gr. Tablets, vials of 20, (2 pkgs)

(j) Sterile petrolatum gauze, 3 inches by 18 inches, (4 pkgs)

(3) Contents of the first aid kit shall be checked before each trip and at least weekly to ensure the expended or expired items are replaced. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.450

Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 4-2001, f. & cert. ef. 3-29-01; OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0019

Power/Hand Operated Bilge Pump/Bailing Bucket

All vessels must comply with U.S.C.G. requirements as listed:

(1) Vessels less than 7.9 m (26 ft): One portable hand pump.

(2) Vessels 7.9 m (26 ft) up to 19.8 m (65 ft) not carrying more than 49 passengers:

(a) One — fixed power pump and one — portable hand pump, or;

(b) One — fixed hand pump and one — portable hand pump.

(3) Vessels not more than 19.8 m (65 ft), carrying more than 49 passengers: One — fixed power pump and one — portable hand pump.

(4) Vessels more than 19.8 m (65 ft): Two — fixed power pumps.

(5) Additionally, each must have, One — five gallon bucket. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR

Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0024

Navigational Charts

Each vessel shall carry on board up-to-date National Oceanic and Atmospheric Administration navigation charts, for the area of operation and of appropriate scale to make safe navigation possible. Electronic charts are a suitable substitute. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR

Hist.: MB 6-1989, f. 12-20-89, cert. ef. 1-1-90; OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0025

Life Jackets/Life Ring

Each vessel shall carry (as a minimum) the following:

(1) One U.S.C.G. approved life jacket (readily accessible, type I, II, III or V of suitable size for the intended wearer) for each person on board.

(2) One U.S.C.G. approved life ring, type IV, (immediately available).

The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR

Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0026

Light/Smoke Flares

Vessels operating in ocean or coastal waters and bays/ivers, with an opening to the seas of 2 miles or more, are required to carry light and or smoke flares as follows:

(1) Coastal, less than 3 miles from the coastline:

(a) One electronic distress light, or 3 approved flares; and

(b) One distress flag or 3 approved flares or 3 approved smoke signals.

(2) Ocean, more than 3 miles from the coastline:

(a) 3 parachute flares;

(b) 6 hand flares; and

(c) 3 smoke flares. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110

Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR

Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0027

VHF Radio

Vessels operating within the communication range (< 20 miles) of a VHF public coast station or U.S. coast Guard station that maintains a watch on 156.800 MHz while the vessel is navigated must be equipped with a

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VHF radiotelephone with frequencies appropriate to contact the United States Coast Guard. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 47 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0028

Running Lights

Vessels shall be equipped with lighting configurations as specified in a Navigation Rules for International and Inland waters. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 33 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0029

U.S.C.G. Operator's License

Vessel operator must be in possession of a valid USCG Operators License appropriate for the area of operation. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0031

Engine Room Ventilation Blower System, Backfire Flame

Boats using fuel having a flashpoint of 110 degrees F. must have installed in each engine space:

- (1) Intake and exhaust cowls and ducting to exhaust fuel vapor;
- (2) Power blower to exhaust fuel vapor;
- (3) Backfire flame control properly installed on carburetor. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0032

Fire Extinguisher

Boats using gasoline as a fuel must have on board fire extinguisher(s) USCG approved or UL listed for marine use. The minimum number and size of fire extinguishers is as follows:

- (1) Vessels under 16 ft; 1 – B-I.
- (2) Vessels 16 ft to less than 26 ft; 1 – B-I
- (3) Vessels 26 ft to less than 40 ft; 2 – B-Is
- (4) Vessels 40 ft to not more than 65 ft; 3 – B-Is
- (5) Vessels not over 50 gross tons; 1 – B-II
- (6) Vessels 50 to not over 100 gross tons; 2 – B-IIs
- (7) A fixed system installed in the machinery space can substitute for 1 – B-I. Also, 2 – B-Is can be substituted for 1 B-II. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

250-015-0033

Additional Equipment

Vessels operating more than 20 miles from the nearest port, in addition to the equipment previously specified, must also carry:

(1) Single Sideband Radio (Title 47 CFR Parts 80.901 & 80.905 (a)(2)). Vessels must be equipped with a medium frequency transmitter capable of transmitting J3E emissions and a receiver capable of reception of J3E emissions within the band of 1710 to 2850 kHz and be capable of operation on 2670 kHz.

(2) Life Raft, Unsinkable Shore Boat (Title 46 CFR Part 180.15). Vessels must carry a life raft, unsinkable shore boat or buoyancy apparatus with a rated capacity sufficient for passengers and crew.

(3) Water Lights (Title 46 CFR Part 25.25-1). Each life jacket must have a water light/life jacket light attached. The Code of Federal Regulations is available online and in the Library

Stat. Auth.: ORS 830.110
Stats. Implemented: ORS 830.430 - 830.460, Title 46 CFR
Hist.: OSMB 3-2005, f. & cert, ef, 1-24-05

Oregon University System
Chapter 580

Adm. Order No.: OSSHE 1-2005(Temp)

Filed with Sec. of State: 2-9-2005

Certified to be Effective: 2-10-05 thru 8-9-05

Notice Publication Date:

Rules Adopted: 580-050-0350, 580-050-0360

Rules Amended: 580-050-0000, 580-050-0020, 580-050-0032

Subject: *Changes to Current Rules:*

580-050-0000 – Provides definition of terms used throughout Division 50.

580-050-0020(2) – Extends renewal of retainer agreements from one to two years.

580-050-0020(3) – Increases from \$25,000 to \$75,000 authority for the vice chancellor for finance and administration (VCFA) or designee to award contracts to consultants on retainer list; allows VCFA to award contracts between \$75,000 and \$200,000 to consultants pursuant to specified procedure; and for contracts over \$200,000, permits award after competitive bidding.

580-050-0032 – Increases maximum amount under retainer agreement to \$500,000.

New Sections:

580-050-0350 – Permits negotiation when offer exceeds cost estimates.

580-050-0360 – Permits offers by facsimile and electronic means.

Rules Coordinator: Marcia M. Stuart—(541) 346-5749

580-050-0000

Definitions

All capitalized terms in chapter 580, division 50 have the meanings set forth below, unless otherwise defined in the chapter 580, division 50 rules.

(1) Construction Trade Services: Construction services that are not personal services on projects that are not Public Improvements.

(2) Consultants: Architects, engineers, planners, land surveyors, appraisers, managers, and related professional consultants.

(3) Electronic Offer: An Offer made by an Offeror in response to an Institution's Solicitation Document posted on its procurement website.

(4) Emergency: Circumstances that were not foreseen that create a substantial risk of loss, damage, interruption of services or threat to the public health or safety that require prompt execution of a Contract to remedy the condition.

(5) Entity: A natural person capable of being legally bound, sole proprietorship, corporation, partnership, limited liability company or partnership, limited partnership, profit or nonprofit unincorporated association, business trust, two or more persons having a joint or common economic interest, or any other person with legal capacity to contract, or a government or governmental subdivision.

(6) Institution: One of the universities that is part of the Oregon University System, including the Board's Chancellor's Office.

(7) Institution Facilities Planning Official: The Vice Chancellor or, pursuant to OAR 580-050-0032(1) and (2), designee at an Institution with the authority to enter into Contracts.

(8) Invitation to Bid or ITB: A Solicitation Document calling for Bids.

(9) Offer: A Bid or Proposal as applicable.

(10) Offeror: A Bidder or Proposer as applicable.

(11) Proposal: A competitive Offer submitted in response to a Request for Proposals or a request from an Institution Facilities Planning Official to respond to a proposed assignment under OAR 580-050-0020(3)(b) or (c).

(12) Public Improvement: Projects for construction, reconstruction or major renovation on real property by or for an Institution where the Contract Price exceeds \$25,000, other than projects for which no funds of a public agency are directly or indirectly used except for participation that is incidental or related primarily to project design or inspection. "Public Improvement" does not include Emergency work, minor alteration, ordinary repair or maintenance necessary in order to preserve a Public Improvement or projects where the total Contract Price is less than \$25,000.

(13) Request for Proposals or RFP: A Solicitation Document calling for Proposals.

(14) Request for Qualification or RFQ: A Written document that:

(a) Provides a general description of a proposed project;

(b) Indicates the type of Consultant services needed, including, if deemed necessary or appropriate, a description of the particular services needed for part or all of a proposed project or projects; and

(c) Requests each prospective Offeror to provide a Written response setting forth the Offeror's specific experience and qualifications of performing the type of services required.

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(15) Signed, Sign, or Signature: Any mark, word or symbol executed or adopted by a person on behalf of an Entity evidencing an intent to be bound.

(16) Solicitation Document: An Invitation to Bid or Request for Proposals or Request for Qualifications including all documents incorporated by reference.

(17) Specification: Any description of the physical or functional characteristics, or of the nature of a supply, service or construction item, including any requirement for inspecting, testing, or preparing a supply, service, or construction item for delivery and the quantities or qualities of materials to be furnished under the Contract. Specifications generally will state the result to be obtained and may, on occasion, describe the method and manner of doing the Work to be performed.

(18) Written or Writing: Conventional paper documents, either manuscript or printed, in contrast to spoken words. It also includes electronic transmissions or Facsimile documents when required by applicable law, or to the extent permitted by the Solicitation Document or Contract.

Stat. Auth.: ORS 351.060, 351.070

Stats. Implemented: ORS 351.060, 351.070

Hist.: OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-10-05 thru 8-9-05

580-050-0020

Appointment of Professional Consultants

The Vice Chancellor for Finance and Administration or designee is authorized to select and employ architects, engineers, planners and related professional consultants (collectively called "Consultants" in this rule) energy management, construction management, facilities planning, technical services and related activities in accordance with the following standards and procedures:

(1) General Standards; Selection Factors. The purposes of this rule are to assure that Consultants are considered fairly for professional service Contracts; that those selected will be highly qualified; and to encourage excellence and cost consciousness on the part of Consultants. The following factors shall be considered in evaluating and selecting Consultants:

(a) Experience, design talent and technical competence, including an indication of the planning process expected to be used in the work;

(b) Capacity and capability to perform the work, including any specialized services within the time limitation set for the work;

(c) Past record of performance on contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules and contract administration;

(d) Availability to and familiarity with the area in which the work is located, including knowledge of design and construction techniques peculiar to the area;

(e) Proposed cost management techniques to be employed; and

(f) Ability to communicate effectively.

(2) Procurement of Consultant Services Under Retainer Agreements.

(a) At least biennially, in a trade periodical or an Oregon newspaper of general circulation, or on the Oregon University System's procurement website, and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses, the Vice Chancellor for Finance and Administration or designee shall publish a notice stating in substance that copies of this rule may be obtained from the Office of Finance and Administration and that consultants are invited to submit qualifications to the Vice Chancellor for Finance and Administration or designee for consideration. The Vice Chancellor for Finance and Administration or designee shall also provide a copy of the above notice to the Office of Minority, Women and Emerging Small Business. A list of the names and addresses of the institution facilities planning official(s) designated by the institution president shall be provided to any consultant upon request.

(b) Following the procedures set out in section (2)(a) of this rule, the Vice Chancellor for Finance and Administration or designee will prepare a list of potential Consultants. An Institution that wishes to enter into retainer agreements may convene a committee as described in paragraph (3)(c)(C) of this rule. Such committee shall review the list prepared by the Vice Chancellor for Finance and Administration or designee and any of the Consultants who have expressed an interest and will select Consultants who appear to have the qualifications for and interest in performing professional services for the Institutions. The Institution Facilities Planning Official shall recommend to the Vice Chancellor for Finance and Administration or designee the selected Consultants.

(c) Each selected Consultant shall be invited to enter into a retainer agreement for a two-year period with the option to extend for an additional two-year term, utilizing a form of agreement approved by the Vice

Chancellor for Finance and Administration. Services of the selected Consultants shall be available to all Institutions requiring such services upon request of any Institution Facilities Planning Official. The Office of Finance and Administration, on its own initiative, selects consultants for retainer agreements. The Vice Chancellor for Finance and Administration or designee may enter into interagency agreements to permit other public agencies to utilize the services of Consultants selected for retainer agreements pursuant to this subsection.

(d) Each institution facilities planning official will maintain a current roster of all consultants chosen for institutional retainer agreements by all institutions as well as a roster of retainer agreements entered into by the Office of Finance and Administration.

(e) The names of interested Consultants not selected under subsection (b) of this rule shall be maintained on a current roster and provided to the Institution Facilities Planning Official at each Institution.

(3) General Procurement of Consultant Services: The procedures to be followed when contracting for professional consulting services will depend upon a combination of factors including the total anticipated fee and whether or not the Consultant has entered into a retainer agreement pursuant to section (2) of this rule.

(a) For professional services contracts where the anticipated professional fee, including Consultant fees and reimbursable expenses and all amendments and supplements, is \$75,000 or less, the Vice Chancellor for Finance and Administration or designee may authorize an appropriate Institution Facilities Planning Official to contract for such professional services with any Consultant selected in subsection (2)(a) or (2)(b) of this rule or such other Consultant as the Institution Facilities Planning Official may choose who appears to have the qualification for and interest in the proposed assignment.

(b) For professional service contracts involving an anticipated professional fee, including Consultant fees and reimbursable expenses and including amendments and supplements, between \$75,001 and \$200,000 or in an Emergency situation the Vice Chancellor for Finance and Administration or designee may authorize the Institution Facilities Planning Official to select a Consultant to perform the needed services using the following procedure:

(i) Select a Consultant:

(A) From those on retainer who appear to have the qualifications for and interest in the assignment; or

(B) Select at least three Consultants not on a retainer agreement who appear to have the qualifications for and interest in the proposed assignment and notify each Consultant selected in reasonable detail of the proposed assignment and invite each Consultant to submit a Written Proposal;

(ii) The Institution Facilities Planning Official shall negotiate a Contract with the selected Consultant, and if a mutually satisfactory contract cannot be agreed to, the Institution Facilities Planning Official may select another Consultant from the recommended consultants and enter into contract negotiations.

(c) For professional service contracts with an anticipated professional fee, including Consultant fees and reimbursable expenses over \$200,001, except in Emergency situations, the Institution Facilities Planning Official shall select Consultants for consideration using the following procedure:

(A) Announcement: The Institution Facilities Planning Official will give notice of intent to contract for professional services in a trade periodical, or newspaper of general circulation, or on the Institution's procurement website and in at least one trade periodical or newspaper geared towards minority, women and emerging small businesses. The notice shall include a description of the proposed project, the scope of the services required, and a description of special requirements, if any. The notice will invite qualified prospective Consultants to apply. The notice will specify where the Solicitation Document may be obtained and the Closing. The Institution Facilities Planning Official shall also provide a copy of the above notice of intent to the Office of Minority, Women and Emerging Small Business.

(B) Application: The application or Consultant's qualification must include a statement that describes the prospective Consultant's credentials, performance data and other information sufficient to establish the Consultant's qualification for the project, as well as any other information requested in the announcement.

(C) Initial Screening: The Institution Facilities Planning Official shall appoint a Consultant screening committee consisting of no fewer than two individuals to review, score, and rank the Consultants according to the solicitation criteria. The Consultant screening committee will evaluate the qualifications of all applicants and select prospective Consultants whose

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applications demonstrate that the selected Consultants can best fulfill the provisions of section (1) of this rule.

(D) The Final Selection Procedure:

(i) Interviews: Following screening and evaluation, the Institution Facilities Planning Official and Consultant screening committee may invite to interview, in person, finalists selected from the initial screening.

(ii) Award of Contracts: The Institution Facilities Planning Official will make the final selection based on such factors as applicant capability, experience, project approach and references; recommend the Consultant to the president or designee; and notify the selected Consultant of such selection.

(iii) An appropriate Institution Facilities Planning Official shall then negotiate a Contract with the selected Consultant. In the event a mutually satisfactory Contract cannot be agreed to, the Consultant screening committee may select for consideration and contract negotiations another Consultant from the remaining recommended Consultants.

(4) Following selection of a consultant, a report of all appointments under subsections (4)(a), (4)(b), and (4)(d) of this rule shall be made to the Board through the Vice Chancellor for Finance and Administration.

(5) The president or designee of the Institution may execute amendments, modifications or supplements to executed professional service Contracts within the scope of the original Contract and the limits prescribed in this rule.

(6) Any Consultant who has submitted a Proposal as outlined in subsections (2)(b), (3)(a), (3)(c) of this rule and claims to have been adversely affected or aggrieved by the selection of a competing Consultant, and unless a different deadline is specified in the notice of intent to contract for professional services, shall:

(a) Have seven (7) calendar days after receiving notice of selection to submit a Written protest of the selection to the Institution Facilities Planning Official. The Institution Facilities Planning Official shall not consider a selection protest submitted after the time period provided in this subsection, unless a different deadline is provided in the notice of intent to contract.

(b) The Institution Facilities Planning Official, in consultation with the Vice Chancellor for Finance and Administration or designee, shall have the authority to settle or resolve a Written protest submitted in accordance with this rule. The Institution Facilities Planning Official shall respond to the protesting Consultant within ten days of receipt of such Written protest.

(c) Judicial review of the disposition of a Written protest submitted in accordance with subsection (6)(a) of this rule may be available pursuant to the provisions of ORS 183.484.

Stat. Auth.: ORS 351

Stat. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 8-1985, f. & ef. 12-19-85; HEB 10-1990, f. & cert. ef. 7-26-90; HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 6-1994, f. & cert. ef. 4-28-94; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-10-05 thru 8-9-05

580-050-0032

Contracts for Repairs and Public Improvements

(1) The Vice Chancellor for Finance and Administration, or designee shall be the contracting officer. All Contracts for the repair of facilities or for Public Improvements shall be awarded and executed by the contracting officer unless delegated by the contracting officer.

(2) The contracting officer may delegate, through the Institution president, to a specific person at each college and university the authority to execute Contracts for the repair and improvement of facilities, provided that all applicable laws and rules are fulfilled. The Institution president may, by written agreement with the president of another Institution, subject to this rule, transfer such delegation to a person at such other Institution. A copy of each such Contract must be filed with the contracting officer or designee who may audit the project and the contracting process.

(3) The contracting officer or designee shall award Contracts valued at \$25,000 or more for the repair and improvement of facilities to the lowest Bidder or best Proposer pursuant to appropriate competitive processes, including competitive bids, design/build competitions and negotiated procurements utilizing Requests for Proposals, including agreement for construction manager/general contractor. Criteria for award shall include price and any other factors as the contracting officer or designee deems appropriate, including, but not limited to, past performance of the Contractor, experience of the Contractor and the Contractor's management team on projects of similar size and scope, the Contractor's reputation for quality and timely completion of projects, the Contractor's business and project management practices, the Contractor's demonstrated commitment to affirmative action, the Contractor's willingness to agree to the Contract terms

proposed by the contracting officer or designee and the Contractor's ability to post an appropriate bond. The contracting officer or designee shall maintain appropriate records of the competitive process utilized for each Contract. The president of each college and university shall determine the procedures to be used for the award of Contracts valued at less than \$25,000 for the repair and improvement of facilities.

(4) The contracting officer or designee may enter into retainer agreements with Contractors using appropriate competitive procedures that take into account, at a minimum, the qualification and reputation of the Contractors, price structure, ability and willingness to respond to requests from one or more colleges and universities, location and such other factors as the contracting officer or designee shall deem appropriate. The contracting officer or designee may utilize the services of Contractors under retainer agreement for projects whose Contract Price is less than the maximum established by the Board of Higher Education in its budget or \$500,000, whichever is greater.

(a) Supplements to the retainer agreement, describing the scope of the specific work and price for which it will be performed, must be executed prior to the commencement of any Work by a Contractor.

(b) Supplements having a Contract Price of \$25,000 or less shall not be subject to the provisions of section (6) of this rule. However, projects may not be divided into more than one supplement to avoid the application of section (6).

(c) The contracting officer or designee shall maintain appropriate records of the competitive process used to select a Contractor from the list of Contractors with current retainer agreements in force at the time the selection is made and the supplement is issued.

(d) The contracting officer or designee should solicit prices from at least two Contractors under the retainer agreement, or document in the contracting file the reason for not doing so.

(5) The Institution president may declare an Emergency when he or she deems such a declaration appropriate. The reasons for the declaration shall be filed with the Vice Chancellor for Finance and Administration or designee and shall include justification for the use of any sole source or negotiated procurements for repairs and improvements within the scope of the Emergency declaration. Upon the declaration, the contracting officer or designee may negotiate a Contract with any qualified Contractor for repairs or improvements included in the scope of the declaration. The contracting officer or designee shall maintain appropriate records of negotiations carried out as part of the contracting process.

(6) All Public Improvement Contracts shall require Contractors to pay and Contractors shall pay, at least the rate of wage for labor determined by the Bureau of Labor and Industries to be the rate of wage for an hour's work in the same trade or occupation in the locality where such labor is performed for work performed under the Contract. The contracting officer or designee may require any Contractor to pay an amount to the Bureau of Labor and Industries to help defray costs of determining and administering prevailing wages. The method of determining any such charge shall be described in the Solicitation Document for the project.

(7) No Contract shall be awarded to any Contractor who is not licensed to do business in the State of Oregon.

(8) The contracting officer or designee may require Offerors and Contractors to post and maintain such bonds as the contracting officer or designee decides is appropriate. Requirements related to the posting, form, maintenance and return shall be included in solicitations and requests for bids and proposals.

(9) All Contractors shall maintain in force at all times during the period of the Contract such insurance as may be required by the contracting officer or designee.

(10) The contracting officer or designee shall ensure that retainage equal to five percent of the Contract Price is withheld from payments to any Contractor. Such retainage shall be invested by the Vice Chancellor for Finance and Administration or designee in accordance with the provisions of OAR 580-040-0007. The principal amount of such retainage and all interest or other earnings from the date of the establishment of a retainage account through the date of completion established in the Contract, less reasonable administrative costs, shall be paid to the Contractor or the Contractor's designee upon notification in writing by the contracting officer or designee that the work contemplated by the Contract has been completed satisfactorily.

(11) The contracting officer or designee shall perform all the duties of the owner on behalf of the Oregon State Board of Higher Education.

(12) The contracting officer or designee may execute change orders to Contracts as long as the scope of the contract is not altered materially by

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such change orders. Exceptions to this provision may be granted by the Vice Chancellor for Finance and Administration or designee.

(13) The Board of Higher Education or the Director of the Internal Audit Division may audit or investigate any Contract or retainer agreement executed under authority of this rule.

(14) The following procedures shall be used in soliciting, evaluating and rejecting or accepting Bids or Proposals for Contracts for repairs or Public Improvements:

(a) The provisions of sections (3), (4), (6), (7), (8), (10), (11), (13), (14), (22), (23), (24), and (27) of OAR 137-30-000; sections (2) and (5) of 137-30-010; 137-30-012; sections (2) and (3) of 137-30-030; sections (1), (2), and (4) of 137-30-040; 137-30-050 through 137-30-085; 137-30-100 through 137-30-104; 137-30-110; 137-30-115(1); 137-30-120; 137-30-150; 137-30-130; 137-40-020; 137-40-030; 137-40-035; 137-40-040; and 137-40-045 effective January 1, 1995, shall be applicable to the bidding, awarding and administration of public contracts of the State System of Higher Education. (These may be found in the Oregon Attorney General's Model Public Contracting Rules Manual, January 1995);

(b) The State System of Higher Education reserves the right to reject any bid or proposal not in compliance with the Solicitation Documents, or with these rules, and to reject any or all Bids or Proposals upon a finding that it is in the public interest to do so;

(c) Low tie Bids are Bids that are responsive to all requirements and are identical in price, fitness, availability, and quality. Preference shall be given to the Bidder whose principal offices or headquarters are located in Oregon. If no Bidder is eligible for this preference, or if more than one Bidder is eligible for this preference, the Contract shall be awarded by drawing lots first among tied Oregon Bidders or, if there are no such Oregon Bidders, shall be awarded by drawing lots among all tied Bidders.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 351.070
Stats. Implemented: ORS 351.070
Hist.: HEB 2-1992, f. & cert. ef. 2-12-92 (and corrected 2-21-92); HEB 1-1993, f. & cert. ef. 2-5-93; HEB 4-1995, f. & cert. ef. 8-1-95; HEB 5-1996, f. & cert. ef. 12-18-96; OSSHE 5-2004(Temp), f. & cert. ef. 6-9-04 thru 12-5-04; OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-10-05 thru 8-9-05

580-050-0350

Negotiation When Offers Exceed Cost Estimate

(1) If all Responsive Offers from Responsible Offerors on a competitively bid Project, including Offers received under OAR 580-050-0032(3) and (4), exceed the Institution's Cost Estimate, prior to Contract award the Institution may negotiate Value Engineering and Other Options with the Responsible Offeror submitting the lowest Responsive Bid or the best Responsive Proposal in an attempt to bring the Project within the Institution's Cost Estimate.

(2) The following definitions apply to this administrative rule:

(a) Cost Estimate: The Institution's most recent pre-Offer, good faith assessment of anticipated Contract costs, consisting either of an estimate of an architect, engineer or other qualified professional, or confidential cost calculation worksheets, where available, and otherwise consisting of formal planning or budgetary documents.

(b) Other Options: Those items generally considered appropriate for negotiation in the RFP process, relating to the details of Contract performance, but excluding any material requirements previously announced in the Solicitation Document that would likely affect the field of competition.

(c) Project: A Public Improvement or Construction Trade Services.

(d) Value Engineering: Those proposed changes to the plans, Specifications, or other Contract requirements which may be made, consistent with industry practice, under the original Contract by mutual agreement in order to take advantage of potential cost savings without impairing the essential functions or characteristics of the Public Improvement or Construction Trade Services. Cost savings include those resulting from life cycle costing, which may either increase or decrease absolute costs over varying time periods.

(3) In determining whether all Responsive Offers from Responsible Offerors exceed the Cost Estimate, only those Offers that have been formally rejected, or Offers from Offerors who have been formally Disqualified by the Institution, shall be excluded from consideration.

(4) Institutions shall not proceed with Contract award if the scope of the Project is significantly changed from the original Offer. The scope is considered to have been significantly changed if the pool of competition would likely have been affected by the change; that is, if other Offerors would have been expected by the Institution to participate in the solicitation process had the change been made during the solicitation process rather than during negotiation. This rule shall not be construed to prohibit resolicitation of trade subcontracts.

(5) Negotiations shall be initially undertaken with the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer. If the lowest Responsive, Responsible Bidder or the best Responsive, Responsible Proposer is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the second lowest Responsive, Responsible Bidder or second best Responsive, Responsible Proposer. If that Offeror is not negotiating in good faith, the Institution may, at its sole discretion, negotiate Value Engineering and Other Options with the next lowest Responsive, Responsible Bidders (Each in order of their Bid) or the next best Responsive, Responsible Proposers (Each in order of their Proposal). Records of an Offeror used in Contract negotiations do not become public records unless they are also submitted to the Institution.

Stat. Auth.: ORS 240, 351.070
Stats. Implemented: ORS 240, 351.070
Hist.: OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-10-05 thru 8-9-05

580-050-0360

Facsimile and Electronic Offers

(1) Institution Authorization. An Institution may authorize Offerors to submit Facsimile or Electronic Offers when the Institution has the resources available and adequate procedures in place to handle the Offers, preserve the "sealed" requirement of competitive procurement, deliver them timely to the Opening and, if Bid or Proposal security is or will be required, provide an alternative method for receipt of the security.

(2) Provisions To Be Included in Solicitation Document. In addition to all other requirements, if the Institution authorizes a Facsimile or Electronic Offer, the Institution will include in the Solicitation Document provisions substantially similar to the following:

(a) A Facsimile or Electronic Offer, as used in this solicitation, means an Offer, modification of an Offer, or withdrawal of an Offer that is transmitted to and received by the Institution via a Facsimile machine or the worldwide web.

(b) Offerors may submit Facsimile or Electronic Offers in response to this solicitation. The entire response must arrive at the place and by the time specified in this Solicitation Document.

(c) Offerors must Sign their Facsimile or Electronic Offers.

(d) The Institution reserves the right to award the Contract solely on the Facsimile or Electronic Offer. However, upon the Institution's request the apparently successful Offeror shall promptly submit its complete original Signed Offer.

(e) If Facsimile Offers are authorized, the data and compatibility characteristics of the Institution's receiving Facsimile machine as follows:

(A) Telephone number;

(B) Compatibility characteristics, e.g., make and model number, receiving speed, and communications protocol.

(a) If Electronic Offers are authorized, the e-mail address of the Institution to be used to receive Electronic Offers.

(b) The Institution is not responsible for any failure attributable to the transmission or receipt of the Facsimile or Electronic Offer including, but not limited to the following:

(A) Receipt of garbled or incomplete documents.

(B) Availability of condition of the receiving facsimile machine, computer, or computer system.

(C) Incompatibility between the sending and receiving Facsimile machine or between the sending and receiving computers.

(E) Delay in transmission or receipt of documents.

(F) Failure of the Offeror to properly identify the Offer documents.

(G) Illegibility of Offer documents.

(H) Security and confidentiality of data.

Stat. Auth.: ORS 240, 351.070
Stats. Implemented: ORS 240, 351.070
Hist.: OSSHE 1-2005(Temp), f. 2-9-05, cert. ef. 2-10-05 thru 8-9-05

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Adm. Order No.: OSSHE 2-2005

Filed with Sec. of State: 2-15-2005

Certified to be Effective: 2-15-05

Notice Publication Date: 11-1-04

Rules Amended: 580-040-0035

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

Rules Coordinator: Marcia M. Stuart—(541) 346-5795

ADMINISTRATIVE RULES

580-040-0035

Summer Session Fee Book

The document entitled "Summer Session Fee Book," dated January 07, 2005, is hereby amended by reference as a permanent rule. All prior adoptions of summer session fee documents are hereby repealed except as to rights and obligations previously acquired or incurred thereunder.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 2-1978, f. & ef. 5-16-78; HEB 3-1979, f. & ef. 4-27-79; HEB 4-1980, f. & ef. 4-18-80; HEB 3-1981, f. & ef. 6-4-81; HEB 3-1982, f. & ef. 4-20-82; HEB 2-1983, f. & ef. 2-11-83; HEB 2-1984, f. & ef. 3-21-84; HEB 3-1985, f. & ef. 3-4-85; HEB 9-1986, f. & ef. 4-7-86; HEB 3-1987, f. & ef. 3-9-87; HEB 3-1988, f. & cert. ef. 3-16-88; HEB 2-1989, f. & cert. ef. 2-14-89; HEB 3-1990, f. & cert. ef. 2-13-90; HEB 2-1991, f. & cert. ef. 3-12-91; HEB 1-1992, f. & cert. ef. 2-12-92; HEB 2-1993, f. & cert. ef. 2-5-93; HEB 2-1994, f. 2-9-94, cert. ef. 2-15-94; HEB 1-1995, f. & cert. ef. 2-23-95; HEB 1-1996, f. & cert. ef. 2-5-96; HEB 1-1997, f. & cert. ef. 1-28-97; OSSHE 1-1998, f. & cert. ef. 1-27-98; OSSHE 7-1998, f. & cert. ef. 12-23-98; OSSHE 7-1999, f. & cert. ef. 12-22-99; OSSHE 5-2000, f. & cert. ef. 12-21-00; OSSHE 1-2002, f. & cert. ef. 1-2-02; OSSHE 6-2003, f. & cert. ef. 12-24-03; OSSHE 2-2005, f. & cert. ef. 2-15-05

Oregon Watershed Enhancement Board Chapter 695

Adm. Order No.: OWEB 1-2005

Filed with Sec. of State: 2-1-2005

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Rules Adopted: 695-045-0010, 695-045-0020, 695-045-0025, 695-045-0030, 695-045-0035, 695-045-0040, 695-045-0045, 695-045-0050, 695-045-0055, 695-045-0060, 695-045-0065, 695-045-0070, 695-045-0080, 695-045-0090, 695-045-0100, 695-045-0110, 695-045-0120, 695-045-0130, 695-045-0140, 695-045-0150

Subject: The Oregon Watershed Enhancement Board proposes to amend its administrative rules relating to grant applications for the lease or purchase of water rights in two ways: 1) to make grammatical changes to allow OWEB to disengage the rules from the land acquisition grant rules and place them in a separate division, and 2) to revise the rules to be consistent with recommendations by the Water Resources Department (WRD) staff to ensure that the rules are compatible with current WRD practice and to ensure that the rules allow OWEB to accomplish the goals of its program.

Rules Coordinator: Bonnie Ashford—(503) 986-0181

695-045-0010

Definitions

(1) "Land Acquisition Project" is a project that proposes to acquire an interest in land from a willing seller for the purpose of addressing the conservation needs of priority habitat and species consistent with conservation principles identified by the Board. Interests in land may include a lease, purchase of a conservation easement, or purchase of fee simple title.

(2) "Partners" are persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed land acquisition project.

(3) "Management Plan" is a description of the planned future management of a property proposed for acquisition that addresses species and habitat management practices, proposed restoration projects, land uses, public access, and educational or research opportunities on the property.

(4) "Ecoregion" means a large area of land or water that contains a geographically distinct assemblage of natural communities that (a) share a large majority of their species and ecological dynamics, (b) share similar environmental conditions, and (c) interact ecologically in ways that are critical for their long-term persistence.

(5) "Due Diligence Review" is a review conducted by OWEB staff and their contractors of the legal and financial terms of the proposed acquisition of an interest in land. This review includes:

(a) An independent, third-party review by a State Certified General Appraiser of the fair market value appraisal submitted by the applicant;

(b) Review by OWEB's legal counsel of the title, title exceptions, option or lease agreement, and proposed conservation easement, deed restriction, or lease submitted by the applicant, if applicable; and

(c) A review by an independent third party contracted by OWEB of the environmental site assessment(s) submitted by the applicant.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0020

Purpose

The Board is directed under Article XV, Section 4b of the Oregon Constitution and ORS 541.375(9) to allocate funding for land acquisition projects that, in its judgment, further the goal of protecting and/or restoring wild salmonids, fish and wildlife habitat, watersheds, or water quality in Oregon. As funds are available, and at times set by the Board, the Board shall consider grant applications for land acquisition projects using the criteria described in this Division. These rules will guide the Board's consideration of land acquisition grant applications based on the proposed project's ecological and educational benefits, partners, the effect the proposed project will have on the local and regional community, and the financial and legal soundness of the proposed real estate transaction. The Oregon Watershed Enhancement Board will not hold fee title to property under these rules.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0025

Eligible Expenses

Land acquisition project grant awards will only provide funding to assist with the purchase price of an interest in land. Interests in land include fee simple title, conservation easements, and leases.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0030

Ineligible Expenses

Expenses other than the actual purchase price of a property interest are not eligible for reimbursement as part of an OWEB land acquisition grant award.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0035

Required Matching Funds

All applicants shall demonstrate at least 25 percent in secured matching funds for a project prior to the disbursement of Board funds. If a grantee has not demonstrated 25 percent in secured matching funds within 12 months after Board approval of grant funds, or a different time period specified by the Board, the grant award will be rescinded without further action by the Board. Match may include:

(1) A commitment of cash by the grantee for the proposed purchase of fee title, a conservation easement, or the lease of a land interest.

(2) Secured funding commitments from other sources for the proposed purchase or lease of a land interest. Secured pledges must have supporting documentation.

(3) If the proposed purchase of an interest in land will be for less than the appraised fair market value, the difference between the appraised fair market value and the actual purchase price of the land interest.

(4) The following reasonable costs incurred prior to Board approval may also be included as part, or all, of the matching funds for the project:

(a) The cost of an option to purchase fee title or a conservation easement, or to lease a land interest, if it is credited toward the purchase or lease price.

(b) The cost of the fair market value appraisal of the land interest submitted to OWEB, including reasonable consulting fees necessary to complete the appraisal.

(c) The cost of a phase one environmental site assessment. If a phase one environmental site assessment indicates that further investigation is necessary, and OWEB staff request submission of a phase two environmental site assessment, the cost of a phase two environmental site assessment. If further assessment is recommended in the phase two assessment, and OWEB staff request further assessment, the cost of the additional assessment.

(d) The cost of a preliminary title report, exception documentation, and title insurance required by OWEB.

(e) Actual funds raised for a stewardship endowment for the project. Secured pledges must have supporting documentation.

(f) The cost of developing a management plan for the proposed acquisition.

(g) The cost of developing a baseline documentation report when the project proposes to acquire a conservation easement.

(h) The cost of surveying the property to obtain a legal description for title insurance purposes.

ADMINISTRATIVE RULES

(5) The Director shall retain the discretion to determine that an amount identified as match in (d) above exceeds that which is reasonable and exclude the unreasonable amount from counting as match under this section.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0040

Evaluation Criteria

Land acquisition grant applications will be evaluated based on:

(1) The ecological benefits of the proposed project through reference to "OWEB Ecological Priorities for Land Acquisition by Basin" identified further in Section 695-045-0080(1);

(2) The capacity of the property manager to sustain the ecological benefits of the proposed project;

(3) The educational benefits of the proposed project;

(4) The strength of the partners in the project and support expressed for the project;

(5) The effect of the proposed project on the local and regional community; and

(6) The soundness of the legal and financial terms of the proposed real estate transaction.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0045

Application Review Process: Overview

(1) Land acquisition grant applications will be considered by the Board and evaluated according to the rules in this Division if all application materials listed in Sections 695-045-0120(2)(a)–(g) through 0120, except those listed in Section 695-045-0120(2)(a)–(g), are submitted prior to the grant application deadline established by the Director. Due diligence application materials, listed in Section 695-045-0120(2)(a)–(g) of these rules, do not have to be submitted with the initial grant application. The submission of due diligence materials by an applicant will be invited by OWEB staff upon the recommendation of the Board Acquisition Subcommittee, or by the OWEB Board after an initial review has occurred.

(2) The processing of all land acquisition project grant applications by the Board will involve the following steps:

(a) Initial review of the proposed project by a Board Acquisition Subcommittee. The Board Acquisition Subcommittee will evaluate the ecological and educational benefits and the proposed manager's capacity to sustain the benefits, partners in and support for the project, and the effect on the local and regional community of the proposed acquisition project.

(b) The Board Acquisition Subcommittee will either recommend proceeding with a due diligence review of a grant application, or recommend that the application be denied, and that no due diligence review of the application should occur. If the Board Acquisition Subcommittee recommends proceeding with a due diligence review of a land acquisition grant application, the Director will undertake a due diligence review once the grant applicant has provided the due diligence materials identified in Section 695-045-0120(2)(a)–(g).

(c) Review by the appropriate Regional Review Team, as defined in OAR 695-005-0020(4), of the ecological and educational value of the proposed acquisition project will occur after the Board Acquisition Subcommittee review.

(d) After a due diligence review of a proposed land acquisition project is complete, the Board Acquisition Subcommittee will synthesize the ecological and educational benefits of a proposed project and the proposed manager's capacity to sustain the benefits, partners in and support for a project, the effect on the local and regional community, the evaluation of the Regional Review Team, and the due diligence review of the project into a funding recommendation to OWEB staff.

(e) OWEB staff will synthesize the following into a staff funding recommendation to the Board:

(A) The ecological and educational benefits of a proposed project, and the proposed manager's capacity to sustain the benefits;

(B) Partners in and support for the project;

(C) The effect on the local and regional community;

(D) The due diligence review of a proposed project;

(E) The evaluation of the Regional Review Team;

(F) The recommendation of the Board Acquisition Subcommittee; and

(G) Information about available funding resources and competing projects.

(f) The Board will make a funding decision on a land acquisition project grant application based on the ecological, educational, and community benefits of a proposed project, the capacity of the proposed manager to sustain the ecological benefits, partners in and support for the project, and the financial and legal soundness of the proposed real estate transaction. The Board will take all information provided by the applicant, reviewers, and staff, as well as competing projects and available funding into consideration when making its funding decision.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0050

Application Review Process: Board Acquisition Subcommittee Review

(1) Initial review of a project will be conducted by a Board Acquisition Subcommittee appointed by the chair(s) of the Board. The Board Acquisition Subcommittee will consist of at least two voting members and one non-voting member of the OWEB Board, and will operate by consensus vote. The Board Acquisition Subcommittee will evaluate the ecological and educational benefits of a project and the capacity to sustain those benefits, partners in and support for the project, and the effect of the project on the local and regional community of the proposed acquisition project.

(2) Staff and the Board Acquisition Subcommittee may request additional information from the applicant, and pose specific questions to be addressed by the Regional Review Team.

(3) Staff will contact any affected tribe(s) prior to the first Board Acquisition Subcommittee meeting and provide them the opportunity to comment on a proposed acquisition project if the acquisition is proposed on or adjacent to tribal lands, including reservation lands, trust lands, or usual and accustomed sites.

(4) After considering the written application materials and information provided by staff, the Board Acquisition Subcommittee will either recommend:

(a) Proceeding with the due diligence review of a grant application in preparation for a funding decision by the OWEB Board; or

(b) Recommend that no due diligence review of the application occur, and that the funding request be denied by the OWEB Board. This recommendation will be based on the initial evaluation of the ecological, educational, and community benefits of a proposed land acquisition project by the Board Acquisition Subcommittee.

(5) The Board Acquisition Subcommittee will use an application's consistency with and significance in supporting both the Conservation Principles and priority basin habitat and species identified in "OWEB Ecological Priorities for Land Acquisition by Basin," identified further in Section 695-045-0080(1), as a benchmark when evaluating the ecological benefits of a proposed land acquisition.

(6) The applicant will be notified in writing of the Board Acquisition Subcommittee's recommendation.

(7) If the Board Acquisition Subcommittee recommends that due diligence review of a grant application not occur, and that the Board deny the funding request, the Board Acquisition Subcommittee will provide the reasons for such recommendation for consideration by the Board. The grant applicant will have the opportunity to discuss this recommendation with the Board prior to its final decision on the grant application.

(8) The Board will vote on whether the grant application should be denied funding or deferred so that a due diligence review may occur. If deferred, the application will be scheduled for consideration by the Board at the next regularly scheduled Board meeting at which restoration and acquisition grants will be considered, as long as the applicant's due diligence materials are submitted at least 90 days before the meeting.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0055

Application Review Process: Regional Review Team Evaluation

(1) The geographically appropriate Regional Review Team will evaluate the ecological and educational value of every proposed land acquisition project, and be asked to provide direct responses to questions posed by the Board Acquisition Subcommittee.

(2) In its evaluation of the ecological value of a proposed acquisition, the Regional Review Team will make explicit findings about an application's consistency with and significance in supporting both the Conservation Principles and priority basin habitat and species identified in "OWEB Ecological Priorities for Land Acquisition by Basin," identified further in Section 695-045-0080(1).

ADMINISTRATIVE RULES

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0060

Application Review Process: Due Diligence Review

(1) The Director will only conduct a due diligence review of a grant application if it is recommended by the Board Acquisition Subcommittee or directed by the OWEB Board.

(2) If the Board Acquisition Subcommittee recommends proceeding with a due diligence review of a land acquisition grant application, the Director shall undertake a due diligence review in preparation for making a funding recommendation to the full Board. The due diligence review will occur once the grant applicant has provided the due diligence materials identified in Section 695-045-0120(2)(a)-(g). This review will include:

(a) An independent, third-party review by a State Certified General Appraiser of the fair market value appraisal submitted by the applicant;

(b) Review by OWEB's legal counsel of the title, title exceptions, option or lease agreement, and proposed conservation easement, deed restriction, or lease submitted by the applicant, if applicable; and

(c) A review by an independent third party contracted by OWEB of the environmental site assessment(s) submitted by the applicant.

(3) Applicants may, but are not required to, submit their due diligence materials, listed in Section 695-045-0120(2)(a)-(g), with their grant application. If an applicant's due diligence materials are not submitted with the grant application, and an applicant is invited to submit its due diligence materials by the Board Acquisition Subcommittee or Board, OWEB staff must receive an applicant's due diligence application materials at least 90 days prior to the Board meeting at which the application is considered.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0065

Application Review Process: Staff Funding Recommendation

The Director will develop a staff funding recommendation to the Board based on the evaluation criteria listed in Section 695-045-0040 and the information provided by the applicant, information developed by staff during the evaluation of the application, and the information provided by the Board Acquisition Subcommittee, Regional Review Team, and due diligence reviewers. The staff funding recommendation will be to fund or partially fund an application, fund an application with conditions, defer action, or deny funding for an application.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0070

Application Review Process: Board Funding Decision

The Board will make a funding decision on a land acquisition project grant application based on the evaluation criteria listed in Section 695-045-0040. This decision will be based on the information provided by the grant applicant, reviewers, Board Acquisition Subcommittee, and OWEB staff. The Board's decision will be made in the context of program budget and priority considerations.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0080

Application Requirements: Ecological Benefits of a Proposed Acquisition Project

(1) The ecological value of a proposed land acquisition project will be evaluated by reference to "OWEB Ecological Priorities for Land Acquisition by Basin" (Basin Ecological Priorities) adopted by the Board on September 14, 2004, and incorporated in these administrative rules by reference. OWEB's Basin Ecological Priorities can be found on file at OWEB's main office at 775 Summer Street NE, Suite 360 in Salem, Oregon, or on OWEB's website at www.oregon.gov/OWEB.

(2) To enable the Board to fully evaluate the ecological benefits of an acquisition project, an applicant shall provide the following information as part of a grant application:

(a) A map showing the approximate locations and descriptions of the habitat and species the project proposes to protect and/or restore.

(b) An explanation of why the applicant believes acquisition of a property interest is the best method to accomplish the proposed protection or restoration, including an answer to the question: "Why will a change in ownership result in a change in management beneficial to priority habitat or species?"

(c) A description of the relative importance of the site's habitat and species values at the watershed, basin, and ecoregion levels, and how the project relates to other watershed restoration and protection efforts in the watershed.

(d) Reference to current conservation plans that identify the property or habitat and species on the property as protection priorities. Applicants will attach the relevant pages from these plans to the grant application.

(e) A description of how the project will protect and/or restore priority basin habitat and species identified in Basin Ecological Priorities for the basin in which the property occurs.

(f) The approximate number of acres on the property containing priority habitat and/or habitat for priority species identified in the Basin Ecological Priorities. If the number of acres on the property containing priority habitat or species identified in the Basin Ecological Priorities is less than 50 percent of the total property acreage, a description of why the entire property interest is proposed for acquisition.

(g) A description of the project's consistency with one or more of the following Conservation Principles, described in more detail in the Basin Ecological Priorities. The proposed acquisition will:

(A) Protect a large, intact area; or

(B) Stabilize an area "on the brink" of ecological collapse; or

(C) Secure a transition area, protecting it from development; or

(D) Require active restoration to achieve its conservation purpose that would not occur without a change in ownership; or

(E) Protect a site with exceptional biodiversity value; or

(F) Improve connectivity of habitat; or

(G) Complete or complement an existing network of sites in the basin or region.

(h) Two letters from natural resource professionals not affiliated with the applicant or project sponsors explaining how the proposed acquisition will address the priority habitat and/or species and conservation principles identified in the Basin Ecological Priorities.

(i) If applicable, a description of watershed functions or water quality parameters the project proposes to directly affect, and the current condition and trend of watershed functions and water quality in the project area.

(j) A description of whether any water rights are associated with the property and whether portions thereof will be transferred to a protected instream water right as part of the project. If the water right or portions thereof will be transferred instream, a description of the watershed benefits associated with the transfer.

(k) A description of the benefit of the acquisition to the goals of the Oregon Plan for Salmon and Watersheds as listed at www.oregon.gov/OWEB.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0090

Application Requirements: Capacity to Sustain the Ecological Benefits of the Acquisition Project

To enable the Board to evaluate how a proposed land acquisition project's ecological benefits will be sustained, the applicant shall provide the following information as part of a grant application:

(1) Whether the ecological benefits will be protected by contractual limitations on future land uses or depend on affirmative future activities of the landowner not funded by the grant. If the latter, then how the applicant proposes to ensure that the ecological benefits are realized.

(2) If a management plan exists, attach a copy of the plan to the grant application.

(3) A description of the management goals and objectives for the land interest, and, if there is not yet a management plan for the interest, the process and timeframe that will be used to develop a long-term management plan for the land interest.

(4) A description of the entity(ies) that will be responsible for managing the land interest, and their organizational ability to implement the management plan or management goals and objectives for the land interest in terms of staff, volunteer, partner, and consultant qualifications and experience.

(5) A description of how the management entity(ies) will finance ongoing management costs, whether stewardship funding has been raised for the project, and plans to raise stewardship funding in the future.

(6) A description of the entity that will hold title to the land interest. If the proposed titleholder is a different entity than the proposed manager of the interest, a description of the relationship between the interest holder and the management entity.

ADMINISTRATIVE RULES

(7) If restoration of habitat, species, or watershed function is proposed as part of the applicant's management goals and objectives for the project, a detailed description of the applicant's capacity to accomplish the restoration goals. This description should address how anticipated funding for the restoration will be raised.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0100

Application Requirements: Educational Benefits of a Proposed Acquisition Project

Not all proposed land acquisition projects should or will have an educational component. However, a proposed land acquisition project that has strong educational benefits may receive a higher ranking than a comparable project that does not have strong educational benefits. To enable the Board to evaluate the potential for the proposed acquisition to enhance citizen understanding of watershed health, if a proposed project does have an educational component, the applicant should provide the following information as part of a grant application:

(1) A description of any plans for education and outreach regarding the project.

(2) A description of how the proposed acquisition will enhance citizen understanding about watershed health at the local, regional, and state levels.

(3) A description of whether the public will be provided access to the property, and if so, under what conditions.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0110

Application Requirements: Partners, Support for the Project, and the Effect of the Proposed Acquisition Project on the Local and Regional Community

(1) To enable the Board to evaluate the effects of the proposed acquisition on the local and regional community, the applicant shall provide the following information as part of a grant application:

(a) A description of partners in the project, and what they will contribute.

(b) A description of entities that support the proposed acquisition, and documentation of their support.

(c) A description of the current land uses on the property, and the land uses adjacent to the proposed acquisition.

(d) A statement by the applicant regarding the proposed acquisition's effect on the local property tax base, including the amount of property taxes paid in the prior year, and whether the property will remain on the tax rolls, or whether in lieu of payments will be made.

(e) A description of the economic and social effects the project may have on the local and regional economy, community, and agriculture/forestry infrastructure.

(2) Grant applicants will provide a statement as part of their grant application certifying that they have contacted and will consult with any affected tribe(s) on a proposed acquisition project if the acquisition is proposed on or adjacent to tribal lands, including reservation lands, trust lands, or usual and accustom sites.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0120

Application Requirements: Due Diligence Regarding the Terms of the Proposed Acquisition

(1) To enable the Board to review the legal and financial terms of the proposed acquisition of an interest in land, applicants shall submit the following information as part of a grant application:

(a) The names of and contact information for the grant applicant(s), the current owner(s) of the property interest to be acquired, and partners in the project.

(b) A letter from the current owner(s) stating that they are in discussions with the grant applicant about selling or leasing the property interest.

(c) The address, a legal description, and a map of the land interest proposed for acquisition.

(d) A general description of the physical state of the property, including any current or proposed roads and structures and their location, and any legal encumbrances and their approximate location. A statement regarding whether the physical improvements or legal encumbrances may impact habitat or species proposed for protection or restoration on the property.

(e) The contractually agreed-upon purchase or lease price for the land interest, or if one does not exist, the anticipated price for the land interest and the basis for that anticipated price.

(f) The proposed conservation values to be protected by either OWEB's required easement, covenant or deed restriction described in OAR 695-045-0140(7), or the proposed easement or lease to be acquired.

(2) Submission of the following due diligence information at the request of OWEB staff or the Board is required to complete a land acquisition project grant application:

(a) A copy of the written option, purchase, or lease agreement for the proposed acquisition, or evidence that such an agreement exists. If a copy of the option, purchase, or lease agreement is not submitted, the applicant shall submit a brief statement explaining whether the terms of the option, purchase, or lease agreement limit the proposed transfer or lease in any way, or could affect the proposed use of the land interest for the purposes described in section 4(b), Article XV of the Oregon Constitution.

(b) A statement of whether or not the seller or lessor of the land interest is contractually required by the written option, purchase or lease agreement, or other related documents, to donate or transfer funds to the buyer, applicant, or a third party who has assisted with or facilitated the proposed acquisition.

(c) Disclosure of the amount of a contractually required donation or payment is required after an initial staff recommendation has been made on the grant application. Disclosure of the amount is required only if the donation or payment will exceed 15 percent of the purchase or lease price for the land interest. Disclosure of the amount of a contractually required donation or payment exceeding 15 percent of the purchase or lease price must be made to the Board in writing prior to the Board's consideration of the proposed funding request, or the grant application will not be considered for funding by the Board.

(d) A fair market value appraisal of the property interest to be acquired, completed within 18 months prior to submittal of the application to OWEB, in a Self-Contained Appraisal Report form. Summary or Restricted Use appraisal reports will not be accepted. The appraisal must be prepared by an independent State Certified General Appraiser certified by the State of Oregon, who is experienced in appraisals of such properties.

(e) A preliminary title report for the property. If exceptions are listed on the title report, documentation explaining the exceptions, and a map locating the exceptions on the property. A final title report must be submitted to OWEB within 60 days of closing.

(f) A phase one environmental site assessment (ESA) conducted by a qualified third party and complying, at a minimum, with American Society for Testing and Materials (ASTM) standard E1527-00 published in July 2000. If a phase one environmental site assessment indicates that further investigation is necessary, OWEB staff may require later submission of a phase two environmental site assessment. If a phase two environmental site assessment indicates that further investigation is necessary, OWEB staff may require submission of additional assessment information. The Board may require remediation prior to the release of grant funds. The final environmental site assessment report shall name OWEB as a third party beneficiary.

(g) If the grant application requests funding for the purchase of land, a draft of the proposed conservation easement, covenant or deed restriction to be held by OWEB, described in OAR 695-045-0140(7), consistent with the template provided by OWEB. If the grant application requests funding to assist with the purchase of a conservation easement or lease, a draft of the proposed conservation easement or lease, giving OWEB a third party right of enforcement, and including the conservation easement or lease elements provided by OWEB in template form. If OWEB's conservation easement or lease elements are not acceptable, then the applicant must describe what modifications are requested and why.

(3) The Director has the discretion to waive one or more of the submission requirements in this subsection if a functional equivalent that provides the same information for the Board's consideration as the document or information required by the rule is submitted.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0130

Acquisition Prior to Application

Applicants may submit an application for funding for an acquisition of a land interest that occurred prior to Board review of the application. These applications will only be accepted if the acquisition occurred after the preceding grant application deadline. In such cases, applicants must submit the following with their application:

ADMINISTRATIVE RULES

(1) An explanation of the circumstances requiring acquisition prior to Board review of the application; and

(2) A statement acknowledging that the applicant proceeded with the acquisition with the understanding that the Board might not approve funding for the project, and that the prior purchase and any financial consequences to the applicant will not be a factor in the Board's funding decision.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0140

Grant Conditions

(1) The grant agreement will require a title insurance policy ensuring title to the interest acquired is vested in the grantee in an amount equal to or greater than the Board grant award to the grantee. The final title insurance policy must be submitted to OWEB within 60 days after closing.

(2) The grant agreement will require title insurance naming the Board as an additional insured, or require another form of assurance that Board funds will be repaid in the event the grantee is unable to carry out the intended use of the property as a result of a defect in title.

(3) Prior to the disbursement of any grant funds, the grantee must sign a grant agreement with the Board containing such terms and conditions as may be deemed necessary by the Director to ensure that the expected benefits of the project are realized, and that applicable legal requirements and any special conditions of the Board with regard to the particular grant are met.

(4) Grant agreements will include, but are not limited to, provisions ensuring that:

(a) The use of the land interest will be consistent with the purposes specified in section 4(b), Article XV of the Oregon Constitution.

(b) In the event that a property interest acquired with Board funding is used in a manner that is not consistent with the purposes specified in section 4(b), Article XV of the Oregon Constitution, Board funds will be repaid with interest due and payable from the effective date of the grant agreement at the rate provided for in ORS 82.010.

(c) Applicants must submit a report to the Board for not less than twenty (20) years following a grant award at a schedule determined by the Director of OWEB. The report shall briefly describe the use and management of the land interest, and certify that the land interest is being used and managed in a manner consistent with any conservation easement and the purposes specified under section 4(b), Article XV of the Oregon Constitution.

(d) Provisions to cover the conveyance of the property interest consistent with OAR 695-045-0150.

(5) The Board and/or Director may require other grant conditions in grant agreements as appropriate to ensure the project results in expected outcomes or otherwise complies with applicable law.

(6) Grant agreements are subject to legal sufficiency review by the Oregon Department of Justice, which may include a requirement to review all agreements relating to a proposed acquisition, including applicable options, purchase, or lease agreements, even if not earlier submitted to the Board.

(7) Prior to the disbursement of any grant funds, the Board will require execution of a conservation easement or other form of covenant or deed restriction on the use of the land by the appropriate parties to the grant award to ensure that the purposes underlying the Board grant award are accomplished, and that applicable legal requirements and any special conditions of the Board with regard to the particular grant are met.

(8) The Board has the authority to enforce the terms of a conservation easement or other form of covenant or deed restriction to which it is a party should the terms of the agreement be violated.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

695-045-0150

Conveyance of Property Interest Acquired with Assistance of OWEB Funds

(1) An interest in land acquired with the assistance of a grant from OWEB shall not be conveyed to another party without prior OWEB Board approval of the conveyance. The Board shall use the following criteria when determining whether to approve a conveyance:

(a) Whether the ecological benefits, effect on the local and regional community, and terms of the original acquisition supporting the Board grant award also support approval of the proposed conveyance.

(b) Whether the proposed recipient of the interest in land has demonstrated its ability to hold and manage the interest consistent with the provisions of the original grant agreement and current OWEB rules; and

(c) Whether the proposed recipient agrees to the material terms of the original grant agreement, and any new conditions reasonably set by the Board.

(2) The Board shall not approve a conveyance that results in a profit to any person or entity. "Profit" means, for purposes of this rule, the amount by which the price for the purchase of an interest in land in a subsequent conveyance exceeds the purchase price for the same interest in land at the time the Board funds were used, net of usual and customary closing costs and appraisal costs actually incurred by the seller. If there will be a profit from a proposed conveyance, the OWEB Board may make a finding that no profit will occur, and approve a subsequent conveyance, by requiring payment of the amount of the profit to the Board.

(3) The Board will consider approval of a transfer of an interest in land acquired with the assistance of a grant from OWEB at any regularly scheduled public business meeting once it has received sufficient information from the grantee to evaluate the proposed transfer according to the criteria specified in the rules.

(4) Board funds will be repaid with interest due and payable from the effective date of the grant agreement at the rate provided for in ORS 82.010 in the event that a property interest acquired with Board funding is transferred or assigned without the Board's prior consent.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 1-2005, f. & cert. ef. 2-1-05

Adm. Order No.: OWEB 2-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 11-1-04

Rules Adopted: 695-046-0010, 695-046-0020, 695-046-0025, 695-046-0030, 695-046-0040, 695-046-0050, 695-046-0060, 695-046-0070, 695-046-0080, 695-046-0090, 695-046-0100, 695-046-0110, 695-046-0120, 695-046-0130, 695-046-0140, 695-046-0150, 695-046-0160, 695-046-0170

Subject: The Oregon Watershed Enhancement Board amended its administrative rules relating to grant applications for the lease or purchase of water rights in two ways: 1) to make grammatical changes to allow OWEB to disengage the rules from the land acquisition grant rules and place them in a separate division, and 2) to revise the rules to be consistent with recommendations by the Water Resources Department (WRD) staff to ensure that the rules are compatible with current WRD practice and to ensure that the rules allow OWEB to accomplish the goals of its program.

Rules Coordinator: Bonnie Ashford—(503) 986-0181

695-046-0010

Purpose

The Board is directed under Article XV, Section 4b of the Oregon Constitution and ORS 541.375(9) to allocate funding for water acquisition projects that further the goal of protecting and/or restoring wild salmonids, fish and wildlife habitat, watersheds, or water quality in Oregon. As funds are available, and at times set by the Board, the Board shall consider grant applications for water acquisition projects using the criteria described in this Division. These rules will guide the Board's consideration of water acquisition project grant applications based on the proposed project's ecological benefits, partners, the effect the proposed project will have on the local and regional community, and the financial and legal soundness of the proposed water right transaction. The Oregon Watershed Enhancement Board will not hold an interest in water rights under these rules.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0020

Definitions

(1) "Water Acquisition Project" is a project that proposes to acquire an interest in water from a willing seller for the purpose of increasing instream flow to:

(a) Address the conservation needs of priority habitat and species; and/or

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(b) Improve water quality in a water quality limited area. Interests in water include short-term instream leases, including split season use instream leases, and permanent and time-limited instream transfers.

(2) "Partners" are persons or entities that have committed funding, expertise, materials, labor, or other assistance to a proposed water acquisition project.

(3) "Due Diligence Review" is a review conducted by OWEB staff and their agents of the legal and financial terms of the proposed acquisition of an interest in water. This review includes:

(a) An independent, third-party review of the fair market value water appraisal or other OWEB Board-approved valuation submitted by the applicant; and

(b) Review by OWEB's legal counsel of the:

(A) Ownership and lien report;

(B) Option, purchase, transfer or lease agreement;

(C) And any other portion of the transaction requested by OWEB staff.

(c) Review of the assessment of reliability of the water right submitted by the applicant by Oregon Water Resources Department staff.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0025

Eligible Expenses

Water acquisition project grant awards will only provide funding to assist with the purchase or lease price for an interest in water. Interests in water include short-term instream leases, including split season use instream leases, and permanent and time-limited instream transfers.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0030

Ineligible Expenses

Expenses other than the actual purchase or lease price of an interest in water are not eligible for reimbursement as part of an OWEB water acquisition project grant award.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0040

Evaluation Criteria

Water lease or transfer grant applications will be evaluated based on:

(1) The ecological benefits of the proposed project;

(2) The financial partners in the project and other support expressed for the project;

(3) The effect of the proposed project on the local and regional community; and

(4) The soundness of the legal and financial terms of the proposed water right transaction.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0050

Application Requirements: Ecological Benefits of a Proposed Acquisition Project

(1) The ecological value of a proposed instream water lease or transfer project will be evaluated based on a project's ability to increase instream flow to address the conservation needs of priority habitat and species, and/or to improve water quality in a water quality limited stream reach. Projects to address the conservation needs of priority habitat and species will be evaluated in part by reference to The Oregon Plan Streamflow Restoration Priorities (2001), incorporated in these administrative rules by reference. However, those projects that are not in a high priority area will still be considered based on their individual benefit to priority habitat and species as demonstrated by the applicant. The Oregon Plan Streamflow Restoration Priorities may be found on the Oregon Water Resources Department website at www.oregon.gov/OWRD, on OWEB's website at www.oregon.gov/OWEB, or at OWEB's Salem office.

(2) To enable the Board to fully evaluate the ecological benefits of a project, an applicant shall provide the following information as part of a grant application:

(a) A description of:

(A) the kind of water transaction proposed;

(B) the term of the transaction in months or years;

(C) the amount of water expressed as cubic feet per second proposed to be leased or transferred;

(D) the total volume of water to be secured in acre-feet;

(E) the reach on the instream water right in river miles; and

(F) the party that will maintain the water interest.

(b) A map showing the location of the point(s) of diversion and place(s) of use of the water interest proposed for lease or transfer.

(c) If applicable, a description of the habitat and species the project proposes to protect and/or restore, the relative importance of the site's habitat and species values at the watershed and basin scale, and how the project relates to other watershed restoration and protection efforts in the watershed. Describe the specific species and life stages most likely benefited.

(d) If applicable, reference to current conservation plans that identify the habitat and species as protection priorities. Applicants will attach the relevant pages from these plans to the grant application.

(e) If applicable, a description of water quality parameters the project proposes to directly affect, and the current condition and trend of water quality in the project area.

(f) A proposal for periodic measurement of whether the instream lease or water right is being met, and for monitoring and evaluating the project's benefits over time.

(g) An explanation of why the applicant believes lease or transfer of a water interest is the best method to accomplish the proposed protection, restoration, or improvement in habitat or water quality.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0060

Application Requirements: Partners, Support for the Project, and the Effect of the Proposed Acquisition Project on the Local and Regional Community

To enable the Board to evaluate the effects of the proposed acquisition on the local and regional community, the applicant shall provide the following information as part of a grant application:

(1) A description of financial and in-kind partners in the project, and what they will contribute.

(2) A description of entities that support the proposed acquisition, and documentation of their support.

(3) A description of the current land uses on the property to which the water right is appurtenant, and the land uses adjacent to the property.

(4) A statement by the applicant regarding the proposed acquisition's effect on the property taxes paid on the property to which the water right is appurtenant, and on the local property tax base.

(5) A description of the economic and social effects the project may have on the local and regional economy and community.

Stat. Auth.: ORS 541.396

Stats. Implemented: ORS 541.375(9)

Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0070

Application Requirements: Due Diligence Regarding the Terms of the Proposed Acquisition

(1) To enable the Board to review the legal and financial terms of the proposed transfer of a water interest, applicants shall submit the following information as part of a grant application:

(a) The names of and contact information for the grant applicant(s), and the current holder(s) of the portion of the water right proposed to be transferred or leased instream.

(b) A letter from the current water right holder(s) stating that they are in discussions with the grant applicant about transferring or leasing the water right interest.

(c) A fair market value appraisal or other OWEB Board-approved valuation of the water right interest to be acquired, completed within the year prior to submittal.

(d) The water right certificate or permit number issued by the Oregon Water Resources Department.

(e) A statement regarding whether the lands served are within an irrigation district or similar organization that conveys water to the subject water right(s).

(f) An ownership and lien report for the property to which the water right is appurtenant.

(g) A copy of the written option, purchase, or lease agreement for the subject acquisition, including the agreed-upon purchase or lease price for the water interest.

(h) A statement of whether the seller or lessor of the water interest is contractually required by the written option, purchase or lease agreement,

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or other related documents, to donate or transfer funds to the buyer, applicant, or a third party who has assisted with or facilitated the proposed lease or transfer.

(i) Disclosure of the amount of a contractually required donation or payment is required after an initial staff recommendation has been prepared on the grant application. Disclosure of the amount is required only if the donation or payment will exceed 15 percent of the purchase or lease price for the water interest. Disclosure of the amount of a contractually required donation or payment exceeding 15 percent of the purchase or lease price must be made to the Director of the Oregon Watershed Enhancement Board in writing, prior to the Board's consideration of the proposed funding request, or the grant application will not be considered for funding by the Board.

(j) An assessment of the reliability of the water right for providing instream benefits, including a description of which month(s) the water right has typically been used, and how often the water right has been met in the last ten years. This assessment should include a written statement from the Oregon Water Resources Department describing the extent to which the water right has historically been met, and whether regulation has been or may be required on the stream in question regarding the proposed right. The assessment should also include a signed statement from the current holder of the portion of the water right proposed to be transferred or leased instream or the landowner to which the water right is appurtenant stating that the water has been used over the past five years in accordance with the terms and conditions of the right or that the right is not subject to forfeiture under ORS 540.610.

(2) The Director has the discretion to waive one or more of the submission requirements in this subsection if a functional equivalent that provides the same information for the Board's consideration as the document or information required by the rule is submitted.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0080

Required Matching Funds

All applicants shall demonstrate at least 25 percent in secured matching funds for a project prior to the disbursement of Board funds. If a grantee has not demonstrated 25 percent in secured matching funds within 12 months after Board approval of grant funds, or a different time period specified by the Board, the grant award will be rescinded without further action by the Board. Match may include:

(1) A commitment of cash by the grantee for the proposed purchase or lease of the interest in water.

(2) Secured funding commitments from other sources for the proposed purchase or lease of a water interest. These commitments must be supported by documentation.

(3) If the proposed purchase of an interest in water will be for less than the appraised or OWEB Board-approved valuation of fair market value, the difference between the appraised or valued fair market value and the actual purchase price of the water interest.

(4) The following reasonable costs incurred prior to Board approval may also be included as part, or all, of the matching funds for the project:

(a) The cost of an option to purchase or lease an interest in water, if it is credited toward the purchase or lease price.

(b) The cost of the fair market value appraisal or other OWEB Board-approved valuation of the water interest submitted to OWEB, including reasonable consulting fees necessary to complete the appraisal or other OWEB Board-approved valuation.

(c) The cost of an ownership and lien report.

(d) Funds raised for monitoring the ecological benefits of the project. Secured pledges must have supporting documentation.

(5) The Director shall retain the discretion to determine that an amount identified as match in (d) above exceeds that which is reasonable and exclude the unreasonable amount from counting as match under this section.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0090

Application Review Process: Overview

(1) Water acquisition grant applications will be considered by the Board and evaluated according to the rules in this Division if all application materials listed in OAR 695-046-0050 through 0080 are submitted prior to the grant application deadline established by the Director.

(2) The processing of all water acquisition project grant applications by the Board will involve the following steps:

(a) Review by the appropriate Regional Review Team, as defined in OAR 695-005-0020(4), of the ecological value of the proposed acquisition project.

(b) A due diligence review as defined in OAR 695-046-0020(3) using the materials identified in OAR 695-045-0070.

(c) After a due diligence review of a proposed water acquisition project is complete, the Director of OWEB will synthesize the following into a staff funding recommendation to the Board:

(A) The ecological benefits of a proposed project;

(B) Financial partners in and other support for the project;

(C) The effect of the proposed project on the local and regional community;

(D) The due diligence review of a proposed project;

(E) The evaluation of the Regional Review Team; and

(F) Information about available funding resources and competing projects.

(d) The Board will make a funding decision on a water lease or transfer project grant application based on the ecological benefits of a proposed project, financial partners in and other support for the project, the effect of the project on the local and regional community, and the financial and legal soundness of the proposed transaction. The Board will take all information provided by the applicant, reviewers, and staff, as well as competing projects and available funding into consideration when making its funding decision.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0100

Application Review Process: Regional Review Team Evaluation

(1) The geographically appropriate Regional Review Team will evaluate the ecological value of every proposed water acquisition project.

(2) In its evaluation of the ecological value of a proposed water acquisition, the Regional Review Team will make explicit findings about a proposed project's ability to increase instream flow to:

(a) Address the conservation needs of priority habitat and species; and/or

(b) Improve water quality in a water quality limited stream reach. Projects to address the conservation needs of priority habitat and species will be evaluated in part by reference to The Oregon Plan Streamflow Restoration Priorities (2001), incorporated in these administrative rules by reference. However, those projects that are not in a high priority area will still be considered based on their individual benefit to priority habitat and species as demonstrated by the applicant.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0110

Application Review Process: Due Diligence Review

The Director shall undertake a due diligence review in preparation for making a funding recommendation to the full Board. The due diligence review will include:

(1) An independent, third-party review of the fair market value water appraisal or other OWEB Board-approved valuation submitted by the applicant; and

(2) Review by OWEB's legal counsel of the:

(a) Ownership and lien report;

(b) Option, purchase, or lease agreement; and

(c) Any other portion of the transaction requested by OWEB staff.

(3) Review of the assessment of reliability of the water right submitted by the applicant by Oregon Water Resources Department staff.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0120

Application Review Process: Staff Funding Recommendation

The Director will develop a staff funding recommendation to the Board based on the evaluation criteria listed in OAR 695-046-0040. This decision will be based on the information provided by the grant applicant, reviewers, and OWEB staff. The staff funding recommendation will be to fund or partially fund an application, fund an application with conditions, defer action, or deny funding for an application.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

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695-046-0130

Application Review Process: Board Funding Decision

The Board will make a funding decision on a water lease or transfer project grant application based on the evaluation criteria listed in OAR 695-046-0040. This decision will be based on the information provided by the grant applicant, reviewers, and OWEB staff. The Board's decision will be made in the context of program budget and priority considerations.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0140

Lease or Transfer Prior to Application

Applicants, as a general rule, may only submit an application for funding for a water lease or transfer prior to the lease or transfer. However, applicants may submit an application for a lease or transfer that occurred prior to Board review if the lease or transfer occurred after the preceding grant application deadline. In such cases, applicants must submit the following with their application:

- (1) An explanation of the circumstances requiring lease or transfer prior to Board review of the application; and
- (2) A statement acknowledging that the applicant proceeded with the lease or transfer with the understanding that the Board might not approve funding for the project, and that the prior lease or transfer and any financial consequences to the applicant will not be a factor in the Board's funding decision.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0150

Application Review Process: Alternate Review Processes

The Board may designate alternate grant cycles and review processes for water lease or transfer grant applications.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0160

Grant Conditions

(1) Prior to the disbursement of any grant funds, the grantee must sign a grant agreement with the Board containing such terms and conditions as may be deemed necessary by the Director to ensure that the expected benefits of the project are realized, and that applicable legal requirements and any special conditions of the Board with regard to the particular grant are met.

(2) Prior to the disbursement of any grant funds for the lease or purchase of an instream lease or transfer, evidence of final approval by the Oregon Water Resources Department of the instream lease or transfer must be provided to OWEB by the grantee. Grant funds may be adjusted to reflect the quantity and timing of water protected instream as specified in the approved instream lease or transfer.

(3) Grant agreements will include, but are not limited to, provisions ensuring that:

(a) The use of the water interest will be consistent with the purposes specified in Section 4(b), Article XV of the Oregon Constitution.

(b) In the event that a water interest acquired with Board funding is used in a manner that is not consistent with the purposes specified in Section 4(b), Article XV of the Oregon Constitution, Board funds will be repaid with interest due and payable from the effective date of the grant agreement at the rate provided for in ORS 82.010.

(c) The Board's approval will be required to terminate a water right lease or time-limited transfer funded in part with Board funds prior to the end of its term.

(d) Grantees that receive Board funding for water right transfers or leases will be required to submit monitoring reports, for a time period specified by the Board, which shall evaluate the benefits of the instream lease or transfer, and certify that the water interest is being used and managed in a manner consistent with Section 4(b), Article XV of the Oregon Constitution.

(4) The Board and/or Director may require other grant conditions in grant agreements as appropriate to ensure the project results in expected outcomes or otherwise complies with applicable law.

(5) Grant agreements are subject to legal sufficiency review by the Oregon Department of Justice, which may include a requirement to review all agreements relating to a proposed water lease or transfer, including applicable options, purchase, or lease agreements, even if not earlier submitted to the Board.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

695-046-0170

Conveyance of Water Interest Acquired with Assistance of OWEB Funds

An interest in water acquired with the assistance of a grant from OWEB shall not be conveyed to another party without prior OWEB Board approval of the conveyance. The Board shall use the following criteria when determining whether to approve a conveyance:

(1) Whether the ecological benefits, effect on the local and regional community, and terms of the original acquisition supporting the Board grant award also support approval of the proposed conveyance.

(2) Whether the proposed recipient of the lease or time-limited transfer has demonstrated its ability to hold and manage the interest consistent with the provisions of the original grant agreement and current OWEB rules; and

(3) Whether the proposed recipient agrees to the material terms of the original grant agreement, and any new conditions reasonably set by the Board.

Stat. Auth.: ORS 541.396
Stats. Implemented: ORS 541.375(9)
Hist.: OWEB 2-2005, f. & cert. ef. 2-1-05

Parks and Recreation Department
Chapter 736

Adm. Order No.: PRD 1-2005

Filed with Sec. of State: 2-4-2005

Certified to be Effective: 2-4-05

Notice Publication Date: 1-1-05

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 an amended master plan for the state park recently renamed L.L. "Stub" Stewart Memorial State Park. Master plans for state parks are adopted as state rules under OAR 736-018-0045. The purpose of amending OAR 736-018-0045 is to adopt the amended master plan as a state rule.

The original master plan, which is now being amended, was adopted in 2001 when the park was still unnamed and referred to simply as "A New State Park in Washington County." The park was subsequently named "Hares Canyon State Park." The Notice of Proposed Rulemaking Hearing for amendment of the master plan that appeared in the January 2005 edition of the Oregon Bulletin, and the draft amendments to the master plan reviewed by the public, both referred to the park as "Hares Canyon." On January 27, 2005, the Oregon Parks and Recreation Commission again changed the name of the park, to "L.L. 'Stub' Stewart Memorial State Park." Accordingly, the amended master plan is now titled "L.L. 'Stub' Stewart Memorial State Park Master Plan." The amended OAR 736-018-0045 also reflects the new name of the park.

The master plan responds to the most current information on park resource conditions and public recreation needs as they pertain to this park. The amended plan was formulated through OPRD's mandated process for adopting and amending master plans and coordinating with affected local governments as described in OAR 736 Division 18 and OAR 660 Division 34.

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;

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(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;

(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

Public Utility Commission Chapter 860

Adm. Order No.: PUC 1-2005

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

Certified to be Effective: 2-2-05

Notice Publication Date: 12-1-04

Rules Amended: 860-016-0050

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

Rules Coordinator: Diane Davis—(503) 378-4372

860-016-0050

Petitions for Enforcement of Interconnection Agreements

(1) Purpose of rule. This rule specifies the procedure for a telecommunications provider, as defined in OAR 860-032-0001, to file a complaint for the enforcement of an interconnection agreement that was previously approved by the Commission. For purposes of this rule, the term "interconnection agreement" is an agreement executed pursuant to the Telecommunications Act of 1996 (the Act). This includes interconnection agreements, resale agreements, agreements for the purchase or lease of unbundled network elements (UNEs), or statements of generally available terms and conditions (SGATs), whether those agreements were entered into through negotiation, mediation, arbitration, or adoption of a prior agreement or portions of prior agreements. Section (11) of this rule specifies procedures for complaints alleging that telecommunications utilities have engaged in prohibited acts under ORS 759.455.

(2) The complaint. A complaint for enforcement of an interconnection agreement must contain the following:

(a) A statement of specific facts demonstrating that the complainant telecommunications provider conferred with defendant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) A copy of a written notice to the defendant telecommunications provider indicating that the complainant intends to file a complaint for enforcement of the interconnection agreement, as described in subsection (3)(a) below;

(c) A copy of the interconnection agreement or the portion of the interconnection agreement that the complainant contends was or is being violated. If a copy of the entire interconnection agreement is provided, complainant must specify provisions at issue. If the interconnection agreement adopted a prior agreement or portions of prior agreements, the complaint must also indicate the provisions adopted in those agreements;

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(d) A statement of the facts or a statement of the law demonstrating defendant's failure to comply with the agreement and complainant's entitlement to relief. The statement of entitlement to relief must indicate that the remedy sought is consistent with the dispute resolution provisions in the agreement, if any. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(e) The complaint may designate one additional person to receive copies of other pleadings and documents; and

(f) Complainant shall also file with the complaint, as a separate document, any motions for affirmative relief. Motions for injunctive or temporary relief must be clearly marked. Nothing in this subsection shall preclude complainant from filing a motion subsequent to the filing of the complaint if the motion is based upon facts or circumstances unknown or unavailable to complainant at the time the complaint was filed;

(g) Complainant shall also file with the complaint, as a separate document, an executive summary outlining the issues and relief requested. Such summary shall be no more than eight pages.

(3) Service of the complaint. The complaint for enforcement must be served as follows:

(a) At least ten days prior to filing a complaint for enforcement with the Commission, complainant must give written notice to defendant and the Commission that complainant intends to file a complaint for enforcement. The notice must identify the provisions in the agreement that complainant alleges were or are being violated and the specific acts or failure to act that caused or is causing the violation and whether the complainant anticipates requesting temporary or injunctive relief. The notice must be served in the same manner as set forth in subsections (b) and (c) below, except that complainant must also serve the notice on all persons designated in the interconnection agreement to receive notices;

(b) Complainant must serve a copy of the complaint for enforcement on defendant the same day the complaint is filed with the Commission. Service may be by fax or overnight mail, provided the complaint arrives at defendant's location on the same day the complaint is filed with the Commission. Service by fax must be followed by a hard copy the next day in overnight mail; and

(c) Complainant must serve a copy of the complaint for enforcement on defendant's authorized representative, attorney of record, or designated agent for service of process.

(4) The answer. An answer must comply with the following:

(a) The answer must contain a statement of specific facts demonstrating that the responding telecommunications provider conferred with complainant in good faith to resolve the dispute, and that despite those efforts the parties failed to resolve the dispute;

(b) The answer must respond to each allegation set forth in the complaint and must set forth all affirmative defenses;

(c) The answer must contain a statement of the facts or a statement of the law supporting defendant's position. Statements of facts must be supported by written testimony or one or more affidavits, made by persons competent to testify and having personal knowledge of the relevant facts. Statements of law must be supported by appropriate citations. If exhibits are attached to the affidavits, the affidavits must contain the foundation for the exhibits;

(d) The answer may designate one additional person to receive copies of other pleadings and documents;

(e) Any allegations raised in the complaint and not addressed in the answer are deemed admitted; and

(f) Defendant shall file with the answer, as a separate document, a response to any motion filed by complainant, and any motion defendant wishes to file that seeks affirmative relief. Nothing in this subsection shall preclude defendant from filing a motion subsequent to the filing of the answer if the motion is based upon facts or circumstances unknown or unavailable to defendant at the time the answer was filed.

(5) Service of the answer. The answer must be served as follows:

(a) Defendant must file a copy of the answer with the Commission within ten business days after service of the complaint for enforcement;

(b) Defendant must deliver a copy of the answer to complainant the same day the answer is filed with the Commission, in the manner set forth in subsections (3)(b) and (3)(c) above;

(c) Defendant must serve a copy of the answer on the complainant's attorney, as listed in the complaint, or the person who signed the complaint, if complainant has no attorney.

(6) The reply. Complainant must file a reply to an answer that contains affirmative defenses within five business days after the answer is filed. The reply must be served in the manner set forth in subsections (3)(b) and (3)(c) above. If the reply contains new facts or legal issues not raised in the complaint, the reply must also comply with subsection (2)(d) above.

(7) Cross-complaints or counterclaims. A cross-complaint or counterclaim shall be answered within the ten-day time frame allowed for answers to complaints.

(8) Conference. The Commission will conduct a conference regarding each complaint for enforcement of an interconnection agreement.

(a) The Administrative Law Judge (ALJ) will schedule a conference within five business days after the answer is filed, to be held as soon thereafter as is practicable. At the discretion of the ALJ, the conference may be conducted by telephone;

(b) Based on the complaint and the answer, all supporting documents filed by the parties, and the parties' oral statements at the conference, the ALJ will determine whether the issues raised in the complaint can be determined on the pleadings and submissions without further proceedings or whether further proceedings are necessary. If further proceedings are necessary, the ALJ will establish a procedural schedule. The procedural schedule may include a mandatory mediation session. Either party may request that a person other than the ALJ preside over the mediation. Nothing in this subsection is intended to prohibit the bifurcation of issues where appropriate;

(c) In determining whether further proceedings are necessary, the ALJ will consider, but is not limited to, the positions of the parties; the need to clarify evidence through the examination of witnesses; the complexity of the issues; the need for prompt resolution; and the completeness of the information presented;

(d) The ALJ may make oral rulings on the record during the conference on all matters relevant to the conduct of the proceeding.

(9) Discovery. A party may file with the complaint or answer a request for discovery, stating the matters to be inquired into and their relationship to matters directly at issue.

(10) Expedited procedure. When warranted by the facts, the complainant or defendant may file a motion requesting that an expedited procedure be used. The moving party shall file a proposed expedited procedural schedule along with its motion. The ALJ will schedule a conference to be held as soon after the motion is filed as is practicable, to determine whether an expedited schedule is warranted.

(a) The ALJ shall consider whether the issues raised in the complaint or answer involve a risk of imminent, irrevocable harm to a telecommunications provider and to the public interest;

(b) If a determination is made that an expedited procedure is warranted, the ALJ shall establish a procedure that ensures a prompt resolution of the merits of the dispute, consistent with due process and other relevant considerations. The ALJ shall consider, but is not bound by, the moving party's proposed expedited procedural schedule;

(c) An expedited procedure may be appropriate if the complainant shows that its ability to provide telecommunications services will be substantially harmed unless the Commission acts promptly. In general, the Commission will not entertain a motion for expedited procedure where the dispute solely involves the payment of money.

(11) Procedures for complaints alleging violation of ORS 759.455.

(a) An answer under section (4) of this rule shall be filed with the Commission and served on the complainant within ten calendar days after service of the complaint;

(b) A reply under section (6) of this rule shall be filed with the Commission and served on the defendant within five calendar days after the answer is filed;

(c) The ALJ shall schedule a conference to be held in person or by telephone not later than 15 calendar days after the complaint is filed;

(d) A hearing shall begin no later than 30 days after the complaint is filed;

(e) The ALJ may consult with the Commission Staff in the manner set forth in OAR 860-016-0030(6).

Stat. Auth.: ORS Ch. 183 & 756

Stats. Implemented: ORS 756.040, 756.518, 759.030(1), 759.455, Ch. 1093, OL 1999 & 47 USC § 252

Hist.: PUC 7-1999, f. & cert. ef. 10-18-99; PUC 7-2000, f. & cert. ef. 5-3-00; PUC 21-2002, f. & cert. ef. 12-9-02; PUC 1-2005, f. & cert. ef. 2-2-05

Adm. Order No.: PUC 2-2005

Filed with Sec. of State: 2-11-2005

Certified to be Effective: 2-11-05

Notice Publication Date: 11-1-04

ADMINISTRATIVE RULES

Rules Adopted: 860-016-0021

Rules Amended: 860-016-0020

Subject: This rulemaking amends OAR 860-016-0020 and adopts OAR 860-016-0021 to allow the acknowledgment of promotional offerings consistent with Section 252(e) of the Telecommunications Act of 1996.

Rules Coordinator: Diane Davis—(503) 378-4372

860-016-0020

Agreements Arrived at through Negotiation

(1) Upon receiving a request for interconnection, services, or network elements pursuant to Section 251 of the Act, the affected telecommunications carrier may negotiate and enter into a binding agreement with the requesting telecommunications carrier.

(2) The negotiating parties may ask a mediator outside the Commission to help them reach agreement. If they request the Commission to mediate, the Commission will use an Administrative Law Judge (ALJ) or a member of the utility Staff to mediate. Only the negotiating parties and the mediator will participate in mediation sessions.

(3) After the parties reach agreement under Section 252(a) of the Act, they must file an application with the Commission seeking approval of the agreement, or for approval of an amendment to an approved agreement on file with the Commission. The application must include an original plus two copies of the negotiated agreement and a completed Carrier-to-Carrier Agreement Checklist. A copy of the checklist is available on the Commission's website. The parties may also include any other supporting information with their application.

(4) The negotiating parties must supplement the filing with an exact copy of the negotiated agreement and checklist in electronic form as required in OAR 860-013-0036. The Commission will provide notice of the application by posting the checklist and the agreement on its Internet website.

(5) The public may file written comments within 21 days of the filing date of the application, unless the Commission establishes a different time limit.

(6) The Commission will accept or reject the agreement within 90 days, with written findings as to any deficiencies. The grounds for rejection are that the agreement:

(a) Discriminates against a carrier not a party to the agreement; or

(b) Is not consistent with the public interest, convenience, and necessity. Applicable Commission policies will be a factor in public interest, convenience, and necessity determinations.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 8-1998, f. & cert. ef. 4-8-98; PUC 25-2001, f. & cert. ef. 11-5-01; PUC 6-2002, f. & cert. ef. 2-13-02; PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05

860-016-0021

Wholesale Promotions

(1) A carrier intending to offer a wholesale promotion that would modify the terms of a Carrier-to-Carrier Agreement must provide the Commission and other telecommunications carriers notice of the promotion at least 30 days prior to the effective date of the promotion. The notice to the Commission must include:

(a) A copy of a form contract, containing the terms and conditions of the promotional offering that would be submitted as an amendment to an existing Carrier-to-Carrier Agreement; and

(b) A description of the means used to notify other telecommunications carriers of the promotion.

(2) The offering carrier must file with the Commission an original plus two copies of the form contract. With the filing, the offering carrier must include a completed Carrier-to-Carrier Agreement Checklist, a copy of which is available on the Commission's Internet website. The carrier must supplement the filing with an exact copy of the contract and checklist in electronic form as required in OAR 860-013-0036. The Commission will post the notice and checklist on its website.

(3) The public may file written comments on the form contract within 15 days of the filing date of the notice, unless the Commission establishes a different time limit.

(4) The Commission will approve the form contract unless it finds that the contract, if filed as an amendment to an interconnection agreement, would be subject to rejection under OAR 860-016-0020(6).

(5) If another carrier accepts the promotional offering, the offering and accepting carriers must file, within ten days of execution by the parties, an amendment to an existing Carrier-to-Carrier Agreement incorporating the exact terms and conditions of the approved amendment in the form contract. Any such filed amendment will be deemed effective upon the later of the Commission approval of the form contract or execution of the amendment by the parties.

Stat. Auth.: ORS 183 & 756

Stats. Implemented: 47 USC 252

Hist.: PUC 12-2004(Temp), f. & cert. ef. 8-31-04 thru 2-26-05; PUC 2-2005, f. & cert. ef. 2-11-05

Secretary of State, Corporation Division Chapter 160

Adm. Order No.: CORP 1-2005

Filed with Sec. of State: 2-1-2005

Certified to be Effective: 2-1-05

Notice Publication Date: 1-1-05

Rules Amended: 160-040-0103

Subject: This amendment adopts the latest version of the national standard UCC forms, while acknowledging the acceptability of the statutorily described forms.

Rules Coordinator: Kristine T. Hume—(503) 986-2356

160-040-0103

Forms

(1) In addition to the forms outlined in ORS 79.0521(1), the Secretary of State shall accept for filing only the standard forms approved for use by the International Association of Commercial Administrators up to August 1, 2004.

(2) Renewal notice. The renewal notice supplied under ORS Ch. 79.0515 shall not be construed as a form for filing purposes. The only form in which to file a continuation shall be the UCC Financing Statement Amendment provided in (1):

(a) Address. The address used to mail renewal notices shall be the secured party name and address of record. If the secured party has not specifically filed an amendment showing a change in address, the renewal notice shall be sent to the address of record, regardless of what may show on continuations, renewals, or other filings;

(b) Returned mail. The UCC Section may attempt to trace or obtain an accurate name or address and/or resend a renewal notice returned because of incorrect name or address.

Stat. Auth.: ORS 79.0526

Stats. Implemented: ORS 79.0515 & 79.0521

Hist.: CORP 2-2001, f. 7-9-01, cert. ef. 8-1-01; CORP 1-2002, f. 11-15-02, cert. ef. 12-1-02; CORP 1-2005, f. & cert. ef. 2-1-05

Teacher Standards and Practices Commission Chapter 584

Adm. Order No.: TSPC 1-2005

Filed with Sec. of State: 1-21-2005

Certified to be Effective: 1-21-05

Notice Publication Date: 12-1-04

Rules Adopted: 584-017-0115, 584-017-0251, 584-017-0261, 584-060-0012, 584-060-0013, 584-060-0022, 584-080-0171

Rules Amended: 584-005-0005, 584-017-0250, 584-017-0260, 584-060-0011, 584-060-0171, 584-060-0210, 584-070-0111, 584-100-0071

ADMINISTRATIVE RULES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-005-0005

Definitions

These definitions apply to Divisions 001-100 unless otherwise indicated by the context:

(1) "Administrators:" Superintendents, assistant superintendents, principals, vice principals, and such other personnel, regardless of title, whose positions require them to evaluate other licensed personnel.

(2) "Alternative Assessment:" Procedures established by the Commission for candidates seeking licensure who fail to achieve a passing score on required matter or specialty area licensure tests for endorsement or authorization.

(3) "Alternative Education Program or School:" A private alternative education program or school registered with the Oregon Department of Education or a public alternative education program or school operated by a school district, education service district, or community college, which is established to serve students identified under ORS 339.250(6) and other students whose academic or professional technical interests and needs are best served through participation in such programs. [See OAR 584-036-0015(2)(i).]

(4) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license. As used in these rules, "application" includes the Application Form, C-1, the fee, and all supporting documents necessary for the evaluation for the license.

(5) "Appropriately Assigned:" Assignments for administrator, teacher, supervisor, school counselor, school psychologist, or school nurse duties for which the person involved holds the proper license, endorsements and authorizations. [See OAR 584-060-0081.]

(6) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare licensed personnel by a U.S. governmental jurisdiction in which the institution is located. See definition of "Regional Accrediting Associations" at OAR 584-005-0005(54).

(7) "Approved Professional Technical Education Program:" A professional technical program, normally at grades nine through twelve, approved by the Oregon State Board of Education.

(8) "Approved Program:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction authorized to approve educator preparation programs.

(9) "Assistant Superintendent:" A superintendent's immediate subordinate who evaluates licensed personnel. May also be designated Deputy or Associate Superintendent.

(10) "Athletic Coaches:" Licensed personnel employed full time or part time for purposes of participation in interscholastic athletics and whose duties include instruction of students, preprimary through grade twelve. A student teacher or intern may serve as an assistant coach without licensure if assigned for a full-time practicum in the school in which he or she is coaching. [See OAR 584-036-0015(2)(e).]

(11) "Authorization Level:" The grade levels in which a person may teach, i.e., early childhood, elementary, middle level and high school as defined in OAR 584-060-0051.

(12) "Commission:" Teacher Standards and Practices Commission (TSPC).

(13) "Competencies:" Ability to apply knowledge and skills appropriately and effectively in achieving the expected outcomes.

(14) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(15) "Conditional Assignment:" (Formerly "Missassignment") Assignment of a licensed educator to a position for which he or she does not hold the subject or specialty area endorsement or authorization level required by the rules for licensure. [See OAR 584-060-0081.]

(16) "Consortium:" An advisory body to the institution in reviewing, evaluating, and making recommendations on the design, implementation, evaluation, and modification of the program.

(17) "Continuing Professional Development Advisor:" A person selected by an educator and approved by the educator's supervisor, such as a college or university advisor, a peer coach, or a qualified member of an agency or professional organization.

(18) "Distance Learning Teacher:" A teacher who meets the criteria in OAR 584-036-0017 and provides live interactive instruction transmitted from a remote location or who delivers online education either from within Oregon or from another state and who is employed by one or more Oregon public school districts to teach public school students.

(19) "Domain:" An area of professional competency under which a teacher may select coursework or other approved activities for continuing professional development. [See OAR 584-090-0010.]

(20) "Education Service District (ESD):" A district created under ORS 334.010 that provides regional educational services to component school districts.

(21) "Educator:" Any person who is authorized to be employed in the instructional program of the public schools, public charter schools and ESDs, and holds a license to teach, administer, supervise, counsel or provide school psychology services.

(22) "Emergency License:" Issued by TSPC when a school district demonstrates extenuating circumstances that merits the issuance of the license in order to protect the district's programs or students.

(23) "Endorsement:" The subject matter or specialty education field or grade authorization in which the individual is licensed to teach.

(24) "Executive Director:" The Executive Director of the Commission. [See ORS 342.410.]

(25) "Expired License:" A license for which an application for renewal was not received by TSPC prior to the date of expiration stated on the license.

(26) "Field Experience:" Learning activities designed to develop professional competence through observing, assisting, or teaching in a public or approved non-public school.

(27) "Instructional Assistant:" A non-licensed position of employment in a school district assigned to assist a licensed teacher in a supportive role in the classroom working directly with students.

(28) "Instructional Faculty:" Full-time and part-time faculty who teach professional courses and/or supervise field-centered activities and student teachers.

(29) "Instructor Appraisal Committee:" A seven-member committee appointed by a school board to evaluate applicants and make recommendations to the Commission and the employing superintendent or school board relative to their licensure and assignment as professional technical teachers. Five members of the committee must be employers and employees currently engaged in an occupation related to the professional technical program area. These five public members must all possess current and substantial knowledge of the technical, environmental, and attitudinal requirements of the occupational field, and one of the five should also represent the school district's occupational advisory committee for the instructional

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program to be offered. One of the two remaining committee members shall be the regional coordinator of professional technical education or an appropriate Oregon Department of Education program area specialist. The seventh member shall be a district administrator or a director of professional technical education. Ex officio members may also be appointed. A facilitator must be chosen and inserviced in operating an instructor appraisal committee. Reports of evaluations that are satisfactorily completed shall be verified by the signatures of the chair of the occupational advisory committee, the chair of the district's Instructor Appraisal Committee, and the regional coordinator of professional technical education.

(30) "Intern:" A student of an approved institution who serves as a teacher, personnel specialist, or administrator under the supervision of the institution and of the school district in order to acquire practical experience in lieu of student teaching or supervised practica. Interns may receive both academic credit from the institution and financial compensation from the school district. Interns may serve as assistant coaches.

(31) "Joint Application:" Submitted by the school district in cooperation with the applicant.

(32) "Liaison Officer:" The person designated by the unit to submit all program modifications for TSPC approval, issue all recommendations for licensure under the approved program, authorize all waivers of professional courses for students enrolled in the program, and handle all correspondence between TSPC and the unit.

(33) "Major Modifications:" Changes of program philosophy, curricula, practica, resources, personnel, or performance standards.

(34) "Major Traffic Violation:" Includes driving while under the influence of intoxicants (ORS 487.540); reckless driving (ORS 487.550); fleeing or attempting to elude a police officer (ORS 487.555); driving while license is suspended or revoked or beyond license restrictions (ORS 487.560); or failure to perform the duties of a driver or witness at an accident (ORS 483.602).

(35) "Mentor:" Educators who have demonstrated the appropriate subject matter knowledge and teaching and/or administrative skills, which when assisting beginning educators, should substantially improve the induction and professional growth of beginning educators in this state.

(36) "Misassignment:" See definition of "Conditional Assignment" above.

(37) "National Board For Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate to qualified educators.

(38) "Oregon Schools:" Includes public school districts, education service districts, registered private schools preprimary through grade twelve, state and federal schools, special state-supported schools, and public charter schools in Oregon serving students ages three through twenty-one, private schools accredited by the Northwest Commission on College and Universities, and private proprietary career schools registered by the Oregon Department of Education.

(39) "Out of State Licenses or Certificates:" A certificate or license valid for full-time employment, at least equivalent to the Oregon license being requested, issued by one of the United States, a U.S. jurisdiction (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands), or the U.S. Department of Defense.

(40) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(41) "Personnel Service:" A type of license issued to counselors, supervisors, and school psychologists.

(42) "Practicum or Practica:" All supervised field experiences other than student teaching or internships. A practicum may be part of the field experience necessary to add an endorsement.

(43) "PRAXIS:" A series of professional assessments for beginning educators produced and administered by Educational Testing Service (ETS) and adopted by TSPC as licensure examinations.

(44) "Principal:" The administrator of each school building or buildings as designated by the school district board.

(45) "Private Schools:" A private school, preprimary through grade twelve, registered with the Oregon Department of Education in compliance with provisions of ORS 345.525 and 345.535 or approved or registered by another U.S. jurisdiction or government.

(46) "Professional Development Plan:" A plan for personal professional growth during the next licensure renewal cycle.

(47) "Professional Development Units (PDU):" A unit of domain-related activity that equals one clock hour of professional development and

contributes to completion of an educator's professional development plan. [See OAR 584-090-001 et seq.]

(48) "Professional Technical Advisor:" The individual assigned to guide, advise and counsel an educator holding a Three-Year Professional Technical License. The advisor participates in the educator's Instructor Appraisal Committee; makes recommendations for meeting minimum requirements; and assists in monitoring, documenting and reporting on the completion of requirements and the professional growth plan.

(49) "Professional Technical Mentor:" A professional technical teacher endorsed within the same endorsement area who guides and supports a beginning professional technical teacher with instructional planning and preparation, delivery of classroom instruction, classroom management, assessment of student performance, and professional development.

(50) "Program Administrator:" Managers of school programs and coordinators of district-wide programs that are accountable at the building level.

(51) "Program Review Committee:" Committee appointed by the Commission to conduct an on-site review for purposes of approval of an educator preparation program.

(52) "Public Funds:" All monies expended by public school districts and for which the school board has responsibility, including funds from local, state, federal, and private sources. [See ORS 342.120(9).]

(53) "Public Schools:" Public school districts, education service districts and public charter school created under ORS Ch. 338, which are supported by local and state public funds and for which the school board has responsibility, for the program of instruction carried out in that school.

(54) "Recent Experience:" An application for a license submitted to TSPC either within three years following completion of an approved program or during the effective period of a comparable license and within three years of the last year of experience on such license. If more than three years have elapsed since completion of the program or since the last year of public school or regionally accredited private school experience, recency may be met by completion of nine quarter hours of additional preparation from an approved institution germane to the license and endorsement requested. The additional credits must be completed during the three-year period prior to application and must help the applicant keep abreast of current needs of public schools. If the comparable license expired prior to application, a Preparation for Teaching Report, Form C-2, must be submitted.

(55) "Regional Accrediting Associations:" Colleges and universities approved for teacher education must be accredited by the appropriate regional association at the time the degree or program is completed. The regional associations are: New England Association of Schools and Colleges, Commission on Institutions of Higher Education; North Central Association of Colleges and Schools, The Higher Learning Commission; Northwest Commission on Colleges and Universities; Middle States Association of Colleges and Schools, Commission on Higher Education; Southern Association of Colleges and Schools, Commission on Colleges; or Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities.

(56) "Reinstatement:" Restoration of the validity of a license which has expired, been suspended, or been revoked. [See OAR 584-050-0015.]

(57) "Renewal:" Extension of validity of a current license. An application for renewal must be submitted prior to the expiration date stated on the license. [See OAR 584 Div 48.]

(58) "School:" A single school building or combination of buildings which the school board designates as a school.

(59) "School Administrator:" The principal, vice principals and assistant principals at each school.

(60) "School Board:" The board of directors of a local school district or an education service district, the governing board of a public charter school, a registered private school, or the directors of a state, federal, or special state-supported school.

(61) "School Counselor:" A licensed employee of the district assigned to assist students to: develop decision-making skills, obtain information about themselves, understand opportunities and alternatives available in educational programs, set tentative career and educational goals, accept increasing responsibilities for their own actions, develop skills in interpersonal relations, and utilize school and community resources.

(62) "School District:" Includes administrative school districts; common school districts; joint school districts; union high school districts; county units; education service districts; registered private schools; and state, federal, and special state-supported schools. May also include school districts from other states.

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(63) "School Nurse:" A registered nurse who is licensed by the Teacher Standards and Practices Commission as qualified to conduct and coordinate the health service programs of a school. [See OAR 584 Div 21.]

(64) "School Psychologist:" A licensed employee of the district assigned to: assessment of students' mental aptitude, emotional development, motor skills, or educational progress; designing educational programs for students and conferring with licensed personnel regarding such programs; and consulting with parents and students regarding interpretation of assessments and the design of educational programs. [See OAR 584 Div 44 and Div 70.]

(65) "School Supervisor:" Educators who assist, supervise, and evaluate students enrolled in the field-centered activities, including but not limited to, practica, internships and student teaching. [See OAR 584 Div 17.]

(66) "Self-Contained Classroom:" An assignment for teaching in grades preprimary through nine in which the teacher has primary responsibility for the curriculum.

(67) "Skills:" Ability to use knowledge effectively in the performance of specific tasks typical of those required in an educational position.

(68) "Small Schools:" An elementary, middle, junior high or high school with an average daily membership (ADM) in the lowest quartile of Oregon public schools ranked by size or school district in the lowest quartile of districts ranked by size.

(69) "State Board:" The Oregon State Board of Education.

(70) "Student Teacher:" A student of an approved teacher education institution who is assigned to a public or approved private school for professional practica under the supervision of qualified personnel. Student teachers may provide instruction or may serve as assistant coaches.

(71) "Successful Experience:" If the educator was permitted to fulfill the contract with the district, the experience is deemed successful.

(72) "Superintendent:" The district's chief administrator who reports directly to the school board.

(73) "Supervisor of Licensed Personnel:" A person assigned to a position which includes the on-the-job supervision or evaluation of licensed personnel. Should not be confused with "School Supervisor" at OAR 584-050-0005(64) above.

(74) "Teacher:" Includes all licensed employees in the public schools or employed by an education service district who have direct responsibility for instruction, coordination of educational programs or supervision or evaluation of teachers and who are compensated for their services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455.

(75) "Teacher Education Programs:" Programs preparing teachers, personnel service specialists, or administrators. Oregon Revised Statutes use the term "teacher education" to refer to all programs preparing educational personnel for public elementary and secondary schools, not exclusive to those for classroom teachers.

(76) "Transcripts:" An institution-sealed official record of academic preparation which bears the signature of the registrar and the seal of the institution. Photocopies are not acceptable.

(77) "TSPC:" Teacher Standards and Practices Commission.

(78) "Unit:" The institution, college, school, department, or other administrative body with the responsibility for managing or coordinating all programs offered for the initial and continuing preparation of teachers and other school personnel, regardless of where these programs are administratively housed.

(79) "Vice Principal:" A principal's immediate subordinate assigned to coordination of instruction, discipline, student activities, or supervision or evaluation of staff.

(80) "Violation of Licensure:" Employment by a public school of a teacher or school nurse without a valid license or Conditional Assignment Permit. See definition of Conditional Assignment at 584-005-0005(15).

(81) "Work Experience:" Structured work experience is employment that is planned and coordinated to increase specific occupational competence as prescribed by the district's Instructor Appraisal Committee. Non-structured work experience is documented employment as a qualified worker, completed within the five years prior to application that is related to the instructional area. One hour of structured work experience related to the program area equals three hours of non-structured work experience.

(82) "Work Samples:" A designed and implemented unit of study that demonstrates capacity to foster student learning.

(83) "Year of Experience:" A period of at least eight consecutive months of full-time work or two consecutive years of one-half time or more while holding a license valid for the assignment.

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

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-342.430 & ORS 342.455-342.495

Hist.: TSPC 2-1998, f. 2-4-98, cert. ef. 1-15-99; TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2000, f. & cert. ef. 9-20-00; TSPC 4-2001, f. & cert. ef. 9-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 2-2002, f. & cert. ef. 3-15-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 1-2005, f. & cert. ef. 1-21-05

584-017-0115

Knowledge, Skills and Abilities for Early Childhood Authorization

(1) In addition to passing the required Commission-approved multiple subjects examination required for this authorization, candidates must complete the required practicum experience with students in one or more age groups or grades between age three and grade four.

(2) Teachers who hold an Initial Teaching License with an elementary authorization may add the early childhood authorization level only upon enrollment in an early childhood authorization program approved by TSPC. [See, OAR 584-060-0051.]

(3) In order to promote child development and learning, the candidate must:

(a) Know and understand young children's characteristics and needs;
(b) Know and understand the multiple influences on development and learning; and

(c) Use developmental knowledge to create healthy, respectful, supportive and challenging learning environments.

(4) In order to build family and community relationships, the candidate must:

(a) Know about and understand family and community characteristics;

(b) Support and empower families and communities through respectful, reciprocal relationships; and

(c) Involve families and communities in their children's development and learning.

(5) In order to document and assess the learning of young children, the candidate will:

(a) Understand the goals, benefits and uses of assessment;

(b) Know about and use observation, documentation, and other appropriate assessment tools and approaches to inform instruction;

(c) Understand and practice appropriate assessment;

(d) Develop partnerships with families and other professionals to assess children's strengths and needs; and

(e) Understand and practice appropriate assessment for all children including culturally and linguistically diverse children as well as children with exceptionalities.

(6) In order to demonstrate teaching and learning, the candidate will:
(a) Connect with children and families to create positive learning environments; and

(b) Use developmentally effective approaches:

(A) Foster oral language and communication;

(B) Draw from continuum of teaching strategies;

(C) Make the most of the environment and routines;

(D) Capitalize on incidental teaching;

(E) Focus on children's characteristics, needs, and interests;

(F) Link children's language and culture to the early childhood program;

(G) Teach through social interactions;

(H) Create support for play;

(I) Address children's challenging behaviors;

(J) Use integrative approaches to curriculum; and

(c) Demonstrate an understanding of content knowledge in early education, the candidate will create a classroom environment that encompasses the following core content objectives:

(A) In language and literacy, candidates will develop curriculum so that students will:

(i) Explore their environments and develop the conceptual, experiential, and language foundations for learning to read and write;

(ii) Develop their ability to converse at length and in depth on a topic in various settings (one-on-one with adults and peers, in small groups, etc.);

(iii) Develop vocabulary that reflects their growing knowledge of the world around them;

(iv) Use language, reading and writing to strengthen their own cultural identity as well as to participate in the shared identity of the school environment;

(v) Associate reading and writing with pleasure and enjoyment as well as with skill development;

(vi) Use a range of strategies to derive meaning from stories and texts;

(vii) Use language, reading, and writing for various purposes;

(viii) Use a variety of print and non-print resources;

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(ix) Develop basic concepts of print and understanding of sounds, letters, and letter sound relationships; and

(B) In the Arts: music, creative movement, dance, drama, and art, candidates will develop curriculum so that students will:

- (i) Interact musically with others;
- (ii) Express and interpret understandings of their world through structured and informal musical play;
- (iii) Sing, play, and create music;
- (iv) Respond to expressive characteristics of music-rhythm, melody, form-through speaking, singing, moving, and playing simple instruments;
- (v) Use music to express emotions, conflicts, and needs;
- (vi) Move expressively to music of various tempos, meters, modes, genres, and cultures to express what they feel and hear;
- (vii) Understand and apply artistic media, techniques, and processes;
- (viii) Make connections between visual arts and other disciplines; and

(C) In Mathematics, candidates will develop curriculum in alignment with the National Council of Teachers of Mathematics (NCTM) curriculum student or K-12 grade, recognizing the quantitative dimensions of children's learning:

- (i) Mathematics as problem solving;
- (ii) Mathematics as communication;
- (iii) Mathematics as reasoning;
- (iv) Mathematical connections;
- (v) Estimation;
- (vi) Number sense and numeration;
- (vii) Concepts of whole number operations;
- (viii) Whole number computation;
- (ix) Geometry and spatial sense;
- (x) Measurement;
- (xi) Statistics and probability;
- (xii) Fractions and decimals;
- (xiii) Patterns and relationships; and

(D) In physical activity and Physical Education, candidates will develop curriculum so that students will:

- (i) Have varied, repeated experiences with functional movement and manipulation;
- (ii) Demonstrate progress toward mature forms of selected physical skills;
- (iii) Try new movement activities and skills;
- (iv) Use feedback to improve performance;
- (v) Experience and express pleasure from participation in physical activity;
- (vi) Apply rules, procedures, and safe practices;
- (vii) Gain competence to provide increased enjoyment in movement; and

(E) In Science, candidates will develop curriculum so that students will:

- (i) Explore materials, objects and events by acting upon them and noticing what happens;
- (ii) Make careful observations of objects, organisms, and events using all their senses;
- (iii) Describe, compare, sort, classify, and order in terms of observable characteristics;
- (iv) Use a variety of simple tools to extend their observations;
- (v) Engage in simple investigations including making predictions, gathering and interpreting data, recognizing simple patterns, and drawing conclusions;
- (vi) Record observations, explanations, and ideas through multiple forms of representation;
- (vii) Work collaboratively with others, share and discuss ideas, and listen to new perspectives; and

(F) In Social Studies, candidates will develop curriculum so that students will:

- (i) Geography:
 - (I) Make and use maps to locate themselves in space
 - (II) Observe the physical characteristics of the places in which they live and identify landforms, bodies of water, climate, soils, natural vegetation and animal life of that place; and
- (ii) History:
 - (I) Use the methods of the historian, identifying questions, locating and analyzing information, and reaching conclusions;
 - (II) Record and discuss the changes that occur in their lives, recalling their immediate past; and
- (iii) Economics:
 - (I) Develop awareness of the difference between wants and needs;

(II) Develop interest in the economic system, understanding the contributions of those who produce goods and services; and

(iii) Social relations/civics:

- (I) Become a participating member of the group, giving up some individuality for the greater good;
- (II) Recognizing similarities among people of many cultures;
- (III) Respecting others, including those who differ in gender, ethnicity, ability or ideas;
- (IV) Learn the principles of democracy, working cooperatively with others, sharing and voting as they solve problems; and

(d) In order to build meaningful curriculum, the candidate will:

- (A) Know, understand, and use positive relationships and supportive interactions;
- (B) Know, understand, and use effective approaches, strategies, and tools for early education;
- (C) Know and understand the importance, central concepts, inquiry tools, curriculum integration, and structures of content areas or academic disciplines; and
- (D) Know and use differentiated instructional strategies to promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability or other individual characteristics.

(7) In demonstrating professionalism, the candidate will:

- (a) Identify and involve oneself with the early childhood field;
- (b) Know about and uphold ethical standard and other professional guidelines (see National Association for the Education of Young Children (NAEYC) Code of Ethical Conduct);
- (c) Engage in continuous, collaborative learning to inform practice;
- (d) Integrate knowledgeable, reflective, and critical perspectives on early education; and
- (e) Engage in informed advocacy for children and the profession.

(8) Valid for any teaching assignment, except specialization requiring endorsement under OAR 584-060-0071, at or below grade four in a school designated as a pre-primary school, primary school, or an elementary school.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 – 342.165
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-017-0250

Objectives for Initial Administrator License

(1) The unit ensures that candidates for an Initial Administrative License possess the knowledge, skills and competencies required for administrators.

(2) Candidates demonstrate and promote ethical standards of democracy, equity, diversity, and excellence and promote communication among diverse groups;

(3) Candidates support the establishment and implementation of high skill and knowledge expectations designed to meet stated goals and objectives for students;

(4) Candidates develop and implement a plan with staff and other stakeholders for school improvement designed to increase student achievement using the best practices for curriculum design, instruction and assessment;

(5) Candidates engage staff in an ongoing study of current best practices and relevant research and demographic data, and analyze their implications for school improvement;

(6) Candidates demonstrate and promote values, ethics, beliefs, and attitudes that achieve the goals of the school and district;

(7) Candidates demonstrate knowledge of the organization of a school within the context of the district and community;

(8) Candidates establish positive school-community relations and encourage parent participation that assists staff in achieving district and/or building goals;

(9) Candidates collaborate in the design and implementation of professional staff development programs to increase the effectiveness of the school program;

(10) Candidates demonstrate knowledge of supervision, professional development, and evaluation of personnel to ensure effective instruction;

(11) Candidates facilitate alternative learning environments when student progress is less than desired;

(12) Candidates assist in the work of district decision making groups, including the school site council;

(13) Candidates develop collaboratively a learning organization that meets the needs of students within the constraints of school, district, and community resources and priorities;

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(14) Candidates manage school financial resources to meet established priorities;

(15) Candidates manage the school in accordance with statutes, administrative rules, school district policies, and collective bargaining agreements;

(16) Candidates demonstrate an understanding of Oregon school law and finance; and

(17) Candidates exhibit an understanding of human development, curriculum, and methods for early childhood, elementary, middle school, and high school students.

(18) These rules are repealed and superseded by OAR 584-017-0251 effective December 31, 2006. Additionally, these rules are only effective for programs approved by TSPC prior to January 1, 2005.

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 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05

584-017-0251

Knowledge, Skills and Abilities Required for Initial Administrator License

(1) Visionary Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by facilitating the development, articulation, implementation, and stewardship of a school or district vision of learning supported by the school community.

(a) Candidates develop a vision. Candidates:

(A) Develop a vision of learning for a school that promotes the success of all students; and

(B) Base this vision on culturally relevant knowledge and theories, including but not limited to an understanding of learning goals in a democratic and pluralistic society, the diversity of learners and learners' needs, schools as interactive social and cultural systems, and social and organizational change.

(b) Candidates articulate a vision. Candidates:

(A) Demonstrate the ability to articulate the components of this vision for a school and the leadership processes necessary to implement and support the vision;

(B) Demonstrate the ability to use data-based research strategies and strategic planning processes that focus on student learning to inform the development of a vision, drawing on relevant information sources such as student assessment results, student and family demographic data, and an analysis of community needs; and

(C) Demonstrate the ability to communicate the vision to staff, parents, students, and community members through the use of symbols, ceremonies, stories, and other activities.

(c) Candidates implement a vision. Candidates:

(A) Can formulate the initiatives necessary to motivate staff, students, and families to achieve the school's vision; and

(B) Develop plans and processes for implementing the vision (e.g., articulating the vision and related goals, encouraging challenging standards, facilitating collegiality and teamwork, structuring significant work, ensuring appropriate use of student assessments, providing autonomy, supporting innovation, delegating responsibility, developing leadership in others, and securing needed resources).

(d) Candidates steward a vision. Candidates:

(A) Demonstrate an understanding of the role effective communication skills play in building a shared commitment to the vision;

(B) Design or adopt a system for using data-based research strategies to regularly monitor, evaluate, and revise the vision; and

(C) Assume stewardship of the vision through various methods.

(e) Candidates promote community involvement in the vision. Candidates:

(A) Demonstrate the ability to involve community members in the realization of the vision and in related school improvement efforts; and

(B) Acquire and demonstrate the skills needed to communicate effectively with all stakeholders about implementation of the vision.

(2) Instructional Improvement: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by promoting a positive school culture, providing an effective instructional program, applying best practice to student learning, and designing comprehensive professional growth plans for staff.

(a) Candidates promote positive school culture. Candidates:

(A) Assess school culture using multiple methods and implement context-appropriate strategies that capitalize on the diversity (e.g., population, language, disability, gender, race, socio-economic) of the school community to improve school programs and culture.

(b) Candidates provide effective instructional program. Candidates:

(A) Demonstrate the ability to facilitate activities that apply principles of effective instruction to improve instructional practices and curricular materials;

(B) Demonstrate the ability to make recommendations regarding the design, implementation, and evaluation of a curriculum that fully accommodates learners' diverse needs;

(C) Demonstrate the ability to use and promote technology and information systems to enrich curriculum and instruction, to monitor instructional practices and provide staff the assistance needed for improvement;

(D) Demonstrate the ability to use aggregated and disaggregated student achievement data to develop effective instructional programs;

(E) Demonstrate the ability to use individual and group achievement data to develop school improvement plans; and

(F) Are able to use a variety of assessment tools and techniques to improve student achievement.

(c) Candidates apply best practice to student learning. Candidates:

(A) Demonstrate the ability to assist school personnel in understanding and applying best practices for student learning;

(B) Apply human development theory, proven learning and motivational theories, and concern for diversity to the learning process; and

(C) Demonstrate an understanding of how to use appropriate research strategies to promote an environment for improved student achievement.

(d) Candidates design comprehensive professional growth plans. Candidates:

(A) Apply human development theory, proven learning and motivational theories, and concern for diversity to the learning process; and

(B) Demonstrate an understanding of how to use appropriate research strategies to promote an environment for improved student achievement.

(3) Effective Management: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by managing the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment.

(a) Candidates manage the organization. Candidates:

(A) Demonstrate the ability to optimize the learning environment for all students by applying appropriate models and principles of organizational development and management, including research and data driven decision-making with attention to indicators of equity, effectiveness, and efficiency;

(B) Develop plans of action for focusing on effective organization and management of fiscal, human and material resources, giving priority to student learning, safety, curriculum, and instruction; and

(C) Have knowledge of licensure rules and apply them properly to assignment of personnel.

(b) Candidates manage operations. Candidates:

(A) Demonstrate the ability to involve staff in conducting operations and setting priorities using appropriate and effective needs assessment, research-based data, and group process skills to build consensus, communicate, and resolve conflicts in order to align resources with the organizational vision; and

(B) Develop communications plans for staff to develop their family and community collaboration skills.

(c) Candidates manage resources. Candidates:

(A) Use problem-solving skills and knowledge of strategic, long-range, and operational planning (including applications of technology) in the effective, legal, and equitable use of fiscal, human, and material resource allocation and alignment that focuses on teaching and learning; and

(B) Creatively seek new resources to facilitate learning.

(4) Inclusive Practice: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by collaborating with families and other community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups.

(a) Candidates collaborate with families and other community members. Candidates:

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(A) Demonstrate an ability to bring together, the resources of family members and the community to positively affect student learning;

(B) Demonstrate an ability to involve all families in the education of their children based on the belief that families have the best interests of their children in mind;

(C) Demonstrate the ability to use public information and research-based knowledge of issues and trends to collaborate with families and community members;

(D) Apply an understanding of community relations models, marketing strategies and processes, data-based decision-making, and communications theory to create frameworks for school, family, business, community, government, and higher education partnerships;

(E) Develop various methods of outreach aimed at business, religious, political, and service organizations;

(F) Demonstrate the ability to involve families and other stakeholders in school decision-making processes, reflecting an understanding that schools are an integral part of the larger community;

(G) Demonstrate the ability to collaborate with community agencies to integrate health, social, and other services; and

(H) Develop a comprehensive program of community relations and demonstrate the ability to work with the media.

(b) Candidates respond to community interests and needs. Candidates:

(A) Demonstrate active involvement within the community, including interactions with individuals and groups with conflicting perspectives;

(B) Demonstrate the ability to use appropriate assessment strategies and research methods to understand and accommodate diverse school and community conditions and dynamics;

(C) Provide leadership to programs serving students with special and exceptional needs; and

(D) Demonstrate the ability to capitalize on the diversity (cultural, ethnic, racial, economic, and special interest groups) of the school community to improve school programs and meet the diverse needs of all students.

(c) Candidates mobilize community resources. Candidates:

(A) Demonstrate an understanding of and ability to use community resources, including youth services, to support student achievement, solve school problems, and achieve school goals;

(B) Demonstrate how to use school resources and social service agencies to serve the community; and

(C) Demonstrate an understanding of ways to use public resources and funds appropriately and effectively to encourage communities to provide new resources to address emerging student problems.

(5) Ethical Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by acting with integrity, fairly, and in an ethical manner.

(a) Candidates act with integrity. Candidates:

(A) Demonstrate a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions promote such respect; and

(B) Demonstrate behaviors that are honest and consistent.

(b) Candidates act fairly. Candidates:

(A) Demonstrate the ability to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others;

(B) Make decisions using an inclusive process; and

(C) Understand and avoid any conflict of interest and avoid the appearance of impropriety.

(c) Candidates act ethically. Candidates:

(A) Make and explain decisions based upon ethical and legal principles; and

(B) Demonstrate respect and diligence regarding the law and compliance with its requirements.

(6) Socio-Political Context: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(a) Candidates understand the larger context. Candidates:

(A) Act as informed consumers of educational theory and concepts appropriate to school context and can demonstrate the ability to apply appropriate research methods to a school context;

(B) Demonstrate the ability to explain how the legal and political systems and institutional framework of schools have shaped a school and community, as well as the opportunities available to children and families in a particular school;

(C) Demonstrate the ability to analyze the complex causes of poverty and other disadvantages and their effects on families, communities, children, and learning;

(D) Demonstrate an understanding of the policies, laws, and regulations enacted by local, state, and federal authorities that affect schools, especially those that might improve educational and social opportunities;

(E) Demonstrate the ability to describe the economic factors shaping a local community and the effects economic factors have on local schools;

(F) Demonstrate the ability to analyze and describe the cultural diversity in a school community;

(G) Can describe community norms and values and how they relate to the role of the school in promoting social justice; and

(H) Demonstrate the ability to explain various theories of change and conflict resolution and the appropriate application of those models to specific communities.

(b) Candidates respond to the larger context. Candidates:

(A) Demonstrate the ability to communicate with members of a school community concerning trends, issues, and potential changes in the environment in which the school operates, including maintenance of an ongoing dialogue with representatives of diverse community groups.

(c) Candidates influence the larger context. Candidates:

(A) Demonstrate the ability to engage students, parents, and other members of the community in advocating for adoption of improved policies and laws;

(B) Apply their understanding of the larger political, social, economic, legal, and cultural context to develop activities and policies that benefit students and their families; and

(C) Advocate for policies, programs and instructional strategies that promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability, or other individual characteristics.

(7) Practicum Experience: The practicum provides significant opportunities for candidates to synthesize and apply the knowledge and practice and develop the skills identified in Standards 1-6 through substantial, sustained, standards-based work in real settings, planned and guided cooperatively by the institution and school district personnel for graduate credit.

(a) The practicum will be substantial. Candidates:

(A) Demonstrate the ability to accept genuine responsibility for leading, facilitating, and making decisions typical of those made by educational leaders. The experience(s) should provide candidates with substantial responsibilities that increase overtime in amount and complexity and involve direct interaction and involvement with staff, students, parents, and community leaders; and

(B) Each candidate should have a minimum of six months (or equivalent, see note below) of full-time practicum experience.

(b) The practicum will be sustained. Candidates:

(A) Participate in planned practicum activities during the entire course of the program, including an extended period of time near the conclusion of the program to allow for candidate application of knowledge and skills on a full-time basis.

(c) The practicum will be standards-based. Candidates:

(A) Apply skills and knowledge articulated in these standards as well as state and local standards for educational leaders; and

(B) Experiences are designed to accommodate candidates' individual needs.

(d) The practica will be in real settings. Candidates:

(A) Experiences occur in multiple that allow for the demonstration of a wide range of relevant knowledge and skills; and

(B) Experiences include work with appropriate community organizations such as service groups and local businesses.

(e) The practica will be planned and guided cooperatively. Candidates:

(A) Experiences are planned cooperatively by the individual, the site supervisor, and institution personnel to provide inclusion of appropriate opportunities to apply skills, knowledge, and research contained in the standards. These three individuals work together to meet candidate and program needs; and

(B) Mentors are provided training to guide the candidate during the practicum experience.

(f) The practicum will be for credit. Candidates:

(A) Earn graduate credit for their practicum experience.

(8) These rules are effective upon filing and shall apply to all new programs approved by the Commission after January 1, 2005. Existing approved administrator programs must implement these standards by no later than January 1, 2007.

Stat. Auth.: ORS 342

ADMINISTRATIVE RULES

Stats. Implemented: ORS 342.120, 342.147 & 342.165
Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-017-0260

Objectives for Continuing Administrator License

(1) The unit provides an approved program through which administrators document the advanced competencies required for Continuing Administrator/Initial Superintendent License.

(2) Candidates document an understanding of and ability to apply emerging research on teaching, learning, and school improvement to increase district effectiveness;

(3) Candidates implement research-based educational practices that ensure student achievement and are sensitive to individual differences, diverse cultures, and ethnic backgrounds;

(4) Candidates exhibit collaboration with colleagues, staff, parents, and the public to enhance the school's performance and its reputation as a high quality learning environment for all students;

(5) Candidates demonstrate effective leadership in communication with diverse and special interest organizations;

(6) Candidates collaborate with patrons, staff and interested organizations in the development, evaluation and improvement of policies and programs to meet school district needs;

(7) Candidates implement practices that ensure effective organizations and management of school district policies and procedures;

(8) Candidates develop productive school, board and community relations;

(9) Candidates demonstrate an advanced understanding of Oregon school law and school finance;

(10) Candidates demonstrate an understanding of planning, maintenance and management of facilities; and

(11) While holding a Continuing Administrator License, complete one year of experience at the district level while working with a mentor.

(12) These rules are repealed and superseded by OAR 584-017-0261 effective December 31, 2006. Additionally, these rules are only effective for programs approved by TSPC prior to January 1, 2005.

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 1-2005, f. & cert. ef. 1-21-05

584-017-0261

Knowledge, Skills and Abilities for Continuing Administrator License

(1) Visionary Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by facilitating the development, articulation, implementation, and stewardship of a school or district vision of learning supported by the school community.

(a) Candidates develop a vision. Candidates:

(A) Develop and demonstrate the skills needed to work with a board of education to facilitate the development of a vision of learning for a school district that promotes the success of all students;

(B) Base development of the vision on relevant knowledge and theories applicable to school-level leaders applied to a school district context;

(C) Use data-based research strategies to create a vision that takes into account the diversity of learners in a district; and

(D) Demonstrate knowledge of ways to use a district's vision to mobilize additional resources to support the vision.

(b) Candidates articulate a vision. Candidates:

(A) Demonstrate the ability to articulate the components of this vision for a district and the leadership processes necessary to implement and support the vision;

(B) Demonstrate the ability to use data-based research strategies and strategic planning processes that focus on student learning to develop a vision, drawing on relevant information sources such as student assessment results, student and family demographic data, and an analysis of community needs; and

(C) Demonstrate the ability to communicate the vision to school boards, staff, parents, students, and community members through the use of symbols, ceremonies, stories, and other activities

(c) Candidates implement a vision. Candidates:

(A) Demonstrate the ability to plan programs to motivate staff, students, and families to achieve a school district's vision; and

(B) Design research-based processes to effectively implement a district vision throughout an entire school district and community.

(d) Candidates steward a vision. Candidates:

(A) Demonstrate the ability to align and, as necessary, redesign administrative policies and practices required for full implementation of a district vision; and

(B) Understand the theory and research related to organizational and educational leadership and engage in the collection, organization, and analysis of a variety of information, including student performance data, required to assess progress toward a district's vision, mission, and goals.

(e) Candidates promote community involvement in the vision. Candidates:

(A) Demonstrate the ability to bring together and communicate effectively with stakeholders within the district and the larger community concerning implementation and realization of the vision.

(2) Instructional Improvement: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by promoting a positive school culture, providing an effective instructional program, applying best practice to student learning, and designing comprehensive professional growth plans for staff.

(a) Candidates promote positive school culture. Candidates:

(A) Develop a sustained approach to improve and maintain a positive district culture for learning that capitalizes on multiple aspects of diversity to meet the learning needs of all students.

(b) Candidates provide effective instructional program. Candidates:

(A) Demonstrate an understanding of a variety of instructional research methodologies and can analyze the comparable strengths and weaknesses of each method;

(B) Are able to use qualitative and quantitative data, appropriate research methods, technology, and information systems to develop a long-range plan for a district that assesses the district's improvement and accountability systems;

(C) Demonstrate the ability to use and promote technology and information systems to enrich district curriculum and instruction, monitor instructional practices, and provide assistance to administrators who have needs for improvement;

(D) Demonstrate the ability to allocate and justify resources to sustain the instructional program;

(E) Demonstrate the ability to use aggregated and disaggregated student achievement data to develop district instructional programs;

(F) Demonstrate the ability to use individual and group achievement data to develop district improvement plans; and

(G) Are able to use a variety of assessment tools and techniques to improve student achievement for all students.

(c) Candidates apply best practice to student learning. Candidates:

(A) Demonstrate the ability to facilitate and engage in activities that use best practices and sound educational research to improve instructional programs;

(B) Demonstrate an ability to assist school and district personnel in understanding and applying best practices for student learning;

(C) Understand and can apply human development theory, proven learning, and motivational theories, and concern for the diversity to the learning process; and

(D) Understand how to use appropriate research strategies to profile student performance in a district and analyze differences among subgroups.

(d) Candidates design comprehensive professional growth plans. Candidates:

(A) Demonstrate knowledge of adult learning strategies and the ability to apply technology and research to professional development design focusing on authentic problems and tasks, mentoring, coaching, conferencing, and other techniques that promote new knowledge and skills in the workplace;

(B) Demonstrate the ability to use strategies such as observations and collaborative reflection to help form comprehensive professional growth plans with district and school personnel; and

(C) Develop personal professional growth plans that reflect commitment to life-long learning and best practices.

(3) Effective Management: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by managing the organization, operations, and resources in a way that promotes a safe, efficient, and effective learning environment.

(a) Candidates manage the organization. Candidates:

(A) Demonstrate the ability to use research-based knowledge of learning, teaching, student-development, organizational development, and data management to optimize learning for all students;

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(B) Demonstrate an ability to manage time effectively and to deploy financial and human resources in a way that promotes student achievement;

(C) Demonstrate the ability to organize a district based on indicators of equity, effectiveness, and efficiency and can apply legal principles that promote educational equity; and

(D) Demonstrate an understanding of how to apply legal principles to promote educational equity and provide a safe, effective and efficient facility.

(b) Candidates manage operations. Candidates:

(A) Demonstrate the ability to involve stakeholders in aligning resources and priorities to maximize ownership and accountability;

(B) Can use appropriate and effective needs assessment, research-based data, and group process skills to build consensus, communicate, and resolve conflicts in order to align resources with the district vision;

(C) Develop staff communication plans for integrating district's schools and divisions; and

(D) Develop a plan to promote and support community collaboration among district personnel.

(c) Candidates manage resources. Candidates:

(A) Use problem-solving skills and knowledge of strategic, long-range, and operational planning (including applications of technology) in the effective, legal, and equitable use of fiscal, human, and material resource allocation that focuses on teaching and learning;

(B) Creatively seek new resources to facilitate learning;

(C) Apply an understanding of school district finance structures and models to ensure that adequate financial resources are allocated equitably for the district;

(D) Apply and assess current technologies for management, business procedures, and scheduling; and

(E) Apply licensure rules to ensure qualified staff are placed in all positions throughout the district.

(4) Inclusive Practice: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by collaborating with families and other community members, responding to diverse community interests and needs, and mobilizing community resources in order to demonstrate and promote ethical standards of democracy, equity, diversity, and excellence, and to promote communication among diverse groups.

(a) Candidates collaborate with families and other community members. Candidates:

(A) Demonstrate the ability to facilitate the planning and implementation of programs and services that bring together the resources of families and the community to positively affect student learning;

(B) Demonstrate an ability to use public information and research-based knowledge of issues and trends to collaborate with community members and community organizations to have a positive affect on student learning;

(C) Apply an understanding of community relations models, marketing strategies and processes, data driven decision-making, and communication theory to craft frameworks for school, business, community, government, and higher education partnerships;

(D) Demonstrate an ability to develop and implement a plan for nurturing relationships with community leaders and reaching out to different business, religious, political, and service organizations to strengthen programs and support district goals;

(E) Demonstrate an ability to involve community members, groups, and other stakeholders in district decision-making, reflecting an understanding of strategies to capitalize on the district's integral role in the larger community;

(F) Demonstrate the ability to collaborate with community agencies to integrate health, social, and other services in the schools to address student and family conditions that affect learning;

(G) Demonstrate the ability to conduct community relations that reflects knowledge of effective media relations and that models effective media relations practices; and

(H) Develop and implement strategies that support the involvement of families in the education of their children that reinforces for district staff a belief that families have the best interests of their children in mind.

(b) Candidates respond to community interests and needs. Candidates:

(A) Facilitate and engage in activities that reflect an ability to inform district decision-making by collecting and organizing formal and informal information from multiple stakeholders;

(B) Demonstrate the ability to promote maximum involvement with, and visibility within the community;

(C) Demonstrate the ability to interact effectively with individuals and groups that reflect conflicting perspectives;

(D) Demonstrate the ability to effectively and appropriately assess, research, and plan for diverse district and community conditions and dynamics and capitalize on the diversity of the community to improve district performance and student achievement; and

(E) Demonstrate the ability to advocate for students with special and exceptional needs.

(c) Candidates mobilize community resources. Candidates:

(A) Demonstrate an understanding of and ability to use community resources, including youth services that enhance student achievement, to solve district problems and accomplish district goals;

(B) Demonstrate how to use district resources to the community to solve issues of joint concern; and

(C) Demonstrate an understanding of ways to use public resources and funds appropriately and effectively to encourage communities to provide new resources to address emerging student problems.

(5) Ethical Leadership: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by acting with integrity, fairly, and in an ethical manner.

(a) Candidates act with integrity. Candidates:

(A) Demonstrate a respect for the rights of others with regard to confidentiality and dignity and engage in honest interactions promote such respect; and

(B) Demonstrate behaviors that are honest and consistent.

(b) Candidates act fairly. Candidates:

(A) Demonstrate the ability to combine impartiality, sensitivity to student diversity, and ethical considerations in their interactions with others;

(B) Make decisions using an inclusive process; and

(C) Understand and avoid any conflict of interest and avoid the appearance of impropriety.

(c) Candidates act ethically. Candidates:

(A) Make and explain decisions based upon ethical and legal principles; and

(B) Demonstrate respect and diligence regarding the law and compliance with its requirements.

(6) Socio-Political Context: Candidates who complete the program are educational leaders who have the knowledge, ability, and cultural competence to improve learning and achievement to ensure success of all students by understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

(a) Candidates understand the larger context. Candidates:

(A) Demonstrate the ability to use appropriate research methods, theories, and concepts to improve district operations;

(B) Demonstrate an understanding of the complex causes of poverty and other disadvantages and their effects on families, communities, children, and learning;

(C) Demonstrate an understanding of the policies, laws, and regulations enacted by local, state, and federal authorities affecting a specific district;

(D) Can explain the system for financing public schools and its effects on the equitable distribution of educational opportunities within a district;

(E) Demonstrate the ability to work with political leaders at the local, state, and national level;

(F) Can apply an understanding of how specific laws at the local, state, and federal level affect school districts and residents; and

(G) Espouse positions in response to proposed policy changes that would benefit or harm districts and explain how proposed policies and laws might improve educational and social opportunities for specific communities.

(b) Candidates respond to the larger context. Candidates:

(A) Demonstrate the ability to engage students, parents, members of the school board, and other community members in advocating for adoption of improved policies and laws;

(B) Apply their understanding of the larger political, social, economic, legal, and cultural context to develop activities and policies that benefit their district and its students; and

(C) Demonstrate the ability to communicate regularly with all segments of the district community concerning trends, issues, and policies affecting the district.

(c) Candidates influence the larger context. Candidates:

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(A) Demonstrate an understanding of how to develop lines of communication with local, state, and federal authorities and actively advocate for improved policies, laws, and regulations, affecting a specific district, both directly and through organizations representing schools, educators, or others with similar interests; and

(B) Demonstrate the ability to advocate for policies, programs and instructional strategies that promote equitable learning opportunities and success for all students, regardless of native language, socioeconomic background, ethnicity, gender, disability, or other individual characteristics.

(7) Practicum Experience: The practicum provides significant opportunities for candidates to synthesize and apply the knowledge and practice and develop the skills identified in Standards 1-6 through substantial, sustained, standards-based work in real settings, planned and guided cooperatively by the institution and school district personnel for graduate credit.

(a) The practicum will be substantial. Candidates:

(A) Demonstrate the ability to accept genuine responsibility for leading, facilitating, and making decisions typical of those made by educational leaders. The experience(s) should provide practicum students with substantial responsibilities that increase overtime in amount and complexity and involve direct interaction and involvement with staff, students, parents, and community leaders; and

(B) Each candidate should have a minimum of six months (or equivalent, see note below) of full-time practicum experience.

(b) The practicum will be sustained. Candidates:

(A) Participate in planned practicum activities during the entire course of the program, including an extended period of time near the conclusion of the program to allow for candidate application of knowledge and skills on a full-time basis.

(c) The practicum will be standards-based. Candidates:

(A) Apply skills and knowledge articulated in these standards as well as state and local standards for educational leaders; and

(B) Experiences are designed to accommodate candidates' individual needs.

(d) The practica will be in real settings. Candidates:

(A) Experiences occur in multiple district settings that allow for the demonstration of a wide range of relevant knowledge and skills; and

(B) Experiences include work with appropriate community organizations, parent groups and school boards.

(e) The practica will be planned and guided cooperatively. Candidates:

(A) Experiences are planned cooperatively by the individual, the site supervisor, and institution personnel to provide inclusion of appropriate opportunities to apply skills, knowledge, and research contained in the standards. These three individuals work together to meet candidate and program needs; and

(B) Mentors are provided training to guide the candidate during the practicum experience.

(f) The practicum will be for credit. Candidates:

(A) Earn graduate credit for their practicum experience.

(8) These rules are effective upon filing and shall apply to all new programs approved by the Commission after January 1, 2005. Existing approved administrator programs must implement these standards by no later than January 1, 2007.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0011

Initial Teaching License

Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Teaching License. This license is issued for three years plus time to the applicant's next birth date and is renewable once under conditions specified below. It is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(1) To be eligible for an Initial Teaching License, an applicant must satisfy all of the following general preparation requirements:

(a) A bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission.

NOTE: Awarding of a higher degree in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure.

(b) Completion in Oregon or another U.S. jurisdiction of an initial teacher education program approved by the commission, or completion of

a U.S. or foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program.

(c) A passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement, except for tests waived due to special academic preparation satisfactory to the commission together with five years of experience teaching the specialty on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license.

(d) A passing score as currently specified by the commission on a test of basic verbal and computational skills, unless the applicant held an Oregon educator license before 1985 or has a regionally accredited doctor's degree.

(e) A passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission.

(2) To be eligible for an Initial Teaching License, an applicant must satisfy a recent experience requirement in one of the following ways during the three-year period immediately preceding application:

(a) Completion of an approved teacher education program; or

(b) Beginning and completion in a public school or regionally accredited private school in a U.S. jurisdiction of at least one academic year as a full-time licensed educator or two consecutive years as a half-time licensed educator on any license appropriate for the assignment, or equivalent experience as in a state or federal school; or

(c) Receipt of 6 semester hours or 9 quarter hours of academic credit, germane to teaching licensure, from a regionally accredited college or university; or

(d) Completion of one hundred eighty days of teaching in Oregon schools on a teaching license valid for the assignment; or

(e) Compliance with provisions of OAR 584-048-0020, Renewal of Teaching Licenses — Special Provisions; or

(f) A combination of such experience and credit may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience.

(3) To be eligible for an Initial Teaching License, an applicant must furnish fingerprints in the manner prescribed by the commission.

(4) The Initial Teaching License can be renewed for three years upon completion of recent educational experience verified by either:

(a) Completion of one academic year of educational work in any capacity at full time or two consecutive years at half-time, or 180 days of substitute teaching, in one or more of the following organizations: a public school or a regionally accredited private school in any U.S. governmental jurisdiction, a state or federal school in Oregon, an Oregon private elementary or secondary school registered by the state Department of Education, an Oregon private proprietary career school licensed by the superintendent of public instruction, a degree-granting college or university in Oregon, a special state-supported school in Oregon, the state Department of Education itself, the Teacher Standards and Practices Commission, the Department of Human Resources, a juvenile court school in Oregon, an Oregon education service district, or a school operated by the U.S. Department of Defense; or

(b) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license.

NOTE: See OAR 584-048-0020 for Special Provisions for renewal of an Initial Teaching License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 2-2000, f. & cert. ef. 5-15-00; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0012

Initial Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted an Initial Teaching License for five years.

(2) The Initial Teaching License is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty. [See 584-060-0011 for Authorization Levels.]

(3) To be eligible for an Initial Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

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(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program approved by the commission in Oregon, or complete a state-approved teacher preparation program in any U.S. jurisdiction, or complete a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program; and

(d) Receive a passing score as currently specified by the commission on each of one or more tests of subject mastery for license endorsement or authorization; and

(A) Any subject-matter test, except the basic skills tests, may be waived if the applicant demonstrates special academic preparation satisfactory to the commission together with five years of experience teaching the specific subject matter on a license valid for the assignment in a public school or regionally accredited private school in a U.S. jurisdiction before holding any Oregon license. The five years of experience must be acquired entirely outside of the state of Oregon and must be obtained while holding an out-of-state license valid for the assignment.

(B) Some applicants may be eligible for alternative assessment for waiver of the subject-matter tests only. [See OAR 584-052-0030 to 0033 regarding Alternative Assessment guidelines and regulations.]

(e) Receive a passing score as currently specified by the commission on a test of basic verbal and computational skills; [See 584-060-0002(7) for definition of Basic Skills Tests.]

(f) Receive a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission; and

(g) Furnish fingerprints in the manner prescribed by the commission. [See OAR 584-036-0062 for Criminal Records Check Requirement.]

(h) Obtain a first aid card pursuant to ORS 342.126.

(i) Complete a recent experience during the three-year period immediately preceding application. [See OAR 584-005-0005(54) for definition of Recent Experience.]

(4) Applicants who have completed programs from states other than Oregon will be required to submit a C-2 form from the institution granting program completion, in addition to transcripts, verifying completion of the teacher education program. A license from another state valid for unrestricted full time teaching may be accepted in lieu of a C-2. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(5) The Initial Teaching License may be renewed one time for five years upon showing progress toward completion of the renewal requirements as described in OAR 584-060-0013 during the life of the Initial Teaching License. The progress must meet or exceed the equivalent of 3 semester hours or 4.5 quarter hours of graduate coursework germane to the license or directly germane to public school employment. For subsequent renewals, see OAR 584-060-0013, Renewal of the Initial Teaching License.

(6) The Executive Director may grant an extension to the Initial Teaching License for a term determined by the director, if and only if extraordinary circumstances can be demonstrated that the teacher was unable to complete the requirements for Continuing Teaching License during the life of the Initial Teaching License.

(7) This rule becomes effective on July 1, 2005.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0013

Renewal of the Initial Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a renewal of the Initial Teaching License for five years.

(2) To be eligible for renewal under these provisions, the applicant must satisfy all the requirements in OAR 584-060-0012, including achieving the first successful renewal of the Initial Teaching License in accordance with OAR 584-060-0012(5).

(3) To be eligible for a second renewal of the Initial Teaching License granted on the basis of a completed teacher preparation program culminating in a bachelor's degree, the applicant must:

(a) Complete a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institu-

tion in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; or

(b) In lieu of a master's degree, a candidate must complete graduate level coursework germane to the license or directly germane to public school employment as follows:

(A) At least ten semester hours or fifteen quarter hours in subject-matter coursework; and

(B) At least ten semester hours or fifteen quarter hours in graduate-level education-related coursework; and

(C) At least ten semester hours or fifteen quarter hours in graduate-level electives.

(4) To be eligible for a second renewal of the Initial Teaching License granted on the basis of a post-baccalaureate completed teacher preparation program, whether the program culminates in a master's degree, the applicant must complete one of the following (a-c):

(a) Six semester hours or nine quarter hours of graduate level academic credit from a regionally accredited college or university; or

(A) The graduate level credit must:

(i) Be completed after the Initial Teaching License has first been issued; and

(ii) Be germane to the teaching license or directly germane to public school employment; and

(iii) May include pedagogy, or content related to an existing endorsement or authorization, or content related to a new endorsement or authorization. (Completion of this required coursework does not guarantee completion of commission approved endorsement requirements offered by any Oregon college or university).

(b) A commission-approved school district program determined to be equivalent to (a) above; or

(c) Any commission-approved professional assessment.

(5) The Initial Teaching License may be renewed repeatedly for five years upon completion of:

(a) All the requirements in either (3) or (4) above; and

(b) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience.

(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(c) A professional development plan in accordance with OAR 584-090.

(6) A teacher may choose to become eligible for the Continuing Teaching License in lieu of continuous renewal of the Initial Teaching License [See OAR 584-060-0022.]

(7) Teachers issued Initial Teaching Licenses prior to July 1, 2005 are not subject to the renewal timeline requirements in this rule. However teachers must meet the requirements of either subsection (3) or subsection (4) above, prior to the expiration of ten (10) years from the date of the first Initial License was issued. The additional year granted to licensees holding Initial Teaching License prior to October 13, 2003, will be included in the ten year calculation for meeting the requirements of this rule.

(8) This rule becomes effective July 1, 2005, and applies to all Initial Teaching Licenses issued after December 1998.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.136

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0022

Continuing Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Continuing Teaching License.

(2) This license is issued for five years and is renewable repeatedly under conditions specified below.

(3) This license is valid for regular teaching at one or more designated authorization levels in one or more designated specialties and for substitute teaching at any level in any specialty.

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(4) To be eligible for a Continuing Teaching License an applicant must:

(a) Meet or complete all requirements of the Initial Teaching License; and

(b) Hold a master's degree or higher in the arts and sciences or an advanced degree in the professions from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission, together with an equally accredited bachelor's degree; and

(c) Have taught five years of at least half-time or more on any non-provisional license appropriate for the assignment; and

(d) Demonstrate minimum competencies, knowledge and skills in accordance with OAR 584-017-0160 by completing one of the following:

(A) A TSPC approved Continuing Teaching License program offered by a college or university; or

(B) A doctorate degree in education from a regionally accredited institution; or

(C) Certification by the National Boards of Professional Teaching Standards; or

(D) Certificate of Clinical Competence awarded by the American Speech and Hearing Association for those holding a communication disorders endorsement; or

(E) A commission-approved school district program; or

(F) Any commission-approved professional assessment.

(5) The Continuing Teaching License may be renewed for five years upon completion of:

(a) Any one of the following educational experiences as a licensed educator on a license appropriate for the assignment:

(A) One academic year full-time; or

(B) Two academic years half-time or more; or

(C) One hundred and eighty (180) days as a substitute; or

(D) Completion of 6 semester hours or 9 quarter hours of preparation completed in an approved institution during the life of the current teaching license; or

(E) A combination of (A)-(D) above may be submitted in satisfaction of this requirement in which one quarter hour of preparation equals 20 days of successful experience; or

(F) Meeting any of the special provisions for renewal contained in OAR 584-048-0015 or 584-048-0020; and

(b) A professional development plan in accordance with OAR 584-090.

(6) This rule becomes effective July 1, 2005.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.165, 342.125, 342.138

Hist.: TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0171

Limited Teaching License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Limited Teaching License.

(2) This license, issued for three years and renewable, is valid at any level and designated for one or more highly specialized subjects of instruction for which the commission does not issue a specific endorsement.

(a) The Executive Director has the authority to grant a Limited Teaching License for an exception to some discreet subjects within an established endorsement upon a showing of district needed. Requests for exceptions to established endorsements may be submitted to the commission for approval at the Executive Director's discretion.

(3) This license is valid for substitute teaching at any level but only in subjects listed on the license.

(4) To be eligible for a Limited Teaching License the applicant must have:

(a) An accredited associate's degree or its approved equivalent in objectively evaluated post-secondary education related to the intended subject of instruction,

(b) Demonstrate knowledge of applicable civil rights laws,

(c) Furnish fingerprints in the manner prescribed by the commission; and

(d) Obtain an approved first aid card within 90 days of receiving the license.

(5) The Limited Teaching License is restricted to use within a district that has applied for it jointly with the teacher, whose qualifications and job description are subject to commission approval.

(6) Upon application, the co-applicant district must describe its particular need in relation to the co-applicant teacher's documented qualifications, agree to provide a mentor up to the first renewal of the license, and

attest that circumstances prevent hiring a suitable teacher holding any other full-time license appropriate for the role to be filled.

(7) To be eligible for renewal of the Limited Teaching License, an applicant must:

(a) Obtain a passing score on a test of knowledge of U.S. and Oregon civil rights laws at the conclusion of a course or workshop approved by the commission, for the first renewal only; and

(b) Submit a letter from the district that includes the following:

(i) A statement from the principal verifying that the students taught by the teacher continue to make satisfactory academic progress; and

(ii) A statement attesting that the teacher's assignment is exactly the same as originally requested; and

(c) Additionally, for the first renewal only, the district must identify the mentor assigned to the teacher including a statement from the mentor attesting to the teacher's progress during the first three years of the license; and

(d) Establish, maintain and report a professional development plan in accordance with OAR 584-090-0020. Exceptionally, a teacher with a Limited Teaching License who works less than .5 FTE during the school year, averaged out over the entire year, need not report continuing professional development.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 6-2003(Temp), f. & cert. ef. 11-13-03 thru 4-9-04; TSPC 3-2004, f. & cert. ef. 5-14-04; TSPC 1-2005, f. & cert. ef. 1-21-05

584-060-0210

Emergency Teaching License

(1) An Emergency Teaching License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Teaching License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(3) An Emergency Teaching License will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(4) The Emergency Teaching License is not subject to the 120 day grace period allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-342

Hist.: TSPC 3-2003, f. & cert. ef. 5-15-03; TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05 (Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05); TSPC 1-2005, f. & cert. ef. 1-21-05

584-070-0111

Transitional School Counselor License

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Transitional School Counselor License. This license is issued for three years and is non-renewable. It is valid for regular or substitute school counseling at all age or grade levels. Recipients whose first license is transitional and who wish to counsel more than three years will be advised on how they can qualify for the Initial School Counselor License, for which they may apply at any time.

(2) To be eligible for a Transitional School Counselor License, the applicant must have:

(a) A master's or higher degree in counseling, education, or related behavioral sciences, including but not limited to social work or psychology, from a regionally accredited institution or approved foreign equivalent; or at some time have been licensed to practice school counseling in any state; and

(b) Demonstrate knowledge of applicable civil rights laws; and

(c) Furnish fingerprints in the manner prescribed by the commission; and

(d) An applicant without an approved first aid card must obtain one within 90 days of receiving the license.

(3) The Transitional School Counselor License will not be restricted as to employer if the applicant has held an unrestricted license for school counseling in any state or completed an approved graduate program in school counseling in any state.

(4) A restricted Transitional School Counselor License will be issued if:

(a) The applicant is enrolled in an Oregon-approved school counselor program, has a bachelor's or higher degree, and has completed approximately one-half of the program; or

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(b) The applicant has been a certified Child Development Specialist for at least three academic years full time.

(c) The application:

(A) Must be made jointly with an employing district; and

(B) The co-applicant district must describe its particular need in relation to the co-applicant counselor's qualifications summarized on a submitted resume; and

(C) The district must attest that circumstances prevent hiring for the role to be filled a suitable counselor with any unrestricted license.

(5) A restricted Transitional School Counselor License will be restricted to use within a district that has applied for it jointly with the counselor and may not be used for substitute teaching.

(6) A restricted extension for up to one year of the Transitional School Counselor License may be issued upon joint application from an educator and the employing district when the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for a regular license. If the extenuating circumstances are due to the lack of due diligence by the applicant, only enough time to prevent the district from experiencing a true hardship may be granted at the Executive Director's discretion. The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the regular license upon expiration of the restricted Transitional School Counselor License.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.123, 342.125, 342.126, 342.127 & 342.165

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 3-2001, f. & cert. ef. 6-21-01; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 1-2005, f. & cert. ef. 1-21-05; TSPC 1-2005, f. & cert. ef. 1-21-05

584-080-0171

Emergency Administrator License

(1) An Emergency Administrator License may be issued when a school district demonstrates extenuating circumstances that merit the issuance of the license in order to protect the district's programs or students.

(2) The Emergency Administrator License shall be issued solely at the discretion of the Executive Director for any length of time deemed necessary to protect the district's programs or students. The Executive Director may consider efforts the educator has made in meeting licensure requirements.

(3) An Emergency Administrator License generally will not exceed one year unless the educator or the district has presented unusual extenuating circumstances.

(4) The Emergency Administrator License is not subject to the 120 days allowed for licensure renewal purposes under ORS 342.127(4).

Stat. Auth.: ORS 342.125

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-342

Hist.: TSPC 8-2004(Temp), f. & cert. ef. 9-10-04 thru 3-9-05; Suspended by TSPC 9-2004(Temp), f. & cert. ef. 9-5-04 thru 3-9-05; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05

584-100-0071

Highly Qualified Middle-Level or Secondary Special Education Teacher

To be considered highly qualified a middle-level or secondary special education teacher must:

(1) Meet the requirements for the "Highly Qualified Middle-Level or Secondary Teacher" new or not new to the profession; and

(2) Hold the appropriate Oregon special education endorsement.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.125

Hist.: TSPC 2-2004, f. & cert. ef. 3-17-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; TSPC 1-2005, f. & cert. ef. 1-21-05

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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
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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
125-249-0610	3-1-05	Adopt	1-1-05	125-360-0030	3-1-05	Repeal	3-1-05
125-249-0620	3-1-05	Adopt	1-1-05	137-008-0010	1-13-05	Amend	2-1-05
125-249-0630	3-1-05	Adopt	1-1-05	137-008-0010	2-1-05	Amend	3-1-05
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125-249-0680	3-1-05	Adopt	1-1-05	137-055-4130	1-3-05	Amend	2-1-05
125-249-0690	3-1-05	Adopt	1-1-05	137-055-5020	1-3-05	Amend	2-1-05
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125-249-0870	3-1-05	Adopt	1-1-05	137-076-0025	11-22-04	Amend	1-1-05
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137-086-0020	11-22-04	Adopt	1-1-05	150-308A.718	12-31-04	Amend	2-1-05
137-086-0030	11-22-04	Adopt	1-1-05	150-309.024	12-31-04	Amend	2-1-05
137-086-0040	11-22-04	Adopt	1-1-05	150-309.100(2)-(B)	12-31-04	Amend	2-1-05
137-086-0050	11-22-04	Adopt	1-1-05	150-309.100(3)-(B)	12-31-04	Amend	2-1-05
141-073-0100	2-28-05	Amend	3-1-05	150-309.100(5)	12-31-04	Adopt	2-1-05
141-073-0105	2-28-05	Amend	3-1-05	150-309.110(1)	12-31-04	Amend	2-1-05
141-073-0110	2-28-05	Amend	3-1-05	150-309.110(1)-(A)	12-31-04	Amend	2-1-05
141-073-0115	2-28-05	Amend	3-1-05	150-311.688	12-31-04	Adopt	2-1-05
141-073-0118	2-28-05	Adopt	3-1-05	150-311.690(4)	12-31-04	Amend	2-1-05
141-073-0119	2-28-05	Adopt	3-1-05	150-311.723	12-31-04	Repeal	2-1-05
141-073-0120	2-28-05	Repeal	3-1-05	150-311.806-(A)	12-31-04	Amend	2-1-05
141-073-0125	2-28-05	Amend	3-1-05	150-314.363-(A)	12-31-04	Repeal	2-1-05
141-073-0130	2-28-05	Repeal	3-1-05	150-314.363-(B)	12-31-04	Repeal	2-1-05
141-073-0150	2-28-05	Repeal	3-1-05	150-314.363-(C)	12-31-04	Repeal	2-1-05
141-073-0155	2-28-05	Repeal	3-1-05	150-314.415(6)	12-31-04	Amend	2-1-05
141-073-0160	2-28-05	Repeal	3-1-05	150-314.650	12-31-04	Amend	2-1-05
141-073-0165	2-28-05	Repeal	3-1-05	150-314.665(2)-(A)	12-31-04	Amend	2-1-05
141-073-0170	2-28-05	Repeal	3-1-05	150-314.670-(A)	12-31-04	Adopt	2-1-05
141-073-0175	2-28-05	Repeal	3-1-05	150-314.748(2)	12-31-04	Repeal	2-1-05
141-073-0180	2-28-05	Repeal	3-1-05	150-315.262	12-31-04	Amend	2-1-05
141-073-0185	2-28-05	Repeal	3-1-05	150-315.304(2)	12-31-04	Amend	2-1-05
141-073-0190	2-28-05	Repeal	3-1-05	150-316.014	12-31-04	Amend	2-1-05
141-073-0195	2-28-05	Repeal	3-1-05	150-316.587(1)	12-31-04	Amend	2-1-05
141-073-0205	2-28-05	Repeal	3-1-05	150-316.587(5)(b)	12-31-04	Amend	2-1-05
141-073-0210	2-28-05	Repeal	3-1-05	150-316.587(5)(c)	12-31-04	Amend	2-1-05
141-073-0215	2-28-05	Amend	3-1-05	150-317.715(3)(b)	12-31-04	Amend	2-1-05
141-073-0220	2-28-05	Repeal	3-1-05	150-321.207(1)	12-31-04	Amend	2-1-05
141-073-0225	2-28-05	Am. & Ren.	3-1-05	150-321.307(4)	12-31-04	Amend	2-1-05
141-073-0230	2-28-05	Am. & Ren.	3-1-05	150-321.348(2)	12-31-04	Adopt	2-1-05
141-073-0235	2-28-05	Repeal	3-1-05	150-321.358(2)	12-31-04	Am. & Ren.	2-1-05
141-073-0240	2-28-05	Am. & Ren.	3-1-05	150-321.485(3)	12-31-04	Am. & Ren.	2-1-05
141-073-0245	2-28-05	Repeal	3-1-05	150-321.741(2)	12-31-04	Adopt	2-1-05
141-073-0250	2-28-05	Am. & Ren.	3-1-05	150-321.751(3)	12-31-04	Adopt	2-1-05
141-073-0255	2-28-05	Repeal	3-1-05	150-321.754(3)	12-31-04	Adopt	2-1-05
141-073-0260	2-28-05	Repeal	3-1-05	150-321.805	12-31-04	Am. & Ren.	2-1-05
141-073-0265	2-28-05	Repeal	3-1-05	150-321.805(4)	12-31-04	Adopt	2-1-05
141-073-0270	2-28-05	Repeal	3-1-05	150-OL 1997, Ch. 835, Sec. 38	12-31-04	Am. & Ren.	2-1-05
141-073-0275	2-28-05	Repeal	3-1-05	150-OL 1997, Ch. 835, Sec. 39	12-31-04	Am. & Ren.	2-1-05
141-073-0280	2-28-05	Repeal	3-1-05	160-040-0103	2-1-05	Amend	3-1-05
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150-285B.728	12-31-04	Repeal	2-1-05	250-015-0010	1-24-05	Amend	3-1-05
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150-293.525(1)(b)	12-31-04	Adopt	2-1-05	250-015-0019	1-24-05	Amend	3-1-05
150-305.220(1)	12-31-04	Amend	2-1-05	250-015-0024	1-24-05	Amend	3-1-05
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250-015-0030	1-24-05	Repeal	3-1-05	330-110-0005	12-20-04	Amend	2-1-05
250-015-0031	1-24-05	Adopt	3-1-05	330-110-0010	12-20-04	Amend	2-1-05
250-015-0032	1-24-05	Adopt	3-1-05	330-110-0015	12-20-04	Amend	2-1-05
250-015-0033	1-24-05	Adopt	3-1-05	330-110-0016	12-20-04	Amend	2-1-05
250-020-0280	1-20-05	Amend	3-1-05	330-110-0020	12-20-04	Amend	2-1-05
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291-082-0020	1-7-05	Amend(T)	2-1-05	330-110-0040	12-20-04	Amend	2-1-05
291-082-0030	1-7-05	Amend(T)	2-1-05	330-110-0042	12-20-04	Amend	2-1-05
291-082-0031	1-7-05	Adopt(T)	2-1-05	330-110-0045	12-20-04	Amend	2-1-05
291-082-0032	1-7-05	Adopt(T)	2-1-05	330-110-0050	12-20-04	Amend	2-1-05
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309-032-1245	1-3-05	Adopt(T)	2-1-05	333-024-0210(T)	12-7-04	Repeal	1-1-05
309-032-1250	1-3-05	Adopt(T)	2-1-05	333-024-0215	12-7-04	Amend	1-1-05
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309-032-1260	1-3-05	Adopt(T)	2-1-05	333-024-0220	12-7-04	Amend	1-1-05
309-032-1265	1-3-05	Adopt(T)	2-1-05	333-024-0220(T)	12-7-04	Repeal	1-1-05
309-032-1270	1-3-05	Adopt(T)	2-1-05	333-024-0225	12-7-04	Amend	1-1-05
309-032-1275	1-3-05	Adopt(T)	2-1-05	333-024-0225(T)	12-7-04	Repeal	1-1-05
309-032-1280	1-3-05	Adopt(T)	2-1-05	333-024-0230	12-7-04	Amend	1-1-05
309-032-1285	1-3-05	Adopt(T)	2-1-05	333-024-0230(T)	12-7-04	Repeal	1-1-05
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309-032-1295	1-3-05	Adopt(T)	2-1-05	333-024-0231(T)	12-7-04	Repeal	1-1-05
309-032-1300	1-3-05	Adopt(T)	2-1-05	333-024-0232	12-7-04	Amend	1-1-05
309-032-1305	1-3-05	Adopt(T)	2-1-05	333-024-0232(T)	12-7-04	Repeal	1-1-05
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309-046-0120	1-1-05	Am. & Ren.	1-1-05	333-024-0240	12-7-04	Amend	1-1-05
309-046-0130	1-1-05	Am. & Ren.	1-1-05	333-024-0240(T)	12-7-04	Repeal	1-1-05
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309-046-0190	1-1-05	Am. & Ren.	1-1-05	333-030-0015	1-14-05	Amend	2-1-05
309-046-0200	1-1-05	Am. & Ren.	1-1-05	333-030-0040	1-14-05	Amend	2-1-05
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309-046-0220	1-1-05	Am. & Ren.	1-1-05	333-030-0050	1-14-05	Amend	2-1-05
309-046-0230	1-1-05	Repeal	1-1-05	333-030-0080	1-14-05	Amend	2-1-05
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333-050-0040(T)	2-3-05	Repeal	3-1-05	333-102-0101	12-1-04	Amend	1-1-05
333-050-0050	2-3-05	Amend	3-1-05	333-102-0101(T)	12-1-04	Repeal	1-1-05
333-050-0050(T)	2-3-05	Repeal	3-1-05	333-102-0103	12-1-04	Amend	1-1-05
333-050-0060	2-3-05	Amend	3-1-05	333-102-0103(T)	12-1-04	Repeal	1-1-05
333-050-0060(T)	2-3-05	Repeal	3-1-05	333-102-0105	12-1-04	Amend	1-1-05
333-050-0080	2-3-05	Amend	3-1-05	333-102-0105(T)	12-1-04	Repeal	1-1-05
333-050-0080(T)	2-3-05	Repeal	3-1-05	333-102-0110	12-1-04	Amend	1-1-05
333-050-0090	2-3-05	Amend	3-1-05	333-102-0110(T)	12-1-04	Repeal	1-1-05
333-050-0090(T)	2-3-05	Repeal	3-1-05	333-102-0120	12-1-04	Amend	1-1-05
333-050-0100	2-3-05	Amend	3-1-05	333-102-0120(T)	12-1-04	Repeal	1-1-05
333-050-0100(T)	2-3-05	Repeal	3-1-05	333-102-0125	12-1-04	Amend	1-1-05
333-050-0130	2-3-05	Amend	3-1-05	333-102-0125(T)	12-1-04	Repeal	1-1-05
333-050-0130(T)	2-3-05	Repeal	3-1-05	333-102-0130	12-1-04	Amend	1-1-05
333-050-0140	2-3-05	Amend	3-1-05	333-102-0130(T)	12-1-04	Repeal	1-1-05
333-050-0140(T)	2-3-05	Repeal	3-1-05	333-102-0135	12-1-04	Amend	1-1-05
333-050-0141(T)	2-3-05	Repeal	3-1-05	333-102-0135(T)	12-1-04	Repeal	1-1-05
333-100-0001	12-1-04	Amend	1-1-05	333-102-0190	12-1-04	Adopt	1-1-05
333-100-0001(T)	12-1-04	Repeal	1-1-05	333-102-0190(T)	12-1-04	Repeal	1-1-05
333-100-0005	12-1-04	Amend	1-1-05	333-102-0200	12-1-04	Amend	1-1-05
333-100-0005(T)	12-1-04	Repeal	1-1-05	333-102-0200(T)	12-1-04	Repeal	1-1-05
333-100-0057	12-1-04	Adopt	1-1-05	333-102-0203	12-1-04	Amend	1-1-05
333-100-0057(T)	12-1-04	Repeal	1-1-05	333-102-0203(T)	12-1-04	Repeal	1-1-05
333-100-0060	12-1-04	Amend	1-1-05	333-102-0225	12-1-04	Repeal	1-1-05
333-100-0060(T)	12-1-04	Repeal	1-1-05	333-102-0235	12-1-04	Amend	1-1-05
333-100-0065	12-1-04	Amend	1-1-05	333-102-0235(T)	12-1-04	Repeal	1-1-05
333-100-0065(T)	12-1-04	Repeal	1-1-05	333-102-0240	12-1-04	Repeal	1-1-05
333-100-0070	12-1-04	Amend	1-1-05	333-102-0245	12-1-04	Amend	1-1-05
333-100-0070(T)	12-1-04	Repeal	1-1-05	333-102-0245(T)	12-1-04	Repeal	1-1-05
333-100-0080	12-1-04	Adopt	1-1-05	333-102-0247	12-1-04	Adopt	1-1-05
333-100-0080(T)	12-1-04	Repeal	1-1-05	333-102-0247(T)	12-1-04	Repeal	1-1-05
333-101-0001	12-1-04	Amend	1-1-05	333-102-0250	12-1-04	Amend	1-1-05
333-101-0001(T)	12-1-04	Repeal	1-1-05	333-102-0250(T)	12-1-04	Repeal	1-1-05
333-101-0003	12-1-04	Adopt	1-1-05	333-102-0255	12-1-04	Amend	1-1-05
333-101-0003(T)	12-1-04	Repeal	1-1-05	333-102-0255(T)	12-1-04	Repeal	1-1-05
333-101-0010	12-1-04	Amend	1-1-05	333-102-0260	12-1-04	Amend	1-1-05
333-101-0010(T)	12-1-04	Repeal	1-1-05	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
333-102-0030(T)	12-1-04	Repeal	1-1-05	333-102-0295	12-1-04	Repeal	1-1-05
333-102-0035	12-1-04	Amend	1-1-05	333-102-0300	12-1-04	Amend	1-1-05

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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
333-105-0330	12-1-04	Repeal	1-1-05	333-105-0690	12-1-04	Adopt	1-1-05
333-105-0335	12-1-04	Repeal	1-1-05	333-105-0690(T)	12-1-04	Repeal	1-1-05

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333-105-0700(T)	12-1-04	Repeal	1-1-05	333-116-0050(T)	12-1-04	Repeal	1-1-05
333-105-0710	12-1-04	Adopt	1-1-05	333-116-0055	12-1-04	Adopt	1-1-05
333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0055(T)	12-1-04	Repeal	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0057	12-1-04	Adopt	1-1-05
333-105-0720(T)	12-1-04	Repeal	1-1-05	333-116-0057(T)	12-1-04	Repeal	1-1-05
333-105-0730	12-1-04	Adopt	1-1-05	333-116-0059	12-1-04	Adopt	1-1-05
333-105-0730(T)	12-1-04	Repeal	1-1-05	333-116-0059(T)	12-1-04	Repeal	1-1-05
333-105-0740	12-1-04	Adopt	1-1-05	333-116-0070	12-1-04	Amend	1-1-05
333-105-0740(T)	12-1-04	Repeal	1-1-05	333-116-0070(T)	12-1-04	Repeal	1-1-05
333-105-0750	12-1-04	Adopt	1-1-05	333-116-0080	12-1-04	Amend	1-1-05
333-105-0750(T)	12-1-04	Repeal	1-1-05	333-116-0080(T)	12-1-04	Repeal	1-1-05
333-105-0760	12-1-04	Adopt	1-1-05	333-116-0090	12-1-04	Amend	1-1-05
333-105-0760(T)	12-1-04	Repeal	1-1-05	333-116-0090(T)	12-1-04	Repeal	1-1-05
333-106-0005	12-1-04	Amend	1-1-05	333-116-0100	12-1-04	Amend	1-1-05
333-106-0005(T)	12-1-04	Repeal	1-1-05	333-116-0100(T)	12-1-04	Repeal	1-1-05
333-106-0035	12-1-04	Amend	1-1-05	333-116-0105	12-1-04	Adopt	1-1-05
333-106-0035(T)	12-1-04	Repeal	1-1-05	333-116-0105(T)	12-1-04	Repeal	1-1-05
333-106-0045	12-1-04	Amend	1-1-05	333-116-0107	12-1-04	Adopt	1-1-05
333-106-0045(T)	12-1-04	Repeal	1-1-05	333-116-0107(T)	12-1-04	Repeal	1-1-05
333-106-0055	12-1-04	Amend	1-1-05	333-116-0120	12-1-04	Amend	1-1-05
333-106-0055(T)	12-1-04	Repeal	1-1-05	333-116-0120(T)	12-1-04	Repeal	1-1-05
333-106-0101	12-1-04	Amend	1-1-05	333-116-0125	12-1-04	Amend	1-1-05
333-106-0101(T)	12-1-04	Repeal	1-1-05	333-116-0125(T)	12-1-04	Repeal	1-1-05
333-106-0105	12-1-04	Amend	1-1-05	333-116-0140	12-1-04	Amend	1-1-05
333-106-0105(T)	12-1-04	Repeal	1-1-05	333-116-0140(T)	12-1-04	Repeal	1-1-05
333-106-0210	12-1-04	Amend	1-1-05	333-116-0150	12-1-04	Amend	1-1-05
333-106-0210(T)	12-1-04	Repeal	1-1-05	333-116-0150(T)	12-1-04	Repeal	1-1-05
333-106-0220	12-1-04	Amend	1-1-05	333-116-0160	12-1-04	Amend	1-1-05
333-106-0220(T)	12-1-04	Repeal	1-1-05	333-116-0160(T)	12-1-04	Repeal	1-1-05
333-106-0325	12-1-04	Amend	1-1-05	333-116-0165	12-1-04	Adopt	1-1-05
333-106-0325(T)	12-1-04	Repeal	1-1-05	333-116-0165(T)	12-1-04	Repeal	1-1-05
333-106-0575	12-1-04	Amend	1-1-05	333-116-0170	12-1-04	Amend	1-1-05
333-106-0575(T)	12-1-04	Repeal	1-1-05	333-116-0170(T)	12-1-04	Repeal	1-1-05
333-106-0700	12-1-04	Amend	1-1-05	333-116-0180	12-1-04	Amend	1-1-05
333-106-0700(T)	12-1-04	Repeal	1-1-05	333-116-0180(T)	12-1-04	Repeal	1-1-05
333-106-0710	12-1-04	Amend	1-1-05	333-116-0190	12-1-04	Amend	1-1-05
333-106-0710(T)	12-1-04	Repeal	1-1-05	333-116-0190(T)	12-1-04	Repeal	1-1-05
333-106-0720	12-1-04	Amend	1-1-05	333-116-0200	12-1-04	Amend	1-1-05
333-106-0720(T)	12-1-04	Repeal	1-1-05	333-116-0200(T)	12-1-04	Repeal	1-1-05
333-106-0730	12-1-04	Amend	1-1-05	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
333-111-0010(T)	12-1-04	Repeal	1-1-05	333-116-0265(T)	12-1-04	Repeal	1-1-05
333-116-0010	12-1-04	Amend	1-1-05	333-116-0290	12-1-04	Amend	1-1-05
333-116-0010(T)	12-1-04	Repeal	1-1-05	333-116-0290(T)	12-1-04	Repeal	1-1-05
333-116-0020	12-1-04	Amend	1-1-05	333-116-0300	12-1-04	Amend	1-1-05
333-116-0020(T)	12-1-04	Repeal	1-1-05	333-116-0300(T)	12-1-04	Repeal	1-1-05
333-116-0025	12-1-04	Adopt	1-1-05	333-116-0310	12-1-04	Amend	1-1-05
333-116-0025(T)	12-1-04	Repeal	1-1-05	333-116-0310(T)	12-1-04	Repeal	1-1-05
333-116-0035	12-1-04	Adopt	1-1-05	333-116-0320	12-1-04	Amend	1-1-05
333-116-0035(T)	12-1-04	Repeal	1-1-05	333-116-0320(T)	12-1-04	Repeal	1-1-05
333-116-0040	12-1-04	Amend	1-1-05	333-116-0330	12-1-04	Amend	1-1-05
333-116-0040(T)	12-1-04	Repeal	1-1-05	333-116-0330(T)	12-1-04	Repeal	1-1-05

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333-116-0340(T)	12-1-04	Repeal	1-1-05	333-116-0590	12-1-04	Amend	1-1-05
333-116-0350	12-1-04	Amend	1-1-05	333-116-0590(T)	12-1-04	Repeal	1-1-05
333-116-0350(T)	12-1-04	Repeal	1-1-05	333-116-0600	12-1-04	Amend	1-1-05
333-116-0360	12-1-04	Amend	1-1-05	333-116-0600(T)	12-1-04	Repeal	1-1-05
333-116-0360(T)	12-1-04	Repeal	1-1-05	333-116-0605	12-1-04	Adopt	1-1-05
333-116-0370	12-1-04	Amend	1-1-05	333-116-0605(T)	12-1-04	Repeal	1-1-05
333-116-0370(T)	12-1-04	Repeal	1-1-05	333-116-0610	12-1-04	Amend	1-1-05
333-116-0380	12-1-04	Amend	1-1-05	333-116-0610(T)	12-1-04	Repeal	1-1-05
333-116-0380(T)	12-1-04	Repeal	1-1-05	333-116-0640	12-1-04	Amend	1-1-05
333-116-0390	12-1-04	Amend	1-1-05	333-116-0640(T)	12-1-04	Repeal	1-1-05
333-116-0390(T)	12-1-04	Repeal	1-1-05	333-116-0660	12-1-04	Amend	1-1-05
333-116-0410	12-1-04	Amend	1-1-05	333-116-0660(T)	12-1-04	Repeal	1-1-05
333-116-0410(T)	12-1-04	Repeal	1-1-05	333-116-0670	12-1-04	Amend	1-1-05
333-116-0420	12-1-04	Amend	1-1-05	333-116-0670(T)	12-1-04	Repeal	1-1-05
333-116-0420(T)	12-1-04	Repeal	1-1-05	333-116-0680	12-1-04	Amend	1-1-05
333-116-0430	12-1-04	Amend	1-1-05	333-116-0680(T)	12-1-04	Repeal	1-1-05
333-116-0430(T)	12-1-04	Repeal	1-1-05	333-116-0720	12-1-04	Amend	1-1-05
333-116-0440	12-1-04	Amend	1-1-05	333-116-0720(T)	12-1-04	Repeal	1-1-05
333-116-0440(T)	12-1-04	Repeal	1-1-05	333-116-0730	12-1-04	Amend	1-1-05
333-116-0450	12-1-04	Amend	1-1-05	333-116-0730(T)	12-1-04	Repeal	1-1-05
333-116-0450(T)	12-1-04	Repeal	1-1-05	333-116-0830	12-1-04	Amend	1-1-05
333-116-0460	12-1-04	Amend	1-1-05	333-116-0830(T)	12-1-04	Repeal	1-1-05
333-116-0460(T)	12-1-04	Repeal	1-1-05	333-116-0905	12-1-04	Adopt	1-1-05
333-116-0470	12-1-04	Amend	1-1-05	333-116-0905(T)	12-1-04	Repeal	1-1-05
333-116-0470(T)	12-1-04	Repeal	1-1-05	333-116-0910	12-1-04	Adopt	1-1-05
333-116-0480	12-1-04	Amend	1-1-05	333-116-0910(T)	12-1-04	Repeal	1-1-05
333-116-0480(T)	12-1-04	Repeal	1-1-05	333-116-0915	12-1-04	Adopt	1-1-05
333-116-0490	12-1-04	Amend	1-1-05	333-116-0915(T)	12-1-04	Repeal	1-1-05
333-116-0490(T)	12-1-04	Repeal	1-1-05	333-118-0020	12-1-04	Amend	1-1-05
333-116-0495	12-1-04	Adopt	1-1-05	333-118-0020(T)	12-1-04	Repeal	1-1-05
333-116-0495(T)	12-1-04	Repeal	1-1-05	333-118-0040	12-1-04	Amend	1-1-05
333-116-0510	12-1-04	Repeal	1-1-05	333-118-0040(T)	12-1-04	Repeal	1-1-05
333-116-0515	12-1-04	Adopt	1-1-05	333-118-0050	12-1-04	Amend	1-1-05
333-116-0515(T)	12-1-04	Repeal	1-1-05	333-118-0050(T)	12-1-04	Repeal	1-1-05
333-116-0525	12-1-04	Adopt	1-1-05	333-118-0060	12-1-04	Amend	1-1-05
333-116-0525(T)	12-1-04	Repeal	1-1-05	333-118-0060(T)	12-1-04	Repeal	1-1-05
333-116-0530	12-1-04	Amend	1-1-05	333-118-0070	12-1-04	Amend	1-1-05
333-116-0530(T)	12-1-04	Repeal	1-1-05	333-118-0070(T)	12-1-04	Repeal	1-1-05
333-116-0540	12-1-04	Amend	1-1-05	333-118-0080	12-1-04	Amend	1-1-05
333-116-0540(T)	12-1-04	Repeal	1-1-05	333-118-0080(T)	12-1-04	Repeal	1-1-05
333-116-0560	12-1-04	Amend	1-1-05	333-118-0090	12-1-04	Amend	1-1-05
333-116-0560(T)	12-1-04	Repeal	1-1-05	333-118-0090(T)	12-1-04	Repeal	1-1-05
333-116-0570	12-1-04	Amend	1-1-05	333-118-0100	12-1-04	Amend	1-1-05
333-116-0570(T)	12-1-04	Repeal	1-1-05	333-118-0100(T)	12-1-04	Repeal	1-1-05
333-116-0573	12-1-04	Adopt	1-1-05	333-118-0110	12-1-04	Amend	1-1-05
333-116-0573(T)	12-1-04	Repeal	1-1-05	333-118-0110(T)	12-1-04	Repeal	1-1-05
333-116-0577	12-1-04	Adopt	1-1-05	333-118-0120	12-1-04	Amend	1-1-05
333-116-0577(T)	12-1-04	Repeal	1-1-05	333-118-0120(T)	12-1-04	Repeal	1-1-05
333-116-0580	12-1-04	Amend	1-1-05	333-118-0130	12-1-04	Amend	1-1-05
333-116-0580(T)	12-1-04	Repeal	1-1-05	333-118-0130(T)	12-1-04	Repeal	1-1-05
333-116-0583	12-1-04	Adopt	1-1-05	333-118-0140	12-1-04	Amend	1-1-05
333-116-0583(T)	12-1-04	Repeal	1-1-05	333-118-0140(T)	12-1-04	Repeal	1-1-05
333-116-0585	12-1-04	Adopt	1-1-05	333-118-0150	12-1-04	Amend	1-1-05
333-116-0585(T)	12-1-04	Repeal	1-1-05	333-118-0150(T)	12-1-04	Repeal	1-1-05
333-116-0587	12-1-04	Adopt	1-1-05	333-118-0160	12-1-04	Amend	1-1-05

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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	333-150-0000	1-14-05	Amend	2-1-05
333-120-0190(T)	12-1-04	Repeal	1-1-05	333-505-0007	2-4-05	Amend	3-1-05
333-120-0200	12-1-04	Amend	1-1-05	340-012-0060	3-1-05	Amend	3-1-05
333-120-0200(T)	12-1-04	Repeal	1-1-05	340-016-0055	11-19-04	Amend	1-1-05
333-120-0210	12-1-04	Amend	1-1-05	340-071-0100	3-1-05	Amend	2-1-05
333-120-0210(T)	12-1-04	Repeal	1-1-05	340-071-0110	3-1-05	Amend	2-1-05
333-120-0215	12-1-04	Adopt	1-1-05	340-071-0115	3-1-05	Amend	2-1-05
333-120-0215(T)	12-1-04	Repeal	1-1-05	340-071-0116	3-1-05	Am. & Ren.	2-1-05
333-120-0220	12-1-04	Amend	1-1-05	340-071-0117	3-1-05	Am. & Ren.	2-1-05
333-120-0220(T)	12-1-04	Repeal	1-1-05	340-071-0120	3-1-05	Amend	2-1-05
333-120-0230	12-1-04	Amend	1-1-05	340-071-0130	3-1-05	Amend	2-1-05
333-120-0230(T)	12-1-04	Repeal	1-1-05	340-071-0131	3-1-05	Adopt	2-1-05
333-120-0240	12-1-04	Amend	1-1-05	340-071-0140	3-1-05	Amend	2-1-05
333-120-0240(T)	12-1-04	Repeal	1-1-05	340-071-0150	3-1-05	Amend	2-1-05
333-120-0250	12-1-04	Amend	1-1-05	340-071-0155	3-1-05	Amend	2-1-05
333-120-0250(T)	12-1-04	Repeal	1-1-05	340-071-0160	3-1-05	Amend	2-1-05
333-120-0320	12-1-04	Amend	1-1-05	340-071-0162	3-1-05	Amend	2-1-05
333-120-0320(T)	12-1-04	Repeal	1-1-05	340-071-0165	3-1-05	Amend	2-1-05
333-120-0400	12-1-04	Amend	1-1-05	340-071-0170	3-1-05	Amend	2-1-05

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340-071-0185	3-1-05	Amend	2-1-05	340-073-0080	3-1-05	Amend	2-1-05
340-071-0195	3-1-05	Repeal	2-1-05	340-073-0085	3-1-05	Amend	2-1-05
340-071-0200	3-1-05	Amend	2-1-05	340-150-0250	12-27-04	Amend	2-1-05
340-071-0205	3-1-05	Amend	2-1-05	340-200-0020	2-10-05	Amend	3-1-05
340-071-0210	3-1-05	Amend	2-1-05	340-200-0040	12-15-04	Amend	1-1-05
340-071-0215	3-1-05	Amend	2-1-05	340-200-0040	1-4-05	Amend	2-1-05
340-071-0220	3-1-05	Amend	2-1-05	340-200-0040	2-10-05	Amend	3-1-05
340-071-0260	3-1-05	Amend	2-1-05	340-204-0010	1-4-05	Amend	2-1-05
340-071-0265	3-1-05	Amend	2-1-05	340-204-0030	1-4-05	Amend	2-1-05
340-071-0270	3-1-05	Amend	2-1-05	340-204-0040	1-4-05	Amend	2-1-05
340-071-0275	3-1-05	Amend	2-1-05	340-204-0090	12-15-04	Amend	1-1-05
340-071-0280	3-1-05	Amend	2-1-05	340-218-0080	2-10-05	Amend	3-1-05
340-071-0285	3-1-05	Amend	2-1-05	340-224-0060	1-4-05	Amend	2-1-05
340-071-0295	3-1-05	Amend	2-1-05	340-224-0070	1-4-05	Amend	2-1-05
340-071-0300	3-1-05	Repeal	2-1-05	340-225-0020	1-4-05	Amend	2-1-05
340-071-0302	3-1-05	Amend	2-1-05	340-225-0045	1-4-05	Amend	2-1-05
340-071-0305	3-1-05	Am. & Ren.	2-1-05	340-225-0090	1-4-05	Amend	2-1-05
340-071-0310	3-1-05	Amend	2-1-05	340-230-0030	2-10-05	Amend	3-1-05
340-071-0315	3-1-05	Amend	2-1-05	340-230-0410	2-10-05	Amend	3-1-05
340-071-0320	3-1-05	Amend	2-1-05	340-238-0040	2-10-05	Amend	3-1-05
340-071-0325	3-1-05	Amend	2-1-05	340-238-0060	2-10-05	Amend	3-1-05
340-071-0330	3-1-05	Amend	2-1-05	340-240-0030	1-4-05	Amend	2-1-05
340-071-0335	3-1-05	Amend	2-1-05	340-240-0100	1-4-05	Amend	2-1-05
340-071-0340	3-1-05	Amend	2-1-05	340-240-0110	1-4-05	Amend	2-1-05
340-071-0345	3-1-05	Amend	2-1-05	340-240-0120	1-4-05	Amend	2-1-05
340-071-0360	3-1-05	Amend	2-1-05	340-240-0130	1-4-05	Amend	2-1-05
340-071-0400	3-1-05	Amend	2-1-05	340-240-0140	1-4-05	Amend	2-1-05
340-071-0401	3-1-05	Repeal	2-1-05	340-240-0150	1-4-05	Amend	2-1-05
340-071-0410	3-1-05	Amend	2-1-05	340-240-0180	1-4-05	Amend	2-1-05
340-071-0415	3-1-05	Amend	2-1-05	340-240-0190	1-4-05	Amend	2-1-05
340-071-0420	3-1-05	Amend	2-1-05	340-240-0200	1-4-05	Repeal	2-1-05
340-071-0425	3-1-05	Amend	2-1-05	340-240-0210	1-4-05	Amend	2-1-05
340-071-0430	3-1-05	Amend	2-1-05	340-240-0220	1-4-05	Amend	2-1-05
340-071-0435	3-1-05	Amend	2-1-05	340-240-0230	1-4-05	Amend	2-1-05
340-071-0440	3-1-05	Amend	2-1-05	340-240-0240	1-4-05	Repeal	2-1-05
340-071-0445	3-1-05	Amend	2-1-05	340-240-0270	1-4-05	Repeal	2-1-05
340-071-0450	3-1-05	Repeal	2-1-05	340-242-0440	12-15-04	Amend	1-1-05
340-071-0460	3-1-05	Amend	2-1-05	340-244-0030	2-10-05	Amend	3-1-05
340-071-0500	3-1-05	Amend	2-1-05	340-244-0040	2-10-05	Amend	3-1-05
340-071-0520	3-1-05	Amend	2-1-05	340-244-0120	2-10-05	Amend	3-1-05
340-071-0600	3-1-05	Amend	2-1-05	340-244-0210	2-10-05	Amend	3-1-05
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340-073-0025	3-1-05	Amend	2-1-05	340-244-0230	2-10-05	Amend	3-1-05
340-073-0026	3-1-05	Amend	2-1-05	410-050-0401	2-1-05	Adopt	3-1-05
340-073-0030	3-1-05	Amend	2-1-05	410-050-0411	2-1-05	Adopt	3-1-05
340-073-0035	3-1-05	Amend	2-1-05	410-050-0421	2-1-05	Adopt	3-1-05
340-073-0040	3-1-05	Amend	2-1-05	410-050-0431	2-1-05	Adopt	3-1-05
340-073-0041	3-1-05	Amend	2-1-05	410-050-0441	2-1-05	Adopt	3-1-05
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340-073-0056	3-1-05	Amend	2-1-05	410-050-0481	2-1-05	Adopt	3-1-05
340-073-0060	3-1-05	Amend	2-1-05	410-050-0491	2-1-05	Adopt	3-1-05
340-073-0065	3-1-05	Amend	2-1-05	410-050-0501	2-1-05	Adopt	3-1-05
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410-050-0531	2-1-05	Adopt	3-1-05	411-045-0030	1-4-05	Amend	2-1-05
410-050-0541	2-1-05	Adopt	3-1-05	411-045-0040	1-4-05	Amend	2-1-05
410-050-0551	2-1-05	Adopt	3-1-05	411-045-0050	1-4-05	Amend	2-1-05
410-050-0561	2-1-05	Adopt	3-1-05	411-045-0060	1-4-05	Amend	2-1-05
410-050-0571	2-1-05	Adopt	3-1-05	411-045-0070	1-4-05	Amend	2-1-05
410-050-0581	2-1-05	Adopt	3-1-05	411-045-0080	1-4-05	Amend	2-1-05
410-050-0591	2-1-05	Adopt	3-1-05	411-045-0090	1-4-05	Amend	2-1-05
410-050-0860	12-3-04	Amend(T)	1-1-05	411-045-0100	1-4-05	Amend	2-1-05
410-120-1295	2-9-05	Amend(T)	3-1-05	411-045-0110	1-4-05	Amend	2-1-05
410-120-1295(T)	2-9-05	Suspend	3-1-05	411-045-0120	1-4-05	Amend	2-1-05
410-121-0030	12-1-04	Amend	1-1-05	411-045-0130	1-4-05	Amend	2-1-05
410-121-0032	1-1-05	Adopt	2-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-121-0040	12-1-04	Amend	1-1-05	411-070-0359	12-28-04	Amend	2-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	411-070-0428	12-28-04	Amend	2-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	411-070-0440	12-28-04	Repeal	2-1-05
410-121-0300	2-1-05	Amend	3-1-05	411-070-0442	12-28-04	Adopt	2-1-05
410-121-0320	1-1-05	Amend	2-1-05	411-070-0446	12-28-04	Repeal	2-1-05
410-122-0190	1-1-05	Amend	2-1-05	411-070-0465	12-28-04	Amend	2-1-05
410-122-0202	1-1-05	Amend	2-1-05	411-335-0010	1-1-05	Adopt	1-1-05
410-122-0204	1-1-05	Amend	2-1-05	411-335-0020	1-1-05	Adopt	1-1-05
410-122-0207	1-1-05	Amend	2-1-05	411-335-0030	1-1-05	Adopt	1-1-05
410-122-0208	1-1-05	Amend	2-1-05	411-335-0040	1-1-05	Adopt	1-1-05
410-122-0340	1-1-05	Amend	2-1-05	411-335-0050	1-1-05	Adopt	1-1-05
410-122-0365	1-1-05	Amend	2-1-05	411-335-0060	1-1-05	Adopt	1-1-05
410-122-0400	1-1-05	Amend	2-1-05	411-335-0070	1-1-05	Adopt	1-1-05
410-122-0475	1-1-05	Amend	2-1-05	411-335-0080	1-1-05	Adopt	1-1-05
410-122-0560	1-1-05	Amend	2-1-05	411-335-0090	1-1-05	Adopt	1-1-05
410-122-0580	1-1-05	Amend	2-1-05	411-335-0100	1-1-05	Adopt	1-1-05
410-122-0630	1-1-05	Amend	2-1-05	411-335-0110	1-1-05	Adopt	1-1-05
410-122-0720	1-1-05	Amend	2-1-05	411-335-0120	1-1-05	Adopt	1-1-05
410-124-0000	12-10-04	Amend(T)	1-1-05	411-335-0130	1-1-05	Adopt	1-1-05
410-124-0000	12-30-04	Amend(T)	2-1-05	411-335-0140	1-1-05	Adopt	1-1-05
410-124-0000(T)	12-10-04	Suspend	1-1-05	411-335-0150	1-1-05	Adopt	1-1-05
410-124-0000(T)	12-30-04	Suspend	2-1-05	411-335-0160	1-1-05	Adopt	1-1-05
410-130-0240	12-1-04	Amend	1-1-05	411-335-0170	1-1-05	Adopt	1-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-335-0180	1-1-05	Adopt	1-1-05
411-002-0175	12-30-04	Adopt	2-1-05	411-335-0190	1-1-05	Adopt	1-1-05
411-015-0015	1-4-05	Amend	2-1-05	411-335-0200	1-1-05	Adopt	1-1-05
411-015-0100	1-4-05	Amend	2-1-05	411-335-0210	1-1-05	Adopt	1-1-05
411-027-0000	1-5-05	Amend	2-1-05	411-335-0220	1-1-05	Adopt	1-1-05
411-031-0020	1-1-05	Amend(T)	2-1-05	411-335-0230	1-1-05	Adopt	1-1-05
411-031-0040	1-1-05	Amend(T)	2-1-05	411-335-0240	1-1-05	Adopt	1-1-05
411-031-0050	1-1-05	Amend(T)	2-1-05	411-335-0250	1-1-05	Adopt	1-1-05
411-034-0000	12-1-04	Amend	1-1-05	411-335-0260	1-1-05	Adopt	1-1-05
411-034-0010	12-1-04	Amend	1-1-05	411-335-0270	1-1-05	Adopt	1-1-05
411-034-0020	12-1-04	Amend	1-1-05	411-335-0280	1-1-05	Adopt	1-1-05
411-034-0030	12-1-04	Amend	1-1-05	411-335-0290	1-1-05	Adopt	1-1-05
411-034-0035	12-1-04	Adopt	1-1-05	411-335-0300	1-1-05	Adopt	1-1-05
411-034-0040	12-1-04	Adopt	1-1-05	411-335-0310	1-1-05	Adopt	1-1-05
411-034-0050	12-1-04	Amend	1-1-05	411-335-0320	1-1-05	Adopt	1-1-05
411-034-0055	12-1-04	Adopt	1-1-05	411-335-0330	1-1-05	Adopt	1-1-05
411-034-0070	12-1-04	Amend	1-1-05	411-335-0340	1-1-05	Adopt	1-1-05
411-034-0090	12-1-04	Amend	1-1-05	411-335-0350	1-1-05	Adopt	1-1-05
411-045-0000	1-4-05	Amend	2-1-05	411-335-0360	1-1-05	Adopt	1-1-05
411-045-0010	1-4-05	Amend	2-1-05	411-335-0370	1-1-05	Adopt	1-1-05

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411-335-0390	1-1-05	Adopt	1-1-05	413-010-0750	2-1-05	Amend	3-1-05
411-340-0020	1-1-05	Amend(T)	2-1-05	413-015-0115	2-1-05	Amend	3-1-05
411-340-0130	1-1-05	Amend(T)	2-1-05	413-015-0205	2-1-05	Amend	3-1-05
411-346-0165	1-1-05	Adopt	1-1-05	413-015-0210	2-1-05	Amend	3-1-05
411-360-0010	2-1-05	Adopt	2-1-05	413-015-0215	2-1-05	Amend	3-1-05
411-360-0020	2-1-05	Adopt	2-1-05	413-015-0305	2-1-05	Amend	3-1-05
411-360-0030	2-1-05	Adopt	2-1-05	413-015-0505	2-1-05	Amend	3-1-05
411-360-0040	2-1-05	Adopt	2-1-05	413-015-0511	2-1-05	Amend	3-1-05
411-360-0050	2-1-05	Adopt	2-1-05	413-015-0725	2-1-05	Amend	3-1-05
411-360-0060	2-1-05	Adopt	2-1-05	413-015-1100	1-28-05	Adopt(T)	3-1-05
411-360-0070	2-1-05	Adopt	2-1-05	413-015-1105	1-28-05	Adopt(T)	3-1-05
411-360-0080	2-1-05	Adopt	2-1-05	413-015-1110	1-28-05	Adopt(T)	3-1-05
411-360-0090	2-1-05	Adopt	2-1-05	413-015-1115	1-28-05	Adopt(T)	3-1-05
411-360-0100	2-1-05	Adopt	2-1-05	413-015-1120	1-28-05	Adopt(T)	3-1-05
411-360-0110	2-1-05	Adopt	2-1-05	413-015-1125	1-28-05	Adopt(T)	3-1-05
411-360-0120	2-1-05	Adopt	2-1-05	413-050-0500	1-1-05	Amend	2-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-050-0510	1-1-05	Amend	2-1-05
411-360-0140	2-1-05	Adopt	2-1-05	413-050-0515	1-1-05	Amend	2-1-05
411-360-0150	2-1-05	Adopt	2-1-05	413-050-0525	1-1-05	Repeal	2-1-05
411-360-0160	2-1-05	Adopt	2-1-05	413-050-0530	1-1-05	Amend	2-1-05
411-360-0170	2-1-05	Adopt	2-1-05	413-050-0535	1-1-05	Amend	2-1-05
411-360-0180	2-1-05	Adopt	2-1-05	413-050-0540	1-1-05	Repeal	2-1-05
411-360-0190	2-1-05	Adopt	2-1-05	413-050-0545	1-1-05	Repeal	2-1-05
411-360-0200	2-1-05	Adopt	2-1-05	413-050-0550	1-1-05	Repeal	2-1-05
411-360-0210	2-1-05	Adopt	2-1-05	413-050-0555	1-1-05	Amend	2-1-05
411-360-0220	2-1-05	Adopt	2-1-05	413-050-0560	1-1-05	Amend	2-1-05
411-360-0230	2-1-05	Adopt	2-1-05	413-050-0565	1-1-05	Amend	2-1-05
411-360-0240	2-1-05	Adopt	2-1-05	413-050-0570	1-1-05	Amend	2-1-05
411-360-0250	2-1-05	Adopt	2-1-05	413-050-0575	1-1-05	Amend	2-1-05
411-360-0260	2-1-05	Adopt	2-1-05	413-050-0580	1-1-05	Repeal	2-1-05
411-360-0270	2-1-05	Adopt	2-1-05	413-050-0585	1-1-05	Amend	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	413-055-0100	1-1-05	Amend	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-055-0105	1-1-05	Amend	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	413-055-0110	1-1-05	Amend	2-1-05
411-360-0300	2-1-05	Adopt	2-1-05	413-055-0115	1-1-05	Repeal	2-1-05
411-360-0310	2-1-05	Adopt	2-1-05	413-055-0120	1-1-05	Amend	2-1-05
413-010-0705	2-1-05	Amend	3-1-05	413-055-0125	1-1-05	Repeal	2-1-05
413-010-0710	2-1-05	Adopt	3-1-05	413-055-0130	1-1-05	Repeal	2-1-05
413-010-0712	2-1-05	Amend	3-1-05	413-055-0135	1-1-05	Repeal	2-1-05
413-010-0714	2-1-05	Amend	3-1-05	413-055-0140	1-1-05	Amend	2-1-05
413-010-0715	2-1-05	Amend	3-1-05	413-055-0145	1-1-05	Amend	2-1-05
413-010-0716	2-1-05	Amend	3-1-05	413-055-0150	1-1-05	Amend	2-1-05
413-010-0717	2-1-05	Amend	3-1-05	413-055-0155	1-1-05	Repeal	2-1-05
413-010-0718	2-1-05	Amend	3-1-05	413-055-0160	1-1-05	Amend	2-1-05
413-010-0720	2-1-05	Amend	3-1-05	413-055-0165	1-1-05	Amend	2-1-05
413-010-0721	2-1-05	Amend	3-1-05	413-120-0440	1-28-05	Amend(T)	3-1-05
413-010-0722	2-1-05	Amend	3-1-05	414-061-0080	12-17-04	Amend	2-1-05
413-010-0723	2-1-05	Amend	3-1-05	414-061-0100	11-16-04	Amend	1-1-05
413-010-0732	2-1-05	Amend	3-1-05	414-061-0110	11-16-04	Amend	1-1-05
413-010-0735	2-1-05	Amend	3-1-05	414-205-0170	11-16-04	Amend	1-1-05
413-010-0738	2-1-05	Amend	3-1-05	416-170-0000	1-11-05	Amend	2-1-05
413-010-0740	2-1-05	Amend	3-1-05	416-170-0010	1-11-05	Amend	2-1-05
413-010-0743	2-1-05	Amend	3-1-05	416-170-0020	1-11-05	Amend	2-1-05
413-010-0745	2-1-05	Amend	3-1-05	416-170-0030	1-11-05	Amend	2-1-05
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416-250-0010	1-11-05	Amend	2-1-05	459-005-0525	12-15-04	Amend(T)	1-1-05
416-250-0020	1-11-05	Amend	2-1-05	459-005-0535	12-15-04	Amend(T)	1-1-05
416-250-0030	1-11-05	Amend	2-1-05	459-005-0545	12-15-04	Amend(T)	1-1-05
416-250-0040	1-11-05	Amend	2-1-05	459-005-0560	12-15-04	Amend(T)	1-1-05
416-250-0050	1-11-05	Amend	2-1-05	459-005-0590	12-15-04	Amend(T)	1-1-05
416-250-0060	1-11-05	Amend	2-1-05	459-005-0591	12-15-04	Amend(T)	1-1-05
416-250-0070	1-11-05	Amend	2-1-05	459-005-0591	1-31-05	Amend	3-1-05
416-250-0080	1-11-05	Amend	2-1-05	459-005-0595	12-15-04	Amend(T)	1-1-05
416-250-0090	1-11-05	Amend	2-1-05	459-007-0220	3-15-05	Amend	1-1-05
416-400-0000	1-11-05	Repeal	2-1-05	459-007-0230	3-15-05	Amend	1-1-05
436-001-0005	1-14-05	Amend	2-1-05	459-007-0240	3-15-05	Amend	1-1-05
437-001-0001	12-30-04	Amend	2-1-05	459-007-0250	3-15-05	Amend	1-1-05
437-002-0120	11-19-04	Amend	1-1-05	459-007-0260	3-15-05	Amend	1-1-05
437-004-6000	12-30-04	Amend	2-1-05	459-007-0270	3-15-05	Amend	1-1-05
437-005-0001	12-30-04	Amend	2-1-05	459-007-0280	3-15-05	Repeal	1-1-05
441-710-0045	11-30-04	Adopt	1-1-05	459-007-0290	3-15-05	Amend	1-1-05
441-860-0020	1-1-05	Amend	1-1-05	459-007-0530	11-23-04	Amend	1-1-05
441-860-0050	1-1-05	Amend	1-1-05	459-050-0040	11-23-04	Amend	1-1-05
441-930-0030	1-1-05	Amend	1-1-05	459-050-0070	11-23-04	Amend	1-1-05
441-930-0210	1-1-05	Amend	1-1-05	459-050-0072	11-23-04	Adopt	1-1-05
441-930-0270	1-1-05	Amend	1-1-05	459-050-0080	11-23-04	Amend	1-1-05
443-001-0000	1-1-05	Amend	2-1-05	459-050-0150	11-23-04	Amend	1-1-05
443-001-0005	1-1-05	Amend	2-1-05	459-070-0050	1-31-05	Adopt	3-1-05
443-002-0010	1-1-05	Adopt	2-1-05	459-070-0100	11-23-04	Amend	1-1-05
443-002-0020	1-1-05	Adopt	2-1-05	459-070-0110	11-23-04	Amend	1-1-05
443-002-0030	1-1-05	Adopt	2-1-05	459-080-0050	1-31-05	Adopt	3-1-05
443-002-0040	1-1-05	Adopt	2-1-05	459-080-0250	11-23-04	Adopt	1-1-05
443-002-0050	1-1-05	Adopt	2-1-05	459-080-0250(T)	11-23-04	Repeal	1-1-05
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443-002-0070	1-1-05	Adopt	2-1-05	461-110-0750	1-1-05	Amend	2-1-05
443-002-0080	1-1-05	Adopt	2-1-05	461-115-0140	1-1-05	Amend	2-1-05
443-002-0090	1-1-05	Adopt	2-1-05	461-115-0190	1-1-05	Amend	2-1-05
443-002-0100	1-1-05	Adopt	2-1-05	461-115-0530	1-1-05	Amend	2-1-05
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443-002-0120	1-1-05	Adopt	2-1-05	461-135-0400	1-1-05	Amend	2-1-05
443-002-0130	1-1-05	Adopt	2-1-05	461-135-0405	1-1-05	Amend	2-1-05
443-002-0140	1-1-05	Adopt	2-1-05	461-135-0510	1-1-05	Amend	2-1-05
443-002-0150	1-1-05	Adopt	2-1-05	461-135-0780	1-1-05	Amend	2-1-05
443-002-0160	1-1-05	Adopt	2-1-05	461-135-0832	1-1-05	Amend	2-1-05
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443-005-0000	1-1-05	Repeal	2-1-05	461-145-0130	1-1-05	Amend	2-1-05
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443-005-0020	1-1-05	Repeal	2-1-05	461-145-0320	1-1-05	Amend	2-1-05
443-005-0040	1-1-05	Repeal	2-1-05	461-145-0330	1-1-05	Amend	2-1-05
443-005-0050	1-1-05	Repeal	2-1-05	461-145-0910	2-1-05	Amend(T)	3-1-05
443-005-0060	1-1-05	Repeal	2-1-05	461-145-0920	2-1-05	Amend(T)	3-1-05
443-005-0070	1-1-05	Repeal	2-1-05	461-150-0050	1-1-05	Amend	2-1-05
443-010-0010	1-1-05	Repeal	2-1-05	461-155-0020	1-1-05	Amend	2-1-05
443-015-0010	1-1-05	Repeal	2-1-05	461-155-0250	1-1-05	Amend	2-1-05
459-001-0005	12-1-04	Amend	1-1-05	461-155-0270	1-1-05	Amend	2-1-05
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461-160-0620	1-1-05	Amend	2-1-05	585-010-0115	2-11-05	Amend	3-1-05
461-165-0082	1-1-05	Adopt	2-1-05	585-010-0120	2-11-05	Amend	3-1-05
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461-180-0125	1-1-05	Adopt	2-1-05	585-020-0060	2-11-05	Amend	3-1-05
461-195-0531	1-1-05	Amend	2-1-05	589-020-0225	11-30-04	Adopt	1-1-05
471-015-0020	1-20-05	Amend	3-1-05	603-040-0010	11-30-04	Repeal	1-1-05
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471-030-0036	12-19-04	Amend	2-1-05	603-040-0030	11-30-04	Repeal	1-1-05
471-030-0038	12-19-04	Amend	2-1-05	603-040-0040	11-30-04	Repeal	1-1-05
471-030-0078	12-19-04	Adopt	2-1-05	603-040-0050	11-30-04	Repeal	1-1-05
471-031-0070	12-19-04	Amend	2-1-05	603-040-0065	11-30-04	Repeal	1-1-05
576-020-0010	1-1-05	Amend	1-1-05	603-041-0015	11-30-04	Repeal	1-1-05
580-040-0035	2-15-05	Amend	3-1-05	603-041-0030	11-30-04	Repeal	1-1-05
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580-043-0105	12-15-04	Adopt(T)	1-1-05	603-041-0040	11-30-04	Repeal	1-1-05
580-043-0110	12-15-04	Adopt(T)	1-1-05	603-041-0050	11-30-04	Repeal	1-1-05
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580-050-0032	2-10-05	Amend(T)	3-1-05	603-041-0075	11-30-04	Repeal	1-1-05
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581-011-0118	2-14-05	Amend	3-1-05	603-052-0116	2-15-05	Amend	3-1-05
581-021-0041	2-14-05	Amend	3-1-05	603-052-0118	2-15-05	Amend	3-1-05
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584-017-0261	1-21-05	Adopt	3-1-05	603-054-0060	2-15-05	Amend	3-1-05
584-060-0011	1-21-05	Amend	3-1-05	603-054-0065	2-15-05	Amend	3-1-05
584-060-0012	1-21-05	Adopt	3-1-05	603-054-0070	2-15-05	Amend	3-1-05
584-060-0013	1-21-05	Adopt	3-1-05	603-054-0075	2-15-05	Amend	3-1-05
584-060-0022	1-21-05	Adopt	3-1-05	611-010-0020	1-13-05	Amend	2-1-05
584-060-0171	1-21-05	Amend	3-1-05	629-041-0200	1-7-05	Amend	2-1-05
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632-007-0030	12-10-04	Amend	1-1-05	635-023-0128	1-1-05	Adopt	1-1-05
635-003-0076	2-14-05	Repeal	3-1-05	635-023-0130	1-1-05	Amend	1-1-05
635-003-0077	2-14-05	Adopt	3-1-05	635-023-0134	1-1-05	Adopt	1-1-05
635-003-0078	2-14-05	Adopt	3-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-004-0005	1-1-05	Amend	1-1-05	635-039-0080	1-1-05	Amend	1-1-05
635-004-0018	1-1-05	Amend	1-1-05	635-039-0090	1-1-05	Amend	1-1-05
635-004-0020	1-1-05	Amend	1-1-05	635-039-0090	1-1-05	Amend	1-1-05
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635-004-0033	1-1-05	Amend	1-1-05	635-041-0030(T)	2-14-05	Repeal	3-1-05
635-004-0033	1-1-05	Amend	1-1-05	635-041-0061	1-1-05	Amend(T)	2-1-05
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635-005-0045	12-21-04	Amend(T)	2-1-05	635-041-0065	1-31-05	Amend(T)	3-1-05
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635-006-0850	12-15-04	Amend	1-1-05	635-042-0130	1-1-05	Amend(T)	2-1-05
635-006-0910	12-15-04	Amend	1-1-05	635-042-0135	1-1-05	Amend(T)	2-1-05
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635-011-0066	1-1-05	Amend	1-1-05	635-042-0180	2-14-05	Amend	3-1-05
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635-017-0080	1-1-05	Amend	1-1-05	635-065-0090	1-1-05	Amend	2-1-05
635-017-0090	1-1-05	Amend	1-1-05	635-065-0401	1-1-05	Amend	2-1-05
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635-069-0000	2-1-05	Amend	2-1-05	690-021-0200	11-16-04	Am. & Ren.	1-1-05
635-069-0030	2-1-05	Amend	2-1-05	690-021-0250	11-16-04	Am. & Ren.	1-1-05
635-070-0000	4-1-05	Amend	2-1-05	690-021-0300	11-16-04	Am. & Ren.	1-1-05
635-071-0000	4-1-05	Amend	2-1-05	690-021-0350	11-16-04	Am. & Ren.	1-1-05
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635-073-0000	2-1-05	Amend	2-1-05	690-021-0500	11-16-04	Repeal	1-1-05
635-073-0080	1-1-05	Amend	2-1-05	690-021-0600	11-16-04	Am. & Ren.	1-1-05
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635-075-0015	1-1-05	Amend	2-1-05	690-385-2200	11-16-04	Adopt	1-1-05
635-075-0026	11-23-04	Amend(T)	1-1-05	690-385-3110	11-16-04	Adopt	1-1-05
635-075-0029	1-1-05	Amend	2-1-05	690-385-3120	11-16-04	Adopt	1-1-05
635-078-0001	4-1-05	Amend	2-1-05	690-385-3130	11-16-04	Adopt	1-1-05
635-078-0005	4-1-05	Amend	2-1-05	690-385-3140	11-16-04	Adopt	1-1-05
635-078-0008	4-1-05	Amend	2-1-05	690-385-3150	11-16-04	Adopt	1-1-05
635-078-0011	4-1-05	Adopt	2-1-05	690-385-3500	11-16-04	Adopt	1-1-05
635-080-0065	1-1-05	Amend	2-1-05	690-385-3520	11-16-04	Adopt	1-1-05
635-412-0030	11-17-04	Amend	1-1-05	690-385-3600	11-16-04	Adopt	1-1-05
635-430-0000	11-26-04	Amend	1-1-05	690-385-4000	11-16-04	Adopt	1-1-05
635-430-0010	11-26-04	Amend	1-1-05	690-385-4100	11-16-04	Adopt	1-1-05
635-430-0020	11-26-04	Amend	1-1-05	690-385-4200	11-16-04	Adopt	1-1-05
635-430-0025	11-26-04	Adopt	1-1-05	690-385-4300	11-16-04	Adopt	1-1-05
635-430-0030	11-26-04	Amend	1-1-05	690-385-4400	11-16-04	Adopt	1-1-05
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635-430-0070	11-26-04	Amend	1-1-05	690-385-4700	11-16-04	Adopt	1-1-05
635-430-0080	11-26-04	Amend	1-1-05	690-385-5600	11-16-04	Adopt	1-1-05
635-430-0090	11-26-04	Amend	1-1-05	690-385-5680	11-16-04	Adopt	1-1-05
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731-030-0090	11-17-04	Amend	1-1-05	735-001-0020	11-17-04	Amend	1-1-05
731-030-0100	11-17-04	Amend	1-1-05	735-001-0050	11-17-04	Amend	1-1-05
731-030-0110	11-17-04	Amend	1-1-05	735-062-0000	1-31-05	Amend	3-1-05
731-030-0120	11-17-04	Amend	1-1-05	735-062-0085	1-31-05	Amend	3-1-05
731-030-0130	11-17-04	Amend	1-1-05	735-062-0090	1-31-05	Amend	3-1-05
731-030-0140	11-17-04	Repeal	1-1-05	735-062-0090(T)	1-31-05	Repeal	3-1-05
731-030-0150	11-17-04	Amend	1-1-05	735-062-0110	1-31-05	Amend	3-1-05
731-030-0160	11-17-04	Amend	1-1-05	735-062-0150	1-31-05	Amend	3-1-05
731-070-0055	1-20-05	Adopt	3-1-05	735-062-0160	1-31-05	Amend	3-1-05
731-070-0055(T)	1-20-05	Repeal	3-1-05	735-062-0190	1-31-05	Adopt	3-1-05
732-005-0000	1-1-05	Amend	2-1-05	735-062-0200	1-31-05	Amend	3-1-05
732-005-0005	1-1-05	Amend	2-1-05	735-070-0020	1-31-05	Amend	3-1-05
732-005-0005(T)	1-1-05	Repeal	2-1-05	735-070-0030	1-1-05	Amend	1-1-05
732-005-0010	1-1-05	Amend	2-1-05	735-070-0054	11-17-04	Amend	1-1-05
732-005-0010(T)	1-1-05	Repeal	2-1-05	735-070-0060	11-17-04	Amend	1-1-05
732-005-0016	1-1-05	Amend	2-1-05	735-070-0110	11-17-04	Amend	1-1-05
732-005-0021	1-1-05	Amend	2-1-05	735-070-0190	11-17-04	Amend	1-1-05
732-005-0027	1-1-05	Amend	2-1-05	735-074-0005	1-20-05	Repeal	3-1-05
732-005-0027(T)	1-1-05	Repeal	2-1-05	735-074-0045	1-20-05	Repeal	3-1-05
732-005-0031	1-1-05	Amend	2-1-05	735-074-0140	1-20-05	Amend	3-1-05
732-005-0031(T)	1-1-05	Repeal	2-1-05	735-074-0150	1-20-05	Amend	3-1-05
732-005-0036	1-1-05	Amend	2-1-05	735-074-0170	1-20-05	Amend	3-1-05
732-005-0041	1-1-05	Amend	2-1-05	735-074-0180	1-20-05	Amend	3-1-05
732-005-0046	1-1-05	Amend	2-1-05	735-074-0220	11-17-04	Amend	1-1-05
732-005-0051	1-1-05	Amend	2-1-05	735-074-0260	1-31-05	Amend	3-1-05
732-005-0051(T)	1-1-05	Repeal	2-1-05	735-090-0000	11-17-04	Amend	1-1-05
732-005-0056	1-1-05	Amend	2-1-05	735-090-0020	11-17-04	Amend	1-1-05
732-005-0061	1-1-05	Adopt	2-1-05	735-090-0040	11-17-04	Amend	1-1-05
732-005-0066	1-1-05	Adopt	2-1-05	735-090-0051	11-17-04	Adopt	1-1-05
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735-090-0130(T)	11-17-04	Repeal	1-1-05	808-004-0211	12-15-04	Adopt(T)	1-1-05
735-152-0020	11-17-04	Amend	1-1-05	808-004-0211	2-15-05	Adopt	3-1-05
735-152-0050	11-17-04	Amend	1-1-05	808-004-0211(T)	2-15-05	Repeal	3-1-05
736-018-0045	2-4-05	Amend	3-1-05	808-004-0250	2-15-05	Amend	3-1-05
740-200-0010	1-1-05	Amend	2-1-05	808-004-0300	2-15-05	Amend	3-1-05
740-200-0020	1-1-05	Amend	2-1-05	808-004-0440	2-15-05	Amend	3-1-05
740-200-0040	1-1-05	Amend	2-1-05	808-004-0510	2-15-05	Amend	3-1-05
800-020-0015	1-5-05	Amend	2-1-05	808-004-0520	2-15-05	Amend	3-1-05
801-001-0000	1-1-05	Amend	2-1-05	808-008-0020	12-15-04	Amend(T)	1-1-05
801-010-0010	1-1-05	Amend	2-1-05	808-008-0020	2-15-05	Amend	3-1-05
801-010-0050	1-1-05	Amend	2-1-05	808-008-0020(T)	2-15-05	Repeal	3-1-05
801-010-0060	1-1-05	Amend	2-1-05	808-008-0030	12-15-04	Amend(T)	1-1-05
801-010-0065	1-1-05	Amend	2-1-05	808-008-0030	2-15-05	Amend	3-1-05
801-010-0085	1-1-05	Amend	2-1-05	808-008-0030(T)	2-15-05	Repeal	3-1-05
801-020-0620	1-1-05	Amend	2-1-05	808-008-0050	1-1-04	Adopt(T)	3-1-05
801-020-0690	1-1-05	Amend	2-1-05	808-008-0051	12-15-04	Adopt(T)	1-1-05
801-020-0700	1-1-05	Amend	2-1-05	808-008-0051	2-15-05	Adopt	3-1-05
801-020-0710	1-1-05	Amend	2-1-05	808-008-0051(T)	2-15-05	Repeal	3-1-05
801-020-0720	1-1-05	Amend	2-1-05	808-008-0060	12-15-04	Amend(T)	1-1-05
801-030-0015	2-1-05	Amend	3-1-05	808-008-0060	2-15-05	Amend	3-1-05
801-040-0010	1-1-05	Amend	2-1-05	808-008-0060(T)	2-15-05	Repeal	3-1-05
801-040-0020	1-1-05	Amend	2-1-05	808-008-0085	12-15-04	Amend(T)	1-1-05
801-040-0030	1-1-05	Amend	2-1-05	808-008-0085	2-15-05	Amend	3-1-05
801-040-0040	1-1-05	Amend	2-1-05	808-008-0085(T)	2-15-05	Repeal	3-1-05
801-040-0050	1-1-05	Amend	2-1-05	808-008-0140	12-15-04	Amend(T)	1-1-05
801-040-0060	1-1-05	Repeal	2-1-05	808-008-0140	2-15-05	Amend	3-1-05
801-040-0070	1-1-05	Amend	2-1-05	808-008-0140(T)	2-15-05	Repeal	3-1-05
801-040-0090	1-1-05	Amend	2-1-05	808-008-0180	2-15-05	Amend	3-1-05
801-040-0100	1-1-05	Amend	2-1-05	808-008-0240	12-15-04	Suspend	1-1-05
801-040-0150	1-1-05	Amend	2-1-05	808-008-0240	2-15-05	Repeal	3-1-05
801-040-0160	1-1-05	Amend	2-1-05	808-008-0280	12-15-04	Amend(T)	1-1-05
804-001-0002	2-14-05	Amend	3-1-05	808-008-0280	2-15-05	Amend	3-1-05
804-001-0014	2-14-05	Amend	3-1-05	808-008-0280(T)	2-15-05	Repeal	3-1-05
804-001-0015	2-14-05	Amend	3-1-05	808-008-0291	12-15-04	Adopt(T)	1-1-05
804-003-0000	2-14-05	Amend	3-1-05	808-008-0291	2-15-05	Adopt	3-1-05
804-010-0000	2-14-05	Amend	3-1-05	808-008-0291(T)	2-15-05	Repeal	3-1-05
804-010-0010	2-14-05	Amend	3-1-05	808-008-0400	12-15-04	Amend(T)	1-1-05
804-020-0055	2-14-05	Amend	3-1-05	808-008-0400	2-15-05	Amend	3-1-05
804-025-0000	2-14-05	Adopt	3-1-05	808-008-0400(T)	2-15-05	Repeal	3-1-05
804-025-0010	2-14-05	Adopt	3-1-05	808-008-0420	12-15-04	Amend(T)	1-1-05
804-025-0020	2-14-05	Adopt	3-1-05	808-008-0420	2-15-05	Amend	3-1-05
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804-030-0015	2-14-05	Amend	3-1-05	808-008-0425	12-15-04	Amend(T)	1-1-05
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804-030-0060	2-14-05	Repeal	3-1-05	808-008-0425(T)	2-15-05	Repeal	3-1-05
804-040-0000	2-14-05	Amend	3-1-05	808-008-0430	12-15-04	Amend(T)	1-1-05
808-001-0005	2-15-05	Amend	3-1-05	808-008-0430	2-15-05	Amend	3-1-05
808-001-0030	2-15-05	Amend	3-1-05	808-008-0430(T)	2-15-05	Repeal	3-1-05
808-002-0260	2-15-05	Amend	3-1-05	808-008-0440	12-15-04	Amend(T)	1-1-05
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808-002-0540(T)	2-15-05	Repeal	3-1-05	808-008-0460	2-15-05	Amend	3-1-05
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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
812-003-0000	12-10-04	Repeal	1-1-05	812-009-0400	12-10-04	Amend	1-1-05
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812-003-0005	12-10-04	Am. & Ren.	1-1-05	812-010-0050	12-10-04	Amend	1-1-05
812-003-0012	12-10-04	Repeal	1-1-05	812-010-0200	12-10-04	Amend	1-1-05
812-003-0015	12-10-04	Repeal	1-1-05	812-010-0220	12-10-04	Amend	1-1-05
812-003-0020	12-10-04	Repeal	1-1-05	812-010-0260	12-10-04	Amend	1-1-05
812-003-0025	12-10-04	Repeal	1-1-05	812-010-0300	12-10-04	Amend	1-1-05
812-003-0030	12-10-04	Am. & Ren.	1-1-05	812-010-0320	12-10-04	Amend	1-1-05
812-003-0040	12-10-04	Am. & Ren.	1-1-05	812-010-0340	12-10-04	Amend	1-1-05
812-003-0050	12-10-04	Repeal	1-1-05	812-010-0360	12-10-04	Amend	1-1-05
812-003-0100	12-10-04	Adopt	1-1-05	812-010-0380	12-10-04	Amend	1-1-05
812-003-0110	12-10-04	Adopt	1-1-05	812-010-0420	12-10-04	Amend	1-1-05
812-003-0120	12-10-04	Adopt	1-1-05	812-010-0480	12-10-04	Amend	1-1-05
812-003-0130	12-10-04	Adopt	1-1-05	813-003-0001	11-23-04	Adopt	1-1-05
812-003-0140	12-10-04	Adopt	1-1-05	813-003-0006	11-23-04	Adopt	1-1-05
812-003-0150	12-10-04	Adopt	1-1-05	813-003-0011	11-23-04	Adopt	1-1-05
812-003-0160	12-10-04	Adopt	1-1-05	813-003-0015	11-23-04	Adopt	1-1-05
812-003-0170	12-10-04	Adopt	1-1-05	813-003-0021	11-23-04	Adopt	1-1-05
812-003-0180	12-10-04	Adopt	1-1-05	813-003-0025	11-23-04	Adopt	1-1-05
812-003-0190	12-10-04	Adopt	1-1-05	813-003-0031	11-23-04	Adopt	1-1-05
812-003-0200	12-10-04	Adopt	1-1-05	813-003-0035	11-23-04	Adopt	1-1-05
812-003-0210	12-10-04	Adopt	1-1-05	813-230-0000	12-17-04	Am. & Ren.(T)	2-1-05
812-003-0220	12-10-04	Adopt	1-1-05	813-230-0001	12-17-04	Adopt(T)	2-1-05
812-003-0230	12-10-04	Adopt	1-1-05	813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05
812-003-0240	12-10-04	Adopt	1-1-05	813-230-0010	12-17-04	Amend(T)	2-1-05
812-003-0260	12-10-04	Adopt	1-1-05	813-230-0015	12-17-04	Amend(T)	2-1-05
812-003-0270	12-10-04	Adopt	1-1-05	813-230-0020	12-17-04	Amend(T)	2-1-05
812-003-0280	12-10-04	Adopt	1-1-05	818-001-0002	2-1-05	Amend	3-1-05
812-003-0290	12-10-04	Adopt	1-1-05	818-001-0005	2-1-05	Amend	3-1-05
812-003-0300	12-10-04	Adopt	1-1-05	818-001-0087	2-1-05	Amend	3-1-05
812-003-0310	12-10-04	Adopt	1-1-05	818-021-0011	12-1-04	Amend	1-1-05
812-003-0330	12-10-04	Adopt	1-1-05	818-021-0025	12-1-04	Amend	1-1-05
812-003-0340	12-10-04	Adopt	1-1-05	818-021-0088	2-1-05	Adopt	3-1-05
812-003-0350	12-10-04	Adopt	1-1-05	818-026-0000	2-1-05	Amend	3-1-05
812-003-0360	12-10-04	Adopt	1-1-05	818-026-0010	2-1-05	Amend	3-1-05
812-003-0370	12-10-04	Adopt	1-1-05	818-026-0020	2-1-05	Amend	3-1-05
812-003-0380	12-10-04	Adopt	1-1-05	818-026-0030	2-1-05	Amend	3-1-05
812-003-0410	12-10-04	Adopt	1-1-05	818-026-0030	2-1-05	Amend	3-1-05
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818-026-0050	2-1-05	Amend	3-1-05	847-035-0030	1-27-05	Amend	3-1-05
818-026-0055	2-1-05	Adopt	3-1-05	847-050-0041	1-27-05	Amend	3-1-05
818-026-0060	2-1-05	Amend	3-1-05	848-001-0000	12-29-04	Amend	2-1-05
818-026-0060	2-1-05	Amend	3-1-05	848-001-0005	12-29-04	Amend	2-1-05
818-026-0070	2-1-05	Amend	3-1-05	848-005-0030	12-29-04	Adopt	2-1-05
818-026-0080	2-1-05	Amend	3-1-05	848-010-0010	12-29-04	Amend	2-1-05
818-026-0100	2-1-05	Amend	3-1-05	848-010-0015	12-29-04	Amend	2-1-05
818-026-0110	2-1-05	Amend	3-1-05	848-010-0020	12-29-04	Amend	2-1-05
818-026-0120	2-1-05	Amend	3-1-05	848-010-0026	12-29-04	Amend	2-1-05
818-026-0130	2-1-05	Amend	3-1-05	848-010-0033	12-29-04	Adopt	2-1-05
818-035-0025	2-1-05	Amend	3-1-05	848-010-0035	12-29-04	Amend	2-1-05
818-035-0030	2-1-05	Amend	3-1-05	848-010-0044	12-29-04	Adopt	2-1-05
818-042-0050	12-1-04	Amend	1-1-05	848-010-0045	12-29-04	Repeal	2-1-05
818-042-0060	12-1-04	Amend	1-1-05	848-010-0050	12-29-04	Repeal	2-1-05
818-042-0116	2-1-05	Amend	3-1-05	848-010-0060	12-29-04	Repeal	2-1-05
818-042-0120	12-1-04	Amend	1-1-05	848-010-0070	12-29-04	Repeal	2-1-05
818-042-0130	12-1-04	Amend	1-1-05	848-010-0080	12-29-04	Repeal	2-1-05
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837-012-0510	12-13-04	Amend(T)	1-1-05	848-010-0105	12-29-04	Repeal	2-1-05
837-012-0515	11-17-04	Amend(T)	1-1-05	848-010-0110	12-29-04	Repeal	2-1-05
837-012-0520	12-13-04	Amend(T)	1-1-05	848-010-0115	12-29-04	Repeal	2-1-05
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837-012-0530	11-17-04	Amend(T)	1-1-05	848-010-0125	12-29-04	Repeal	2-1-05
837-012-0540	12-13-04	Amend(T)	1-1-05	848-015-0010	12-29-04	Adopt	2-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	848-015-0020	12-29-04	Adopt	2-1-05
837-012-0555	1-13-05	Amend(T)	2-1-05	848-015-0030	12-29-04	Adopt	2-1-05
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837-012-0615	2-15-05	Amend	3-1-05	848-020-0010	12-29-04	Amend	2-1-05
837-012-0620	2-15-05	Amend	3-1-05	848-020-0020	12-29-04	Repeal	2-1-05
837-012-0625	2-15-05	Amend	3-1-05	848-020-0030	12-29-04	Amend	2-1-05
837-012-0645	2-15-05	Amend	3-1-05	848-020-0040	12-29-04	Amend	2-1-05
837-012-0650	2-15-05	Amend	3-1-05	848-020-0050	12-29-04	Amend	2-1-05
837-012-0670	2-15-05	Amend	3-1-05	848-020-0060	12-29-04	Amend	2-1-05
837-012-0750	2-15-05	Amend	3-1-05	848-030-0000	12-29-04	Amend	2-1-05
837-040-0010	1-3-05	Amend(T)	2-1-05	848-030-0010	12-29-04	Amend	2-1-05
839-003-0040	1-7-05	Amend	2-1-05	848-040-0000	12-29-04	Repeal	2-1-05
839-004-0021	1-19-05	Amend	2-1-05	848-040-0010	12-29-04	Repeal	2-1-05
839-009-0240	1-7-05	Amend	2-1-05	848-040-0020	12-29-04	Repeal	2-1-05
839-009-0260	1-7-05	Amend	2-1-05	848-040-0030	12-29-04	Repeal	2-1-05
839-010-0200	1-7-05	Adopt	2-1-05	848-040-0040	12-29-04	Repeal	2-1-05
839-010-0205	1-7-05	Adopt	2-1-05	848-040-0050	12-29-04	Repeal	2-1-05
839-010-0210	1-7-05	Adopt	2-1-05	848-040-0100	12-29-04	Adopt	2-1-05
839-016-0700	12-13-04	Amend	1-1-05	848-040-0105	12-29-04	Adopt	2-1-05
839-016-0700	1-1-05	Amend	2-1-05	848-040-0110	12-29-04	Adopt	2-1-05
839-021-0106	1-3-05	Adopt	2-1-05	848-040-0115	12-29-04	Adopt	2-1-05
839-021-0355	1-3-05	Amend	2-1-05	848-040-0120	12-29-04	Adopt	2-1-05
839-050-0050	2-11-05	Amend	3-1-05	848-040-0125	12-29-04	Adopt	2-1-05
839-050-0220	2-11-05	Amend	3-1-05	848-040-0130	12-29-04	Adopt	2-1-05
839-050-0360	2-11-05	Amend	3-1-05	848-040-0135	12-29-04	Adopt	2-1-05
845-004-0101	1-1-05	Amend	1-1-05	848-040-0140	12-29-04	Adopt	2-1-05
845-005-0312	1-1-05	Amend	2-1-05	848-040-0145	12-29-04	Adopt	2-1-05
845-009-0200	1-1-05	Amend	2-1-05	848-040-0150	12-29-04	Adopt	2-1-05
845-010-0905	12-1-04	Amend	1-1-05	848-040-0155	12-29-04	Adopt	2-1-05
845-010-0915	12-1-04	Amend	1-1-05	848-040-0160	12-29-04	Adopt	2-1-05
845-015-0175	1-1-05	Amend	2-1-05	848-040-0165	12-29-04	Adopt	2-1-05

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848-045-0010	12-29-04	Adopt	2-1-05	860-014-0092	12-30-04	Amend	2-1-05
848-045-0020	12-29-04	Adopt	2-1-05	860-016-0020	2-11-05	Amend	3-1-05
848-050-0000	12-29-04	Repeal	2-1-05	860-016-0021	2-11-05	Adopt	3-1-05
848-050-0010	12-29-04	Repeal	2-1-05	860-016-0050	2-2-05	Amend	3-1-05
848-050-0020	12-29-04	Repeal	2-1-05	860-021-0009	12-1-04	Amend	1-1-05
848-050-0030	12-29-04	Repeal	2-1-05	860-021-0021	12-1-04	Amend	1-1-05
848-050-0100	12-29-04	Adopt	2-1-05	860-021-0034	12-1-04	Amend	1-1-05
848-050-0110	12-29-04	Adopt	2-1-05	860-021-0034	12-30-04	Amend	2-1-05
848-050-0120	12-29-04	Adopt	2-1-05	860-021-0036	12-1-04	Amend	1-1-05
850-010-0220	2-4-05	Amend	3-1-05	860-021-0036	12-30-04	Amend	2-1-05
850-010-0225	2-4-05	Amend	3-1-05	860-021-0037	12-1-04	Amend	1-1-05
850-020-0000	2-4-05	Amend	3-1-05	860-021-0037	12-30-04	Amend	2-1-05
850-020-0005	2-4-05	Amend	3-1-05	860-021-0125	12-1-04	Amend	1-1-05
850-020-0010	2-4-05	Repeal	3-1-05	860-021-0130	12-1-04	Amend	1-1-05
850-020-0015	2-4-05	Repeal	3-1-05	860-021-0200	12-1-04	Amend	1-1-05
850-020-0020	2-4-05	Amend	3-1-05	860-021-0205	12-1-04	Amend	1-1-05
850-020-0025	2-4-05	Amend	3-1-05	860-021-0206	12-1-04	Amend	1-1-05
850-020-0030	2-4-05	Amend	3-1-05	860-021-0210	12-1-04	Amend	1-1-05
851-050-0131	11-30-04	Amend	1-1-05	860-021-0420	12-1-04	Amend	1-1-05
855-001-0000	2-7-05	Amend	3-1-05	860-022-0005	12-30-04	Amend	2-1-05
855-041-0600	3-1-05	Adopt	3-1-05	860-022-0015	12-30-04	Amend	2-1-05
855-041-0610	3-1-05	Adopt	3-1-05	860-022-0020	12-30-04	Amend	2-1-05
855-041-0620	3-1-05	Adopt	3-1-05	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

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860-034-0440	12-30-04	Amend	2-1-05	918-305-0010	4-1-05	Amend	1-1-05
860-034-0600	12-30-04	Amend	2-1-05	918-305-0030	4-1-05	Amend	1-1-05
860-036-0035	12-1-04	Amend	1-1-05	918-305-0100	4-1-05	Amend	1-1-05
860-036-0040	12-1-04	Amend	1-1-05	918-305-0105	4-1-05	Adopt	1-1-05
860-036-0050	12-1-04	Amend	1-1-05	918-305-0110	4-1-05	Amend	1-1-05
860-036-0075	12-1-04	Amend	1-1-05	918-305-0120	4-1-05	Amend	1-1-05
860-036-0095	12-1-04	Amend	1-1-05	918-305-0130	4-1-05	Amend	1-1-05
860-036-0095	12-30-04	Amend	2-1-05	918-305-0150	4-1-05	Amend	1-1-05
860-036-0097	12-1-04	Amend	1-1-05	918-305-0160	4-1-05	Amend	1-1-05
860-036-0097	12-30-04	Amend	2-1-05	918-305-0165	4-1-05	Amend	1-1-05
860-036-0115	12-1-04	Amend	1-1-05	918-305-0180	4-1-05	Amend	1-1-05
860-036-0125	12-1-04	Amend	1-1-05	918-305-0250	4-1-05	Amend	1-1-05
860-036-0605	12-30-04	Amend	2-1-05	918-305-0270	4-1-05	Amend	1-1-05
860-036-0615	12-30-04	Amend	2-1-05	918-305-0280	4-1-05	Adopt	1-1-05
860-036-0625	12-30-04	Amend	2-1-05	918-305-0290	4-1-05	Adopt	1-1-05
860-036-0645	12-30-04	Amend	2-1-05	918-305-0300	4-1-05	Adopt	1-1-05
860-037-0030	12-1-04	Amend	1-1-05	918-305-0310	4-1-05	Adopt	1-1-05
860-037-0035	12-1-04	Amend	1-1-05	918-305-0320	4-1-05	Adopt	1-1-05
860-037-0045	12-1-04	Amend	1-1-05	918-306-0005	4-1-05	Amend	1-1-05
860-037-0070	12-1-04	Amend	1-1-05	918-690-0420	4-1-05	Amend	1-1-05
860-037-0095	12-1-04	Amend	1-1-05	918-750-0110	4-1-05	Amend	1-1-05
860-037-0095	12-30-04	Amend	2-1-05	951-002-0000	11-26-04	Adopt	1-1-05
860-037-0097	12-1-04	Amend	1-1-05	951-002-0001	11-26-04	Adopt	1-1-05
860-037-0097	12-30-04	Amend	2-1-05	951-002-0005	11-26-04	Adopt	1-1-05
860-037-0110	12-1-04	Amend	1-1-05	951-002-0010	11-26-04	Adopt	1-1-05
860-037-0410	12-30-04	Amend	2-1-05	951-002-0020	11-26-04	Adopt	1-1-05
860-037-0420	12-30-04	Amend	2-1-05	951-003-0000	11-26-04	Adopt	1-1-05
860-037-0430	12-30-04	Amend	2-1-05	951-003-0001	11-26-04	Adopt	1-1-05
860-037-0450	12-30-04	Amend	2-1-05	951-003-0005	11-26-04	Adopt	1-1-05

