

# OREGON BULLETIN

*Supplements the 2005 Oregon Administrative Rules Compilation*

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Secretary of State  
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# INFORMATION AND PUBLICATION SCHEDULE

## General Information

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

## Background on Oregon Administrative Rules

The *Oregon Attorney General's Administrative Law Manual* defines "rule" to include "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency" ORS 183.310(9). Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit, Archives Division, Secretary of State assists agencies with the notification, filing and publication requirements of the administrative rules process. Every Administrative Rule uses the same numbering sequence of a 3 digit agency chapter number followed by a 3 digit division number and ending with a 4 digit rule number (000-000-0000).

## How to Cite

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

## Understanding an Administrative Rule's "History"

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

## Locating the Most Recent Version of an Administrative Rule

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

## Locating Administrative Rules Unit Publications

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

## 2004-2005 Oregon Bulletin Publication Schedule

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

## Submission Deadline — Publishing Date

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

## Reminder for Agency Rules Coordinators

Each agency that engages in rulemaking must appoint a rules coordinator and file an "Appointment of Agency Rules Coordinator" form, ARC 910-2003, with the Administrative Rules Unit, Archives Division, Secretary of State. Agencies which delegate rulemaking authority to an officer or employee within the agency must also file a "Delegation of Rulemaking Authority" form, ARC 915-2005. It is the agency's responsibility to monitor the rulemaking authority of selected employees and to keep the appropriate forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process. Forms ARC 910-2003 and ARC 915-2005 are available from the Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310, or are downloadable from the Oregon State Archives Website.

## Publication Authority

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

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# EXECUTIVE ORDERS

## EXECUTIVE ORDER NO. EO 05-04

### WATER REUSE AS AN INTEGRAL COMPONENT OF ECONOMIC DEVELOPMENT, WATER CONSERVATION, AND ENVIRONMENTAL SUSTAINABILITY IN OREGON.

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

WHEREAS the people of the State of Oregon have a long history of finding innovative solutions to challenging and complex problems;

WHEREAS the State of Oregon's strategic plan, Oregon Shines, reflects a balance of the community, environmental and economic values that we hold for our state;

WHEREAS analysis of current trends described by the Oregon Benchmarks and by the Oregon State of the Environment Report documents certain threats to our quality of life and the state's environmental and economic sustainability;

WHEREAS, for purposes of the Executive Order, water reuse is defined as the beneficial use of reclaimed water (treated wastewater) for such planned uses as landscape and golf course irrigation; agricultural irrigation; industrial and commercial uses; recreation; groundwater recharge; environmental enhancement; and other uses permitted under Oregon law;

WHEREAS water reuse provides an environmentally-sound method for managing wastewater, while conserving water and replenishing valuable water supplies;

WHEREAS water reuse can be a source of water to communities during drought conditions;

WHEREAS the Environmental Protection Agency, a federal agency, encourages water reuse as a means for managing wastewater under the provisions of the Clean Water Act, 33 USC §§ 1251 *et seq.*;

WHEREAS Oregon statutes and regulations protect public health and environmental quality, and require a specific level of water quality and treatment corresponding to each beneficial use of reclaimed water; and

WHEREAS the Oregon Environmental Quality Commission encourages water reuse for beneficial purposes using methods that assure that public health and environmental quality of the state are protected;

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

1. The State of Oregon shall promote policies and programs to encourage and support water reuse, to work together to overcome institutional and regulatory barriers and funding constraints, to ensure protection of public health and environmental quality, to encourage public acceptance of water reuse, and to help this state meet its overall water needs.
2. The State of Oregon shall improve its policies and internal operations to encourage more water reuse by:
  - a. State agencies that participated in the Urban Reuse Task Force that was created subsequent to the passage of Senate Bill 820 by the Seventy-second Oregon Legislative Assembly, Chapter 788, Oregon Laws 2003, shall review agency policies and rules, as they are revised, and make appropriate revisions to those policies to remove potential regulatory barriers and to encourage water reuse in Oregon. Within one year of the effective date of this Executive

Order, such agencies shall report in writing to the Governor's Office regarding their progress under this Executive Order. Within 18 months of the effective date of this Executive Order, the Governor's Office will coordinate with the relevant agencies to review their actions and to identify possible next steps.

b. The Department of Environmental Quality is responsible for leading the coordination among state agencies, businesses, non-profit organizations, local governments and other citizens in the development of guidance describing the regulatory and permitting requirements for water reuse projects.

c. The Office of Regulatory Streamlining is responsible for negotiating and executing a Memorandum of Understanding among the relevant state agencies that expressly sets forth each agency's responsibilities as they pertain to the approval of water reuse projects.

d. The Water Resources Department, Department of Human Services, and Department of Environmental Quality shall coordinate outreach activities that encourage water reuse and shall meet annually to determine whether agency procedures and permitting activities are consistent with this Executive Order.

e. The Department of Environmental Quality, Department of Human Services, Water Resources Department, and the Department of Consumer and Business Services shall collaborate, consistent with each agency's existing authority, to allow water reuse pilot projects that are protective of public health and the environment, and shall work to resolve issues with other relevant state agencies regarding water reuse.

Done at Salem, Oregon this 21st day of March, 2005.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE

## EXECUTIVE ORDER NO. 05-05

### DETERMINATION OF A STATE OF DROUGHT EMERGENCY IN CROOK, GILLIAM, HOOD RIVER, MORROW, SHERMAN, AND UMATILLA COUNTIES DUE TO DROUGHT AND LOW WATER CONDITIONS.

Pursuant to ORS 401.055, I find that ongoing drought and low water conditions and weather patterns have the potential to cause local adverse natural and economic disaster conditions in Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties. Projected weather patterns are not expected to significantly alleviate these conditions and drought conditions are continuing. These conditions are expected to have significant environmental and economic impacts on the fish and wildlife, agriculture and natural resource-dependent communities of the above-mentioned counties.

Current conditions are being addressed by state agencies including the Department of Agriculture, the Department of Water Resources, and Oregon Emergency Management.

A timely response to this situation being vital to the well being and economic security of the citizens and businesses of the above-mentioned counties, I hereby declare a "state of drought emergency" in Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties and direct the following activities:

## EXECUTIVE ORDERS

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### IT IS HEREBY ORDERED AND DIRECTED:

I. The Oregon Department of Agriculture is directed to coordinate and provide assistance in seeking federal resources that may be available to mitigate conditions and to assist agricultural recovery in Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties.

II. The Department of Water Resources is directed to coordinate and provide assistance and regulation for Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties as it determines is necessary in accordance with ORS 536.700 to 536.780.

III. The Office of Emergency Management is directed to coordinate and assist as needed with assessment and mitigation activities to address current and projected drought conditions in Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties.

IV. All other departments are directed to coordinate with the above agencies and to provide appropriate state resources as determined essential to assist affected political subdivisions in Crook, Gilliam, Hood River, Morrow, Sherman, and Umatilla Counties.

V. This Executive Order expires on December 31, 2005

Done at Salem, Oregon this 7th day of April, 2005.

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

ATTEST

/s/ Bill Bradbury  
Bill Bradbury  
SECRETARY OF STATE



## OTHER NOTICES

### DEQ PROPOSES APPROVAL OF ENVIRONMENTAL CLEANUP AT THE GREENBERRY INDUSTRIAL SITE IN CORVALLIS

**COMMENTS DUE:** Comments Invited Through May 31, 2005  
**SITE LOCATION:** 5210 NE Elliot Circle, Corvallis

**PROPOSAL:** The Oregon Department of Environmental Quality is proposing to issue final approval for the environmental cleanup of petroleum releases at the Greenberry Industrial site located at 5210 NE Elliot Circle in Corvallis.

**HIGHLIGHTS:** DEQ is proposing final approval for two areas, the Train Derailment and Diesel Underground Storage Tank (UST), within the Greenberry Industrial site where isolated releases and cleanups have occurred. The two areas are located immediately east of the Highway 99W railroad tracks. Greenberry Industrial joined the DEQ Cleanup Program in January 2005 in order to obtain closure on the environmental cleanup of these two areas. Greenberry purchased the site in 2001, which formerly operated as a roofing products manufacturing facility from 1963 to November 2000. Greenberry Industrial has since converted the site to a boat/RV storage facility.

**BACKGROUND:** Initial Investigation and cleanup was conducted as part of cleaning up the spill from the train derailment and decommissioning the UST. In 1987, a train collision caused the release of approximately 600 gallons of hot asphalt and 500 to 600 gallons of diesel fuel. Impacted soil was allegedly removed. In 1990, additional sampling was conducted to assess residual petroleum concentrations related to the collision. The 1,000-gallon diesel UST was decommissioned and removed from the site in November 1993. DEQ did not accept the analytical results because of suspected fraudulent activity on the part of the contractor who conducted the sampling. In 1995, additional sampling was conducted to assess residual petroleum concentrations related to the decommissioned UST. Between September 2004 and March 2005, DEQ received and reviewed reports summarizing historical and recent investigative data for these two areas. The potential risks identified for the site are the future use of groundwater for human and livestock consumption from the two groundwater wells on-site and exposure to soil during construction or excavation. Having evaluated the conditions at this site, DEQ has determined that the residual contamination poses no current risk or reasonably likely future risk to human health and the environment and recommends that no further investigation be undertaken for environmental impacts due to the two releases.

**HOW TO COMMENT:** Comments must be received by 5:00 PM on May 31, 2005. Information about the project is available for public review at DEQ's Salem Office. To schedule an appointment, please call the Salem Office at (503) 378-8240. For questions or comments, please call or send written comments by fax or email to: Nancy Gramlich, Project Manager, 503-378-8240 ext. 259 (toll free at 1-800-349-7677, TTY at 503-378-3684), Fax: 503-373-7944, gramlich.nancy@deq.state.or.us. A public meeting will be held to receive verbal comments if requested by 10 or more people or by a group with membership of 10 or more. DEQ will consider all public comments received by the May 31, 2005 deadline before making a final decision.

### PUBLIC COMMENT PERIOD EXTENDED PROPOSED FINAL CLEANUP ACTIONS FORMER HATTRICK DIESEL SPILL SITE GRANTS PASS, OREGON

**COMMENTS DUE:** June 1, 2005

**PROJECT LOCATION:** Former Hattrick Diesel Spill Site, 681 Jack Creek Street, Grants Pass, Oregon

**PROPOSAL:** Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Oregon Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for

petroleum-contaminated soil at the Former Hattrick Diesel Spill Site near Grants Pass.

**BACKGROUND:** In December 2003, approximately 400 to 600 gallons of diesel fuel spilled from an above-ground storage tank onto the ground from a disconnected fuel line. Due to a heavy rainstorm and saturated soil conditions at the time of the spill, the diesel migrated from the spill area east into a drainage ditch and into Horse Creek. No product was recovered in the creek.

In December 2004, the spill area and several depressions along the migration pathway were excavated to a maximum depth of 4.5 feet. About 65 cubic yards of petroleum-contaminated soil were excavated and disposed at an approved off-site landfill. Field sampling collected after excavation found low levels of diesel and oil.

The site was screened for human health and ecological risk from exposure to petroleum-contaminated soil. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health or ecological risks associated with the petroleum-contamination in soil at the Site. Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts from the Former Hattrick Diesel Spill Site.

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln Street, and Grants Pass office, 510 NW 4th, Room 76. Written comments must be received by June 1, 2005. Comments should be submitted to DEQ's Eugene office, located at 1102 Lincoln St., Suite 210, Eugene, OR 97401 or by e-mail at camarata.mary@deq.state.or.us. Questions may also be directed to Mary Camarata at the Eugene address or by calling her at 1-800-844-8467 ext 259. The TTY number for the hearing impaired is 541-687-5603.

**THE NEXT STEP:** DEQ will consider all public comments before taking final actions on this matter. A public meeting will be held to receive verbal comments on the proposed cleanup action upon written request by ten or more persons, or by a group with ten or more members.

### PROPOSED APPROVAL OF CLEANUP AT BOB THOMAS CHEVROLET BEND, OREGON

**COMMENT DUE:** June 15, 2005

**PROJECT LOCATION:** 345 NE Third Street, Bend, Oregon

**PROPOSAL:** The Department of Environmental Quality (DEQ) intends to issue a No Further Action (NFA) finding for the subject property known as the Bob Thomas Chevrolet facility, based upon completed site investigations and cleanup of soils and sediment contaminated by petroleum compounds. All residual contamination at this site is documented at levels below selected cleanup and/or screening standards established by the DEQ for this site except for a limited volume of residually-contaminated soil that is effectively capped by clean fill and/or building structures. Low level residual concentrations of petroleum-related chemicals in site soils were left in place in a protective manner underneath effective capping because it was not feasible to completely remove diminimus volumes without undermining existing structures. The DEQ has determined there is no significant residual risk of impact to the environment or human health as a result of a residually-contaminated pocket-of-contamination in soils which remains at this facility.

**HOW TO COMMENT:** A public comment period will extend to June 15, 2005. Please address all comments and/or inquiries to Mr. Cliff Walkey at the following address:

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

## OTHER NOTICES

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.

### **A CHANCE TO COMMENT ON PROPOSED CONSENT JUDGMENT FOR REMEDIAL ACTION COSTS AT THE FORMER MAIN STREET CLEANERS/ABE'S CLEANERS IN MILWAUKIE, OREGON**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** 10863 SE Main Street, Milwaukie, Oregon (the "Property").

**PROPOSAL:** The Department of Environmental Quality (DEQ) is proposing to enter into a Consent Judgment regarding a portion of DEQ's remedial action costs (cleanup costs) at the former Main Street Cleaners/Abe's Cleaners site in Milwaukie, Oregon. The Consent Judgment is with Spar Investment Co., Alexander Aginsky, Main Street Cleaners, Inc., George L. Fossati, and Joseph C. Fossati. **HIGHLIGHTS:** The Property was the site of a dry cleaning operation beginning in the 1940's. During dry cleaning operations, hazardous substances were released into the ground and groundwater the Property and adjacent properties. The settling parties were owners, operators, and lessees variously of the Property and dry cleaning facilities at the property. DEQ conducted investigation and removal actions at the Property and adjacent properties and incurred substantial remedial action costs. This Judgment will fully settle DEQ's claims against the settling parties. It will not specifically exempt from the release their possible liability for natural resource damages.

**HOW TO COMMENT:** Written comments concerning the Consent Judgment should be sent to Charlie Landman at DEQ Headquarters, 811 SW 6th Avenue, Portland, Oregon 97204. Comments must be received by DEQ by 5:00 pm May 31, 2005. Questions may be directed to Mr. Landman at that address or by calling (503) 229-6461. The proposed Consent Decree may be reviewed at DEQ's Headquarters' Office and at the DEQ Northwest Regional Office in Portland by contacting Bruce Gilles at (503) 667-8414x55007.

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

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

### **OPPORTUNITY FOR PUBLIC COMMENT RECOMMENDATION FOR NO FURTHER ACTION TRUS JOIST JUNCTION CITY FACILITY**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** Trus Joist, A Weyerhaeuser Business/Junction City Plant, 93747 Highway 99 South, Junction City, Oregon

**PROPOSAL:** Pursuant to ORS 465.320 and Oregon Administrative Rules (OAR) 340-122-465, the Department of Environmental Quality (DEQ) requests public comment on its recommendation that no further investigation or cleanup action is required for contaminated groundwater at the Trus Joist engineered wood products manufacturing facility in Junction City.

**HIGHLIGHTS:** A removal action and several investigations have been performed at the Trus Joist facility to address the impact of chlorinated solvent chemicals found in soil and groundwater near the southeast corner of the main production building. These chemicals originated from buried solid waste that included plywood patch compound. About 32 cubic yards of contaminated wastes were removed

from this area in 1995 and then treated at an Ensco facility in El Dorado, Arkansas. Field sampling from four monitoring wells and two production wells indicate that shallow groundwater is locally contaminated on-site with low concentrations of: methyl-ethyl ketone; 1,1,1-trichloroethane (TCA); 1,1-dichloroethane (DCA), acetone, and xylenes.

The site was screened for human health and ecological risks from exposure to solvent-contaminated groundwater. Under current and reasonably likely future land and water uses at the site, DEQ has concluded that there are no significant human health or ecological risks associated with solvent contamination in shallow groundwater at the site. Trus Joist will continue to monitor drinking water at this site per Oregon Health Division requirements. The site's potable water currently meets all applicable State and Federal drinking water standards.

Therefore, DEQ has recommended that no further investigation or remediation is needed for environmental impacts from the former buried waste area near the southeast corner of the main facility building.

Key project documents are available at DEQ's website: <http://www.deq.state.or.us/wr/LocalProjects/TrusJoist/TrusJoist.htm>

**HOW TO COMMENT:** The project files may be reviewed by appointment at DEQ's Eugene office, 1102 Lincoln, Suite 210, Eugene 97401. To schedule an appointment in Eugene, call (541)-686-7838. The TTY number for the hearing impaired is 541-687-5603.

Please direct any questions or comments about this pending decision to:

Greg Aitken, DEQ project manager  
address: 1102 Lincoln Street, #210, Eugene, OR 97401  
phone: (541) 686-7838, ext. 252 (TTY 541-686-5603)  
email: [aitken.greg@deq.state.or.us](mailto:aitken.greg@deq.state.or.us)

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

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

### **PROPOSED CONDITIONAL NO FURTHER ACTION GENERAL FARM SUPPLY (FORMER) BAKER COUNTY, OREGON**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** 879 Elm Street, Baker City, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based site investigations, remedial actions, and institutional controls performed at the former General Farm Supply site located at 879 Elm Street in Baker City, Oregon.

**HIGHLIGHTS:** The facility operated as a retail gas station from approximately 1971 to the early 1990's and was assigned underground storage tanks (UST) Facility No. 5248. The site has been vacant since the station's closure in the early 1990's. The property is currently owned by Baker County through tax foreclosure. All structures on the site have been removed and the site is currently a vacant lot. The site had three sub-standard, regulated USTs which had held gasoline and diesel fuel for retail sales that were removed in September 2001. Soil and/or groundwater petroleum contamination has been identified on the site.

The site has been proposed for a risk-based closure. All of the potential exposure concerns are proposed to be addressed though: 1) elimination of potential pathways; 2) performance of an interim remedial action measure (IRAM); and 3) by placement of institutional controls on the property. The institutional control consists of deed restrictions with the following restrictions: 1) no beneficial use of groundwater; 2) no residential use; and 3) any subsurface exca-

## OTHER NOTICES

vation of contaminated soil must include proper handling, characterization, and disposal soil.

**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 May 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 "Conditional No Further Action" determination.

### **PROPOSED CONDITIONAL NO FURTHER ACTION CRAZY ED'S GENERAL FARM SUPPLY (FORMER) HARNEY COUNTY, OREGON**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** Highway 20 West, Hines, Oregon

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a "Conditional No Further Action" determination based site investigations and institutional controls performed at the former Crazy Ed's General Farm Supply site located on Highway 20 West, north of Byrd Street, in Hines, Oregon.

**HIGHLIGHTS:** The facility operated as a retail gas station for an unknown period of time and was assigned underground storage tanks (UST) Facility No. 5247. The site has been vacant since the station's closure in approximately 1990. The site had four sub-standard, regulated USTs which had held gasoline and diesel fuel for retail sales that were removed in April 2001. Soil and/or groundwater petroleum contamination has been identified on the eastern portion of the site, a limited portion of the residential property to the south of the site, under Highway 20 adjacent to the site.

The site has been proposed for a risk-based closure. All of the potential exposure concerns are proposed to be addressed through: elimination of potential pathways and by placement of institutional controls on the property. The institutional control consists of deed restrictions with the following restrictions: 1) no beneficial use of groundwater; 2) no residential use; 3) no structures in a designated portion of the site unless appropriate measures are taken to mitigate the potential for vapor intrusion; and 4) any subsurface excavation of contaminated soil must include proper handling, characterization, and disposal soil.

**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 May 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 "Conditional No Further Action" determination.

### **PROPOSED NO FURTHER ACTION DETERMINATION HAP TAYLOR & SONS TUMALO YARD DESCHUTES COUNTY, OREGON**

**COMMENTS DUE:** June 1, 2005

**PROJECT LOCATION:** 64543 W. Highway 20, Bend, Oregon 97709 (intersection of Highway 20 and O.B. Riley Road, Tumalo area)

**PROPOSAL:** The Department of Environmental Quality is proposing a No Further Action determination for the Hap Taylor & Sons Tumalo Yard. This determination is based on approval of investigation and cleanup measures. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** Hap Taylor & Sons conducted a site investigation and cleanup in response to a Notice of Noncompliance that was issued by the Department in September 2003. The main concern was possible changes of the acid potential (measured by pH) of the surrounding environment resulting from truck washing activities on the south side of the property. Water in the bermed evaporation pond where truck wash water was dumped had a pH of between 12 and 12.5. The DEQ inspector noted that water was leaking out of the pond. Elsewhere on the site, the inspector found ponded water with a low pH (5.5 to 6) that appeared to be the result of use of excessive amounts of a strongly acidic cleaner. In addition, the DEQ inspection report noted concerns about petroleum contamination in the vicinity of the vehicle maintenance shop on the north side of the site.

Groundwater was found at a depth of 42 feet. The Deschutes River is about 150 east of the site. pH testing in groundwater and the river water range between 6.9 and 7.6. Soil pH levels range from 6.3 to 8.3. These measurements indicate that site activities have not had a significant effect on the level of acidity in the surrounding soil, surface water or groundwater.

Approximately 178 tons of petroleum-contaminated soil was removed from two catch basins and an oil water separator east of the vehicle maintenance shop. Confirmation samples following excavation indicate that remaining petroleum contamination does not exceed safe levels. Based on these results, DEQ concludes that no further action is required.

**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 Wednesday, June 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.

### **PROPOSED NO FURTHER ACTION FOR BRIGHT WOOD PLANT 13 WOODLIFE RELEASE MADRAS, OR**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** 1429 Earl Street., Madras, OR

**PROPOSAL:** The Department of Environmental Quality is proposing to issue a decision regarding cleanup activities at the above referenced site based on approval of an investigation and removal actions conducted to date. Public notification is required by ORS 465.320.

**HIGHLIGHTS:** On December 20, 2004, approximately 1100 gallons of Woodlife wood treatment product was accidentally released at Bright Wood Plant 13 building. Some of the product flowed over the concrete floor to the outside of the building, contaminating a small unpaved area and entering the storm drain system. The excavation of impacted soil occurred in an area approximately 15 feet by 15 feet.. Confirmation samples were collected near each corner of the excavation at mid depth and at the bottom. The consolidation of the volcanic materials prevented excavation beyond 5 feet. Samples were



## OTHER NOTICES

analyzed for total petroleum hydrocarbons in the gasoline range (TPH-Gx) and in the diesel range (TPH-Dx), extractable petroleum hydrocarbons (EPH), volatile petroleum hydrocarbons (VPH), Polynuclear aromatic compounds (PAHs), volatile organic compounds (VOCs), and constituent testing for the 4 pesticide compounds identified in the product: tebuconazole, permethrin, propiconazole and Iodocarb.

Confirmation samples as well as sample results from other potential areas of concern indicate that the remaining soil meets applicable risk-based screening levels.

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

**COMMENT:** The staff report recommending the proposed action may be reviewed by appointment at DEQ's Office in Bend, 2146 NE Fourth Street, Suite 104, Bend, OR 97701. To schedule an appointment, contact Toby Scott at (541) 388-6146, ext. 246. Written comments should be sent by May 31, 2005 to Mr. Scott at the address listed above. Questions may also be directed to Mr. Scott by calling him directly.

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

### CHANCE TO COMMENT ON... PROPOSED NO FURTHER ACTION DECISION FOR THE WMR PROPERTY PORTION OF THE UNION CARBIDE SITE

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** The site is located at 11920 North Burgard Road in Portland, Oregon.

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "No Further Action" (NFA) determination proposed for a portion of the Union Carbide Site. This proposed NFA determination is for the 74-acre portion of the site located west of Columbia Boulevard, formerly owned by Union Carbide Corporation (Union Carbide) and Elkem Metals Company (Elkem), and currently owned by WMR LLC. The remaining 10 acres of the former Union Carbide/Elkem site is located east of the WMR property, across Columbia Boulevard, and will be addressed in a future cleanup action.

**HIGHLIGHTS:** The WMR property was previously owned by Union Carbide who operated a calcium carbide and ferroalloy processing facility from about 1941 until 1981. Elkem purchased the property in 1981 and sold it in 1983. Union Carbide plant operations utilized raw materials in their process, and waste, including sludge generated from a wet scrubber system for the furnaces, coke dryer, and bag-house, and potentially process slag, were discharged to three on site unlined sludge ponds prior to discharge to the Columbia Slough. Pond #3 is located in the southeastern undeveloped portion of the WMR property. After manufacturing ceased at the site the ponds were filled without removing the accumulated sludge. The Union Carbide plant buildings have been demolished and the WMR property is now used as a shipping storage container facility.

The current property owner conducted removal actions between 1995 and 2000, prior to cleanup oversight by DEQ. PCB contaminated soil near an on site electrical sub station was removed using appropriate EPA generic remedy soil criteria for PCBs and under EPA oversight. Several above ground and underground storage tanks were decommissioned, and associated soil contaminated with petroleum hydrocarbons was removed using DEQ's UST Matrix Level-2 cleanup level of 500 mg/kg. An on site ash pile was removed, even though it did not pose a threat to human health, and was disposed in an industrial landfill. DEQ reviewed documentation associated with

these removal actions and approved the tank and associated soil removal.

DEQ entered into a Consent Order with Union Carbide and Elkem in 2000. A remedial investigation of the WMR property was conducted between 2000 and 2004. The results of the investigation indicate that polynuclear aromatic hydrocarbons (PAH) and metals are present in pond #3 sludge, elevated arsenic and manganese are present in fill material overlying the pond, and elevated arsenic was detected in groundwater beneath pond #3.

A risk assessment was performed to evaluate risks to potential human and ecological receptors from exposure to site related chemicals that are present in fill, pond sludge and groundwater. The human health risk assessment evaluated exposure to soil by on site workers and excavation workers, and the ecological risk assessment evaluated exposure to surface soil by several receptors including terrestrial vegetation, invertebrates, and a variety of small mammals and birds. Focused risk evaluations included a screening level risk assessment for exposure of on site workers to surface soil across the site, an evaluation of slag present on steeper slopes in the center of the site and exposure of on site workers to slag by direct contact and fugitive dust, and evaluation of exposure of on site workers to groundwater beneath pond #3 through use of groundwater for equipment washing.

The results of the human health risk assessment generally indicate that risk to humans for exposure to contamination present in soil and groundwater are below acceptable risk levels established by DEQ consistent with current and reasonably likely future land and water uses. The exceptions was benzo(a)pyrene and arsenic that are present in pond #3 sludge and soil cover, which exceeded criteria for direct contact by on site workers. Subsequent to the risk assessment, the property owner placed up to three feet of clean gravel fill over an area that includes pond #3 as part of site development for business purposes, effectively cutting off this direct exposure pathway.

DEQ has concluded that no further actions are warranted for the WMR property because risk-based criteria for human and ecological receptors have not been exceeded and exposure pathways have been eliminated. The proposed NFA applies to the 74-acre WMR property. DEQ will consider removal of the site from the Confirmed Release and Inventory Lists, and termination of the Consent Order after work has been completed for the remaining 10 acres of the former Union Carbide/Elkem site.

**HOW TO COMMENT:** You can review the administrative record for the proposed No Further Action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, in Portland. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Mavis D. Kent, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: kent.mavis.d@deq.state.or.us. DEQ must receive written comments by 5:00 p.m. on May 31, 2005. This notice will also be published in the local newspaper The Oregonian.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate public notice announcing the date, time, and location of any public meeting would be published in this publication.

DEQ is committed to accommodating people with disabilities at our hearings. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, contact DEQ Communications and Outreach at (503) 229-5696 or toll free in Oregon at (800) 452-4011. People with hearing impairments may call DEQ's TTY number, (503)229-5471.

**THE NEXT STEP:** DEQ will consider all public comments received by the May 31, 2005 deadline. In the absence of comments, DEQ will issue the No Further Action.

## OTHER NOTICES

### **NOTICE OF PROPOSED NO FURTHER ACTION DETERMINATION, FORMER NORTH PACIFIC DIVISION LABORATORY — U.S. ARMY CORPS OF ENGINEERS, 1491 NORTHWEST GRAHAM ROAD, TROUTDALE, OREGON**

**COMMENT PERIOD:** May 1 to May 31, 2005

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** 1491 NW Graham Road, Troutdale, Oregon

**PROPOSAL:** The Oregon Department of Environmental Quality (DEQ) invites public comment on the proposed no further action determination for the Former North Pacific Division (NPD) Laboratory of the U.S. Army Corps of Engineers.

The NPD laboratory operated at the site from 1949 until the spring of 1997. The laboratory conducted materials testing for the entire duration of operation. In 1986, the laboratory began analyzing quality assurance (QA) split samples collected during Hazardous, Toxic, and Radioactive Waste (HTRW) investigations conducted by the USACE and its contractors. Environmental samples were analyzed until the cessation of operations in 1997.

Previous investigations and remediation activities include the removal of an underground storage tank and an associated 10 cubic yards of diesel range petroleum impacted soil in 1991. In 1999, thirty cubic yards of soil were removed from the drainage ditch area, where elevated levels of metals were found. Twenty-five cubic yards of soil were removed from the dry well area, where the presence of chromium, Aroclor® 1260, TCA, toluene, and bis(2-ethylhexyl) phthalate were detected in a tar sample at concentrations greater than screening levels.

In 2003, sediment from a concrete sump with elevated levels of arsenic, chromium, and PCBs, was removed from the sump. The entire solid waste landfill on the north parcel of the site was removed because of elevated levels of benzo[a]pyrene, arsenic, and 1,2-dibromothane. The landfill removal action effectively removed 5,456 tons of soil from the site. Confirmation samples for the entire site are within DEQ standards for the protection of human health and the environment.

**HOW TO COMMENT:** As required by ORS 465.320, DEQ invites public comment on the proposed approval of the cleanup action for the Former NPD Laboratory. Written comments should be sent to Rod Struck, DEQ, 2020 SW Fourth Avenue, Suite 400, Portland, OR 97201 by May 31, 2005. A public meeting will be held to receive comments if requested by 10 or more persons or by a group with a membership of 10 or more.

**INFORMATION:** The administrative record for the site is available for public review by appointment at DEQ's Northwest Region Office. To schedule an appointment call (503) 229-6729. For additional information regarding the cleanup at the site, contact DEQ Project Manager, Rod Struck at (503) 229-5562 or by email at [rodneystruck@deq.state.or.us](mailto:rodneystruck@deq.state.or.us). Additional information is also available at <http://www.deq.state.or.us/news/publicnotices/>.

**THE NEXT STEP:** DEQ will consider all public comments before making the final decision.

### **CHANCE TO COMMENT ON... PROPOSED CONDITIONAL NO FURTHER ACTION DECISION FOR THE FORMER INDUSTRIAL CHROME PLATING FACILITY**

**COMMENTS DUE:** May 31, 2005

**PROJECT LOCATION:** The site is located at 6204 NE Hassalo Street, Portland, Oregon

**PROPOSAL:** Pursuant to Oregon Revised Statute, ORS 465.320, and Oregon Administrative Rules, OAR 340-122-100, the Department of Environmental Quality (DEQ) invites public comment on its proposal for a "No Further Action" (NFA) determination proposed for the former Industrial Chrome Plating Facility.

**HIGHLIGHTS:** The former Industrial Chrome Plating (ICP) facility processed various industrial metal components for clients utilizing a hard chrome plating method. The business initiated chrome plating operations in the late 1930s and continued plating parts using a hard chrome process until the business ceased operations in 2001. In 1990, DEQ received a complaint from a former ICP employee who had worked at the site in the early 1960s indicated plating wastes had been improperly disposed of in a dry well on the property. A Preliminary Assessment (PA) was conducted by DEQ in September of 1990 identified significant soil contamination at the property. DEQ's Site Assessment Program completed an evaluation of the facility in 1997 leading to referral to EPA for potential removal actions. In May 1999, EPA's Contractor, E&E, conducted a site investigation at the ICP site. Results of the investigation indicated that chromium and lead contamination was present in the surface and subsurface soils at levels significantly exceeding risk-based concentrations.

EPA initiated removal activities at the site in August 2001. The removal activities involved removal of hazardous plating wastes stored in the building followed by demolition of the ICP building and removal of significant soil contamination to depths up to 20 feet. Removal of the ICP building, liquid wastes, and soils was completed in October 2001. Approximately 4,000 gallons of chromic acid and 500 pounds of hazardous substances including paint wastes, corrosive liquids, mercury, and PCB wastes were packed and transported off-site for treatment and disposal. A total of 186 loads containing approximately 5800 tons of concrete and soil were transported off-site for proper treatment and disposal. The excavated areas were subsequently lined with geotextile fabric, filled with gravel, graded, and capped with asphalt concrete designed to cover the excavation area to minimize infiltration of storm water. A separate storm water catch basin and drainage line were placed along the southern portion of the site to properly drain the asphalt surface.

DEQ conducted a screening-level risk assessment to evaluate potential human health risks remaining at the site to determine the need for long-term engineering or institutional controls based on the analytical results from confirmation soil sampling conducted by EPA's contractor at completion of the removal. The risk assessment evaluated direct contact exposure for future industrial/commercial use of the property without consideration of the asphalt cap placed on the site. The results of the human health risk screening generally indicate that risk to humans for exposure to contamination present in subsurface soil are below acceptable risk levels established by DEQ consistent with current and reasonably likely future land uses and absence of groundwater uses within one-half mile of the site.

DEQ's proposed NFA would specify conditions to reduce potential future risks posed by residual contamination remaining at depths greater than 5 to 20 feet below current land surface. These conditions would include: no future use of groundwater without assessment of groundwater quality beneath the site; no future placement of dry wells for stormwater control; maintaining paved surfaces to minimize potential for infiltration of stormwater through residually contaminated soils found at depth; and if the site is redeveloped that the native soil containing residual contamination beneath the geotextile liner and gravel fill not be disturbed.

**HOW TO COMMENT:** You can review the administrative record for the proposed No Further Action at DEQ's Northwest Region office located at 2020 SW 4th Avenue, Suite 400, in Portland. For an appointment to review the files call (503)229-6729; toll free at (800)452-4011; or TTY at (503)229-5471. Please send written comments to Bruce Gilles, Project Manager, DEQ Northwest Region East Side Office, 1550 NW Eastman Parkway, Suite 290, Gresham, Oregon, 97030 or via email at: [gilles.bruce@deq.state.or.us](mailto:gilles.bruce@deq.state.or.us). DEQ must receive written comments by 5:00 p.m. on May 31, 2005. This notice will also be published in the local newspaper The Oregonian.

DEQ will hold a public meeting to receive verbal comments if 10 or more persons, or a group with membership of 10 or more requests such a meeting. Interest in holding a public meeting must be submitted in writing to DEQ. If a public meeting is held, a separate pub-

## OTHER NOTICES

lic notice announcing the date, time, and location of any public meeting would be published in this publication.

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**THE NEXT STEP:** DEQ will consider all public comments received by the May 31, 2005 deadline. In the absence of comments, DEQ will issue the No Further Action.

### PROPOSED CLOSEOUT AT LANDMARK EQUIPMENT SITE

**COMMENTS DUE:** May 30, 2005

**PROJECT LOCATION:** 8711 NE Killingsworth St., Portland, Oregon

**PROPOSAL:** As required by ORS 465.320, the Department of Environmental Quality (DEQ) invites public comment on remedial action completed at Landmark Equipment and DEQ's proposal to issue a no further action (NFA) determination for the site.

**HIGHLIGHTS:** The site is located in north Portland in an area of industrial development centered around NE Killingsworth St. and NE Columbia Blvd. The site has been used since the late 1950s for the leasing/sale, storage, and repair of heavy equipment. The City of Portland is preparing to purchase the property to facilitate upgrading the NE Columbia/NE Killingsworth exchange, which would result in the site being covered by a combination of roadway and adjoining landscaping. A number of investigation efforts have been completed at the site since 1993 which identified limited contamination (principally petroleum hydrocarbons) in surface soil. More recent investigation focused on four on-site dry wells, two of which were found to contain contaminated sediment. Approximately 165 tons of petroleum-impacted soil were removed from the site in 1993, and active dry wells sampled and cleaned out in 2005. Remaining soil contamination is below risk-based concentrations (EPA Preliminary Remediation Goals or DEQ Risk-Based Concentrations) and therefore does not pose a risk to humans. No significant ecological receptors have been identified at or adjacent to the site. During February 2005 sampling, low levels of naphthalene (0.129 ug/l) and trichloroethene (1.01 ug/l) were detected in shallow groundwater below the most heavily-impacted dry well. Both concentrations are below EPA drinking water standards and expected to represent worst-case conditions. Based on this information, DEQ proposes to issue a NFA for the Landmark Equipment site.

**HOW TO COMMENT:** To review project records, contact Dawn Weinburger at (503) 229-6729. The DEQ project manager is Dan

Hafley (503-229-5417). Written comments should be sent to the project manager at the Department of Environmental Quality, Northwest Region, 2020 SW 4th Avenue, Suite 400, Portland, OR 97201 by May 30, 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 comments received and make a final decision after consideration of these comments.

### PUBLIC NOTICE FINAL SULFUR DIOXIDE MILESTONE REPORT FOR REGIONAL HAZE

**NOTICE:** The Department of Environmental Quality (DEQ) is announcing the completion of the following report: *Final 2003 Regional SO<sub>2</sub> Emissions and Milestone Report*. In March 2005, DEQ issued a notice for public comment on the draft report. The final report incorporates comments received during the comment period. This report describes 2003 sulfur dioxide (SO<sub>2</sub>) emissions from large industrial sources in five states, including Oregon. The collective SO<sub>2</sub> emissions from these states must be less than the SO<sub>2</sub> 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 Oregon to cooperate with four other states in preparing an annual report to determine if SO<sub>2</sub> emissions from large industrial sources are less than annual SO<sub>2</sub> emissions milestones. The 2003 SO<sub>2</sub> milestone represents one of several annual milestones that must be met over the next 15 years. The report concludes that for 2003, total SO<sub>2</sub> emissions from the five states—Oregon, Arizona, New Mexico, Wyoming and Utah—were 330,679 tons, while the SO<sub>2</sub> milestone is 447,383 tons, indicating that DEQ has met the annual milestone requirement in the plan.

**HOW TO OBTAIN A COPY:** The *Final 2003 Regional SO<sub>2</sub> Emissions and Milestone Report* can be found on the website for the Western Regional Air Partnership at: [http://www.wrapair.org/forums/309/documents/2003\\_Final\\_WRAP\\_SO<sub>2</sub>\\_Milestone\\_Report.pdf](http://www.wrapair.org/forums/309/documents/2003_Final_WRAP_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](mailto: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.



# NOTICES OF PROPOSED RULEMAKING

## Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

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

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

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

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

### Board of Geologist Examiners Chapter 809

**Date:** 6-10-05  
**Time:** 1 p.m.  
**Location:** 1193 Royvonne Ave. SE  
Salem, OR 97302

**Hearing Officer:** Gary Peterson, Board Chairman

**Stat. Auth.:** ORS 670.310, 672.705 & 182.462

**Stats. Implemented:** ORS 672.705 & 182.462

**Proposed Amendments:** 809-010-0025

**Last Date for Comment:** 6-10-05, 1 p.m.

**Summary:** The amended rule will adopt the Oregon State Board of Geologist Examiners 2005-2007 biennial budget. The Public Hearing will allow input from registrants with regard to the budget. No increase in annual renewal fees is included. A copy of the proposed budget and/or rule amendment is available by contacting the Board Rules Coordinator.

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

**Rules Coordinator:** Susanna R. Knight

**Address:** Board of Geologist Examiners, Sunset Center South, 1193 Royvonne Ave. SE, #19, Salem, OR 97302

**Telephone:** (503) 566-2837

### Board of Naturopathic Examiners Chapter 850

**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.145

**Proposed Amendments:** 850-010-0225

**Last Date for Comment:** 5-30-05

**Summary:** This amendment will update the compendium for naturopathic physicians, and pharmacists, to prescribe and fill prescriptions that are within Oregon law.

**Rules Coordinator:** Anne Walsh

**Address:** Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232

**Telephone:** (971) 673-0193

**Stat. Auth.:** ORS 685.125

**Stats. Implemented:** ORS 685.030

**Proposed Amendments:** 850-010-0212

**Last Date for Comment:** 5-30-05

**Summary:** Clarifies the requirement of consistent education for all IV Chelation therapy.

**Rules Coordinator:** Anne Walsh

**Address:** Board of Naturopathic Examiners, 800 NE Oregon St. - Suite 407, Portland, OR 97232

**Telephone:** (971) 673-0193

### Board of Nursing Chapter 851

**Date:** 6-16-05  
**Time:** 9 a.m.  
**Location:** 800 NE Oregon St.  
Portland State Office Bldg.  
Rm. 120-C  
Portland, OR 97232

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

**Stat. Auth.:** ORS 678.440 & 678.442

**Stats. Implemented:** ORS 678.442

**Proposed Amendments:** 851-062-0055

**Last Date for Comment:** 6-14-05

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

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

**Rules Coordinator:** KC Cotton

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

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

**Date:** 6-16-05  
**Time:** 9 a.m.  
**Location:** 800 NE Oregon St.  
Portland State Office Bldg.,  
Rm. 120-C  
Portland, OR 97232

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

**Stat. Auth.:** ORS 678.050 & 678.285

**Stats. Implemented:** ORS 678.050 & 678.285

**Proposed Amendments:** 851-052-0030

**Last Date for Comment:** 6-14-05

**Summary:** These rules cover the licensing of Certified Registered Nurse Anesthetists (CRNA) by the Oregon State Board of Nursing, establish standards for safe practice for the CRNA, serve as a guide for the Board to evaluate CRNA practice, and define the scope of practice for the CRNA.

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

**Rules Coordinator:** KC Cotton

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

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

**Date:** 6-16-05  
**Time:** 9 a.m.  
**Location:** 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:** 6-14-05, 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 April and May 2005 updates to **Drugs Facts and Comparisons** to the formulary, with specific drugs proposed for inclusion or deletion. The Board



## NOTICES OF PROPOSED RULEMAKING

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

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**Board of Optometry**  
**Chapter 852**

Date:	Time:	Location:
6-24-05	1 p.m.	3218 Pringle Rd. SE Morrow Crane Bldg. Salem, OR 97302

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

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

**Stats. Implemented:** ORS 182.462(1)(2)

**Proposed Amendments:** 852-005-0005, 852-010-0080, 852-050-0006

**Last Date for Comment:** 6-24-05

**Summary:** 852-005-0005 - Establishes the Board's budget for the 2005-2007 biennium.

852-010-0080 - Establishes the Board's schedule of fees.

852-050-0006 - Establishes license renewal fees.

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

**Rules Coordinator:** David W. Plunkett

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

**Telephone:** (503) 373-7721, ext. 23

.....  
**Construction Contractors Board**  
**Chapter 812**

Date:	Time:	Location:
5-24-05	11 a.m.	West Salem Roth's IGA Santiam Rm. Salem, OR

**Hearing Officer:** Jim Fairchild

**Stat. Auth.:** ORS 183.310 - 183.500, 670.310, 701.075, 701.085, 701.148, 701.150, 701.235 & 701.280

**Stats. Implemented:** ORS 183, 448.279, 448.115, 671.510 - 671.710, 701.055, 701.075, 701.085, 701.115, 701.125, 701.143, 701.145, 701.147, 701.148, 701.150 & 701.280

**Proposed Amendments:** 812-002-0220, 812-002-0760, 812-003-0170, 812-003-0350, 812-003-0380, 812-004-0600, 812-006-0030, 812-010-0080, 812-010-0420, 812-010-0425, 812-010-0460

**Proposed Ren. & Amends:** 812-010-0440 to 812-010-0470

**Last Date for Comment:** 5-24-05, 11 a.m.

**Summary:** OAR 812-002-0220 is amended to expand the definition to cover employee and subcontractor claims.

OAR 812-002-0760 is amended to remove cleaning, cleaning of new structures prior to occupancy, sandblasting, pressure washing or chemical treatments, scaffolding and other construction site specialty work from the definition of work as a contractor based on advice from counsel.

OAR 812-003-0170 is amended to clarify when the Board will require a larger bond.

OAR 812-003-0350 and 812-003-0380 are amended to add a reference to 812-003-0320 (record changes) to the rule to clarify that a \$20 fee will be charged to change to an inactive status or back to an active status during an interim renewal period.

OAR 812-004-0600 is amended to clarify when an arbitration award is ready for payment by a contractor's surety. These clarifications are necessary to make payments under an award parallel to payments under a contested case order. They also make this system more understandable to the parties.

OAR 812-006-0030 is amended to delete (5). Currently the statistical information gathered by the agency contains discrepancies; therefore, the agency has not published passing rates. The TEAC subcommittee of the Board determined that there really is not a need for the agency to publish education provider passing rates.

OAR 812-010-0080 and 812-010-0420 are amended to correct cite reference due to the amendment and renumber of OAR 812-010-0440.

OAR 812-010-0425 is amended to add language that if the arbitrator waives or extends deadlines under this rule, the arbitrator must notify the agency and deletes section (10) that is outdated language from rule and the agency may lack authority to set limits on the time to prepare an amended arbitration award.

812-010-0440 is amended and renumbered to 812-010-0470 to put it after OAR 812-010-0460, which deals with petitions to the court. These petitions must take place prior to payment from a contractor's bond. Establishes that payment on an award is not due until the period for requesting modification of the award has run. Under OAR 812-004-0600 an unpaid award will not be sent to a contractor's surety for an additional 30 days to allow time for payment. Therefore, an unpaid award will not be sent to the surety for a total of 51 days (21 + 30) after the award is issued.

812-010-0460 is amended to revise title of rule. Revises the section reference in this rule to provide that a contractor appealing an award to the court waives objection that we send the award to the contractor's surety only if the contractor fails to notify CCB of the petition to modify.

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

**Rules Coordinator:** Catherine Dixon

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

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

.....  
**Department of Administrative Services**  
**Chapter 125**

Date:	Time:	Location:
5-16-05	1:30-3:30 p.m.	State Archives Bldg. 2nd Floor Salem, OR

**Hearing Officer:** David Hartwig

**Stat. Auth.:** ORS 293.295 - 293.515; Other Auth.: Ballot Measure 37, 2004

**Stats. Implemented:** ORS 293.306, 197 & Measure 37

**Proposed Adoptions:** 125-145-0010, 125-145-0020, 125-145-0030, 125-145-0040, 125-145-0045, 125-145-0060, 125-145-0080, 125-145-0090, 125-145-0100, 125-145-0105

**Proposed Repeals:** 125-145-0010(T), 125-145-0020(T), 125-145-0030(T), 125-145-0040(T), 125-145-0045(T), 125-145-0060(T), 125-145-0080(T), 125-145-0090(T), 125-145-0100(T), 125-145-0105(T), 125-145-0130(T)

**Last Date for Comment:** 5-17-05, 5 p.m.

**Summary:** These Permanent rules replace the Temporary rules filed to implement the provisions of Ballot Measure 37. The measure passed on November 2, 2004 with an effective date of December 2, 2004. "Ballot Measure 37 adds a new statute to ORS chapter 197. The measure specifies that the owner of private real property may be entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value."

The permanent rules contain changes made to the claim process to allow timelines to be met, and the rules have been simplified and clarified. These changes will facilitate the processing of Measure 37 Claims, and add clarity to the steps that applicants must follow to file a Claim.

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

## NOTICES OF PROPOSED RULEMAKING

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

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**Date:** 5-17-05      **Time:** 1:30 p.m.      **Location:** 1225 Ferry St. SE  
1st Flr., General Services Bldg.  
Salem, OR

**Hearing Officer:** Karen Hartley  
**Stat. Auth.:** ORS 279.845 & 184.340  
**Stats. Implemented:** ORS 279.015 & 279.835 - 279.855  
**Proposed Amendments:** 125-055-0005, 125-055-0010, 125-055-0015, 125-055-0020, 125-055-0025, 125-055-0030, 125-055-0035, 125-055-0040, 125-055-0045  
**Proposed Repeals:** 125-055-0005(T), 125-055-0010(T), 125-055-0015(T), 125-055-0020(T), 125-055-0025(T), 125-055-0030(T), 125-055-0035(T), 125-055-0040(T), 125-055-0045(T)  
**Last Date for Comment:** 5-17-05, 5 p.m.

**Summary:** This rule corrects how the Qualified Rehabilitation Facility (QRF) temporary services provider monitors the employee hours performed by a temporary employee when providing temporary services under the QRF contract to the state. The rule amends OAR 125-055-0040(3) to correct and clarify how the temporary employee hours are monitored by the QRF for each temporary work assignment which includes temporary employee hours worked under a QRF contract plus temporary work hours under another QRF temporary service provider and any other temporary employee hours worked for the state by the temporary employee in a 12-month period.

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

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

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**Stat. Auth.:** Uniform Electronic Transactions Act (UETA) & 84.064; Other Auth.: Source 2001 HB 2112  
**Stats. Implemented:** ORS 84, 84.049, 84.052, 84.055 & 84.064  
**Proposed Adoptions:** 125-600-0000  
**Last Date for Comment:** 5-21-05

**Summary:** The Department of Administrative Services is directed by §84.064 to make determinations and adopt standards for state agencies to implement UETA. This rule addresses the electronic signature provisions of the act.

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

\*\*\*\*\*

**Stat. Auth.:** ORS 279A.065 & 279A.070  
**Stats. Implemented:** ORS 279A.020, 279A.030, 279A.050, 279A.065, 279A.070, 279A.140 & OL 2003, Ch. 794, Sec. 332, 334  
**Proposed Amendments:** 125-246-0100, 125-246-0560  
**Last Date for Comment:** 5-23-05, 5 p.m.

**Summary:** On March 1, 2005, the Public Contracting Code began to operate, as mandated by HB 2341, and the related DAS Public Contracting Rules became effective. Certain solicitations and public contracts commenced prior to March 1, 2005, and continued after this effective date (Transitional Contracts). These two Rule amendments address the application of law to and the amending of Transitional Contracts.

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

### Department of Agriculture Chapter 603

**Date:** 5-16-05      **Time:** 10 a.m.      **Location:** 635 Capitol St. NE  
ODA, Rm. "B"  
Salem, OR 97301

**Hearing Officer:** Ron McKay  
**Stat. Auth.:** ORS 561; Other Auth.: ORS 596  
**Stats. Implemented:** ORS 596.341  
**Proposed Amendments:** 603-011-0265  
**Last Date for Comment:** 5-23-05

**Summary:** This amendment requires dairy cattle over 6 months of age to test negative for Tuberculosis prior to entering the State of Oregon. This amendment is necessary because Tuberculosis is becoming more prevalent in the United States, even in states previously declared free of Tuberculosis. Bovine Tuberculosis is a contagious bacterial infection of cattle that is contagious to humans. Since dairy animals are often long lived, infected animals can spread the disease to other dairy cattle.

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

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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**Date:** 5-17-05      **Time:** 4 p.m.      **Location:** 635 Capitol St. NE  
ODA Conf. Rm. D  
Salem, OR 97301

**Hearing Officer:** James W. Johnson  
**Stat. Auth.:** ORS 183, 192, 192.005, 192.410-505, 468.020, 561 & OAR 603  
**Stats. Implemented:** ORS 183, 192.005, 192.420, 192.440, 192.450, 561, 561.040 & 561.260  
**Proposed Adoptions:** 603-001-0160, 603-001-0170  
**Proposed Amendments:** 603-001-0125, 603-001-0130, 603-001-0135, 603-001-0140, 603-001-0145, 603-001-0150, 603-001-0155  
**Last Date for Comment:** 6-7-05

**Summary:** These rules effectuate the process of obtaining public records through the Oregon Department of Agriculture.

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

**Rules Coordinator:** Sue Gooch  
**Address:** Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301  
**Telephone:** (503) 986-4583

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### Department of Agriculture, Oregon Sheep Commission Chapter 644

**Date:** 6-10-05      **Time:** 1:30 p.m.      **Location:** 635 Capitol St. NE  
Conf. Rm. D  
Salem, OR

**Hearing Officer:** Cleve Dumdi  
**Stat. Auth.:** ORS 576.304 & 183  
**Stats. Implemented:** ORS 576.304 & 576.325  
**Proposed Amendments:** 644-010-0010  
**Last Date for Comment:** 6-10-05, 5 p.m.

**Summary:** The proposed amendment to OAR 644-010-0010 will increase the existing assessment on the sale of wool through commercial channels from one and one half cent per pound to two cents per pound.

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

**Rules Coordinator:** Richard Kosesan

## NOTICES OF PROPOSED RULEMAKING

**Address:** Department of Agriculture, Oregon Sheep Commission,  
1270 Chemeketa St. NE, Salem, OR 97301-4145  
**Telephone:** (503) 370-7024

.....  
**Department of Agriculture,  
Oregon Tall Fescue Commission  
Chapter 607**

**Date:** 5-26-05      **Time:** 7 p.m.      **Location:**  
Yaquina Bay Restaurant  
Albany, OR

**Hearing Officer:** Kent Doerfler

**Stat. Auth.:** ORS 576 & 183

**Stats. Implemented:**

**Proposed Amendments:** 607-010-0015, 607-010-0020

**Last Date for Comment:** 5-26-05

**Summary:** The rule amendment eliminates the exemption from reporting and assessment for the variety Kentucky 31 tall fescue seed produced in Oregon.

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

**Rules Coordinator:** David S. Nelson

**Address:** Department of Agriculture, Oregon Tall Fescue Commission, 1193 Royvonne SE - Suite 11, Salem, OR 97302

**Telephone:** (503) 585-1157

.....  
**Department of Community Colleges and  
Workforce Development  
Chapter 589**

**Date:** 5-16-05      **Time:** 9 a.m.–12 p.m.      **Location:**  
Employment Dept. Auditorium  
Salem, OR

**Hearing Officer:** Scott Tighe

**Stat. Auth.:** ORS 326.051 & 341.626

**Stats. Implemented:** ORS 341.015, 341.022, 341.317, 341.440, 341.525, 341.528, 341.626 & 341.665

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

**Last Date for Comment:** 5-16-05

**Summary:** It is in the state's interest to support a strong local community college system that meets local, regional and state economic and workforce development needs. Oregon's community college distribution formula is designed to provide a financial foundation to support undergraduate and lower-division education, professional technical education, remedial education, local response to workforce training and other educational services necessary at the local and state level.

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

**Rules Coordinator:** Scott Tighe

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

**Telephone:** (503) 378-8648, ext. 361

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

**Date:** 5-17-05      **Time:** 9:30 a.m.      **Location:**  
1535 NW Edgewater St.  
Salem, OR

**Hearing Officer:** Richard Y. Blackwell

**Stat. Auth.:** ORS 479.540

**Stats. Implemented:** ORS 479.540

**Proposed Adoptions:** 918-261-0031

**Last Date for Comment:** 5-20-05, 5 p.m.

**Summary:** This proposed rule would exempt individuals from licensure and permit requirements for industrial electrical equipment designed for and used directly in the manufacture of a product under certain circumstances.

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

**Rules Coordinator:** Heather L. Gravelle

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

**Telephone:** (503) 373-7438

.....  
**Date:** 5-17-05      **Time:** 10:30 a.m.      **Location:**  
1535 NW Edgewater St.  
Salem, OR

**Hearing Officer:** Mike D. Graham

**Stat. Auth.:** ORS 455.010, 455.020, 455.030, 455.110, 480.545 & 480.550

**Stats. Implemented:** ORS 455.010, 455.020, 455.030, 455.110, 480.545 & 480.550

**Proposed Amendments:** 918-225-0240, 918-225-0430, 918-225-0560, 918-225-0660

**Last Date for Comment:** 5-20-05, 5 p.m.

**Summary:** This rulemaking adopts current editions of the standards of the ASME Boiler and Pressure Vessel Code, ASME Code for Pressure Piping and the National Board Inspection Code (NBIC) which are used as the Oregon Boiler and Pressure Vessel Specialty Code. Adopting the most current editions of these standards provides improved protection for people and property in the State of Oregon.

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

**Rules Coordinator:** Heather L. Gravelle

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

**Telephone:** (503) 373-7438

.....  
**Date:** 5-17-05      **Time:** 11 a.m.      **Location:**  
1535 NW Edgewater St.  
Salem, OR

**Hearing Officer:** Casey T. Hoyer

**Stat. Auth.:** ORS 447.010, 447.060, 455.030, 455.148, 455.150, 455.467, 455.469, 455.455, 455.457, 455.459, 455.622, 455.461, 455.463, 455.720, 455.740, 455.895, 479.730, 670.380, 693.020, 693.040, 693.100, 693.103, 693.108 & 693.111

**Stats. Implemented:** ORS 446.250, 447.020, 455.030, 455.150, 455.448, 455.449, 455.455, 455.457, 455.459, 455.461, 455.463, 455.467, 455.469, 455.725, 455.730, 455.740, 455.895, 479.010, 479.730, 670.380, 693.020, 693.040, 693.050, 693.103, 693.108 & 693.111

**Proposed Adoptions:** Rules in 918-090, 918-098

**Proposed Amendments:** Rules in 918-020, 918-090, 918-098, 918-281, 918-695

**Proposed Repeals:** Rules in 918-090, 918-098, 918-281, 918-695

**Last Date for Comment:** 5-20-05, 5 p.m.

**Summary:** These proposed rules align new certifications with the newly adopted model code published by the International Code Council (ICC) as one criteria for being certified in Oregon as either a building official, plans examiner or inspector.

This rulemaking places the responsibility for checking experience and continuing education credits with the municipalities building official before hiring an inspector or plans examiner.

In addition to requirements mentioned above, new applicants must successfully pass an Oregon specific administrative examination, which is identified as the "Oregon Inspection Certification" (OIC). The OIC tests individuals on Oregon laws and ensures that certified individuals are accountable to the division regardless if they have an ICC certification.

These rules do not change the status of certifications currently held by individuals, individuals currently enrolled in training programs or applications that have been submitted prior to the effective date of these rules.

This rulemaking also corrects references to Division 98 rules in other areas of Chapter 918.



## NOTICES OF PROPOSED RULEMAKING

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

**Rules Coordinator:** Heather L. Gravelle

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

**Telephone:** (503) 373-7438

\*\*\*\*\*

### Department of Fish and Wildlife Chapter 635

Date:	Time:	Location:
6-10-05	8 a.m.	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:** 635-017-0095

**Proposed Repeals:** 635-017-0095(T)

**Last Date for Comment:** 6-10-05

**Summary:** This rule is necessary to permanently adopt sturgeon sport fishing season in the Willamette River. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

**Rules Coordinator:** Katie Thiel

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

**Telephone:** (503) 947-6033

\*\*\*\*\*

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

**Hearing Officer:** Fish and Wildlife Commission

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

**Stats. Implemented:** ORS 496.162 & 506.129

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

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

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

**Last Date for Comment:** 6-10-05

**Summary:** Adopt new regulations to clarify that Oregon adopts, by reference, any inseason actions that may be taken by the federal government and the International Pacific Halibut Commission for sport or commercial fisheries for Pacific halibut. 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

\*\*\*\*\*

Date:	Time:	Location:
5-13-05	8 a.m.	Crook County Library Broughton Rm. 175 NW Meadow Lakes Dr. Prineville, OR 97754
6-10-05	8 a.m.	ODFW Commission Rm. 3406 Cherry Ave. NE Salem, OR 97303

**Hearing Officer:** Fish and Wildlife Commission

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

**Stats. Implemented:** ORS 496.162, 506.109 & 506.129

**Proposed Adoptions:** Rules in 635-500

**Proposed Amendments:** Rules in 635-500

**Proposed Repeals:** Rules in 635-500

**Last Date for Comment:** 6-10-05

**Summary:** The Agency proposes to amend the Klamath River Basin Fish Management Plan policies and objectives for fish management in Miller Lake and Miller Creek to include Miller Lake Lamprey. 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

\*\*\*\*\*

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

**Hearing Officer:** Oregon Fish & 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 635-045, 635-049, 635-060, 635-065, 635-066, 635-067, 635-068, 635-069, 635-070, 635-071, 635-072, 635-073, 635-075, 635-078, 635-080, 635-160, 635-190, 635-200

**Last Date for Comment:** 6-10-05

**Summary:** Establish 2005 controlled hunt tag numbers for the hunting of pronghorn antelope, bighorn sheep, Rocky Mountain goat, deer, and elk. Change bag limits from one buck to one deer in certain units in the general archery season. Change bag limits for certain hunts relating to the permanent disabilities permit program. Rules will be amended to add New York to the list of states from which the importation of certain cervid parts is banned. Deer and elk management objectives will be revised.

Propose 2006 hunting regulations for game mammals, including season dates, open area, location of cooperative travel management areas, and other rules including general hunting, landowner preference, emergency hunt, and controlled hunting regulations. Propose quotas for 2006 cougar seasons. Propose spring bear seasons and tag numbers for 2006. These proposals will be presented in principle to the Oregon Fish and Wildlife Commission in June 2005 and again for adoption in October 2005.

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

\*\*\*\*\*

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

**Hearing Officer:** Oregon Fish & Wildlife Commission

**Stat. Auth.:** ORS 496.012, 496.138, 496.146, 496.162 & 497.112

**Stats. Implemented:** ORS 496.012, 496.138, 496.146, 496.162 & 497.112

**Proposed Amendments:** Rules in 635-067, 635-090

**Last Date for Comment:** 6-10-05

**Summary:** Amend rules regarding big game auction and raffle tags.

Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

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

**Rules Coordinator:** Katie Thiel

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

**Telephone:** (503) 947-6033



# NOTICES OF PROPOSED RULEMAKING

## Department of Forestry Chapter 629

Date:	Time:	Location:
5-16-05	10 a.m.	Oregon Dept. of Forestry 4690 Hwy. 20 Sweet Home, OR 97386
5-23-05	10 a.m.	Oregon Department of Forestry 3150 Main St. Springfield, OR 97478
6-1-05	1 p.m.	Mehama Fire Hall 21475 Ferry Rd. Lyons, OR 97358

**Hearing Officer:** Richard Gibson

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

**Stats. Implemented:** ORS 477.225

**Proposed Adoptions:** 629-041-0547, 629-041-0557

**Proposed Repeals:** 629-041-0520, 629-041-0535, 629-041-0545

**Last Date for Comment:** 6-1-05

**Summary:** This proposed action will disestablish the Clackamas-Marion Forest Protection District, the Eastern Lane Forest Protection District and the Linn Forest Protection District and replace them with the North Cascade Forest Protection District and the South Cascade Forest Protection District. No lands will be added to a forest protection district and no lands will be withdrawn from a district, as a result of this action. Questions specific to the proposed rule amendment process may be directed to Richard Gibson, 503-945-7440. Questions specific to the location of the boundary may be directed to Gregg Cline, 503-859-2151 or to Lena Tucker, 541-726-3588.

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

**Rules Coordinator:** Gayle Birch

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

**Telephone:** (503) 945-7210

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

Date:	Time:	Location:
5-24-05	8:30 a.m.	500 Summer St. NE Rm. 254 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 163.535, 418.017, 419B.100, 419B.150 & 442.015

**Stats. Implemented:** ORS 163.535, 418.017, 419B.100, 419B.150 & 442.015

**Proposed Repeals:** 413-030-0140, 413-030-0145, 413-030-0150, 413-030-0155, 413-030-0160, 413-030-0165

**Last Date for Comment:** 5-24-05

**Summary:** Rules were filed to become effective on January 1, 2002 in order to implement ORS 418.017. Upon review by the Legislative Counsel's Office, the Department has determined these rules should be repealed. Rules were not required to implement this legislation.

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

**Rules Coordinator:** Annette Tesch

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

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

Date:	Time:	Location:
5-25-05	8:30 a.m.	500 Summer St. NE Rm. 254 Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 181.537, 409.010, 418.005 & 419B.020; Other Auth.: ORS 181.537, 409.010, 418.005 & 419B.020

**Stats. Implemented:** ORS 181.537, 409.010, 418.005 & 419B.020

**Proposed Adoptions:** 413-015-1100, 413-015-1105, 413-015-1110, 413-015-1115, 413-015-1120, 413-015-1125

**Proposed Amendments:** 413-120-0440

**Last Date for Comment:** 5-31-05

**Summary:** These Child Protective Services and Adoption rules allow for local Child Welfare offices to run and use criminal records checks for CPS related decisions and emergency certification purposes.

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

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

**Rules Coordinator:** Annette Tesch

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

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

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

Date:	Time:	Location:
8-2-05	10 a.m.	500 Summer St. NE DHS, Rm. 137A Salem, OR

**Hearing Officer:** Linda Williams

**Stat. Auth.:** ORS 409.010

**Stats. Implemented:** ORS 414.065

**Proposed Adoptions:** 410-133-0245

**Proposed Amendments:** 410-133-0000, 410-133-0040, 410-133-0060, 410-133-0080, 410-133-0090, 410-133-0100, 410-133-0120, 410-133-0140, 410-133-0160, 410-133-0180, 410-133-0200, 410-133-0220, 410-133-0280, 410-133-0300, 410-133-0320, 410-133-0340

**Last Date for Comment:** 8-2-05, 5 p.m.

**Summary:** Rules relate to the requirements and operations for conducting school-based health services.

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

**Rules Coordinator:** Pat Bougher

**Address:** Department of Human Services, 500 Summer St. NE, E22, Salem, OR 97301-1099

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

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

**Stats. Implemented:** ORS 414.065

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

**Last Date for Comment:** 5-20-05, 12 p.m.

**Summary:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. In December 2004, OMAP temporarily amended 410-121-0300 to update the CMS Federal Upper Limits for Drug Payments listing. This is the Notice to permanently amend the rule to update Transmittal #37, with Title XIX State Agency Letter Number 05-01, changes to the list, effective for services rendered on or after February 14, 2005, to revise drug products information in compliance with federal regulations from Centers for Medicare and Medicaid Services (CMS).

**Rules Coordinator:** Darlene Nelson

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

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

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

**Stats. Implemented:** ORS 414.065

**Proposed Amendments:** 410-121-0157

**Proposed Repeals:** 410-121-0157(T)

## NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 5-20-05, 12 p.m.

**Summary:** The Pharmaceutical Services program rules govern Office of Medical Assistance Programs (OMAP) payments for services provided to clients. OMAP will amend rule 410-121-0157 to reference the updated information regarding participating pharmaceutical companies to the Medicaid Drug Rebate Program, in compliance with federal regulations. Previous Releases and updates are included to ensure a 24-month time period for billing is covered, using the appropriate effective dates in all Releases. The most current changes include information from CMS Release #136, dated February 14, 2005 and the OMAP Master Pharmaceutical Rebate Lists, updated March 30, 2005.

**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

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

Date:	Time:	Location:
6-1-05	9 a.m.	500 Summer St. NE Human Service Bldg. Rms. 137 A and B Salem, OR

**Hearing Officer:** Ralph Summers

**Stat. Auth.:** ORS 430.640 & 743.556; Other Auth.: 2003 Legislative Budget Note included in House Bill 5030

**Stats. Implemented:** ORS 430.630

**Proposed Adoptions:** 309-032-1240, 309-032-1245, 309-032-1250, 309-032-1255, 309-032-1260, 309-032-1265, 309-032-1270, 309-032-1275, 309-032-1280, 309-032-1285, 309-032-1290, 309-032-1295, 309-032-1300, 309-032-1305

**Last Date for Comment:** 6-1-05, 5 p.m.

**Summary:** These proposed rules would replace temporary rules that add standards for continuous care coordination beyond the services that residential, day, and community mental health treatment providers are currently required to provide by adding standards for Children's Intensive Community-Based Treatment and Support Services, as directed by the Legislature in the 2003 Legislative Budget Note included in House Bill 5030.

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

**Rules Coordinator:** Christina Hartman

**Address:** Department of Human Services, Mental Health and Developmental Disability Services, 800 NE Oregon St., Suite 930, Portland, OR 97232

**Telephone:** (503) 731-4405

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

**Stat. Auth.:** ORS 184, 448.150(1), 448.131, 448.280(1)(b) and (2), 438.605, 438.610, 438.615 & 438.620

**Stats. Implemented:** ORS 448.280(1)(b) and (2), 438.605, 438.610, 438.615 & 438.620

**Proposed Amendments:** 333-064-0025, 333-064-0035, 333-064-0070

**Last Date for Comment:** 5-22-05

**Summary:** Amends rules (for accrediting environmental testing laboratories) to:

1. Changes the standards for accreditation from NELAC 2002 Standards (Chapters 3, 4, 5 and 7) and NELAC Standards 2003 (Chapters 1, 2 and 6) to NELAC 2003 Standards for all 7 Chapters as required to maintain national recognition of the Oregon Environmental Laboratory Accreditation Program (ORELAP) by the U.S.

Environmental Protection Agency's National Environmental Laboratory Accreditation Program.

2. Adds clarifying language in regards to the need for an acceptable on-site assessment prior to granting primary accreditation to environmental testing laboratories seeking initial ORELAP accreditation.

3. Removes October 10, 2002 as the effective date for 333-064-0035.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 731-4405

.....  
**Stat. Auth.:** ORS 431.110, 431.140, 432, 433, 437.030, 616 & 624

**Stats. Implemented:** ORS 437.030

**Proposed Amendments:** 333-019-0041

**Last Date for Comment:** 5-22-05

**Summary:** Removes redundant language for tuberculosis screening of certain populations of school children.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 731-4405

.....  
**Stat. Auth.:** ORS 431, 432, 433 & 434

**Stats. Implemented:** ORS 431, 432, 433 & 434

**Proposed Amendments:** 333-012-0250

**Last Date for Comment:** 5-22-05

**Summary:** Clarifies purpose of the AIDS Drug Assistance Program and specifies the Department of Human Services as the Administrator of the federal funds awarded under Title II of the Ryan White Care Act for the State of Oregon. Language is revised to reflect changes in the federal legislation that administers the AIDS Drug Assistance Program.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 731-4405

.....  
**Stat. Auth.:** ORS 431 & 433

**Stats. Implemented:** ORS 431 & 433

**Proposed Amendments:** 333-017-0000, 333-018-0005, 333-018-0010, 333-018-0015, 333-018-0018, 333-019-0002, 333-019-0005, 333-019-0010, 333-019-0017

**Proposed Repeals:** 333-019-0015

**Last Date for Comment:** 5-22-05

**Summary:** To revise and update:

DIVISION 17, DISEASE CONTROL (DEFINITIONS AND REFERENCES): 333-017-0000 Definitions - Misnumbering corrected in (2).

DIVISION 18, DISEASE REPORTING: 333-018-0005 To Whom Reports Shall Be Made - Formatting only.

333-018-0010 Form of the Report:

Adds requirement that labs provide age or date of birth and specimen collection date.

Adds requirement that all health care providers, facilities, and labs cooperate with public health authorities by providing additional information relevant to investigations of cases or conditions, including outbreaks. Upon request such information shall be provided to any local health department or the Department of Human Services, regardless of county of residence.

333-018-0015 What Is to Be Reported and When:

Adds to list of reportable diseases: SARS, CJD and other transmissible spongiform encephalopathies, and chronic hepatitis C (not just acute infections).

Changes spelling of *Chlamydomphila psittaci* to reflect new taxonomy.

## NOTICES OF PROPOSED RULEMAKING

Simplifies reporting timetables (moving all diseases that had been one week to one working day category).

333-018-0018 Submission of Specimens to the Public Health Laboratory - Adds requirement that private labs forward serum from positive hepatitis A IgM tests to the Oregon State Public Health Laboratory.

### DIVISION 19, INVESTIGATION AND CONTROL OF DISEASES:

333-019-0002 Cooperation with Public Health Authorities - Formatting only.

333-019-0005 Conduct of Special Studies by the DHS - Removes redundant reference to statute.

333-019-0010 Imposition of Restrictions - Clarifies that only draining Staph/Strep lesions are excludable.

333-019-0015 Communicable Disease Control in Schools - Repeals rule that was to be deleted as part of the omnibus 2002 revisions, but was left in by mistake. It duplicates (or contradicts) substance covered in other rules.

333-019-0017 Rabies Vaccination for Animals - Updates Compendium reference to 2005 edition and corrects ALL CAPS formatting error.

**Rules Coordinator:** Christina Hartman

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

**Telephone:** (503) 731-4405

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### Department of Human Services, Self-Sufficiency Programs Chapter 461

Date:	Time:	Location:
5-24-05	10 a.m.	Room 255 500 Summer St. NE Salem, OR

**Hearing Officer:** Annette Tesch

**Stat. Auth.:** ORS 409.050, 411.060, 411.070, 411.816, 414.342, 418.040, 418.100; Other Auth.: 7 CFR 273.1, 7 CFR 273.5, 7 CFR 273.9(d)(3), 7 CFR 273.10(c)(3)(ii), 7 CFR 273.11(a)(1), 7 CFR 273.12(a), 7 CFR 273.13(b)(6), 7 CFR 273.17, ORS 411.060, ORS 411.105, Oregon's Health Insurance Flexibility and Accountability (HIFA)/Section 1115 demonstration

**Stats. Implemented:** ORS 409.050, 411.060, 411.070, 411.117, 411.700, 411.816, 414.342, 418.100

**Proposed Adoptions:** 461-170-0025

**Proposed Amendments:** 461-101-0010, 461-105-0010, 461-110-0370, 461-120-0120, 461-120-0125, 461-125-0330, 461-130-0330, 461-135-0400, 461-135-0570, 461-135-1110, 461-140-0040, 461-145-0365, 461-145-0910, 461-145-0920, 461-150-0055, 461-150-0090, 461-160-0055, 461-160-0620, 461-170-0101, 461-170-0102, 461-175-0300, 461-180-0090, 461-180-0130, 461-190-0197, 461-190-0406

**Last Date for Comment:** 5-24-05

**Summary:** Rule 461-101-0010 is being amended to clarify that special needs are a part of the Oregon Supplemental Income Program.

Rule 461-105-0010 is being amended to accurately reflect the 90-day application processing time frame for the OSIPM program.

Rule 461-110-0370 is being amended to clarify that the decision for an elderly individual, who meets certain criteria, to be considered a separate filing group from the others with whom they purchase and prepare can be made by either the elderly person or the others with whom they purchase and prepare. The rule is further being amended to exclude from the filing group persons who have already been members of another FS filing group in the month of application. In addition, the rule is being amended to add that a live-in attendant must be a paid provider of services.

Rule 461-120-0120 is being amended to bring the Oregon State Refugee Program in line with federal guidelines. The TVPRA (Trafficking Victims Protection Reauthorization Act of 2003) considers certain family members of trafficking victims as eligible for feder-

ally funded or administered benefits and services to the same extent as refugees. This includes: the TANF, OSIP, BCCM, MAA, MAF, OHP, OSIPM, SAC, GA, GAM, and Food Stamp programs.

Rule 461-120-0125 is being amended to bring the Oregon State Refugee Program in line with federal guidelines. The TVPRA (Trafficking Victims Protection Reauthorization Act of 2003) considers certain family members of trafficking victims as eligible for federally funded or administered benefits and services to the same extent as refugees. This includes: the TANF, OSIP, BCCM, MAA, MAF, OHP, OSIPM, SAC, GA, GAM, and Food Stamp programs.

Rule 461-125-0330 is being amended to rename Medical Disability Review Team (MDRT) to Presumptive Medicaid Disability Determination Team (PMDTT).

Rule 461-130-0330 is being amended in order to change the policy regarding JOBS disqualification penalty. Instead of starting at the third month of disqualification as is done under current disqualification policy, applicants who fail, without good cause, to participate in JOBS activities will start at no less than the second month of disqualification penalty. If a TANF grant for a non-cooperating applicant is opened on any date in the month other than the first day, the grant will open at no less than the second month of the disqualification penalty. If the grant opens on the first calendar day of the month, the grant will open at not less than the third month of disqualification. This amendment will change TANF program policy. It is not a clarification of current policy.

Rule 461-135-0400 is being amended to preserve access to student child care for students attending not-for-profit higher institutions.

Rule 461-135-0570 is being amended to align this rule with the federal regulations. This includes policy on students attending colleges or universities. Student status must be reviewed anytime the student attends classes in a college or university that offers degrees except when attending GED, ABE, ESL or similar high school equivalency programs.

Rule 461-135-1110 is being amended to reflect the annual change to the Expected Family Contribution (EFC) related to Pell Grant eligibility for 2005-2006. The EFC amount for 2005-2006 is established in the Consolidated Appropriations Act, 2005 (P.L. 108-447). The 2005-2006 EFC amount remains unchanged from 2004-2005.

Rules 461-140-0040 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.

Rule 461-145-0365 is being amended to clarify how to count income from the National and Community Service Trust Act (NCSTA) of 1993 for GA, GAM, OSIP, OSIPM, and QMB.

Rules 461-145-0910 and 461-150-0090 are being amended to merge all policies about annualizing income into one location and to conform to federal regulations on annualizing income when the business has been in operation for less than one year.

Rule 461-145-0920 is also being amended to remove the word "verifiable" and to clarify policy on allowable costs for producing self-employment income.

Rule 461-150-0055 is being amended to clarify existing policy regarding changes in resources that occur during the Oregon Health Plan (OHP) certification period. The rule is amended to reflect that changes in resources do not affect the eligibility of a benefit group during their certification period or until their eligibility otherwise ends once the group has been determined eligible.

Rule 461-160-0055 is being amended to add policy stating that the cost of companion animals can be allowed as a medical deduction for Food Stamps.

Rule 461-160-0620 is being amended to conform with the requirements in Section 1924(d)(3)(B) of the Social Security Act which indexes the amount of income a resident of a nursing facility or a resident of a living arrangement covered under Section 1915(c) of the Social Security Act, may divert back to their spouse who resides in the community. The applicable amount subject to diversion is a per-



## NOTICES OF PROPOSED RULEMAKING

centage of the federal poverty level, as published in the Federal Register on February 18, 2005, which is 150% for a two person family size.

Rule 461-170-0025 is being adopted to clarify existing policy and rule related to reporting requirements for individuals receiving Extended Medical (EXT) benefits. The rule establishes what changes must be reported for individuals receiving EXT benefits.

Rule 461-170-0101 is being amended to remove groups consisting of only elderly and disabled people with no earned income from the list of filing groups who may not participate in SRS. The rule is further being amended to add filing groups containing person(s) who are in MRS for another program to the list of those filing groups who may not participate in SRS.

Rule 461-170-0102 is being amended to clarify that households in which all members are elderly or disabled and have no earned income will not be required to complete an interim change report while they are participating in SRS.

Rule 461-175-0300 is being amended to remove the term "decision notice". This term is expressly defined in state policy. Federal regulations do not require a decision notice when a Food Stamp household needs to be notified at certification that their benefits will reduce when their TANF or GA benefits begin.

Rule 461-180-0090 is being amended to clarify existing policy regarding the effective dates for medical benefits in the General Assistance Medical (GAM), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), Oregon Health Plan (OHP), Oregon Supplemental Income Program Medical (OSIPM), Qualified Medical Beneficiary Program - Disabled Worker (QMB-DW), Refugee Medical (REFM) and Substitute Adoptive Care (SAC). The rule is amended to reflect that if a client does not complete the application within the time period described in 461-115-0190, the application will be denied, and the determination of an effective date requires a new date of request.

Rule 461-180-0130 is being amended to clarify that the effective date for restoring food stamp benefits that were lost due to underpayment, denial or closure is the first of the month following the earliest of the month the benefit group notifies the branch office of the possible loss or the month the branch office discovers the loss or the date a hearing is requested.

Rule 461-190-0197 is being amended to require that clients participating in the microenterprise component provide to the department semi-annual statements of the client's income prepared by a certified public accountant, bookkeeping firm, or other entity approved by the Department according to generally accepted accounting principles.

Rule 461-190-0406 is being amended to remove an out-of-date reference to "or Food Stamp benefits".

*\*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

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

Date:	Time:	Location:
5-27-05	9 a.m.	500 Summer St. NE Rm. 137d Salem, OR

**Hearing Officer:** Lynda Dyer

**Stat. Auth.:** ORS 410

**Stats. Implemented:** ORS 410.210 - 410.300

**Proposed Adoptions:** 411-002-0155

**Last Date for Comment:** 5-27-05

**Summary:** 411-002-0155 amends Chapter 411, Division 2, Designation of Planning and Service Areas, to address the supervision of Type B1 and B2 Contract AAA state employees.

The adoption of this rule will clarify the responsibility between the Department of Human Services (Department) and AAA local government entities (Contract) relating to the supervision of Type B1 and B2 Contract state employees (Employees). It defines collaborative requirements between Department and County relating to said Employees; and requires that policy for state employees of Type B1 and B2 AAAs is consistent with other Department employees. Additionally, it provides clarification regarding the role and responsibility of the State Program Manager in a Type B1 or B2 Contract AAA and specifies the Department as the sole negotiator for employment-related settlements of Employees.

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

**Rules Coordinator:** Lynda Dyer

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

**Telephone:** (503) 945-6398

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

Date:	Time:	Location:
6-9-05	10:30 a.m.	1215 State St. Third Flr. Salem, OR 97301

**Hearing Officer:** Esin Onart, Assistant Attorney General

**Stat. Auth.:** ORS 180.140(5), 279A.025(2)(j) & 183.310(9)

**Stats. Implemented:** ORS 180.140(5), 279A.025(2)(j) & 200.035

**Proposed Adoptions:** 137-009-0125, 137-009-0130, 137-009-0135, 137-009-0140, 137-009-0145, 137-009-0150, 137-009-0155, 137-009-0160, 137-009-0165

**Proposed Repeals:** 137-009-0000, 137-009-0005, 137-009-0010, 137-009-0045, 137-009-0060, 137-009-0065, 137-009-0100, 137-009-0120

**Last Date for Comment:** 6-9-05

**Summary:** The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to establish personal services contracts with individuals or entities to perform such services. Previous rules substantially identical to the rules being adopted expired by operation of law when the new Public Procurement Code became effective on March 1, 2005 and are being repealed. The only change in text between the expired/repealed rules and the rules being adopted are corrections to references to rule numbers and the addition of references to the successor to the Department of Administrative Services' VIP System.

The documents related to this rulemaking are available for public review during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday, at the Department of Justice, 1215 State Street, 3rd Floor, Salem, OR 97301.

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

**Rules Coordinator:** Carol Riches

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

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

.....  
**Stat. Auth.:** ORS 25.020, 25.245, 25.396, 25.610 & 180.345  
**Stats. Implemented:** ORS 18.180 - 18.195, 18.645, 18.655, 25.011, 25.020, 25.080, 25.085, 25.150, 25.245, 25.287, 25.396, 25.414, 25.610, 107.108, 180.345, 416.415 & 416.425  
**Proposed Adoptions:** 137-055-1700  
**Proposed Amendments:** 137-055-1180, 137-055-2140, 137-055-3400, 137-055-4130, 137-055-5110, 137-055-5120, 137-055-5400, 137-055-6020



## NOTICES OF PROPOSED RULEMAKING

**Proposed Ren. & Amends:** 137-055-6110 to 137-055-4455

**Last Date for Comment:** 6-20-05

**Summary:** Adopt 137-055-1700 which designates the Special Collections Unit as the office to receive writs of garnishment against the agency. The amendments to: OAR 137-055-1180 authorizes an administrative law judge to make a finding on the record for an address of record; OAR 137-055-1700 designates the Special collection Unit as the authorized office to accept garnishments of child or spousal support payments; OAR 137-055-2140 authorizes an administrative law judge to issue a final order by default when a party fails to appear for a hearing; OAR 137-055-3400 exempts a Division of Child Support office from the rule; OAR 137-055-4130 corrects an administrative rule number cite; OAR 137-055-5110 adds a definition for "equivalent of a C grade average" to the rule; OAR 137-055-5120 deletes the definition of the C grade average from the rule; OAR 137-055-5400 clarifies that obligers cannot get credit for time they are on assistance in another state or from a tribe prior to the effective date of the law; OAR 137-055-6110 is renumbered and changes shall to will or must.

Copies of the proposed rules can be found on our web page at [http://www.dcs.state.or.us/oregon\\_admin\\_rules/default.htm](http://www.dcs.state.or.us/oregon_admin_rules/default.htm)

**Rules Coordinator:** Shawn Irish

**Address:** Department of Justice, Division of Child Support, 494 State St. SE, Suite 300, Salem, OR 97301

**Telephone:** (503) 986-6158

.....  
**Department of Oregon State Police**  
**Chapter 257**

**Stat. Auth.:** ORS 181.440

**Stats. Implemented:** ORS 181.440

**Proposed Adoptions:** 257-050-0020, 257-050-0125, 257-050-0145, 257-050-0157, 257-050-0170, 257-050-0200

**Proposed Amendments:** 257-050-0040, 257-050-0070, 257-050-0090, 257-050-0140, 257-050-0150

**Proposed Repeals:** 257-050-0080, 257-050-0120, 257-050-0160

**Last Date for Comment:** 5-22-05

**Summary:** ADOPT: OAR 257-050-0020(1-4): establishing policy & purpose of the Oregon State Police pertaining to towing needs of the Department in regards to the Non-Preference Tow Program.

OAR 257-050-0125(1-7): reinspections/self certifications

OAR 257-050-0145(1-4): conduct criminal history checks on tow company employees when listed as tow truck drivers.

OAR 257-050-0157(1-2): suspension for violation other than chargeable as violation or crime

OAR 257-050-0170(1-7): procedure for hearings

OAR 257-050-0200(1-5): mandatory equipment standards for tow trucks/safety related equipment, replaces 257-050-0160

AMEND: OAR 257-050-0040(2): clarifying rules

OAR 257-050-0070(A)(B)(D): increase in cargo & garagekeepers liability insurance

OAR 257-050-0090: housekeeping

OAR 257-050-0140(4-A) (4-B) (5): housekeeping

OAR 257-050-0150(6): housekeeping

REPEAL: OAR 257-050-0080, OAR 257-050-0120, OAR 257-050-0160

**Rules Coordinator:** Cort Dokken

**Address:** Department of State Police, 400 Public Service Bldg., Salem, OR 97310

**Telephone:** (503) 378-3725, ext. 4105

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

**Date:**  
5-16-05

**Time:**  
10 a.m.

**Location:**  
4760 Portland Rd. NE  
Mt. Hood Conf. Rm.  
Salem, OR

**Hearing Officer:** John Caul

**Stat. Auth.:** ORS 476.030 & 480.110 - 480.165

**Stats. Implemented:** ORS 480.110 - 480.165

**Proposed Amendments:** 837-012-0505, 837-012-0510, 837-012-0515, 837-012-0520, 837-012-0525, 837-012-0530, 837-012-0540, 837-012-0545, 837-012-0555

**Last Date for Comment:** 5-16-05, 5 p.m.

**Summary:** Changes are being made to OAR 837-012-0505 to 837-012-0555 for the purposes of housekeeping and clarification. Other changes have been made to update the name of BATF to the new name of BATFE and to update NFPA 1124 from edition 1998 to 2003. In addition, we are changing the application deadline date from December 15 to December 1.

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

**Rules Coordinator:** Pat Carroll

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

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

.....  
**Date:**  
5-16-05

**Time:**  
10 a.m.

**Location:**  
4760 Portland Rd. NE  
Mt. Hood Conf. Rm.  
Salem, OR

**Hearing Officer:** John Caul

**Stat. Auth.:** ORS 476.030 & 480.110 - 480.165

**Stats. Implemented:** ORS 480.110 - 480.165

**Proposed Amendments:** 837-012-0610, 837-012-0615, 837-012-0620, 837-012-0635, 837-012-0640, 837-012-0650, 837-012-0655, 837-012-0670

**Last Date for Comment:** 5-16-05, 5 p.m.

**Summary:** Changes are being made to OAR 837-012-0610 to 837-012-0670 for the purposes of housekeeping and clarification. Other changes have been made to update NFPA 1124 from edition 2003 to 2004 and to correct the name and edition of the Oregon Electrical Code 1999 edition to the Oregon Electrical Specialty Code, 2005 edition.

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

**Rules Coordinator:** Pat Carroll

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

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

.....  
**Stat. Auth.:** ORS 476.030 & 480.310 - 480.385

**Stats. Implemented:** ORS 480.310 - 480.385

**Proposed Adoptions:** 837-020-0120

**Proposed Amendments:** 837-020-0035, 837-020-0040, 837-020-0050, 837-020-0055, 837-020-0060, 837-020-0065, 837-020-0070, 837-020-0085, 837-020-0105, 837-020-0115, 837-020-0125

**Last Date for Comment:** 5-22-05

**Summary:** Changes are being made to the Oregon Administrative Rules 837-020-0035 to 837-020-0125 as a result of a three year rule review, and for purposes of housekeeping and clarification. In addition, language pertaining to contested cases and hearings have been moved to a new section for ease of access.

Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code, adding a note to the definition of Class 1 Flammable Liquid, renumbering certain sections, and grammatical changes.

**Rules Coordinator:** Pat Carroll

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

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

.....  
**Stat. Auth.:** ORS 476.030

**Stats. Implemented:** ORS 476, 479 & 480

**Proposed Amendments:** 837-040-0010

## NOTICES OF PROPOSED RULEMAKING

**Last Date for Comment:** 6-24-05

**Summary:** Amend the Oregon Fire Code, 2004 Edition as follows:

1) Make Temporary Rule changes, filed December 29, 2004, to sections 907.10.1.3, 907.10.1.4, 3301.1.6 and Chapter 45, referenced standards, NFPA 495, 1124 and 1142 permanent.

2) Amend sections 406.2-Frequency (employee training and response procedures) and section B105.2-Buildings other than one and two family dwellings (fire flow requirements for buildings)

3) Delete Section 2404.11-Clearance (temporary and permanent tents, canopies and membrane structures)

Copies of the amendments may be obtained by calling 503-373-1540, ext. 276.

**Rules Coordinator:** Pat Carroll

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

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

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**Stat. Auth.:** ORS 476.030 & 480.110 - 480.165

**Stats. Implemented:** ORS 480.110 - 480.165

**Proposed Amendments:** 837-012-0310, 837-012-0315, 837-012-0320, 837-012-0330

**Last Date for Comment:** 5-23-05, 5 p.m.

**Summary:** Changes are being made to the Oregon Administrative Rules 837-012-0305 to 837-012-0370 for purposes of housekeeping and clarification. Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code.

**Rules Coordinator:** Pat Carroll

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

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

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**Stat. Auth.:** ORS 476.030 & 480.010 - 480.990

**Stats. Implemented:** ORS 480.010 - 480.990

**Proposed Amendments:** 837-012-1210, 837-012-1220, 837-012-1240, 837-012-1260, 837-012-1290, 837-012-1300, 837-012-1310, 837-012-1320, 837-012-1390, 837-012-1420

**Last Date for Comment:** 5-23-05, 5 p.m.

**Summary:** Changes are being made to the Oregon Administrative Rules 837-012-1210 to 837-012-1420 for purposes of housekeeping and clarification. Other changes have been made to update the name of the past fire code to the new name and edition of the Oregon Fire Code.

**Rules Coordinator:** Pat Carroll

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

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

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

**Stat. Auth.:** ORS 181.644, 181.652, 181.653, 181.665

**Stats. Implemented:** ORS 181.644, 181.652, 181.653, 181.665

**Proposed Amendments:** 259-008-0040

**Last Date for Comment:** 5-23-05

**Summary:** Housekeeping change. Extends certification time beyond 18 months for officers deployed to military duty. Currently, a one-year extension is allowed. However, deployed officers are often called to duty for periods longer than one year. Provision allows for terms of remediation upon the officer's return to law enforcement.

A copy of the proposed rules are available by contacting the rules coordinator listed on this form.

**Rules Coordinator:** Bonnie Salle

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

**Telephone:** (503) 378-2431

**Stat. Auth.:** ORS 181.875, 181.878 & 181.883

**Stats. Implemented:** ORS 181.875, 181.878 & 181.883

**Proposed Amendments:** 259-060-0020, 259-060-0120, 259-060-0130, 259-060-0135, 259-060-0300, 259-060-0500

**Last Date for Comment:** 5-23-05

**Summary:** Housekeeping issues. Increases the 14-day response period to 21 days; requires completion of Form PS-21; provides for a late submission penalty fee when providers fail to renew certification prior to the expiration date of license certification; and adds language consistently referencing the late submission penalty fee of \$50.00. Additionally, corrects an administrative oversight that inadvertently omitted previously approved rules from the Secretary of State's Administrative Rules.

A copy of the proposed rules are available by contacting the rules coordinator listed on this form.

**Rules Coordinator:** Bonnie Salle

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

**Telephone:** (503) 378-2431

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### **Department of Revenue Chapter 150**

**Date:**  
5-24-05

**Time:**  
9:45 a.m.

**Location:**  
955 Center St. NE  
Fishbowl Conference Rm.  
Salem, OR

**Hearing Officer:** Judi James

**Stat. Auth.:** ORS 305.100 & 305.810

**Stats. Implemented:** ORS 305.810, 314.385, 314.397, 316.162 & 316.207

**Proposed Adoptions:** 150-305.810

**Proposed Amendments:** 150-314-385(1)-(D), 150-316.207

**Proposed Repeals:** 150-314-385(1)-(C), 150-314.397

**Proposed Ren. & Amends:** 150-316.162(4) to 150-316.162(3)

**Last Date for Comment:** 5-24-05

**Summary:** To adopt or amend administrative rules relating to personal income tax and collections.

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

**Rules Coordinator:** Judith Lile

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301

**Telephone:** (503) 947-2209

\*\*\*\*\*

**Date:**  
5-24-05

**Time:**  
9:45 a.m.

**Location:**  
955 Center St. NE  
Fishbowl Conference Rm.  
Salem, OR

**Hearing Officer:** Judi James

**Stat. Auth.:** ORS 305.100, 321.609, 321.005, 321.700, 308.030, 308.215

**Stats. Implemented:** 305.810, 308.030, 308.146, 308.215, 309.026, 311.668, 321.005, 321.609, 321.700, 457.450

**Proposed Adoptions:** 150-308.030, 150-308.146, 150-309.026(2)-(B), 150-321.609(1)-(A), 150-457.450(1)

**Proposed Amendments:** 150-308.215(1)-(A), 150-311.668(1)(a)-(A), 150-321.700(13)

**Proposed Repeals:** 150-308.030(4), 150-308.205(3)

**Proposed Ren. & Amends:** 150-321.005

**Last Date for Comment:** 5-24-05

**Summary:** To adopt or amend administrative rules relating to property tax, Senior Citizens' Property Deferral, and timber tax.

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

**Rules Coordinator:** Judith Lile

**Address:** Department of Revenue, 955 Center St. NE, Salem, OR 97301

**Telephone:** (503) 947-2099

# NOTICES OF PROPOSED RULEMAKING

## Department of Transportation, Highway Division Chapter 734

**Stat. Auth.:** ORS 184.616, 184.619 & 811.167

**Stats. Implemented:** ORS 811.167

**Proposed Amendments:** 734-020-0220

**Last Date for Comment:** 5-23-05

**Summary:** OAR 734-020-0220 establishes the proper placement of the Yield to Bus sign as required by ORS 811.167. The current rule requires a transit agency to place the Yield to Bus sign only on the lower left side of the vehicle. At the time, the assumption was that buses would only re-enter traffic after stopping to receive or discharge passengers from the right lane. The Yield to Bus sign flashes when the turn signal is activated. Several transit agencies will be adding stops in medians which will require buses to re-enter traffic from left lanes and will, therefore, be signaling to re-enter traffic with their right turn signal. When the Yield to Bus sign is located next to the activated turn signal it is much more visible to vehicle operators behind the bus who are required to yield to the bus when it re-enters traffic. This makes re-entry safer for the bus occupants and the motorists following the bus. This proposed rule amendment will allow buses to either include an additional Yield to Bus sign on the right side of the bus near the right turn signal or have one Yield to Bus sign centrally located on the rear of the bus in order to accommodate traffic entry from left lanes, as well as from right lanes.

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

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**Stat. Auth.:** ORS 184.616, 184.619, 366.205 & 810.200

**Stats. Implemented:** ORS 810.200 & 810.210

**Proposed Amendments:** 734-020-0005, 734-020-0430, 734-020-0460

**Last Date for Comment:** 5-23-05

**Summary:** The proposed amendment of OAR 734-020-0005 adopts the 2003 Edition of the Manual on Uniform Traffic Control Devices (MUTCD), Oregon Supplement to the MUTCD and the Oregon Temporary Traffic Control Handbook as standards for traffic control devices in Oregon in accordance with ORS 810.200. The amended rule, as proposed, complies with federal requirements set forth in Title 23, United States Code, Section 109(d) and Title 23, Code of Federal Regulations, Part 655.603, which requires states to adopt the 2003 Edition of the MUTCD and any supplements within two years of issuance. The proposed amendment of OAR 734-020-0430 revises the position responsible for maintaining the Traffic Signal Approval List consistent with realignment of the Highway Division. The amended rule, as proposed, also clarifies the process for reinstating locations not advanced to construction within five years after placement on the Traffic Signal Approval List. The proposed amendment of OAR 734-020-0460 revises language consistent with the adoption of the 2003 Edition of the MUTCD under the amendment of OAR 734-020-0005.

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

## Health Licensing Office Chapter 331

**Date:**  
5-23-05

**Time:**  
9 a.m.

**Location:**  
700 Summer St.  
Rhoades Conf. Rm.  
Salem, OR

**Hearing Officer:** Bert Krages

**Stat. Auth.:** ORS 676.615 & 680.525; Other Auth.: ORS 676.605 & 680.525

**Stats. Implemented:** ORS 676.615 & 680.525

**Proposed Amendments:** 331-405-0030

**Last Date for Comment:** 5-23-05

**Summary:** The Board is proposing **fee increases** for initial issuance and license renewal from \$495 to \$795. Proposed fee increases correct depleting revenues resulting from licensee attrition and increased costs of providing services and administering the licensing program.

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

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Health Licensing Office, 700 Summer St. NE, Suite. 320, Salem, OR 97302

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

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## Health Licensing Office, Board of Cosmetology Chapter 817

**Stat. Auth.:** ORS 676.615, 690.046, 690.048 & 690.165; Other Auth.: ORS 676.605

**Stats. Implemented:** ORS 676.615, 690.046, 690.048 & 690.165

**Proposed Amendments:** 817-005-0005, 817-030-0018, 817-035-0010, 817-035-0030, 817-040-0003

**Last Date for Comment:** 5-21-05

**Summary:** **Refiled Notice of Rulemaking** due to lapse in time for permanent adoption, following public rule hearing held October 25, 2004. The proposed rules are based on passage of HB 2325 during the 2003 Legislative Session that corrected conflicting provisions in ORS Chapter 690 governing cosmetology and the practice of barbering, hair design, facial technology and nail technology - ORS 690.005 Definitions and ORS 690.048 Certificate Prima Facie Evidence of Right to Practice. The law separates certification according to the field of practice for which an applicant receives training/education, passes competency testing, and is issued authorization to practice. Oregon Laws 2003, Chapter 547 became effective January 1, 2004. The revised fee schedule will convert the \$50 practitioner two-year certificate with bundled fields of practice to a \$33 fee for each certificate issued in a field of practice.

**Rules Coordinator:** Patricia C. Allbritton

**Address:** Health Licensing Office, Board of Cosmetology, 700 Summer St. NE, Suite. 320, Salem, OR 97302

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

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## Landscape Contractors Board Chapter 808

**Date:**  
5-20-05

**Time:**  
11 a.m.

**Location:**  
City Council Chambers  
101 NW A St.  
Grants Pass, OR

**Hearing Officer:** Ron Overstreet

**Stat. Auth.:** ORS 670.310 & 671.670

**Stats. Implemented:** ORS 182.462

**Proposed Amendments:** 808-001-0008

**Last Date for Comment:** 5-20-05

**Summary:** 808-001-0008 - Adopt 2005-2007 Biennium Budget.

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

**Rules Coordinator:** Kim Gladwill-Rowley



## NOTICES OF PROPOSED RULEMAKING

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

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

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### **Oregon Department of Education Chapter 581**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-05	3 p.m.	255 Capitol St. NE Public Service Bldg. Rm. 251-A Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 820.100; Other Auth.: State Board of Education

**Stats. Implemented:** ORS 820.100

**Proposed Amendments:** 581-053-0550

**Last Date for Comment:** 5-24-05

**Summary:** Industry weights and classifications on vehicles have changed, which creates a need to require training and regulations for the drivers of these new types of vehicles.

If you have questions regarding this rule, please contact Deborah Lincoln at (503) 378-3600 Ext. 2664 or e-mail [Deborah.lincoln@state.or.us](mailto:Deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600 Ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

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

**Rules Coordinator:** Debby Ryan

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-05	3 p.m.	Public Service Bldg. 255 Capitol St. NE Rm. 251A Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 820.100

**Stats. Implemented:** ORS 820.100

**Proposed Amendments:** 581-053-0507

**Last Date for Comment:** 5-24-05

**Summary:** Industry changes have changed the weights and classifications on vehicles. This amendment will reflect those changes.

If you have a question regarding this rule, please contact Deborah Lincoln at (503)-378-3600, ext. 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us). For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

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

**Rules Coordinator:** Debby Ryan

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

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

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<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-05	3 p.m.	Public Service Bldg. 255 Capitol St. NE Rm. 251A Salem, OR

**Hearing Officer:** Mike Reed

**Stat. Auth.:** ORS 820.100

**Stats. Implemented:** ORS 820.100

**Proposed Amendments:** 581-053-0517

**Last Date for Comment:** 5-24-05

**Summary:** Industry changes have changed the weights and classifications on vehicles. Innovative improvements on equipment have made new features available that were previously unavailable.

If you have a question regarding this rule, please contact Deborah Lincoln at (503)-378-3600, ext. 2664 or e-mail [deborah.lincoln@state.or.us](mailto:deborah.lincoln@state.or.us)

state.or.us. For a copy of this rule, please contact Debby Ryan at (503) 378-3600, ext. 2348 or e-mail [debby.ryan@state.or.us](mailto:debby.ryan@state.or.us)

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

**Rules Coordinator:** Debby Ryan

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

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

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### **Oregon Liquor Control Commission Chapter 845**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-05	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 471.740 & 471.750(1)

**Proposed Amendments:** 845-015-0170

**Last Date for Comment:** 6-7-05

**Summary:** Retail sales agents are authorized to make package sales of distilled spirits. This rule describes when payment for distilled spirits must be received, and the allowed forms (check, currency, etc.) of payment. We need to amend the rule to clarify when payment must be received, particularly for Full-On-Premises Sales licensees who may have their distilled spirits delivered to their licensed premises.

*\*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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### **Oregon Public Employees Retirement System Chapter 459**

<b>Date:</b>	<b>Time:</b>	<b>Location:</b>
5-24-05	2 p.m.	11410 SW 68th Pkwy. Boardroom, PERS Headquarters Tigard, OR

**Hearing Officer:** David K. Martin

**Stat. Auth.:** ORS 238.305(3)(c) & 238.650

**Stats. Implemented:** ORS 238, 238.260, 238.300, 238.305 & 238.315

**Proposed Amendments:** 459-007-0001, 459-007-0003, 459-007-0005, 459-007-0090

**Proposed Repeals:** 459-007-0095, 459-013-0300

**Last Date for Comment:** 6-3-05

**Summary:** The Oregon Supreme Court determined two elements of the 2003 PERS Reform Legislation to be invalid. One was the crediting limitation on Tier One member regular accounts. The other was using the COLA Freeze method to recover overpayments as determined under the legislation. Previously, the agency had adopted administrative rules that incorporated those elements. After the decision was announced, PERS staff identified the following rule provisions that need to be modified to remove those elements and conform to the current state of the law after Strunk.

**459-007-0001:** This rule must be changed to reflect that the Deficit and Rate Guarantee reserves are ongoing accounts, not just reflections of prior deficits. Note that in this and the other rule modifications, an effective date is specified. These dates correspond to when the prior, now invalid, version of the rules became effective. These modifications will, by operation of these dates, supersede the non-conforming versions.

**459-007-0003:** This rule reflected the limitations on Tier One member regular account earnings crediting that were voided in Strunk. The rule modifications clarify that Tier One member regular accounts will be credited with no less than a pro-rate of the assumed rate. The rule also notes that such accounts cannot be cred-



## NOTICES OF PROPOSED RULEMAKING

ited with more than that rate until the conditions of ORS 238.255 are met. HB 2001 (2003 regular session) adopted limitations that prevent the PERS Board from crediting more than the assumed rate to Tier One member regular accounts. Those limitations were not challenged in the Strunk case, so the rule modifications acknowledge them.

**459-007-0005:** The substantive modifications are to sections (8) and (10) of the rule to reflect the assumed rate guarantee for Tier One member regular accounts. The other modifications correct terminology and references that were not consistent.

**459-007-0090:** This rule reflected an interim provision that credited lump sum installment retirements with a special rate up until April 1, 2004. That provision was struck down in Strunk, so this rule modification removes reference to the April trigger date.

**459-007-0095:** This rule was adopted to reflect that interim provision referenced above. The provision required that lump sum retirements from August 2003 to April 1, 2004 that were paid in two or more installments be credited with actual earnings or losses. That restriction was invalidated in Strunk, so staff is asking the Board to repeal the rule implementing it.

**459-013-0300:** The Strunk court also found that the COLA Freeze method was not a permissible way to recover overpaid amounts as determined under the legislation. This rule was adopted to define and support the COLA Freeze process, so staff is asking the Board to repeal the rule.

*\*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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Date:	Time:	Location:
5-24-05	2 p.m.	11410 SW 68th Pkwy. Boardroom, PERS Headquarters Tigard, OR

**Hearing Officer:** David K. Martin

**Stat. Auth.:** ORS 238.650

**Stats. Implemented:** ORS 293.525

**Proposed Adoptions:** 459-005-0225

**Last Date for Comment:** 6-3-05

**Summary:** ORS 293.525 provides for state agencies to require payments to the agency via electronic funds transfer (EFT). PERS would like to enable EFT, which would require employers to remit payments through an automated clearinghouse. The EFT process will provide for safer, more efficient processing of payments.

*\*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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Date:	Time:	Location:
5-24-05	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.050 & 238.705

**Proposed Amendments:** 459-070-0100, 459-070-0110

**Last Date for Comment:** 6-3-05

**Summary:** OAR 459-070-0100 and 459-070-0110 direct participating employers to submit required information and contributions to PERS for each pay period and specify penalties for incomplete or late reporting.

ORS 293.525 provides for state agencies to require payments to the agency via electronic funds transfer (EFT). PERS wishes to institute an EFT process and has initiated rulemaking to enable this

process. Currently, however, some employers have statement dates at the end of the month, which is preventing the posting of those contributions in a timely manner. Changing the remittance deadline from seven to five days though the EFT process will help to insure contributions are posted in a timely manner.

Additionally, statutory language incorporated from ORS Chapter 238 into the OPSRP programs imposes harsh penalties on employers that fail to remit reports or contributions in a timely manner. These rules were initially amended to extend the ability of the Executive Director to waive penalties to avoid administrative complications in waiving penalties and unnecessarily burdening employers struggling to comply with the new reporting standards. With administrative complications still being worked out, flexibility in waiving penalties is warranted.

*\*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 University System, Oregon Institute of Technology Chapter 578**

Date:	Time:	Location:
5-25-05	11 a.m.	Mt. Bailey College Union Bldg. Klamath Falls, OR

**Hearing Officer:** Staff

**Stat. Auth.:** ORS 351

**Stats. Implemented:** ORS 351.070

**Proposed Amendments:** 578-041-0030, 578-072-0030

**Last Date for Comment:** 6-1-05

**Summary:** 578-041-0030 Amends the Schedule of Special Institution Fees and Charges. Amendments allow for increases, revisions, additions or deletions of special course fees and general service fees for fiscal year 2005-06. The schedule of subject fees may be obtained from the Oregon Institute of Technology Business Office.

578-072-0030 Initiates changes in parking permits and regulations for the 2005-06 fiscal year.

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

**Rules Coordinator:** Ceilia E. Foster

**Address:** Oregon State System of Higher Education, Oregon Institute of Technology, 3201 Campus Drive, Klamath Falls, OR 97603

**Telephone:** (541) 885-1105

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### **Oregon University System, Oregon State University Chapter 576**

Date:	Time:	Location:
5-26-05	12 p.m.	206 Memorial Union Oregon State University Corvallis, OR

**Hearing Officer:** Bonnie Dasenko

**Stat. Auth.:** ORS 351.070, 352.360 & OAR 580-040-0010

**Stats. Implemented:** ORS 351.070 & 352.360

**Proposed Amendments:** 576-010-0000

**Last Date for Comment:** 5-27-05

**Summary:** The proposed amendment will set fees and charges for designated services at Oregon State University for fiscal year 2005-2006. The rule states: "The University hereby adopts by reference a list of fees and charges for fiscal year 2005-2006. The list of fees and charges is available at the Oregon State University Office of Budget and Fiscal Planning and the Oregon State University Valley Library, and is hereby incorporated by reference in the rule."

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

## NOTICES OF PROPOSED RULEMAKING

**Rules Coordinator:** Bonnie Dasenko  
**Address:** Oregon State System of Higher Education, Oregon State University, 600 Kerr Administration Building, Corvallis, OR 97331-2128  
**Telephone:** (541) 737-2474

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**Oregon Youth Authority**  
**Chapter 416**

**Stat. Auth.:** ORS 420A.025  
**Stats. Implemented:** ORS 419C.481, 419C.550 - 419C.558 & 420A.014  
**Proposed Adoptions:** 416-120-0030  
**Proposed Amendments:** 416-120-0000, 416-120-0010  
**Last Date for Comment:** 5-23-05  
**Summary:** OAR 416-120-0000 will be amended in that it will be retitled and will redefine "physical custodian" and expand the list of actions that workers and supervisors/manager may consent to based on statute. OAR 416-120-0010 will be expanded to clarify the role of guardianship. OAR 416-120-0030 will be adopted to define the authority for Department of Corrections' offenders in the physical custody of the OYA. 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:**  
**Proposed Repeals:** 416-350-0000, 416-350-0010, 416-350-0020, 416-350-0030  
**Last Date for Comment:** 5-23-05  
**Summary:** OAR Chapter 416, Division 350 will be repealed in its entirety. Payment language is found in other legal documents and does not require rule. 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 420.888 - 420.892  
**Proposed Amendments:** 416-530-0010  
**Last Date for Comment:** 5-24-05  
**Summary:** This notice is being re-filed as the notice submitted on 12/15/04 was not presented to legislative counsel in a timely manner. OAR 416-530-0010 is being amended to redefine a "respite provider" by removing the language "and not a member of the house-

hold." 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 420.855 - 420.885  
**Proposed Adoptions:** 416-315-0000, 416-315-0010, 416-315-0020, 416-315-0030  
**Last Date for Comment:** 6-1-05  
**Summary:** OAR 416-315-0000 Will define the process detention facilities will use to request approval and designation of youth care center programs, and the criteria the OYA will apply to review the requests. OAR 416-315-0010 Will set criteria for the operation of youth care center programs operated within juvenile detention facilities and the review standards for designation. OAR 416-315-0020 Will define approval notification, on-going renewal, and termination standards. OAR 416-315-0030 Will define grievance procedures.  
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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**Public Utility Commission**  
**Chapter 860**

**Stat. Auth.:** ORS 183, 756 & 757  
**Stats. Implemented:** ORS 757.039  
**Proposed Amendments:** 860-024-0020, 860-024-0021  
**Last Date for Comment:** 5-23-05  
**Summary:** The proposed rules adopt published US Department of Transportation (USDOT) amendments associated with the construction, operation and maintenance of intrastate gas pipelines and liquefied natural gas facilities. The amendments being adopted are from the Code of Federal Regulations, CFR Title 49, Part 192 (six amendments), and Part 193 (one amendment).  
Pursuant to ORS 757.039(3), the Commission has agreements with USDOT that the Oregon PUC will adopt federal pipeline safety regulations applicable to intrastate gas pipelines and liquefied natural gas facilities. This rulemaking is necessary to update OPUC's gas safety rules to be current with federal gas pipeline safety regulations.  
**Rules Coordinator:** Diane Davis  
**Address:** Public Utility Commission of Oregon, 550 Capitol St. NE, Suite 215, Salem, OR 97301-2551  
**Telephone:** (503) 378-4372

# ADMINISTRATIVE RULES

## Board of Examiners for Engineering and Land Survey Chapter 820

**Adm. Order No.:** BEELS 1-2005

**Filed with Sec. of State:** 3-16-2005

**Certified to be Effective:** 3-16-05

**Notice Publication Date:** 2-1-05

**Rules Adopted:** 820-010-0622, 820-020-0040, 820-020-0045

**Rules Amended:** 820-010-0010, 820-010-0200, 820-010-0600, 820-040-0040

**Subject:** OAR 820-010-0010(17) - Creates a definition of Inactive Status as referred in ORS 672.255.

OAR 820-010-0200 - Amends requirements to Application for Registration as Geotechnical Engineers.

OAR 820-010-0600 - Amends language to comply with Boards and Commissions record retention schedule.

OAR 820-010-0622 - Adds requirements and restrictions for stamping documents involving modification of documents prepared by another registrant. These proposed rules protect the public in requiring the registrant to clearly explain which portion of a document the registrant has changed or revised and is responsible for.

OAR 820-020-0040 - Defines exam subversion and the conduct of examinees under Rules of Professional Conduct.

OAR 820-020-0045 - Defines Unprofessional Behavior.

OAR 820-040-0040 - Amends definition of Geotechnical Engineer.

**Rules Coordinator:** Mari Lopez—(503) 362-2666

### 820-010-0010

#### Definitions

The following definitions and guides have been adopted by the Board to assist registrants and the general public in their interpretation of specific portions of ORS 672.002 to 672.325.

(1) "Board" means the Oregon State Board of Examiners for Engineering and Land Surveying provided by ORS 672.240.

(2) "Practice of Engineering" refers to ORS 672.005 and 672.007.

(3) "Technician work" means the time spent on work where the personal responsibility and technical knowledge required are small; that is, where the individual performance of a task, set and supervised by others, is all that is required. It shall also include all time spent in work before applicant is 18 years old, excepting for engineering and land surveying education, see sections (5) and (9) of this rule. Engineering "technician work" will include, but not be limited to, work as: inspector, laboratory assistant, design assistant, survey technician, or draftsman. Land Surveying "technician work" will include, but not be limited to, survey technician, draftsman, instrument, plotter, or computation work under close supervision and not requiring the exercise of judgment in survey or map design, nor decisions on boundary location.

(4) "Engineering work," means time after an applicant is 18 years old spent in work of a higher grade and responsibility than that above defined as "technician work." Time spent in engineering teaching subsequent to graduation shall be listed as "engineering work." Time spent in training and performing engineering work to supplement engineering education for the purpose of qualifying for the FE examination shall be listed as "engineering work." Engineering work done during summer vacations will be considered as part of the year of "engineering education."

(5) "Responsible Charge of engineering work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution and suitability of materials, without relying upon instruction from their superior, and of supplying deficiencies in plans, or correcting errors in design without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans, written specifications, and directed computations made in connection with engineering works when guided solely by rough sketches, general information, and field measurements;

(c) Experience as a full-time assistant professor or above, in a Board-approved engineering curriculum, may be considered at the discretion of the Board as "charge of engineering work of a character satisfactory to the Board."

(6) "Practice of land surveying" refers to ORS 672.005(3) and 672.007. It is interpreted by the Board as the application of all technologies for quantitative measurement of the earth surface, sub-surface, and sub-oceanic features for the purpose of, but not limited to, location and relocation of boundaries, construction of maps, and the determination of positions, elevations, areas, and volumes. The practice requires fundamental knowledge of mathematics and science as applied to instrumentation, observations, and measurements and the rigid adjustments of data to useful and practical mapping and survey systems. The practice also requires authoritative knowledge of common law in boundary locations particularly with regard to unwritten title transfer and admissible evidence, as well as the current statutory laws in the State of Oregon with respect to land subdivision and the legal responsibilities of a land surveyor.

(7) "Land surveying work" means time after the applicant is 18 years old spent in work of a higher grade and responsibility than that above defined as "technician work." Engineering work, not related to the practice of land surveying as defined under section (6) of this rule, is not land surveying work. Time spent in training and performing land surveying work to supplement surveying education, for the purpose of qualifying for the FLS examination shall be listed as "land surveying work." "Land surveying work" done during summer vacations shall be considered as part of the year of "land surveying education."

(8) "Responsible Charge of land surveying work" means that:

(a) The applicant must have had direction of work, the successful accomplishment of which rested upon the individual, where the individual had to decide questions of methods of execution, design of a survey system, the research and evaluation of evidence, the preparation of maps, or plats for record without relying upon advice or instruction from their superior, and the supplying of deficiencies or correcting errors in surveys or maps without first referring them to higher authority for approval; or

(b) That the applicant must have undertaken investigations or carried out important assignments that demand resourcefulness and originality, or made plans and directed computations in connection with land surveying work when guided solely by general guidelines and information;

(c) Experience as a full-time assistant professor or above, in a Board-approved land surveying curriculum may be considered at the discretion of the Board as "charge of land surveying work."

(9) "Under direct supervision and control" shall be construed to mean that the engineer or land surveyor providing such supervision shall have made the decisions on technical matters of policy and design and shall have exercised their own professional judgment in all engineering and land surveying matters that are embodied in the plans, design, specifications, or other documents involved in the work. By applying their seal to the final documents, they accept responsibility thereof.

(10) Professional Development Hour (PDH) — A contact hour (nominal) of instruction or presentation. The common denominator for other units of credit.

(11) Continuing Education Unit (CEU) — Unit of credit customarily used for continuing education courses. One continuing education unit equals 10 hours of class in an approved continuing education course.

(12) College/Unit Semester/Quarter Hour — Credit for course work in an approved program or other related college course approved in accordance with article (e) of this section.

(13) Course/Activity — Any qualifying course or activity with a clear purpose and objective which will maintain, improve or expand the skills and knowledge relevant to the licensee's field of practice.

(14) Multiple Registrant — A person who is registered as both a land surveyor and an engineer or is registered as an engineer in two or more disciplines.

(15) Active Status means the registrant is authorized to engage in the professional practice of engineering or land surveying, and is in good standing with regard to payment of annual renewal fees and Continuing Professional Development requirements.

(16) Exempt Status means the registrant has notified the Board that they are not providing or offering to provide professional engineering or land surveying services to the public of the State of Oregon and requests exemption from Continuing Professional Development requirements.

(17) Inactive Status means the registrant is not holding out as a professional engineer or land surveyor and is not authorized to engage in the professional practice of engineering or land surveying until such time the Board determines otherwise.

(18) Retired status — An engineer or land surveyor meeting the requirements of ORS 672.180, who has notified the Board that they are not providing engineering or land surveying services to the public of the State of Oregon and who requests the retired status.



# ADMINISTRATIVE RULES

(19) Delinquent Status means the registrant has not renewed their license or has not completed the Continuing Professional Development requirements.

(20) Nonresident engineer — a nonresident engineer as used in ORS 672.050 shall mean an engineer who does not meet the residence requirements of OAR 820-010-0616(1).

(21) Acronyms:

(a) ACCE — American Council for Construction Education;

(b) ABET — Accreditation Board for Engineering and Technology, Inc.;

(c) EAC — Engineering Accreditation Commission of ABET;

(d) TAC — Technology Accreditation Commission of ABET;

(e) ASAC — Applied Science Accreditation Commission of ABET;

(f) EI — Engineering Intern;

(g) LSI — Land Surveying Intern.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 17, f. 4-22-74, ef. 5-11-74; EE 20, f. & ef. 12-15-77; EE 1-1987, f. & ef. 1-5-87; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 4-2000, f. & cert. ef. 8-4-00; BEELS 5-2000, f. & cert. ef. 10-19-00; BEELS 1-2001, f. & cert. ef. 5-22-01; BEELS 1-2002, f. & cert. ef. 3-13-02; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 2-2004, f. & cert. ef. 7-14-04; BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-010-0200

### Application for Registration as Professional Engineers (PE)

(1) (References are to Engineers' and Land Surveyors' Registration Law, ORS Chapter 672, as amended.) Applications may be made for admission to examination for registration as provided in ORS 672.255. Professional engineers registered in other states may file applications for registration on the basis of comity with such other state as provided in ORS 672.125. The National Council of Examiners for Engineering and Surveying Certificate verified record may be accepted at full value. Experience records and references of the NCEES verified record are to be current within the last two years. If not, they must be verified by the Board.

(2) Applicants who are not registered in any state or jurisdiction but who meet all requirements for registration in Oregon may be considered for registration if the application is submitted within 2 years following completion of the practical examination. This section does not apply to applicants who are not currently registered due to expired, delinquent, or otherwise invalid certificates.

(3) Professional engineers currently registered in another jurisdiction that, at the time of that registration, did not require an examination equivalent to the Fundamentals of Engineering may be considered as having met substantially-equivalent requirements for registration in Oregon after providing evidence of each of the following:

(a) Graduation in an engineering curriculum of four years or more;

(b) Passage of a written examination devoted to practical engineering problems; and

(c) No less than 12 years of qualifying engineering practice, approved by the Board, as a registered professional or a chartered engineer in a jurisdiction identified as approved by the Board through the agreement on education known as the "Washington Accord";

(d) Successful passage of an oral exam if required by the Board;

(e) Applicants are advised that registration under this equivalent provision may not satisfy requirements in other jurisdictions.

(4) Prior to issuing an initial certificate of registration to practice in Oregon, each applicant must pass a "take-home" examination on the laws and rules that regulate practice.

(5) The Board shall grant registration as a "Geotechnical Engineer" to a professional engineer if the professional engineer:

(a) Holds an unexpired, valid Oregon license as a professional;

(b) Passes the geotechnical engineering examination offered by the Board; and

(c) Submits evidence satisfactory to the Board demonstrating four (4) years of qualifying experience as required by ORS 672.255(1)(d) and as defined in Section 820-040-0040. In addition, up to one year credit for qualifying experience will be given for possession of post graduate degree(s) from a Board approved school of engineering with major studies in soil engineering. Credit for post graduate degree(s) will not be given if already applied to the experience requirement for professional engineering licensure.

(6) Within one year after the date the Board first gives an examination in the new branch, a professional engineer may qualify for registration as a professional geotechnical engineer without taking the geotechnical exam if the engineer is licensed in a branch of engineering and submits an applica-

tion that demonstrates qualifying experience to the satisfaction of the Board.

(7) "Qualifying experience" as used in section (6) of this rule means:

(a) At least four (4) years of experience having responsible charge of soil engineering projects in geotechnical engineering as defined in 820-040-0040 and accumulated since licensure as a professional engineer. The application must contain a description of the pertinent geotechnical aspects of each project claimed as part of the minimum experience. Teaching soil engineering and related courses at a board approved school of engineering will be given credit as qualifying experience.

(b) Unless waived by the Board, an applicant must provide at least three (3) references acceptable to the Board from professional engineers substantiating the applicant's experience and that the application meets the requirements for geotechnical engineering as defined in 820-040-0040. Additional references may be required to substantiate all of the minimum experience.

(8) The titles "geotechnical engineer," "soils engineer," "foundation engineer," and "soil engineer" are identifications of competence and specialization in the geotechnical subspecialty of professional engineering and necessitates experience in addition to that required for registration as a professional engineer. Use of any of the above designations without licensure as a geotechnical engineer is misleading to the public and may subject the registrant to disciplinary action by the board.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 16, f. 3-5-74, ef. 3-25-74; EE 20, f. & ef. 12-15-77; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1993, f. 1-28-93, cert. ef. 2-1-93; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2000, f. & cert. ef. 1-14-00; BEELS 3-2001, f. & cert. ef. 11-26-01; BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 1-2004, f. & cert. ef. 1-26-04; BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-010-0600

### Records

(1) The Board will maintain and store complete and accurate records on professional registrants registered by the Board pursuant to OAR 166 division 350.

(2) The Board will maintain and store complete and accurate records on EIs and LSIs enrolled by the Board pursuant to OAR 166 division 350.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: EE 13, f. 3-29-72, ef. 4-15-72; EE 20, f. & ef. 12-15-77; EE 2-1986, f. 3-26-86, ef. 3-31-86; EE 1-1992, f. & cert. ef. 2-3-92; EE 1-1995, f. 8-15-95, cert. ef. 9-1-95; BEELS 1-1998, f. & cert. ef. 2-10-98; BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-010-0622

### Modifying Designs or Documents Prepared by Another Professional Engineer

(1) Registrants modifying designs or documents prepared and sealed by another Professional Engineer must meet all of the following requirements:

(a) Only a registered Professional Engineer may make changes to designs or documents prepared and sealed by another Professional Engineer.

(b) A registrant will not change or modify another Professional Engineer's design or document unless they are competent in the field that is covered by the work being changed.

(c) A registrant making a change to another Professional Engineer's design or document will cloud; encircle; or in some other way clearly indicate the portion of the design or document they are changing or revising and refer the viewer to a separate design or document.

(d) The registrant making the change will stamp and seal the separate design or document.

(2) Registrants modifying designs or documents not sealed must provide all the engineering services that would have been required had they started the work from its origin.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-020-0040

### Examination Subversion

(1) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee. Examination subversion includes, but is not limited to:

(a) Communication between examinees inside of the examination room.

(b) Giving or receiving any unauthorized assistance on the examination while an examination is in process.

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(c) Having any unauthorized printed or written matter or other devices in the examinee's possession that might serve to aid the examinee on the examination.

(d) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to secured examination questions or other secured examination material prior to, during or after the administration of the examination.

(e) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.

(f) Permitting anyone to copy answers to the examination.

(g) Removing any secured examination materials from the examination facility.

(h) Allowing another person to take the examination in the examinee's place.

(i) Placing any identifying mark upon the examinee's examination papers other than the examinee's identification number or other identifiers as directed by the examination administrator.

(j) Use by an examinee of any written material, audio material, video material, digital material, or any other mechanism not specifically authorized during the examination for the purpose of assisting an examinee in the examination.

(k) Writing on anything other than designated examination material.

(l) Writing or erasing anything after time is called.

(2) At the discretion of the Board or its designees, if there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.

(b) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.

(c) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination. If the examinee does not leave the facility, the examinee will be deemed a trespasser.

(d) The examinee may be requested to submit a written statement indicating that the examinee understands and intends to comply with the prohibitions of examination subversion.

(e) The examinee's examination results may be voided and the application fee forfeited.

(f) The examinee may not be allowed to sit for an examination for up to three years.

(3) If examination subversion is detected after the administration of the examination, the Board or its designee shall make appropriate inquiry to determine the facts concerning the examination subversion and the Board or its designee may take any of the actions described in section (2) herein.

(4) Notwithstanding OAR 820-010-0440, 820-010-0470, or any other rule, the Board or its designee may choose not to release or make available the examination results to examinee or any other person pending the outcome of an investigation into examination subversion.

(5) Removal of the examinee from or voiding the examinee's examination of any one part of a multiple part examination shall constitute removal from or voiding of all other parts of the multiple part examination.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-020-0045

### Unprofessional Behavior

It is a violation of the rules of Professional conduct to engage in any unprofessional behavior. Unprofessional behavior includes:

(1) By word or conduct, intentionally attempting to place a client, licensee, board member, board employee or examination proctor in fear of imminent serious physical injury.

(2) Engaging in reckless, knowing or willful conduct that causes serious physical injury to a client, licensee, board member, board employee or examination proctor.

(3) Conviction of a felony or misdemeanor, punishable by imprisonment, which is substantially related to the fitness and ability of the applicant or licensee to engage in the practice of engineering or land surveying.

(4) Failing to comply with terms set in an examination non-disclosure agreement.

(5) Failing to make full payment to the Board of all Board assessed fees, fines and penalties.

(6) Failing to give written notification to the Board of any disciplinary action or sanction related to the practice of engineering or land surveying by any state licensing agency.

Stat. Auth.: ORS 670.310, 672.045 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05

## 820-040-0040

### Geotechnical Engineering

(1) Geotechnical Engineering is defined as the investigation and the evaluation of the physical and engineering properties of earth materials, such as soil and rock, including impacts of ground water and earthquakes, and their application to the design and construction of civil engineering works, such as foundations, earth dams, retaining walls, and similar, using soil and rock mechanics and earthquake engineering principles and related engineering laws, formula, and procedures. Further, the practice involves the application of soil and rock mechanics and related engineering laws and procedures to an evaluation of the performance of constructed civil engineering works as influenced by earth materials, groundwater, and earthquakes and to an evaluation of the performance, including stability, of natural and man-made slopes, including man-made fills and embankments, and for the design of mitigation measures to reduce risk and/or hazards as disclosed by the evaluation.

(2) A "Geotechnical Engineer" is a registered professional engineer who passes a geotechnical engineering examination recognized by the Board and meets the other necessary qualifications for registration under ORS 672.002 to 672.325.

Stat. Auth.: ORS 670.310 & 672.255

Stats. Implemented: ORS 672.002 - 672.325

Hist.: BEELS 1-2003, f. & cert. ef. 1-28-03; BEELS 1-2005, f. & cert. ef. 3-16-05

## Board of Naturopathic Examiners Chapter 850

**Adm. Order No.:** BNE 4-2005

**Filed with Sec. of State:** 4-13-2005

**Certified to be Effective:** 4-13-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 850-010-0190

**Subject:** Updates the terminology used, and clarifies that a license may be disciplined in ways other than just denial or revocation.

**Rules Coordinator:** Anne Walsh—(971) 673-0193

## 850-010-0190

### Discipline or Denial of License

The Board may refuse to grant a license to practice Naturopathic medicine in the State of Oregon, or may discipline a license, for any of the following reasons:

(1) Commitment to a mental health institution. A copy of the record of commitment, certified to by the clerk of the court entering the commitment, is conclusive evidence of the commitment.

(2) Habitual use of ardent spirits, narcotics, or other intoxicants to such an extent as to incapacitate him/her from the performance of his/her professional duties.

(3) Unprofessional or dishonorable conduct which includes but is not limited to:

(a) Any conduct or practice contrary to recognized standards of ethics of the naturopathic profession; or

(b) Any of the following:

(A) Engaging in any conduct which constitutes a violation of any provision of ORS 163.305 through 163.465, Criminal Sexual Offenses, if proven by at least a preponderance of the evidence in any criminal, civil, or administrative litigation, or admitted to or stipulated by the professional;

(B) Engaging in any conduct with a patient that is sexual, or may be reasonably interpreted as sexual, whether initiated by the patient or not;

(C) Any behavior, gesture, or expression that is sexually seductive or sexually demeaning to a patient, or any action that shows a lack of respect for the patient's privacy;

(D) Entering into an intimate sexual relationship with a patient or with a former patient if within six months after the doctor-patient relationship is terminated, unless a prior sexual relationship existed.

(4) Fraud or misrepresentation related to naturopathic medicine.

(5) A breach of confidentiality.

(6) The use of any advertising in which untruthful, improper, misleading, or deceptive statements are made.

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(7) Claiming superiority to or a greater skill than that possessed by fellow naturopathic physicians.

(8) Aiding or abetting the unlawful practice of any of the healing arts by an unlicensed person.

(9) The advertising or holding oneself out to diagnose or treat a patient by any secret formula method, treatment, or procedure.

(10) The guaranteeing of a cure or "results" from any treatment.

(11) Failure to refer the patient to an appropriate care provider upon termination of treatment where referral is called for, unless termination was the decision of the patient and the licensee had no opportunity to refer the patient.

(12) Prescribing or dispensing a substance that is not listed on the formulary compendium.

Stat. Auth.: ORS 685.125

Stats. Implemented: ORS 685.225

Hist.: NE 1, f. 11-12-57; NE 3-1980, f. & ef. 9-11-80; NE 3-1992, f. & cert. ef. 11-5-92; BNE 4-1998(Temp), f. & cert. ef. 8-26-98 thru 2-22-99; Administrative correction 8-9-99; BNE 4-2005, f. & cert. ef. 4-13-05

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## Board of Optometry Chapter 852

**Adm. Order No.:** OPT 2-2005

**Filed with Sec. of State:** 4-8-2005

**Certified to be Effective:** 4-8-05

**Notice Publication Date:** 2-1-05

**Rules Adopted:** 852-020-0035, 852-050-0021

**Rules Amended:** 852-080-0040

**Subject:** 852-020-0035 - Establishes standards for prescribing controlled substances for optometric physicians specifically when prescribing for oneself or family members. Establishes definition of unprofessional conduct for violation of this rule.

852-050-0021 - Waives fees for voluntary optometric services provided by licensees to a charitable non-profit facilities. Establishes definitions of qualified charitable non-profit corporation and rules for maintenance of records and reporting practice locations to the Board.

852-080-0040 - Establishes rules for CPR certification and re-certification.

**Rules Coordinator:** David W. Plunkett—(503) 373-7721, ext. 23

### 852-020-0035

#### Prescribing

(1) A Doctor of Optometry shall only use, prescribe or administer controlled substances in Schedules III — V to a person whom he/she has a bona fide physician/patient relationship.

(a) A Doctor of Optometry shall not use, prescribe or administer Schedule III — V controlled substances to himself/herself.

(b) A Doctor of Optometry shall not use, prescribe or administer Schedule III — V controlled substances to an immediate family member except in emergency situations.

(c) Immediate family member means spouse, children, siblings, parents or other individual for whom a Doctor of Optometry's personal or emotional involvement may render him/her unable to excise detached professional judgement in reaching diagnostic and/or therapeutic decisions.

(2) It shall be considered unprofessional conduct for a Doctor of Optometry to use, prescribe or administer controlled substances in Schedules III — V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

Stat. Auth.: ORS 683, 182

Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k) & 182.466

Hist.: OPT 2-2005, f. & cert. ef. 4-8-05

### 852-050-0021

#### Nonprofit Services

No fees will be assessed any licensed doctor of optometry for providing professional services to a charitable nonprofit corporation on a voluntary basis.

(1) Nonprofit corporation means a charitable corporation as described in section 501(c)(3) of the Internal Revenue Code and determined by the Oregon Board of Optometry as providing optometric services by volunteer licensed optometric physicians to populations with limited access to eye care at no charge or at a substantially reduced charge.

(2) Voluntary basis means working of one's own free will without payment for services.

(3) Any entity that owns or operates a nonprofit charitable clinic that provides eye care services must: Name an active licensed optometric physi-

cian as its vision service director who shall be subject to the provisions of ORS 683 and OAR 852. This director shall have responsibility for the patient records on eye care services for the clinic.

(4) Any licensed optometric physician that works at a nonprofit clinic described in (1) above must:

(a) Obtain a license from the Oregon Board of Optometry to practice at this location. This license cannot be used for practicing optometry at any other location. There is no fee for obtaining this license from the Board.

(b) Comply with all other provisions of ORS 683 and OAR 852.

Stat. Auth.: ORS 683, 182

Stats. Implemented: ORS 683.010(3), 683.240(2), 683.270(k) & 182.466

Hist.: OPT 2-2005, f. & cert. ef. 4-8-05

### 852-080-0040

#### Certification to Use Pharmaceutical Agents

(1) DPA Certification — Prior to using diagnostic pharmaceutical agents as listed in this rule, any doctor of optometry licensed in Oregon must: receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Diagnostic Pharmaceutical Agents".

(2) Topical TPA Certification for active status licensee — Prior to using topical therapeutic pharmaceutical agents as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed, within five years of application to the Board for topical TPA certification, a 100 hour TPA course approved by the Board,

(b) Pay a \$75 TPA examination and licensure fee for topical TPA certification; and

(c) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents".

(3) Topical TPA Certification for inactive status licensee — Any doctor of optometry licensed in Oregon in inactive status must:

(a) Pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD) or have passed a 100 hour TPA course approved by the Board and have been continuously practicing using therapeutic pharmaceutical agents in another state or states without disciplinary incident,

(b) Pay a \$75 TPA examination and licensure fee for topical TPA certification, and

(c) Receive a certificate from the Oregon Board of Optometry indicating "Certified to use Topical Therapeutic Pharmaceutical Agents".

(4) Nontopical TPA Certification for active status licensee — Prior to using nontopical therapeutic pharmaceutical agents as listed in this rule, any doctor of optometry licensed in Oregon in active status must:

(a) Meet all criteria for Topical TPA Certification in OAR 852-80-040(2),

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination,

(c) Pass a Nontopical TPA workshop of at least 7 hours approved by the Board or provide proof of equivalent training acceptable to the Board,

(d) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(e) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(f) Acquire and maintain CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. This requirement shall be effective October 1, 2003 or upon the expiration of a current CPR certification held by a licensee already certified for nontopical certification by the Board:

(A) After the initial CPR certification, the Board will accept the American Heart Association BLS Healthcare Providers Online Renewal course. An online CPR course that is not equivalent will not be approved by the Board.

(B) The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(C) The Board, as a courtesy, will send a reminder to licensee's last address of record, 60 days prior to their CPR expiration, indicating that current CPR certification is required to maintain their Nontopical TPA certi-



## ADMINISTRATIVE RULES

cation. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected.

(D) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification shall be subject to a fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

(5) Nontopical TPA Certification for inactive status licensee — Any doctor of optometry licensed in Oregon in inactive status must:

(a) Meet all criteria for Topical TPA Certification in OAR 852-080-0040(3);

(b) Pass a didactic Nontopical TPA course of at least 23 hours approved by the Board or pass the National Board of Examiners in Optometry's "Treatment and Management of Ocular Disease" (TMOD), year 2002 or subsequent examination;

(c) Pass a Nontopical TPA workshop of at least 7 hours approved by the Board or provide proof of equivalent training acceptable to the Board;

(d) Pay a \$75 TPA examination and licensure fee for nontopical TPA certification;

(e) Receive and prominently display a certificate from the Oregon Board of Optometry indicating "Certified to use Topical and Nontopical Therapeutic Pharmaceutical Agents"; and

(f) Acquire and maintain CPR certification. The CPR certification shall be the American Heart Association's BLS Healthcare Providers Course or its equivalent, as determined by the Board. This CPR course shall be a hands-on course; online CPR courses will not be approved by the Board for initial CPR certification. This requirement shall be effective October 1, 2003 or upon the expiration of a current CPR certification held by a licensee already certified for nontopical certification by the Board:

(A) After the initial CPR certification, the Board will accept the American Heart Association BLS Healthcare Providers Online Renewal course. An online CPR course that is not equivalent will not be approved by the Board.

(B) The Board shall consider the CPR expiration date to be the last day of the month that the CPR instructor indicates that the certification expires.

(C) The Board, as a courtesy, will send a reminder to licensee's last address of record, 60 days prior to their CPR expiration, indicating that current CPR certification is required to maintain their Nontopical TPA certification. Failure to maintain current CPR certification will result in immediate automatic loss of Nontopical TPA certification. The Nontopical TPA certification will not be reinstated until the CPR certification deficiency has been corrected.

(D) Any licensee whose Nontopical TPA certification is lost due to expiration of their CPR certification shall be subject to a fee of \$50 to have the Nontopical TPA certification reinstated. The fee must be received before the Nontopical TPA certification will be reinstated.

Stat. Auth.: ORS 683 & 182

Stats. Implemented: ORS 683.270 & 182.466

Hist.: OP 1-1994, f. 5-4-94, cert. ef. 5-9-94; OPT 2-1999, f.12-29-99, cert. ef. 1-1-00; OPT 1-2002, f. & cert. ef. 7-26-02; OPT 3-2003, f. 9-15-03, cert. ef. 10-1-03; OPT 3-2004, f. 9-24-04, cert. ef. 10-1-04; OPT 2-2005, f. & cert. ef. 4-8-05

### Board of Pharmacy Chapter 855

**Adm. Order No.:** BP 3-2005

**Filed with Sec. of State:** 4-14-2005

**Certified to be Effective:** 4-14-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 855-041-0040, 855-041-0060

**Subject:** Rule amendments define electronic recordkeeping and procedures to incorporate new statutory language adopted in 2003. This allows 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 pharmacy and pharmacist-in-charge for maintaining minimum requirements.

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

### 855-041-0040

#### Minimum Equipment Requirements (Both Retail and Institutional Drug Outlets)

The minimum equipment requirement to open and operate a retail drug outlet and institutional drug outlet in the state of Oregon shall consist of not less than the following:

(1) The most current issue of at least one pharmaceutical reference with current, properly filed supplements and updates appropriate to and based on the standards of practice for the setting.

(2) Current and properly filed Oregon Revised Statutes, Chapters 689, and 475; current and properly filed Oregon Administrative Rules, Chapter 855; and a minimum of three years of the Board of Pharmacy quarterly newsletters maintained in house or other readily retrievable means.

(3) Official Poison and Exempt Narcotic Register if poisons and exempt narcotics are sold or distributed.

(4) Suitable refrigeration.

(5) A sink with running hot and cold water.

(6) Equipment and supplies appropriate to and based on the standards of practice for the setting as determined by the Pharmacy and Pharmacist-in-Charge.

(7) Failure to have and use equipment necessary to your practice setting constitutes unprofessional conduct for purposes of ORS 689.405(1)(a).

(8) If an outlet files original prescriptions electronically, then the outlet must have a computer and software capable of storing and accessing electronically filed original prescriptions. Exceptions to the above list may be approved by the Board of Pharmacy.

Stat. Auth.: ORS 689.205, 689.508

Stats. Implemented: ORS 689.205, 689.508

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 1-1981(Temp), f. & ef. 4-1-81; 1PB 2-1981, f. & ef. 8-20-81; 1PB 4-1986, f. & ef. 12-8-86; PB 8-1987, f. & ef. 9-30-87; PB 12-1989, f. & cert. ef. 8-11-89; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05

### 855-041-0060

#### Prescription Records and Retention

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

(a) An "original prescription" is a prescription maintained in the same physical manner in which a pharmacy first receives the prescription. For example, for a prescription received by the pharmacy in writing on a prescription form, the original prescription consists of the original writing on the prescription form. For a prescription received by the pharmacy orally over the telephone, the original consists of the writing or electronic record that reflects receipt of the oral prescription.

(b) "Filing" and "file" mean the storage of the original prescription in such a manner that the original prescription is safeguarded and readily retrievable.

(2) Every pharmacy and pharmacist-in-charge of a pharmacy must ensure that original prescriptions are properly filed in compliance with this rule.

(3) All original prescriptions shall be filed for a minimum of three years from the date of first dispensing and shall at all times be open for inspection by the prescriber, and the Board of Pharmacy or its duly authorized agent.

(4) After 120 days, the paper prescription may be destroyed and filed in an electronic form if:

(a) The electronic form shows the exact and legible image of the original prescription;

(b) Notes of clarifications of and changes to the prescription are directly associated with the electronic form of the prescriptions; and

(c) The prescription is not for a controlled substance.

(5) This rule is not intended to alter or supercede the recordkeeping requirements of any other federal or Oregon statute or rule, including but not limited to ORS 689.508, OAR 855-041-0065, 855-041-0085, and rules related to records for prescriptions for controlled substances.

Stat. Auth.: ORS 475.035 & 689.205

Stats. Implemented:

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; PB 1-1994, f. & cert. ef. 2-2-94; BP 3-2005, f. & cert. ef. 4-14-05

**Adm. Order No.:** BP 4-2005

**Filed with Sec. of State:** 4-14-2005

**Certified to be Effective:** 5-14-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 855-050-0037, 855-050-0038, 855-050-0039, 855-050-0041, 855-050-0042, 855-050-0043

# ADMINISTRATIVE RULES

**Subject:** The rule restricts the retail sale of products which contain pseudoephedrine from anywhere other than behind a pharmacy counter. The only exception from this prohibition is the sale of liquid-filled capsules (gel caps) and liquid products that may be sold by a non-prescription drug outlet. The pharmacy must keep a log documenting the sale. This log must include the purchaser's name and either a driver's license number and state of issue or the purchaser's name, identification number and date of birth. The log must also include the name or initials of the pharmacist (which includes pharmacy interns) or pharmacy technician who approved the transaction and the quantity of pseudoephedrine purchased. The rule requires 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 are 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. A period of time has been designated to allow retailers to take the necessary steps to come into compliance before enforcement action will be taken. Enforcement of the rule will begin on July 16, 2005.

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

## 855-050-0037

### Statement of Purpose and Applicability

(1) The Oregon Board of Pharmacy (Board) has responsibility to regulate the sale of retail drugs in Oregon. The rules outlined in OAR 855-050-0037 through 855-050-0043 specify the requirements for regulation and control of pseudoephedrine sales in Oregon. These rules are designed to discourage the purchase of pseudoephedrine products in Oregon for use in the clandestine manufacture of methamphetamine.

(2) OAR 855-050-0037 through 855-050-0043 applies to any product containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient, unless specifically exempted by the Board by rule or order.

(3) The following products containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient are exempt from regulation under OAR 855-050-0037 through 855-050-0043:

- (a) Any product that consists of liquid-filled gelatin capsule capsules;
- (b) Any product that consists of a liquid preparation; and
- (c) Any product that has been determined by the Board to present no

significant risk of use in the clandestine manufacture of methamphetamine.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

## 855-050-0038

### Retail Sale of Pseudoephedrine

(1) Products containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient may be sold or transferred only from a licensed pharmacy, except as otherwise provided in OAR 855-050-0037 through 855-050-0043. Pharmacists, pharmacists-in-charge, and pharmacy technicians have an affirmative duty to guard against theft and diversion of these products.

(2) Products containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient must be kept secured in:

- (a) The prescription area; or
- (b) A locked storage space (e.g., shelving unit, safe, cabinet) within

the outlet that is close to and within full view of a licensed pharmacy. Only a licensed pharmacist or registered pharmacy technician may be allowed to remove products from the locked storage space.

(3) Any pharmacy that sells pseudoephedrine product must require the purchaser to produce a valid photo identification issued by a government or a school before completing the sale and must keep a log, either electronically or by hard copy, of pseudoephedrine sales that contains the following information:

- (a) Purchaser's name;
- (b) A record of the purchaser's form of identification, including:
  - (A) Purchaser's driver's license number and state of issue, or
  - (B) Purchaser's government or school identification number, if any and date of birth.

(c) Name or initials identifying the pharmacist or pharmacy technician who approved the transaction;

(d) Information reflecting the total milligrams of pseudoephedrine purchased in the transaction. This requirement may be met by documenting

milligrams per tablet and number of tablets purchased, or any other information that shows the quantity of pseudoephedrine purchased.

(4) A pharmacist or pharmacy technician must review the purchaser's identification and approve the transaction, but a clerk or cashier may finish a transaction. It is the responsibility of each pharmacy, pharmacist, and pharmacy technician involved in sales of pseudoephedrine products to ensure that information required in subsection (3) of this rule is recorded accurately.

(5) Subsections (1), (2), (3), and (4) of this rule do not apply to the sale or transfer of a pseudoephedrine product to a veterinarian, physician, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these in the regular course of lawful business activities.

(6) Subsections (3) and (4) of this rule do not apply to the sale or transfer of a pseudoephedrine product pursuant to a valid prescription.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

## 855-050-0039

### Thirty-day Requirement

Outlets, pharmacists and other authorized persons who sell pseudoephedrine products shall exercise reasonable care to ensure that the purchaser has not purchased more than nine grams of pseudoephedrine in a 30-day period. The nine-gram limit applies to the amount of pseudoephedrine contained in products purchased, not the overall weight of the product including all ingredients.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

## 855-050-0041

### Records and Invoices

Any distributor or retailer of products containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient must keep readily retrievable records and invoices documenting the distribution of these products. All records must be kept for a minimum of two years from the date of distribution.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

## 855-050-0042

### Security for Distributors and Wholesalers

Pharmaceutical distributors and wholesalers are responsible for establishing security measures to guard against diversion of products containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

## 855-050-0043

### Criteria for exemption

(1) Any person may request an exemption or conditional exemption for a specific product containing pseudoephedrine, the salts, isomers or salts of isomers of pseudoephedrine as an active ingredient. The decision of whether to grant an exemption shall be made by the Oregon Board of Pharmacy or its designee based upon the following criteria:

(a) Ease with which the product can be converted into methamphetamine;

(b) Ease with which pseudoephedrine is extracted from the product and whether it forms an emulsion, salt, or other form;

(c) Whether the product contains a "molecular lock" that renders it incapable of being converted into methamphetamine;

(d) Presence of other ingredients that render the product less likely to be used in the manufacture of methamphetamine;

(e) Whether pertinent data shows the risks of the substance being used in the illegal manufacture of methamphetamine.

(2) The person requesting an exemption has the burden of persuading the Board that the product should be exempted. The person requesting the exemption must provide the Board with evidence that the product has been formulated so as to deter the conversion of pseudoephedrine into methamphetamine. Evidence must include valid scientific data, created by a professional laboratory, and a clear description of methodology.

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

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

Hist.: BP 4-2005, f. 4-14-05, cert. ef. 5-14-05

# ADMINISTRATIVE RULES

## Bureau of Labor and Industries Chapter 839

**Adm. Order No.:** BLI 8-2005

**Filed with Sec. of State:** 3-29-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:**

**Rules Amended:** 839-025-0700

**Subject:** The rule amends the prevailing rates of wage as determined by the Commissioner of the Bureau of Labor and Industries for the period beginning January 1, 2005 to include amendments effective April 1, 2005.

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

### 839-025-0700

#### Prevailing Wage Rate Determination/Amendments to Determination

(1) Pursuant to ORS 279C.815, the Commissioner of the Bureau of Labor and Industries has determined that the wage rates stated in a publication of the Bureau of Labor and Industries entitled *Prevailing Wage Rates on Public Works Contracts in Oregon* dated January 1, 2005 are the prevailing rates of wage for workers upon public works in each trade or occupation in the locality where work is performed for the period beginning January 1, 2005, and the effective dates of the applicable special wage determination and rates amendment:

(a) Marine Rates for Public Works Contracts in Oregon (effective December 13, 2004).

(b) Amendment to Oregon Determination 2005-01 (effective April 1, 2005).

(2) Copies of Prevailing Wage Rates on Public Works Contracts in Oregon dated January 1, 2005, and the determinations referenced in subsection (1)(a) and (b) are available from any office of the Wage and Hour Division of the Bureau of Labor and Industries. The offices are located in Eugene, Medford, Portland and Salem and are listed in the blue pages of the phone book. Copies are also available on the bureau's webpage at [www.oregon.gov/boli](http://www.oregon.gov/boli) or may be obtained from the Prevailing Wage Rate Coordinator, Prevailing Wage Rate Unit, Wage and Hour Division, Bureau of Labor and Industries, 800 NE Oregon Street #1045, Portland, Oregon 97232; (503) 731-4709.

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

Hist.: BLI 7-1998(Temp), f. & cert. ef. 10-29-98 thru 4-27-99; BLI 1-1999, f. 1-8-99, cert. ef. 1-15-99; BLI 4-1999, f. 6-16-99, cert. ef. 7-1-99; BLI 6-1999, f. & cert. ef. 7-23-99; BLI 9-1999, f. 9-14-99, cert. ef. 10-1-99; BLI 16-1999, f. 12-8-99, cert. ef. 1-1-00; BLI 4-2000, f. & cert. ef. 2-1-00; BLI 9-2000, f. & cert. ef. 3-1-00; BLI 10-2000, f. 3-17-00, cert. ef. 4-1-00; BLI 22-2000, f. 9-25-00, cert. ef. 10-1-00; BLI 26-2000, f. 12-14-00 cert. ef. 1-1-01; BLI 1-2001, f. & cert. ef. 1-5-01; BLI 3-2001, f. & cert. ef. 3-15-01; BLI 4-2001, f. 3-27-01, cert. ef. 4-1-01; BLI 5-2001, f. 6-21-01, cert. ef. 7-1-01; BLI 8-2001, f. & cert. ef. 7-20-01; BLI 14-2001, f. 9-26-01, cert. ef. 10-1-01; BLI 16-2001, f. 12-28-01, cert. ef. 1-1-02; BLI 2-2002, f. 1-16-02, cert. ef. 1-18-02; BLI 8-2002, f. 3-25-02, cert. ef. 4-1-02; BLI 12-2002 f. 6-19-02 cert. ef. 7-1-02; BLI 16-2002, f. 12-24-02 cert. ef. 1-1-03; BLI 1-2003, f. 1-29-03, cert. ef. 2-14-03; BLI 3-2003, f. & cert. ef. 4-1-03; BLI 4-2003, f. 6-26-03, cert. ef. 7-1-03; BLI 5-2003, f. 9-17-03, cert. ef. 10-1-03; BLI 9-2003, f. 12-31-03, cert. ef. 1-5-04; BLI 1-2004, f. 4-9-04, cert. ef. 4-15-04; BLI 6-2004, f. 6-25-04, cert. ef. 7-1-04; BLI 11-2004, f. & cert. ef. 10-1-04; BLI 17-2004, f. 12-10-04 cert. ef. 12-13-04; BLI 18-2004, f. 12-20-04, cert. ef. 1-1-05; Renumbered from 839-016-0700, BLI 7-2005, f. 2-25-05, cert. ef. 3-1-05; BLI 8-2005, f. 3-29-05, cert. ef. 4-1-05

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**Adm. Order No.:** BLI 9-2005

**Filed with Sec. of State:** 4-15-2005

**Certified to be Effective:** 4-18-05

**Notice Publication Date:**

**Rules Amended:** 839-025-0750

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

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

### 839-025-0750

#### Residential Prevailing Wage Rate Determinations

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

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

(b) *Special Prevailing Wage Rate Determination for Residential*

*Project, Sagewind Manor, Project #2004-03*, dated May 20, 2004, for the period of May 24, 2004 through June 30, 2005.

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

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

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

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

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

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

Stat. Auth.: ORS 279C.815

Stats. Implemented: ORS 279C.815

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

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## Department of Administrative Services Chapter 125

**Adm. Order No.:** DAS 3-2005(Temp)

**Filed with Sec. of State:** 3-25-2005

**Certified to be Effective:** 3-25-05 thru 9-21-05

**Notice Publication Date:**

**Rules Adopted:** 125-600-0000

**Subject:** The Department of Administrative Services is directed by §84.064 to make determinations and adopt standards for state agencies to implement UETA. This rule addresses the electronic signature provisions of the act.

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

### 125-600-0000

#### Guidelines for Use of Electronic Signatures by State Agencies

(1) The purpose of this rule is to implement the electronic signature provisions of the Uniform Electronic Signatures Act (UETA). The rule is not intended to apply to the other provisions of the act.

(2) This rule applies prospectively to new software applications with electronic transactions requiring signatures that are implemented after the effective date of this rule.

(3) Agencies shall follow the Information Resources Management Division policy which adopts the federal E-authentication process. The IRMD policy requires that agencies using electronic signatures:

(a) Determine the level of assurance the agency needs that the party signing an electronic transaction is authentic.

(b) Use only those tools and software applications approved by NIST and the Department of Administrative Services, Information Resources Management Services Division to mitigate the risks identified and provide the level of authentication needed.

(4) Agencies may request an exemption from these rules from the Department of Administrative Services.

Stat. Auth.: ORS 184.305, 291.038, 84, 84.049, 84.052, 84.055 & 84.064

Stats. Implemented: 2001 HB 2112

Hist.: DAS 3-2005(Temp), f. & cert. ef. 3-25-05 thru 9-21-05



# ADMINISTRATIVE RULES

**Adm. Order No.:** DAS 4-2005

**Filed with Sec. of State:** 4-13-2005

**Certified to be Effective:** 6-6-05

**Notice Publication Date:** 5-1-05

**Rules Amended:** 125-246-0100, 125-246-0560

**Subject:** On March 1, 2005, the Public Contracting Code began to operate, as mandated by HB 2341, and the related DAS Public Contracting Rules became effective. Certain solicitations and public contracts commenced prior to March 1, 2005, and continued after this effective date (Transitional Contracts). These two Rule amendments address the application of law to and the amending of Transitional Contracts.

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

## 125-246-0100

### Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) set forth policy and procedure for the Public Contracting of Agencies subject to these Rules. Pursuant to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering and Land Surveying Services and Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering and Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(3) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and notwithstanding other provisions of the Public Contracting Code, under these conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, and 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, and 279C.005 through 279C.670.

(4) These Division 246 Rules apply to Public Contracts first advertised on or after March 1, 2005, and to unadvertised Public Contracts entered into on or after March 1, 2005.

(5) Transitional Contracts.

(a) Oregon Laws 2003, chapter 794, section 334 provides: "Rules and exemptions adopted under statutes repealed by section 332 of this 2003 Act expire on March 1, 2005. However, nothing in this 2003 Act operates to invalidate or terminate any public contract that is entered into pursuant to a rule or an exemption that expires on March 1, 2005." For the purposes of Section 5 of this Rule, "Transitional Contracts" means all Public Contracts entered into pursuant to a rule or an exemption that expired on March 1, 2005, including solicited Public Contracts first advertised before March 1, 2005, and unadvertised Public Contracts entered into before March 1, 2005.

(b) Pursuant to section 334 of this 2003 Act, statutes of ORS 279 and rules repealed by section 332 of this 2003 Act will continue to apply to the Transitional Contracts, including:

(A) The Solicitations of Public Contracts first advertised before March 1, 2005;

(B) Unadvertised Public Contracts entered into before March 1, 2005; and

(C) The Contract Administration of the Transitional Contracts, except for amendments and the related authority for amendments of the Transitional Contracts.

(c) For the purposes of Section 5 of this Rule, the term, "Solicitations," means the process beginning with the advertisement and ending with the execution of the Transitional Contract. Section 5 applies to all Transitional Contracts and their Solicitations, if any.

(d) The Public Contracting Code and these Rules, Divisions 246 through 249, apply to amendments and the related authority for amendments of the Transitional Contracts.

(e) Section 5 of this Rule applies retroactively to and is effective on March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05

## 125-246-0560

### Amendments

(1) Generally. This Rule on Amendments sets forth:

(a) A General Rule for Amendments in Section (2) applicable to Contracts for Supplies and Services pursuant to the Code and these Rules;

(b) Special Rules for Amendments in Sections (3) through (9), applicable to different types of Contracts. These Special Rules supplement the General Rule, unless expressly stated otherwise; and

(c) A Rule for Transitional Contracts in Section (10), applicable to solicited Public Contracts first advertised before March 1, 2005, and to unadvertised Public Contracts entered into before March 1, 2005.

(d) The General Rule for Amendments under Section (2) of this Rule may not increase the Contract beyond the limit of any Threshold established in the Public Contracting Code or Rules.

(e) Definition of "Amendment." "Amendment" means a Written modification to a Public Contract, other than by Changes to the Work pursuant to Section (5)(b), that is reasonably related to the Scope of the original Procurement and requires the mutual agreement between the Authorized Agency and the Contractor. This definition applies to Amendments in this Rule.

(2) General Rule for Amendments.

(a) Definitions.

(A) "Anticipated Amendment" means:

(i) The Authorized Agency has stated in Writing in any Solicitation Document and the Original Contract that the Authorized Agency may amend that Contract;

(ii) This required language in any Solicitation Document and the Original Contract includes:

(I) The possibility of one or more Amendments;

(II) The general circumstances that might require an Anticipated Amendment to be issued under the Contract;

(III) The method that the Authorized Agency will use to finalize the details and costs of an Amendment; and

(IV) A general description of certain or known changes to the requirements of the Contract that may be anticipated or even planned for, but not necessarily quantified at the time of Contract execution. These changes may be specifically described in any Solicitation and Contract as:

(a) Extra Work;

(b) Additional Work;

(c) Work to be done if certain situations are encountered; or

(d) Changes in terms, conditions, price, or type of Work.

(iii) The Authorized Agency is not required to designate an Amendment in any Solicitation Document and Original Contract as an "Anticipated Amendment," if Subsections (a)(A)(i) and (ii) are followed.

(B) "Unanticipated Amendment" means:

(i) An Amendment that is not described in one or more of any Solicitation Document and Original Contract pursuant to Subsection (a)(A)(i), or

(ii) An Amendment that does not fall within the limitations of Subsection (a)(A)(ii).

(b) Anticipated Amendments. An Authorized Agency may make one or more Anticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(A) Scope. The Anticipated Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract, in accordance with the definition of an Amendment under Subsection (1)(d). If the Original Contract was awarded pursuant to a Special Procurement by Rule pursuant to OAR 125-247-0288, the Anticipated Amendment is reasonably related to the Scope of that respective Section of OAR 125-247-0288;

(B) Disclosure. In accordance with the definition of an Anticipated Amendment, the Anticipated Amendment's circumstances, method, and changes were described in any Solicitation Document and the Original Contract, pursuant to Subsection (2)(a)(A).

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(C) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(D) Legal Requirements. The Amendment is made consistent with applicable legal requirements;

(E) Writing. All Amendments to Contracts must be in Writing;

(F) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts and must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review pursuant to ORS 291.047.

(c) Unanticipated Amendments.

(A) Limited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process, provided:

(i) Scope. The Unanticipated Amendment satisfies the definition of an Amendment under Subsection (1)(d), including but not limited to the requirement that the Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract;

(ii) Original Contract. The Original Contract was awarded pursuant to ORS 279B.055, 279B.060, 279B.065, 279B.070, 279B.075, 279B.085, or 279A.200 through 279A.220;

(iii) Limit. The cumulative amounts of one or more Unanticipated Amendments to a Contract must not exceed 20% of the Original Contract amount.

(B) Unlimited Amount. An Authorized Agency may make one or more Unanticipated Amendments to a Contract without any additional competitive process and for an unlimited amount, provided:

(i) Scope. The Unanticipated Amendment is reasonably related to the Scope of any original Solicitation Document and the Original Contract, in accordance with the definition of an Amendment under Subsection (1)(d). If the Original Contract was awarded pursuant to a Special Procurement by Rule pursuant to OAR 125-247-0288, the Unanticipated Amendment is reasonably related to the Scope of that respective Section of OAR 125-247-0288;

(ii) Approval. Pursuant to an Authorized Agency's delegated authority under OAR 125-246-0170, the Authorized Agency's Designated Procurement Officer gives Written approval of the Unanticipated Amendment, based upon a determination of the best interests of the State, including but not limited to:

(I) Whether the change is legitimate and due to unforeseen circumstances which occurred as Work progressed, and whether the reasons for the change were unforeseen at the time the Original Contract was established, as opposed to an effort to evade Procurement requirements;

(II) Whether the Unanticipated Amendment is within the Scope of the Original Contract pursuant to Subsection (2)(c)(B)(i);

(III) Whether the Original Contract contains clauses authorizing modification; and

(IV) Whether the Unanticipated Amendment represents any important general change, which alters the essential identity or main purpose of the Original Contract, or is of such importance as to constitute a new undertaking. The approval of the Designated Procurement Officer and the basis of this determination must be documented in the Procurement File pursuant to OAR 125-246-0355.

(C) Legal Requirements. The Amendment is made consistent with applicable legal requirements.

(D) Writing. All Amendments to Contracts must be in Writing.

(E) Authority. All Amendments to Contracts must be signed by the authorized representatives of the parties to the Contracts and must receive all required approvals before the Amendments will be binding on the Authorized Agency, including but not limited to the Department of Justice legal sufficiency review pursuant to OAR 125-045-0070.

(3) Special Rules for Amendments of Contracts for Supplies and Services:

(a) Small Procurements. An Authorized Agency may amend a Contract awarded as a Small Procurement in accordance with OAR 125-247-0265, but the cumulative Amendments must not increase the total Contract Price to greater than \$6,000. The Contract and all cumulative Amendments must not exceed a total amount of \$6,000. In addition, the General Rule on Amendments applies to Small Procurements.

(b) Intermediate Procurements. An Authorized Agency may amend a Contract awarded as an Intermediate Procurement in accordance with OAR 125-247-0270, and the General Rule on Amendments applies to Intermediate Procurements not exceeding the Threshold of \$150,000. If the Contract and all cumulative Amendments would result in an amended

Contract amount exceeding \$150,000, then the Authorized Agency may only amend that Contract, providing:

(A) The Authorized Agency conducts a Renegotiation of an Existing Contract with an Incumbent Contractor in accordance with the Special Procurement of OAR 125-247-0288(2); or

(B) The Authorized Agency requests and obtains prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(c) Formal Procurements. The General Rule on Amendments applies to Procurements pursuant to ORS 279A.200 through 279A.220 (Cooperative Procurement), ORS 279B.055 through 279B.060 (Competitively Sealed Bidding and Proposals) and ORS 279B.085 (Special Procurements), if applicable, (for purposes of this Subsection only, "Formal" Procurements), and except as provided in this Rule.

(d) Special Procurement for Renegotiated Contracts. Notwithstanding the General Rule on Amendments in Section (2) and pursuant to OAR 125-247-0288(2), an Authorized Agency may renegotiate the terms and conditions, including the Contract Price, of a Contract without any additional competitive process and amend a Contract if the Authorized Agency determines that it is in the best interest of the Authorized Agency and subject to the following conditions:

(A) An Authorized Agency must determine that, with all things considered, the renegotiated Contract is at least as favorable to the Authorized Agency as the Original Contract; and

(B) The renegotiated Contract will not have a total term greater than allowed in the original Solicitation Document, Contract or approval of a Special Procurement after combining the initial and extended terms. For example, a one-year Contract, renewable each year for up to four additional years, may be renegotiated as a two to five-year Contract, but not beyond a total of five years. Also, if Contracts with a single Contractor are restated as a single Contract, the term of the single Contract may not have a total term greater than any one of the prior Contracts.

(C) If a Contractor offers a lower price in exchange for a change in term or condition that was expressly rejected in the original Solicitation, the amended Contract may be structured with this changed term as an optional, but not as a mandatory Contract term.

(D) If the Contract to be renegotiated is the result of a Cooperative Procurement, the amended Contract must be within the Scope of the Original Contract and may not materially change the terms, conditions, and prices of the Original Contract.

(e) Payment Authorization of Cost Overruns for Trade and Personal Services Contracts.

(A) Payments on Contracts for Trade or Personal Services that exceed the maximum contract consideration require approval from the State Procurement Office and may also require approval from the Department of Justice pursuant to OAR 137-045-0010 et seq. Approval may be provided if:

(i) The Original Contract was duly executed and, if required, approved by the Department and the Attorney General;

(ii) The Original Contract has not expired or been terminated as of the date Written approval to increase the Contract amount is granted;

(iii) The cost overrun is not associated with any change in the Statement of Work set out in the Original Contract;

(iv) The cost overrun arose out of extraordinary circumstances or conditions encountered in the course of contract performance that were reasonably not anticipated at the time the Original Contract, or the most recent Amendment, if any, was signed. Such circumstances include, but are not limited to: to address emergencies arising in the course of the Contract that require prompt action to protect the Work already completed, to comply with official or judicial commands or directives issued during contract performance or to ensure that the purpose of the Contract will be realized;

(v) The cost overrun was incurred in good faith, results from the good faith performance by the Contractor, and is no greater than the prescribed hourly rate or the reasonable value of the additional Work or performance rendered;

(vi) Except for the cost overrun, the Contract and its objective are within the statutory authority of the Authorized Agency and the Authorized Agency currently has funds available for payment under the Contract;

(vii) An officer or employee of the Authorized Agency has presented a Written report to the State Procurement Office within sixty (60) Days of the Authorized Agency's discovery of the overrun that states the reasons for the cost overrun and demonstrates to the State Procurement Office's satisfaction that the Original Contract and the circumstances of the overrun satisfy the conditions stated above; and

(viii) The Designated Procurement Officer of the Authorized Agency approves in Writing the payment of the overrun, or such portion of the over-

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run amount as the Designated Procurement Officer of the Authorized Agency determines may be paid consistent with the conditions of this Rule. If the Designated Procurement Officer of the Authorized Agency has signed the Contract, or has immediate supervisory responsibility over performance of the Contract, that Person must designate an alternate delegate to grant or deny Written approval of payment.

(B) The Authorized Agency must obtain any Attorney General's approval of the Contract Amendment, if such approval is required by ORS 291.047, before making any overrun payment.

(4) Special Rules for Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services. Notwithstanding the General Rule on Amendments in Section (2), the Rule for Amendments of Contracts for Architectural, Engineering and Land Surveying Services and Related Services is found at OAR 125-248-0320 and duplicated in this Section:

(a) An Authorized Agency may amend any Contract for Architectural, Engineering or Land Surveying Services or Related Services if the Authorized Agency, in its sole discretion, determines that the Amendment is within the Scope of services contemplated under the Request for Proposals and that the Amendment would not materially impact the field of competition for the services described in the Request for Proposals. In making this determination, the Authorized Agency must consider potential alternative methods of procuring the services contemplated under the proposed Amendment. An Amendment would not materially impact the field of competition for the services described in the Request for Proposals if the Authorized Agency reasonably believes that the number of Proposers would not significantly increase if the Request for Proposals were re-issued to include the additional services.

(b) The Authorized Agency may amend any Contract if the additional services are required by reason of existing or new regulations or ordinances of federal, state or local Authorized Agencies, and these existing or new regulations or ordinances affect performance of the Original Contract and were not cited in the original Request for Proposals or Contract or were enacted or amended after issuance of the original Request for Proposals or execution of the Original Contract.

(c) Effect of Material Alteration or Delay of Project. Pursuant to OAR 125-248-0310, if an Authorized Agency delays, or delays and then materially alters, a Project for which the Authorized Agency has entered a Contract, and the Contract has expired or been terminated, Authorized Agency may enter a Contract with the same Consultant to perform either the same Architectural, Engineering and Land Surveying Services and Related Services described in the Contract or Architectural, Engineering and Land Surveying Services and Related Services as amended to reflect Authorized Agency's material alteration of the Project if no more than one year has passed since expiration or termination of the Contract and the Authorized Agency makes Written findings that entering a Contract with Consultant:

(A) Will promote efficient use of public funds and resources and result in substantial cost savings;

(B) Will not encourage favoritism in the contracting process; and

(C) Will not substantially diminish competition for future Contracts with Consultants.

(5) Special Rules for Amendments of Contracts for Public Improvements:

(a) Intermediate Procurements.

(A) Price Increases. Notwithstanding the General Rule on Amendments in Section (2), Intermediate level Public Improvement Contracts obtained by competitive quotes may be increased above the original amount of the Award by the Authorized Agency issuance of a Change to the Work or Amendment, pursuant to OAR 125-249-0910, within the following limitations:

(i) Up to an aggregate Contract Price increase of 25% over the Original Contract amount when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work, and;

(ii) Up to an aggregate Contract Price increase of 50% over the Original Contract amount, when an Authorized Agency's Designated Procurement Officer determines that a price increase is warranted for additional reasonably related Work and the Designated Procurement Officer approves the increase in Writing.

(B) Amendments. Amendments of intermediate level Public Improvement Contracts that exceed the Thresholds stated in OAR 125-249-0200(1) are specifically authorized by the Code, when made in accordance with this Rule. Accordingly, such Amendments are not considered new Procurements and do not require an exemption from competitive bidding.

(C) This Subsection (5)(a) is also found in OAR 125-249-0160.

(b) Changes to the Work and Amendments. Notwithstanding the General Rule on Amendments in Section (2):

(A) Definitions. As used in Subsection 5(b) of this Rule:

(i) "Amendment" means a Written modification to the terms and conditions of a Public Improvement Contract, other than by Changes to the Work, within the general Scope of the original Procurement that requires mutual agreement between the Authorized Agency and the Contractor.

(ii) "Changes to the Work" means a mutually agreed upon change order, or a construction change directive or other Written order issued by the Authorized Agency or its authorized representatives to the Contractor requiring a change in the Work within the general Scope of a Public Improvement Contract and issued under its changes provisions in administering the Contract and, if applicable, adjusting the Contract Price or contract time for the changed Work.

(B) Changes Provisions. Changes to the Work are anticipated in construction and, accordingly, Authorized Agencies must include changes provisions in all Public Improvement Contracts that detail the scope of the changes clause, provide pricing mechanisms, authorize the Authorized Agency or its authorized representatives to issue Changes to the Work and provide a procedure for addressing Contractor claims for additional time or compensation. When Changes to the Work are agreed to or issued consistent with the Contract's changes provisions they are not considered to be new Procurements and an exemption from competitive bidding is not required for their issuance by Authorized Agencies.

(C) Change Order Authority. Authorized Agencies may establish internal limitations and delegations for authorizing Changes to the Work, including dollar limitations. Dollar limitations on Changes to the Work are not set by these Rules, but such changes are limited by the above definition of that term.

(D) Contract Amendments. Contract Amendments reasonably related to the scope of the original Procurement are not considered to be new Procurements and an exemption from competitive bidding is not required in order to add components or phases of Work specified in or reasonably implied from the Solicitation Document. Amendments to a Public Improvement Contract may be made only when:

(i) They are reasonably related to the scope of the original Procurement;

(ii) The field of competition and Contractor selection would not likely have been affected by the Contract modification. Factors to be considered in making that determination include similarities in Work, project site, relative dollar values, differences in risk allocation and whether the original Procurement was accomplished through Competitive Bidding, Competitive Proposals, competitive quotes, sole source or Emergency Contract;

(iii) In the case of a Contract obtained under an Alternative Contracting Method, any additional Work was specified or reasonably implied within the findings supporting the competitive bidding exemption; and

(iv) The Amendment is made consistent with applicable legal requirements.

(E) This Subsection (5)(b) is also found in OAR 125-249-0910.

(6) Special Rule for Amendments of Price Agreements. Notwithstanding the General Rule on Amendments in Section (2), the State Procurement Office or its delegatee may amend a Price Agreement as follows:

(i) As permitted by the Price Agreement;

(ii) As permitted by any applicable Special Rule for Amendments, Sections (3) through (9); or

(iii) As permitted by applicable law.

(7) Special Rule for Amendments of Cooperative Procurements.

(a) An Administering Authorized Agency may amend an Original Contract in a manner that is substantially equivalent to this Rule.

(b) A Participating Authorized Agency may amend its own Contract resulting from a Cooperative Procurement in a manner that complies with this Rule.

(8) Special Rule for Sole-Source Procurements. The General Rule on Amendments in Section (2) applies to Sole-Source Procurements pursuant to ORS 279B.075 and OAR 125-247-0275, unless as otherwise provided in the terms of any delegation agreement between the Authorized Agency and the State Procurement Office pursuant to OAR 125-246-0170.

(9) Special Rule for Amendments of Contracts for Emergencies. Notwithstanding Sections (2) through (8) of this Rule, an Authorized Agency may amend a Contract awarded as an Emergency Procurement if



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the emergency justification for entering into the Contract still exists, and the Amendment is necessary to address the continuing emergency.

## (10) Rule for Amendments of Transitional Contracts

(a) "Transitional Contracts" means all Public Contracts entered into pursuant to a rule or an exemption that expired on March 1, 2005, including solicited Public Contracts first advertised before March 1, 2005, and unadvertised Public Contracts entered into before March 1, 2005. See OAR 125-246-0100(5).

(b) An Authorized Agency must have authority to amend the Transitional Contract in accordance with OAR 125-246-0170, including but not limited to delegations by rule, agreement, letter and policy as described in OAR 125-246-0170(1).

(c) An Authorized Agency may amend a Transitional Contract by complying with:

(A) This Amendment Rule, OAR 125-246-0560(1) through (9), or

(B) The Special Procurement Rules, OAR 125-247-0285 through 125-247-0287, for Supplies and Services, or

(C) Except for Personal Services Contracts, OAR 125-246-0560(1) and this Subsection (10)(c)(C), adapted from an exemption, OAR 125-310-0010, in effect prior to March 1, 2005, and entitled "Contract Amendments (Including Change Orders and Extra Work)." An Amendment for additional Work or product which is reasonably related to the Scope of work under the original Contract, including Changes to Work, extra Work, field orders, or other change in the original specifications that increases the original Contract price, may be made with the Provider or without competitive bidding subject to the following conditions:

(1) The original Contract was let by (i) a competitive bidding or alternative Procurement process; (ii) unit prices or additive alternates were provided that established the cost basis for the additional Work or product; and (iii) a binding obligation exists on the parties covering the terms and conditions of the additional Work; or

(2) The original Contract was let pursuant to a declaration of emergency, in accordance with ORS 279.015(4)(a) and 279.015(5) and OAR 125-310-0030; or

(3) The additional Work is required by reason of existing regulations or ordinances of federal, state or local agencies, dealing with the prevention of environmental pollution and the preservation of natural resources, that affect performance of the original Contract and such regulations or ordinances, as provided in ORS 279.318, either were not cited in the original Contract or were enacted or amended after submission of the successful Bid or Proposal; or

(4) The original Contract was for the renovation or remodeling of a building.

(5) Except for Amendments entered into pursuant to Subsections (C)(1) to (4), the aggregate increase resulting from all Amendments to a Contract must not exceed 20 percent of the initial Contract price. Contracts for the renovation or remodeling of buildings may have aggregate Amendments not exceeding 33 percent of the initial Contract price. Provided, however, that Amendments made pursuant to Subsection (C)(1) are not to be applied against either the 20 percent or the 33 percent aggregate limit on Contract Amendments. Provided, further, that Contracts amended pursuant to Subsections (C)(2) or (3) are not subject to either the 20 percent or the 33 percent aggregate limit on Contract Amendments.

(6) If the original Contract required the Contractor to provide a performance and payment bond, and the Authorized Agency has terminated the Contract and notified the surety of such termination, the Authorized Agency may allow the Contractor's surety an opportunity to provide a substitute Contractor to complete performance of the original Contract. Such substitute performance, and any Amendment of the original Contract that makes a substitute Contractor a party to the Contract, and is not an award of a Public Contract for purposes of ORS 279.015(1), must not be subject to the competitive procurement provisions of ORS 279.005 through 279.111; or

(D) For Personal Services Contracts only, OAR 125-246-0560(1) and this Subsection (10)(c)(D), adapted from a rule, OAR 125-020-0520, in effect prior to March 1, 2005, and entitled "Contract Amendments."

(1) Contract Amendments must be made in writing.

(2) Amendments to Contracts must fall within the Scope of the original Solicitation, unless the amended Contract is exempt under OAR 125-020-0610, including whether the Contract consideration or term limit for performance may be increased (See OAR 125-020-0310(4)(b)). Amendments must not be used to circumvent rules establishing approvals at certain monetary levels.

(3) The State Procurement Office must approve an Amendment to a Contract unless approval of the amended Contract is not required under OAR 125-246-0170.

(4) Except for Contracts related to Year 2000 services or Phased Development projects, Amendments to perform additional work related to information technology must not exceed 33% of the amount identified in the original Contract.

(5) The Attorney General must approve an amendment to a Personal Services Contract if the resulting Contract calls for payments of more than \$75,000, unless exempted by the Attorney General under ORS 291.045 and 291.047.

(6) The Authorized Agency must provide justification for any increase in time, compensation or other modification to the State Procurement Office.

(7) A Contract Amendment form(s) will be provided by the State Procurement Office. The Authorized Agency may create Amendment form(s) as long as the Amendment form is approved by the State Procurement Office.

(i) For Amendments, the Authorized Agency is required to:

(I) Prepare a Contract Amendment;

(II) Obtain necessary approvals before the Amendment is effective;

(III) Complete and submit a justification statement to the State Procurement Office; and

(IV) For Amendments not needing the State Procurement Office approval, forward only the justification form to the State Procurement Office.

(ii) For Contract Amendments needing State Procurement Office approval, the Authorized Agency must submit the Contract Amendment package (one original and one copy of the Contract Amendment, a copy of the original Contract, copies of any previous Amendment(s), and the justification statement) to the State Procurement Office;

(iii) The State Procurement Office will review the Contract Amendment for compliance with applicable Rules.

(d) Section (10) of the Rule applies retroactively to and is effective on March 1, 2005.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.050, 279A.065(5), 279A.070 & 279A.140

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05

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

**Adm. Order No.:** PEBB 1-2005

**Filed with Sec. of State:** 4-14-2005

**Certified to be Effective:** 4-14-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 101-020-0020, 101-040-0080, 101-050-0015

**Subject:** 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—(503) 378-2349, ext. 325

### 101-020-0020

#### Adding An Eligible Family Member or Domestic Partner to Medical and Dental Insurance Coverage

(1) Spouse. A new spouse or the new spouse's Dependent Child(ren) may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting the completed applicable form(s) to the agency within 60 days of the marriage date. Medical or dental insurance coverage or both will be effective on the first of the month following either the date the agency receives the completed applicable form(s) or the Qualified Status Change event date, whichever is later.

(2) Domestic Partner. A new Domestic Partner or the new Domestic Partner's Dependent Child(ren) may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting the completed applicable form(s) to the agency within 60 days of meeting the criteria for Domestic Partner enrollment and signing the Affidavit of Domestic Partnership. Medical or dental insurance coverage or both will be effective

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on the first of the month following the date the agency receives the completed applicable form(s) and Affidavit of Domestic Partnership.

(3) Newborn Dependent Child. An Eligible Employee's medical and dental insurance coverage will be automatically effective for a newborn Dependent Child from the moment of birth and for the first 31 days after date of birth. Medical or dental insurance coverage or both will be continuous beyond this 31 day period only if the newborn Dependent Child is added to the Eligible Employee's medical or dental insurance coverage or both within 60 days of the date of birth. The initial insurance premium payment is adjusted retroactive to the first of the month following the date of birth. Insurance premium adjustments must occur in whole month increments.

(4) Adding Dependent Child by Affidavit.

(a) A Dependent Child that is not adopted may be added to an Eligible Employee's medical or dental insurance coverage or both by submitting the completed applicable form(s) within 60 days of the date of birth or the date the child is placed in the physical custody of the Eligible Employee or his or her spouse or Domestic Partner and the Eligible Employee or his or her spouse or Domestic Partner has assumed the financial or medical responsibility for the support and care of the child. Affidavit of Dependency form(s) must be included with the enrollment.

(b) Medical or dental insurance coverage or both for a new Dependent Child will be effective on the first of the month following either the date the agency received the completed applicable form(s) and Affidavit of Dependency or the first of the month after eligibility is met, whichever is later.

(5) Adopted Child. An Eligible Employee's medical and dental insurance coverage will be automatically effective for a newly adopted child of the Eligible Employee for the first 31 days from the date of the adoption decree or date of placement for adoption pending the completion of adoption proceedings. Medical or dental insurance coverage or both will be continuous beyond this 31 day period only if the newly adopted child is added to the Eligible Employee's medical or dental insurance coverage or both within 60 days of the date of the adoption decree or date of placement for adoption. Documentation of the adoption agreement must be included with the enrollment.

(a) The initial premium payment is adjusted retroactive to the first of the month following the date of the adoption decree or date of placement for adoption. Premium adjustments must occur in whole month increments.

(b) Claims payment will not occur prior to the date of the adoption decree or date of placement for adoption.

(6) Under HIPAA regulations a Family Member previously eligible for enrollment can be added to medical or dental insurance coverage or both at the same time a new Family Member is added. Medical or dental insurance coverage or both for an eligible individual, other than for the newborn or adopted child of the eligible individual, that is enrolled within 60 days of birth or adoption, will be effective the first of the month following the date the agency receives the completed applicable form(s). Reference: Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) enacted August 21, 1996.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 183.310-550, 192.660, 292.051, 659A.060-069, 659A.150-186, 743.600-602 & 743.707

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2000, f. 11-15-00, cert. ef. 1-1-01; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05

### 101-040-0080

#### Correcting Enrollment Errors

These provisions cover enrollment errors and omissions on forms that may occur when an Eligible Employee elects benefit plan coverage or elects to make benefit plan changes and when agencies process those elections. If an Eligible Employee becomes aware of an enrollment error at the time he or she receives the first paycheck stub following the election, the plan identification card, the confirmation statement, or denied claim, it is the Eligible Employee's responsibility to bring the error to PEBB's attention through the appeal process.

(1) Eligible Employee Errors in Completing or Submitting the Form(s).

(a) Enrollment errors and omissions on forms may occur when an Eligible Employee submits the PEBB enrollment form(s) as a newly hired employee, submits the update form(s) to make mid-year enrollment changes or fails to act as a result of and following a mid-year Qualified Status Change event.

(b) If an Eligible Employee recognizes he or she made an enrollment error and it is prior to payroll implementation, the error can be corrected by

the agency representative. Implementation means the benefit plan election has been entered into the payroll and benefit systems and submitted to the carriers.

(c) Within 60 Days of the New Hire Date or the Qualified Status Change Event Date.

(A) If the Eligible Employee recognizes he or she made an enrollment error after payroll implementation, but within 60 days of the new hire date or Qualified Status Change event date, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the enrollment error PEBB will correct the error retroactive to the first of the month following the date the enrollment or update form(s) containing the enrollment error was first received by the agency. If documentation confirming the enrollment error is not received within 60 days of the request date for correction, PEBB will deny the request to correct the error.

(d) After 60 Days of the New Hire Date or the Qualified Status Change Event Date.

(A) If the Eligible Employee recognizes he or she made an enrollment error after 60 days of the new hire date or the Qualified Status Change event date the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the enrollment error PEBB will correct the error effective the first of the month following the receipt of the request to correct the enrollment error. Effective date exception made only for Short or Long-Term Disability insurance plans where a retroactive effective date would circumvent a pre-existing condition clause. If documentation confirming the enrollment error is not received within 60 days of the request date for correction, PEBB will deny the request to correct the error.

(e) After 120 Days of the New Hire Date or the Qualified Status Change Event Date. If the Eligible Employee recognizes he or she made an enrollment error and it is beyond 120 days of the new hire date or the Qualified Status Change event date, the request to correct the error will be denied.

(2) Eligible Employee Errors during Open Enrollment. An Eligible Employee may miss the open enrollment timeline, make enrollment errors or realize omissions on enrollment forms during the annual Open Enrollment Period. PEBB authorizes agency representatives to accept the late completed applicable form(s) and process changes or corrections to enrollment elections without PEBB approval for 30 days following the Open Enrollment Period.

(a) Within 60 Days of the New Plan Year.

(A) If an Eligible Employee recognizes he or she made an open enrollment error or neglected to submit the applicable open enrollment form(s) within 60 days of the new Plan Year, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the open enrollment error PEBB will correct the error retroactive to the first of the month of the new Plan Year. If documentation confirming the open enrollment error is not received within 60 days of the request date for correction PEBB will deny the request to correct the error.

(b) After 60 Days of the New Plan Year.

(A) If an Eligible Employee recognizes he or she made an open enrollment error after 60 days of the new Plan Year, the requested correction must be reviewed by PEBB through the appeal process.

(B) The Eligible Employee must clearly document that the enrollment does not accurately reflect their intent.

(C) If documentation is received confirming the open enrollment error PEBB will correct the error effective the first of the month following the receipt of the request to correct the open enrollment error. If documentation confirming the open enrollment error is not received within 60 days of the request date for correction, PEBB will deny the request to correct the open enrollment error.

(c) After 120 Days of the New Plan Year. If the Eligible Employee recognizes he or she made an open enrollment error and it is beyond 120 days of the new Plan Year, the request to correct the error will be denied.

(3) Enrollment Errors That Occur When Processing the Applicable Form(s) for Open Enrollment, a Qualified Status Change Event or a Newly Hired Employee. Data entry errors or omissions may occur when benefit

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plan elections are processed in the state's payroll and benefit systems, when an Eligible Employee receives wrong information, or when an Eligible Employee does not receive enrollment information or materials in a timely manner.

(a) Within 60 Days of Open Enrollment, a Qualified Status Change Event or a New Hire Date. If it is determined that a data entry error or omission was made, incorrect information has been provided to the employee or transmission of information from the agency to the employee has been delayed and it is identified within the first 60 days of the agency's receipt of the completed applicable form(s) the agency will correct the error in the payroll and benefit systems retroactive to the first of the month following the date the enrollment or update form(s) was first received by the agency or the first day of the new Plan Year for open enrollment activity and the payroll system will automatically reconcile any overcharges or undercharges. Where information or materials were not received by a newly hired employee within 30 days of the hire date, benefit plan elections will be effective retroactive to the first of the month following the Eligible Employee's hire date.

(b) After 60 Days of Open Enrollment, a Qualified Status Change Event or a New Hire Date.

(A) If it is determined that a data entry error or omission was made, incorrect information has been provided to the employee or transmission of information from the agency to the employee has been delayed, and it is identified after 60 days of open enrollment, a qualified status change event or the new hire date, PEBB must review any requested corrections through the appeal process.

(B) During PEBB's review, if the agency confirms and provides documentation of the entry error, or omission, PEBB will approve correction of the enrollment error retroactive to the first of the month following the date the completed applicable form(s) was first received by the agency but no earlier than the first of the previous Plan Year, or in the case of open enrollment processing, first of current Plan Year. Where information or materials were not received by a newly hired employee within 30 days of the hire date benefit plan elections will be effective retroactive to the first of the month following the Eligible Employee's hire date.

(4) Overcharges and Undercharges of Insurance Premium. When enrollment errors or omissions are corrected overcharges and undercharges of insurance premium payments may result. Data entry errors or omissions also create insurance premium discrepancies that need to be rectified. Data entry errors or omissions resulting in insurance premium discrepancies may be corrected as described in (3) Enrollment Errors That Occur When Processing the Applicable Form(s) for Open Enrollment, a Qualified Status Change Event or a Newly Hired Employee. Eligible Employee errors that result in insurance premium discrepancies will be reviewed as follows:

(a) Within 60 Days of the First Payroll Deduction Reflecting the Discrepancy. PEBB will review requests to correct the error with an insurance premium refund or charge for an Eligible Employee occurring upon approval. If notified within the 60 days, PEBB will approve the correction and insurance premium reconciliation retroactive to the date the discrepancy first occurred.

(b) More Than 60 Days of the First Payroll Deduction. If the Eligible Employee or the agency representative contacts PEBB more than 60 days from the first payroll deduction, PEBB will correct the error the first of the month following notification of the error. In instances where premiums were paid in error, no premium refund will occur. Exceptions to this rule include:

(A) Eligible Employee voluntary insurance premium deductions.

(B) Self-paid insurance premium amount.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061 - 243.302

Hist.: PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05

### 101-050-0015

#### Retiree Returning to Work for a PEBB Participating Organization in a Benefit Eligible Status

(1) A retiree returning to work with a PEBB Participating Organization on a full-time basis, or returning to work on at least a Half-Time or job-share basis, may be eligible for PEBB active employee benefit plans. All medical, dental, life and disability insurance coverage previously in effect as an Eligible Employee will be Reinstated effective the first day of the month following the date of hire if returning to work within 12 months of the previously active insurance coverage end date. If the retiree returns to Eligible Employee status beyond 12 months from the previously active insurance coverage end date, the retiree must complete the applicable form(s) for newly hired employees.

(2) A retiree enrolled in a PEBB non-Medicare retiree insurance plan may suspend the retiree insurance coverage when enrolled in PEBB sponsored benefit plans as an Eligible Employee by notifying the Retiree Plan Administrator.

(3) A retiree or the retiree's eligible individual enrolled in Medicare who returns to active employee status with a PEBB Participating Organization must enroll in the active employee benefit plans. A retiree not enrolled in Medicare may Decline Benefits or enroll in active employee benefit plans.

(4) There may be no break in insurance coverage from the PEBB non-Medicare retiree insurance plans to active employee benefit plans or vice versa. Insurance coverage must be continuous.

(5) A retiree returning to Eligible Employee status who continues to be covered under PEBB retiree or COBRA insurance plans, and is receiving a state premium subsidy, is not eligible to receive Opt Out cash.

(6) A retiree returning to Eligible Employee status beyond 12 months of the previously active insurance coverage end date, will have all new employee hire rights including guarantee issue options (except as noted in 101-050-0015(7)) for life insurance coverage provided the retiree did not previously convert life insurance plans upon separation from state service.

(7) A retiree returning to Eligible Employee status beyond 12 months of the previously active insurance coverage end date, is not eligible for guarantee issue of Long Term Care insurance coverage a second time. The Eligible Employee had an initial guarantee issue enrollment and the opportunity to continue the policy following separation from state service at the same rates.

Stat. Auth.: ORS 243.061 - 243.302

Stats. Implemented: ORS 243.061-302, 659A.060-069, 659A.150-186, 743.600-602, 743.707 & 743.752-760

Hist.: PEBB 1-1999, f. 12-8-99, cert. ef. 1-1-00; PEBB 1-2001, f. & cert. ef. 9-6-01; PEBB 1-2002, f. 7-30-02, cert. ef. 8-1-02; PEBB 1-2003, f. & cert. ef. 12-4-03; PEBB 1-2004, f. & cert. ef. 7-2-04; PEBB 3-2004, f. & cert. ef. 10-7-04; PEBB 1-2005, f. & cert. ef. 4-14-05

### Department of Agriculture Chapter 603

**Adm. Order No.:** DOA 13-2005

**Filed with Sec. of State:** 3-25-2005

**Certified to be Effective:** 3-25-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 603-052-1250

**Subject:** The rule will create a *Phytophthora ramorum* certification program for nursery stock. The rule will comply with recently adopted 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 and will receive a *P. ramorum*-free 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—(503) 986-4583

### 603-052-1250

#### *Phytophthora ramorum* Regulated Area for Nursery Stock

(1) A regulated area is established as authorized under ORS 570.305, 571.015 and 571.145, to protect Oregon from introduction of *Phytophthora ramorum* (sudden oak death, ramorum canker and blight). This pathogen causes leaf blight, dieback or death in certain trees and shrubs including tanoak, rhododendron, viburnum and camellia. Susceptible plants include species important to Oregon's native forests, horticultural landscapes and nursery industry.

(2) This regulated area includes the entire state of Oregon.

(3) The following definitions apply to OAR 603-052-1250:

(a) "Hosts and associated plants" means plants on USDA's official list of *P. ramorum* hosts and associated plants, last revised January 10, 2005. This list is available online at: [http://oregon.gov/ODA/PLANT/path\\_sod\\_index.shtml](http://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) "Grower" and "nursery stock" are defined in ORS 571.005.

(c) Tissue culture plantlets in sealed, sterile containers are exempt from this regulation. Also exempt are: seeds; turf or sod; bulbs; tubers, corms or rhizomes (except those species listed as hosts or associated plants); greenhouse grown cactus, succulents and orchids; aquarium grown aquatic plants; and greenhouse, container or field grown palms and cycads.

(4) All growers of host and associated plants in the regulated area shall enter into compliance agreements with the department and/or USDA,



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APHIS as described in section (6). Before growers can enter into a compliance agreement they must be inspected, tested and certified free of *P. ramorum*, as described in sections (5) or (7).

(5) Growers in the certification program shall be inspected and tested annually for *P. ramorum*. Inspection and sampling procedures will meet or exceed USDA standards for nurseries in regulated areas not under quarantine. The department, using state and federally approved laboratory protocols, will test the samples.

(6) Growers who enter compliance agreements will be required to:

(a) Comply with OAR 603-054-0027 that requires all recipients of shipments of tree and shrub nursery stock imported from out-of-state, to notify the department within two business days of arrival of the shipment,

(b) Purchase hosts and associated hosts only from certified sources when such purchases originate in a Federally quarantined or regulated areas where official *P. ramorum* certification programs acceptable to the department exist,

(c) Have an official inspector inspect and test for *P. ramorum*, hosts and associated hosts purchased from sources in Federally quarantined or regulated areas where no official certification program exists; these plants must be safeguarded, segregated and held off sale until test results are complete,

(d) Maintain records of all incoming and outgoing shipments of hosts and associated hosts for a minimum of 24 months,

(e) Include appropriate Federal or State certification with all host nursery stock and associated plants shipped interstate.

(7) Alternately, such nurseries may be inspected, sampled and tested through an official "State Nursery Stock Cleanliness Program (SNSCP), which documents inspection of all nursery stock for the presence of *P. ramorum*, at the appropriate time of year. The SNSCP inspection, sampling, and testing program must be approved by USDA, APHIS. Until testing is completed and the nursery is found free of evidence of *P. ramorum* the following plants must be withheld from interstate shipment:

(a) All host nursery stock and associated plants;

(b) All plants within same genus as any host or associated plant; and

(c) Any plants located within 10 meters of a host or associated plant.

(8) Failure to comply with all articles of a compliance agreement will result in revocation of the compliance agreement and decertification.

(9) Growers of nursery stock that is not on the list of hosts and associated plants must be inspected annually for any evidence of *P. ramorum*. Plants showing symptoms of *P. ramorum* infection upon inspection will be sampled and tested. If symptomatic plants are found upon inspection, the following plants must be withheld from interstate shipment until testing is completed and the nursery is found free of evidence of *P. ramorum*: (1) all symptomatic plants; (2) any plants located in the same lot as the suspect plant; and (3) any plants located within 2 meters of this lot of plants.

(10) A list of growers compliant with these rules will be maintained on the department's web site. The department will update the list as necessary to maintain an accurate accounting of growers participating in the program.

(11) If *P. ramorum* is found, delimitation and eradication procedures as outlined in USDA's Confirmed Nursery Protocol, as amended October 15, 2004 will be implemented immediately. This protocol is available online at: [http:// ODA/PLANT/path\\_sod\\_index.shtml](http://ODA/PLANT/path_sod_index.shtml) or from the Oregon Department of Agriculture, 635 Capitol St. NE, Salem, OR 97301, telephone 503-986-4644. Hosts and associated hosts shall not be moved from the nursery/growing site until all conditions of the protocol are met and the department releases the plants.

(12) Unless renewed, or revised and re-issued, this order shall be considered revoked 3 years from the effective date.

(13) Violators of this regulated area are subject to the penalties provided by 570.410 and 570.990, including civil penalties up to \$10,000.

Stat. Auth.: ORS 561.510, 570.305

Stats. Implemented: ORS 561.190

Hist.: DOA 13-2005, f. & cert. ef. 3-25-05

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

Adm. Order No.: BCD 2-2005

Filed with Sec. of State: 3-16-2005

Certified to be Effective: 4-1-05

Notice Publication Date: 1-1-05

Rules Amended: 918-400-0270, 918-400-0455, 918-400-0465, 918-400-0525, 918-400-0630, 918-400-0740

**Subject:** These proposed rules update the Oregon Elevator Specialty Code with the latest editions and addenda's for elevator and escalator safety standards and lift standards.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

### 918-400-0270

#### Definitions, Cross Reference

(1) Statutory definitions for the elevator laws are in ORS 460.005.

(2) Electrical definitions are in ORS 479.530.

(3) Code definitions are in Section 1.3 of the adopted Elevator Specialty Code (ASME A17.1).

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

### 918-400-0455

#### Elevator Specialty Code Adoption

The **Oregon Elevator Specialty Code** shall be:

(1) "**The Belt Manlift Standard**" published by the American Society of Mechanical Engineers, **ASME A90.1b, 2001 Edition** with revisions and interpretations through January 1, 2005;

(2) "Standards for Specialty Lifts in Oregon" as provided by standards to be effective April 1, 2005; and

(3) "The Inspector's Manual" published by the American Society of Mechanical Engineers, **ASME A17.2, 2001 Edition** together with revisions and interpretations published through July 1, 2002.

(4) The safety standard for the general installation, alteration, repair and maintenance of elevators, other than those identified in sections (1) to (3) of this rule, is the **Safety Code for Elevators and Escalators, ASME A17.1, 2004 Edition** with published revisions and interpretations through January 1, 2005. The escalator step/skirt index **Requirements 6.1.3.3.7 and 6.1.3.3.8 and Section 8.6.8.3** shall be considered optional. Elective testing and installation of skirt deflecting devices shall conform to Requirements 6.1.3.3.7 and 6.1.3.3.8 and Section 8.6.8.3 as applicable.

(5) The safety standard for the general installation, alteration, repair and maintenance of vertical and inclined wheelchair lifts and inclined stairway chairlifts is the **Safety Standard for Platform Lifts and Stairway Chairlifts, ASME A18.1b 2001 Edition** with published revisions and interpretations through January 1, 2005.

(6) Referenced standards referred to within adopted standards, shall recognize the latest Oregon adopted edition unless otherwise specified herein.

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

Stat. Auth.: ORS 460.085, 455.202, 455.030 & 455.110

Stats. Implemented: ORS 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; DC 12-1986(Temp), f. & ef. 7-8-86; DC 10-1987, f. & ef. 4-13-87; Renumbered from 814-030-0005; BCA 35-1989, f. 12-22-89, cert. ef. 1-1-90; BCA 7-1992, f. & cert. ef. 4-10-92; BCA 26-1992, f. 12-29-92, cert. ef. 1-1-93; BCA 13-1993(Temp), f. 6-23-93, cert. ef. 7-1-93; BCA 17-1993, f. 8-24-93, cert. ef. 9-1-93; BCA 24-1993, f. 10-22-93, cert. ef. 11-1-93; BCA 35-1993, f. 12-14-93, cert. ef. 1-1-94; BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0010; BCD 3-1997, f. 3-18-97, cert. ef. 4-1-97; BCD 20-1997, f. 12-24-97, cert. ef. 1-1-98; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0520; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

### 918-400-0465

#### Elevator Maintenance Requirements

(1) The governing code for the repair and maintenance of existing elevators and for placing elevators back in service shall be the **Oregon Elevator Specialty Code for Existing Elevators and Escalators is the 2002 Edition of ASME A17.3** published by the American Society of Mechanical Engineers, as amended by the Building Codes Division with revisions and interpretations through January 1, 2005; and

(2) Where **ASME A17.3** fails to clearly define or govern a specific device or type of conveyance:

(a) The code under which the unit was installed, or the latest alteration code, if applicable, shall be used;

(b) The 1937 code shall apply to devices installed prior to March 1937.

(3) When elevator signal fixtures are altered, all elevator signal fixtures, car handrail(s), and two-way communication device(s) shall be brought into compliance with the applicable disability regulations in the **Oregon Structural Specialty Code**.

(4) All requirements for periodic safety tests, repair of existing devices and maintenance shall be brought into compliance within the time period required in the annual inspection report.

(5) Except as provided in section (4) of this rule, the maximum time allowed to comply with new maintenance standards for existing elevators shall not be more than 24 months from date of annual inspection except:

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(a) The replacement of hand line control as required by **ASME A17.3, Item 3.10.1** shall be allowed a maximum of 36 months to comply.

(b) All existing elevator hoistway gates or doors required to comply with **ASME A17.3, Item 2.6.1** and car doors or gates required to comply with Item 3.4.2(a) shall meet the minimum 72-inch (1828.8 mm) height requirement within 60 months from the date of the annual safety inspection following effective date of this rule, or when the gate requires complete replacement, whichever comes first.

(c) All elevators required by **ASME A17.3, Item 3.11.3** to have fire fighters' service shall comply with this rule within 60 months from date of the annual safety inspection following effective date of this rule.

(d) All passenger elevators and freight elevators allowed to carry passengers permitted after January 1, 1993, shall comply with **ASME A17.3, Item 3.11.1**. Elevators not in compliance with the applicable chapter of the Oregon Structural Specialty Code for elevator communication devices as of January 1, 1993, shall have 24 months from date of annual inspection to install the proper communicating device.

(e) Compliance extensions beyond the limits set in this section may be granted where, because of material shortages or extent of required changes, the additional time is necessary to achieve compliance.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: DC 25-1982, f. & ef. 12-16-82; Renumbered from 814-030-0075; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0100; BCD 3-1997, f. 3-18-97, cert. ef. 4-1-97; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0530; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

## 918-400-0525

### Plan Review Requirements

Plans and pertinent data submitted to the department under ORS 460.048 shall include proof that the elevator equipment meets the **Oregon Elevator Specialty Code** by providing the following information:

(1) Electrical product certification by providing;

(a) The listing or certification number and identification of the approved laboratory that tested the equipment;

(b) When applicable, date and identification of the electrical special deputy who certified the equipment to the **Oregon Elevator Specialty Code** electrical requirement; or

(c) Proof that requests for listing or certification are pending.

(2) For the purpose of complying with plan submittal requirements of ORS 460.048, and when applicable to the type of equipment being proposed, a complete set of drawings shall include:

(a) Elevation view;

(b) Plan view;

(c) Machine room layout (when applicable to the type of equipment);

(d) Cab and fixture detail;

(e) Hoistway entrance detail; and

(f) Electrical straight line wiring diagrams showing, as a minimum, safety circuits, normal and final limit circuits and door lock circuits, which shall include circuitry required by **ASME A17.1, 2004 Edition, Requirements 2.26.1.5 and 2.26.5**.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 21-1994, f. 9-13-94, cert. ef. 9-15-94; BCD 18-1995, f. & cert. ef. 12-15-95; Renumbered from 918-400-0120; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0610; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

## 918-400-0630

### Provisional Permits for Elevators Under Construction

(1) A construction-use (workman's) permit may be granted under the following conditions:

(a) It is only issued to an elevator contractor while the elevator is under construction;

(b) The elevator shall only be used for transportation of workers and materials necessary for the physical construction and inspection of the site and shall not be used by the general public;

(c) Notification shall be given to the division before making any elevator changes, except those necessary to complete construction of the elevator;

(d) The installation meets all requirements of the **Oregon Elevator Specialty Code (ASME A17.1, 2004 Edition, Section 5.10)**;

(e) An operator is provided for all elevator operations unless the elevator meets all requirements for normal operations; and

(f) The provisional permit shall be:

(A) Specific to a particular elevator; and

(B) Attached to the car enclosure in plain view.

(2) Notwithstanding any expiration date placed on a provisional permit, the permit automatically terminates upon issuance of an operating permit.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.055

Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0450; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

## 918-400-0740

### Taking Elevators Out of Service

Except as provided in OAR 918-400-0275, a person wishing to take an elevator out of service shall:

(1) Within 30 days of taking an elevator out of service, notify the division in writing of the date the elevator was taken out of service; and

(2) Within 12 months from the date the elevator is taken out of service, disable it as an "installation placed out of service," described in the **Safety Code for Elevators and Escalators, ASME A17.1 2004 Edition, Requirement 8.11.1.4**.

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

Stat. Auth.: ORS 460.085

Stats. Implemented: ORS 460.085

Hist.: BCD 18-1995, f. & cert. ef. 12-15-95; BCD 13-1999, f. & cert. ef. 10-1-99, Renumbered from 918-400-0560; BCD 3-2003, f. 2-28-03, cert. ef. 3-1-03; BCD 2-2005, f. 3-16-05, cert. ef. 4-1-05

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**Adm. Order No.:** BCD 3-2005

**Filed with Sec. of State:** 3-16-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 1-1-05

**Rules Adopted:** 918-500-0021

**Subject:** This rulemaking adopts rules to document amendments to the Manufactured Dwelling and Park Specialty Code. These rules amend the Manufactured Dwelling and Park Specialty Code to allow manufactured dwellings to be spaced less than 10 feet apart, if a one-hour fire resistive wall separates them. This requirement is equal to the current requirement that is found in the One-and Two-family Dwelling Specialty Code for residential dwellings.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-500-0021

### Amendments to the Manufactured Dwelling and Park Specialty Code

(1) The **Oregon Manufactured Dwelling and Park Specialty Code** is adopted as the recognized standard for manufactured dwelling use. Amendments adopted are placed in this rule, showing the division reference, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

(2) Effective April, 1, 2005:

(a) Amend Section 9-5.3(k) and 9-6.3(n) by removing reference to clearances between dwellings on adjacent lots and property lines.

(b) Amend Table 9-A by changing notations on separations for dwellings on same lot and dwellings on adjacent lots.

(c) Amend Table 9-B by changing notations on several setbacks and clearances and adding notation number 5.

[Publications: Publications referenced are available from agency]

Stat. Auth.: ORS 446.100 & 446.185

Stats. Implemented: ORS 446.100 & 455.110

Hist.: BCD 3-2005, f. 3-16-05, cert. ef. 4-1-05

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**Adm. Order No.:** BCD 4-2005(Temp)

**Filed with Sec. of State:** 3-28-2005

**Certified to be Effective:** 3-28-05 thru 6-30-05

**Notice Publication Date:**

**Rules Adopted:** 918-480-0003

**Subject:** On April 1, 2005, the 2005 Oregon Residential Specialty Code (ORSC) replaces the 2003 One-and Two-Family Dwelling Specialty Code. Due to unforeseen circumstances during the rule-making process, the printed amendments to the code was not available to users prior to the effective date. This rulemaking is necessary to allow a phase-in period of 90 days, which will provide the construction industry, contractors, architects, engineers, building offi-

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cials, inspectors, cost estimators, and building designers an opportunity to become familiar with and use the 2005 ORSC.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-480-0003

### Transitional Period for the 2005 Oregon Residential Specialty Code

(1) For the purposes of implementing a phase-in period for the **2005 Oregon Residential Specialty Code** (2005 ORSC) the following codes are adopted for a period of 90-days beginning April 1, 2005 and ending June 30, 2005.

(2) The division is requiring that all building departments in the state allow this phase-in period and are required to accept plans designed for low-rise residential dwellings covered under the scope of the 2005 ORSC to use either the 2005 ORSC or any of the following codes as applicable for:

(a) Detached one-and two-family dwellings, the **2003 One-and-Two Family Dwelling Specialty Code**.

(b) Townhouse structures, the **1998 Oregon Structural Specialty Code**.

(c) Rowhouse structures, the 1998 Oregon Structural Specialty Code or Oregon alternate method ruling No. 00-10 Rowhouse Construction.

(d) Apartments buildings, the **1998 Oregon Structural Specialty Code** for the following:

(A) Apartment buildings that contain a maximum of 24 fire-sprinkled units, each unit having an exterior door and that are three stories or less above grade with a maximum area of 36,000 square-feet per building.

(B) Apartment buildings that contain a maximum of 16 non fire-sprinkled units, each unit having an exterior door, that are two stories or less above grade with a maximum area of 24,000 square-feet per building and no more than eight-units in one-half of the building provided the two-halves are separated by a firewall.

(2) Plans that use a combination of these codes will not be accepted.

(3) The **2003 One-and-Two Family Dwelling Specialty Code** is the 2000 Edition of the International Residential Code for One-and-Two-Family Dwellings, as published by the International Code Council, Inc., with errata through March 31, 2003, and as further amended by the Building Codes Division.

(4) The **1998 Oregon Structural Specialty Code** is the 1997 Edition of the Uniform Building Code (Volumes 1, 2 and 3), Third Printing, as published by the International Conference of Building Officials and amended by the Building Codes Division, with errata through September 30, 2004.

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

Stat. Auth.: ORS 455.030, 455.525 & 455.380

Stats. Implemented: ORS 455.610

Hist.: BCD 4-2005(Temp), f. & cert. ef. 3-28-05 thru 6-30-05

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**Adm. Order No.:** BCD 5-2005

**Filed with Sec. of State:** 3-28-2005

**Certified to be Effective:** 3-28-05

**Notice Publication Date:** 11-1-04

**Rules Amended:** 918-480-0005, 918-480-0010

**Subject:** ORS 455.020 and ORS 455.110 requires the division to promulgate a uniform state building code to govern the construction, reconstruction, alteration and repair of buildings and other structures and the installation of mechanical devices and equipment therein and to require the correction of unsafe conditions caused by earthquakes in existing buildings. The law further requires the building code to establish performance standards for health, safety, welfare, comfort and security of residents of the State of Oregon, who are occupants and users of buildings and to provide for the use of modern methods, devices, materials, techniques and practicable maximum energy conservation.

ORS 455.610 requires the division to adopt, and amend as necessary, a Low-Rise Residential Dwelling Code that contains all requirements, including structural design provisions, related to the construction of residential dwellings three stories or less above grade.

The current Oregon One and Two Family Dwelling Code adopted is the 2000 edition of the International Residential Code (IRC) with Oregon amendments, and is known as the 2003 Oregon One and Two-Family Specialty code. This rule adopts the 2003 edition of the International Residential Code (IRC) with Oregon amendments, and will be known as the 2005 Oregon Residential Specialty Code. This will expand the scope of the residential code to include regulation

over certain apartment buildings and rowhouse structures that contain more than two dwelling units per structure.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-480-0005

### Minimum Safety Standards for the Design and Construction of Residential Dwellings

(1) The **Low-Rise Residential Dwelling Code** identified in ORS 455.610 shall be known as the **Oregon Residential Specialty Code**.

(2) Effective April 1, 2005, the **2005 Oregon Residential Specialty Code** is the **2003 Edition** of the **International Residential Code for One-and Two-Family Dwellings**, as published by the International Code Council, Inc. and as further amended by the Building Codes Division.

(3) Applicability of code changes to pending applications. Code requirements in effect at the time a plan review or permit application is filed shall control the construction under the application unless the applicant agrees to be controlled by subsequent changes.

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

Stat. Auth.: ORS 455.030, 455.525 & 455.380

Stats. Implemented: ORS 455.610

Hist.: DC 11-1986, f. 6-30-86, ef. 7-1-86; DC 6-1987(Temp), f. & ef. 4-3-87; Renumbered from 814-031-0005; BCA 3-1990, f. 1-30-90, cert. ef. 4-1-90; BCA 7-1990(Temp), f. 3-23-90, cert. ef. 4-1-90; BCA 21-1990, f. 8-28-90, cert. ef. 9-24-90; BCA 30-1990, f. 12-21-90, cert. ef. 1-1-92; BCA 8-1991, f. 4-10-91, cert. ef. 7-1-91; BCA 32-1991(Temp), f. & cert. ef. 9-30-91; BCA 1-1992, f. & cert. ef. 2-6-91; BCA 4-1992(Temp), f. 3-4-92, cert. ef. 3-5-92; BCA 6-1992, f. 3-24-92, cert. ef. 3-27-92; BCA 13-1992, f. 6-29-92, cert. ef. 7-1-92; BCA 28-1992(Temp), f. 12-30-92, cert. ef. 1-1-93; BCA 3-1993(Temp), f. & cert. ef. 3-3-93; BCA 7-1993, f. 4-28-93, cert. ef. 5-1-93; BCA 10-1993(Temp), f. & cert. ef. 6-11-93; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98, Renumbered from 918-480-0000; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05

## 918-480-0010

### Amendments to the Oregon Residential Specialty Code

(1) The **Oregon Residential Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized dwelling code and other referenced supporting nationally recognized codes pursuant to OAR chapter 918, division 8. Amendments adopted are placed in this rule, showing the division reference, a descriptive caption and a short description of the amendment. When the code is readopted, these amendments will be physically integrated into the new code and removed from rule.

(2) Effective April 1, 2005:

(a) The **2003 Edition of the Uniform Plumbing Code** as published by the International Association of Plumbing and Mechanical Officials and amended by the division are adopted as the plumbing provisions of the **Oregon Residential Specialty Code**; and

(b) The **2005 Edition of the NFPA 70, National Electrical Code** and amended by the division are adopted as the electrical provisions of the **Oregon Residential Specialty Code**.

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

Stat. Auth.: ORS 455.020, 455.110, 455.525 & 455.610

Stats. Implemented: ORS 455.610

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCA 29-1993, f. 11-24-93, cert. ef. 12-1-93; BCD 6-1995, f. 3-31-95, cert. ef. 4-1-95; BCD 3-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 22-1996(Temp), f. 10-1-96, cert. ef. 10-4-96; BCD 5-1997, f. 3-21-97, cert. ef. 4-1-97; Administrative Reformatting 1-19-98; BCD 3-1998, f. 1-29-98, cert. ef. 4-1-98; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 3-2000, f. 1-14-00 cert. ef. 4-1-00; BCD 19-2000(Temp), f. & cert. ef. 8-15-00 thru 2-10-01; BCD 32-2000, f. 12-27-00, cert. ef. 1-1-01; BCD 3-2001, f. 2-9-01, cert. ef. 3-1-01; BCD 2-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 22-2002(Temp), f. 9-13-02 cert. ef. 10-1-02 thru 3-29-03; BCD 30-2002, f. 12-6-02, cert. ef. 1-1-03; BCD 1-2003(Temp), f. & cert. ef. 1-10-03 thru 3-31-03; BCD 33-2002, f. 12-20-02 cert. ef. 4-1-03; BCD 15-2004, f. 9-10-04, cert. ef. 10-1-04; BCD 5-2005, f. & cert. ef. 3-28-05

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**Adm. Order No.:** BCD 6-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 918-001-0006

**Subject:** 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—(503) 373-7438

## 918-001-0006

### Specialty Code Name Change

Effective April 1, 2005, all references in OAR chapter 918, except those found in OAR chapter 918 division 098, are changed from the Oregon One-and-Two-Family Dwelling Specialty Code to the Oregon Residential



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Specialty Code. Nothing in this rule is intended to change the required criteria or scope of work allowed for permits, licensees, certificates, inspectors or plans examiners.

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

Stat. Auth.: ORS 455.144

Stats. Implemented: ORS 455.144

Hist.: BCD 6-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.:** BCD 7-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 918-008-0030

**Subject:** This rulemaking is necessary to remove specific dates and timelines that relate to specialty code amendments.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-008-0030

### Specialty Code Amendments

(1) Amendments to the **Electrical Specialty Code, Structural Specialty Code, Mechanical Specialty Code, Plumbing Specialty Code** and the **Oregon Residential Specialty Code** shall be considered for adoption based on the following:

(a) Notices shall be sent to interested parties and the general public advising of the due date for code change submittals;

(b) A complete code change proposal, including those filed under ORS 455.030 by “interested persons,” shall be filed with the division for consideration. All filings received or made “complete” after the due date established by notice to the public in (1) (a) shall be deferred to the next regular submission date;

(c) The division shall submit proposed amendments received under subsection (a) of this section to the appropriate board or its delegated committee for review and recommendations;

(d) If the board refers proposals to one or more committees for review and comments the committee shall submit recommendations to the board;

(e) The board or its delegated committee shall submit its recommendations to the administrator no later than 180 days from the date of formal submittal under subsection (b) of this section. The board or its delegated committee shall attach the cost findings on recommended amendments as required by ORS 455.030 and recommend an implementation schedule;

(f) Following receipt of a board response under subsection (e) of this section, the administrator shall notify the amendment proponent within the time provided in ORS 455.030 (5) and, if relevant, begin rulemaking;

(g) If rulemaking is begun, a notice shall be filed scheduling a public hearing. A division report shall be provided to the appropriate board following the hearing; and

(h) All code amendments shall have an April 1 or October 1 effective date.

(2) Exceptions for Filings under ORS 455.030 and Temporary Rules:

(a) Filings received expressly under ORS 455.030 shall be initially evaluated by the division to determine if a temporary rule is justified under ORS 183.335. If justified, it shall be processed under subsection (b) of this section. If not, it shall be processed under section (1) or (2) of this rule; and

(b) Temporary code amendments shall be processed and adopted regardless of the time lines established in this rule when allowed by ORS 183.335. In all cases, board consultation requirements under ORS 455.030 shall be followed. Nothing shall prevent consideration of a related permanent rule in connection with adoption of a temporary rule.

(3) The submission dates in this rule shall be followed by all persons except when:

(a) Controversial proposals are involved;

(b) It is necessary to respond to statutory mandates;

(c) Additional findings or documentation are required; or

(d) When legal consultation is necessary.

(4) Nothing in the schedules established in sections (1) and (2) of this rule prevents a board from internally generating proposed adoptions or amendments of codes if it meets the submission date to the administrator for rule adoption.

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

Stat. Auth.: ORS 447.020, 455.030 & 479.730

Stats. Implemented: ORS 447.020, 455.030 & 479.730

Hist.: BCD 26-1994, f. & cert. ef. 11-15-94; BCD 6-1997, f. & cert. ef. 4-1-97; BCD 1-2004(Temp), f. & cert. ef. 1-29-04 thru 7-26-04; Administrative correction 8-19-04; Suspended by BCD 17-2004(Temp), f. & cert. ef. 9-30-04 thru 3-28-05; BCD 7-2005, f. & cert. ef. 4-1-05

**Adm. Order No.:** BCD 8-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 918-282-0110, 918-400-0380, 918-515-0020, 918-515-0110, 918-515-0415, 918-674-0095, 918-695-0010, 918-695-0038

**Subject:** 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 license applicants to submit notarized documents electronically (fax or scan and email). These rules create consistent processes across all program areas, except the elevator and electrical program.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-282-0110

### General Licensing Criteria

(1) Application. Application for license shall be made on a division form and shall be approved by the division before an applicant may sit for the examination.

(2) Education Requirement. All applicants required to take an examination shall have a high school diploma, GED or international equivalent education.

(3) Military and Trade School Training and Experience. Experience and training gained through the military or attendance at an accepted trade school shall be evaluated by the division on a case-by-case basis. The experience and training shall comply with the equivalent standards for the license sought.

(4) Verification of Experience and Training. One year experience equals 2,000 hours. Unlawful work experience shall not be accepted. Applicants for license categories requiring verification of electrical work or completion of an approved apprenticeship or training program shall submit verification as follows:

(a) Applicants who complete an approved apprenticeship program shall submit a referral letter from the approved training committee specifying the applicant is qualified to take the examination.

(b) Applicants for a reciprocal license shall submit a copy of a current, valid license or a statement from the issuing jurisdiction attesting the applicant currently possesses a valid license.

(c) Applicants from other, nonreciprocal jurisdictions shall submit verification of equivalent experience for the work categories and minimum hours required for the license. Verification of equivalent experience shall be on a division form or an original letter from current or previous employers on company, union or similar letterhead. The signature of the individual verifying the experience shall be notarized, embossed with a union seal or have similar authentication. Applicants who are required to submit a transcript of related electrical training classes may alternatively submit verification of twice the amount of equivalent experience for the work categories and minimum hours required for the license.

(d) Applicants relying solely on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of work experience. Other official military documentation that reliably verifies military training and experience may be accepted when supervisory officials are not available or cannot be located.

(e) Applicants relying solely on trade school training and experience shall submit copies of their transcripts, identifying courses successfully completed with passing grades of 70 percent (“C”) and notarized documentation from the supervising instructor or school of the type and approximate hours of work experience.

(f) The board may approve alternate verification of training and work experience on a case-by-case basis.

(5) Examination. The board-approved license examination shall test an applicant’s knowledge of the related training listed for the license. The applicant shall receive a minimum passing grade of 75 percent. Applicants failing exam may retest after 30 days for first failure, 90 days upon second failure and one-year for third or subsequent failures. The examination schedule for the test sites shall be determined by the division and may change without prior notice.

(6) License Revocation, Cancellation or Suspension.

(a) Interpretation of ORS 479.660.

(A) A “pattern of conduct” exists under ORS 479.660 if an electrical licensee is assessed civil penalties under the Electrical Safety Law or rules on at least three separate occasions within a three-year period.

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(B) A person willfully violates a provision of the Electrical Safety Law or rules if the person knew or should have known of the violation.

(C) A person negligently violates the Electrical Safety Law or rules if the person carelessly or recklessly disregards the requirements.

(b) When an electrical license is suspended for any reason, it is necessary for the licensee to continue to comply with continuing education requirements where applicable and to apply for and pay for renewal of the license to prevent cancellation of the license by operation of law.

(7) In addition to the exceptions provided in ORS 479.540, electrical licenses are not required to:

(a) Replace light bulbs, fluorescent tubes or approved fuses, or to connect approved portable electrical equipment to permanently installed and properly wired receptacles;

(b) Do experimental electrical work or testing of electrical products in electrical shops, educational institutions, industrial plants or recognized testing laboratories;

(c) Operate, maintain, repair and replace broadcast equipment of commercial radio and television stations; or

(d) Install limited energy systems not exceeding 100 voltampere ("VA") in Class 2 and 3 systems limited to:

(A) Single station smoke or ionization detectors installed in buildings three stories or less in height;

(B) Closed circuit television systems installed in buildings three stories or less in height;

(C) Master Antenna Television ("MATV") systems installed in buildings three stories or less in height; or

(D) Intercom and audio systems installed in one- and two-family dwellings.

(8) Nothing in chapter 918 division 282 prevents an applicant for a license from faxing or scanning and e-mailing documents.

Stat. Auth.: ORS 479.730

Stats. Implemented: ORS 479.730

Hist.: DC 15-1987, f. & ef. 5-15-87; Renumbered from 814-022-0800; BCD 9-1996, f. 9-17-96, cert. ef. 10-1-96; Renumbered from 918-320-0010; BCD 18-1999, f. 12-30-99, cert. ef. 1-1-00; BCD 23-2000, f. 9-29-00, cert. ef. 10-1-00; BCD 26-2002, f. & cert. ef. 10-1-02; BCD 8-2005, f. & cert. ef. 4-1-05

## 918-400-0380

### Limited Elevator Mechanic License

(1) Pursuant to ORS 460.057, any person installing, altering, repairing or maintaining elevator mechanical equipment prior to October 23, 1999, and who does not otherwise qualify for licensure herein, shall be issued a limited elevator mechanic's license commensurate with their prior, verifiable work experience if they comply with the following:

(a) Makes appropriate application; and

(b) Pays applicable fees as prescribed under OAR 918-400-0800.

(2) The following shall not be used to determine prior experience;

(a) Work on equipment not regulated by the Elevator Safety Law unless such prior experience is considered to be transferable experience gained prior to October 23, 1999;

(b) The installation, alteration, repair or maintenance of equipment installed in Oregon that was not lawfully permitted as required by the Elevator Safety Law;

(c) Work in Oregon while employed by a company not lawfully licensed as an elevator contractor in Oregon, or not lawfully registered with the Construction Contractors Board; or

(d) Experience gained in violation of any other state law.

(3) Experience gained shall be considered based on the following. Applicants must have been regularly engaged in the installation, alteration, repair or maintenance on the type, or types, of equipment commensurate with the license being sought based on:

(a) Minimum of 4,000 hours "substantial experience" lawfully obtained on equipment covered by a limited elevator mechanic's license;

(b) "Substantial experience," for purposes of this rule, must be verified evidence in the form of two separate notarized affidavits. One from an Oregon business attesting the person has been involved in 40 or more elevator projects and one from a CPA attesting that the business had at least \$75,000 of gross business prior to October 23, 1999. Nothing in this rule prevents an applicant from faxing or scanning and e-mailing documents.

(4) A license under this rule shall be limited to the scope of work for which the person has provided work experience acceptable to the division.

(5) This license expires on October 1 no later than three years after the date of issuance.

Stat. Auth.: ORS 460.057 & 460.085

Stats. Implemented: ORS 460.005 - 460.175

Hist.: BCD 21-2002(Temp), f. 8-30-02, cert. ef. 9-1-02 thru 2-27-03; BCD 34-2002, f. 12-20-02, cert. ef. 1-1-03; BCD 12-2004, f. 8-20-04, cert. ef. 10-1-04; BCD 8-2005, f. & cert. ef. 4-1-05

## 918-515-0020

### Minimum Requirements of Educational Provider

All manufactured dwelling installation education and continuing education classes used to satisfy the requirements of this rule shall be approved by the Division. All instructors teaching required manufactured dwelling installation education and continuing education classes shall be employees of the division or approved educational providers. To be approved as an educational provider for manufactured dwelling installers, limited installers, limited skirting installers and installation inspectors, an individual shall meet the following requirements:

(1) Have a minimum of 3,200 hours experience in one or more of the following areas:

(a) As a supervisor of manufactured dwelling installations;

(b) As a supervisor of manufactured dwelling service or repair;

(c) As a supervisor in the building construction industry;

(d) In design work related to the building construction industry;

(e) As an Oregon-certified manufactured dwelling installation inspector;

(f) Completion of a two-year educational institution program in a construction-related field that is recognized by the Division; or

(g) Any combination of experience or education from subsections (a) through (f) of this section totaling 3,200 hours.

(2) Have successfully completed the following:

(a) Attendance at a Division-approved manufactured dwelling and cabana installation education program; and

(b) Received a passing grade of 90 percent on the Division-approved examination covering ORS Chapter 446, OAR chapter 918, divisions 500 and 515 and the **Oregon Manufactured Dwelling Standard**.

(3) The applicant shall provide to the Division the following:

(a) A copy of a personal photo identification with submittal of any Division applications;

(b) A completed Division application;

(c) The required application fee; and

(d) A class curriculum for Division approval.

(4) Verification of experience shall be submitted in the form of signed statements by past or present employers, or other verification acceptable to the Division. Verification may not be provided by a member of the applicant's immediate family, by a live-in companion or by any person dependent upon the applicant. The Division may contact any person to verify experience of an applicant.

(5) Licensed manufactured dwelling installers and certified manufactured dwelling installation inspectors are not required to show evidence of Section (4) of this rule.

(6) Personal photo identification shall be required for admission to all required manufactured dwelling installation examinations.

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

Stat. Auth.: ORS 446.176, ORS 446.400 & ORS 446.405

Stats. Implemented: ORS 446.395

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 8-2005, f. & cert. ef. 4-1-05

## 918-515-0110

### Requirements for Installer License

(1) To be licensed as a manufactured dwelling installer, an applicant shall meet the following minimum experience requirements:

(a) 1,600 hours experience as a manufactured dwelling installer in another state or 1,600 hours experience as an Oregon licensed limited installer or limited skirting installer;

(b) 3,200 hours experience servicing or repairing manufactured dwellings;

(c) 3,200 hours experience in the construction of manufactured dwellings;

(d) 3,200 hours experience as a building construction supervisor;

(e) 1,600 hours experience as an active Oregon certified manufactured dwelling installation inspector;

(f) Completion of a one year college program in a construction related field which is recognized by the Board; or

(g) Any combination of experience or education from subsections (a) through (f) of this section totaling 3,200 hours.

(2) In addition to the requirements in section (1) of this rule, applicants shall have:

(a) Attended a Division-approved manufactured dwelling installation education program; and

(b) Received a passing grade of 75 percent on the Division approved examination.

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(3) Verification of experience shall be submitted in the form of signed statements by past or present employers. Verification may not be provided by a member of the applicant's immediate family, by a live-in companion or by any person dependent upon the applicant. The Division may contact any person to verify experience of an applicant.

(4) In addition to the completed application form and application fee, an applicant shall provide:

(a) Personal photo identification for admission to all required manufactured dwelling examinations and with submittal of the Division's license application;

(b) If the applicant is required to register with the Construction Contractors Board, the applicant shall provide proof of registration; and

(c) If the applicant is required to carry Workers' Compensation insurance, the applicant shall provide proof of insurance.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.395

Hist.: BCA 1-1990, f. & cert. ef. 1-2-90; BCA 10-1992, f. 6-15-92, cert. ef. 7-1-92; BCD 2-1994, f. 1-14-94, cert. ef. 2-1-94; BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 1-1997, f. 2-24-97, cert. ef. 4-1-97; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 8-2005, f. & cert. ef. 4-1-05

### 918-515-0415

#### Temporary Limited Installer License

A temporary limited installer license allows persons to perform all of the work performed by a limited installer, subject to the following conditions:

(1) The temporary license shall be valid for a period of 60 days and all work performed under this license shall be under the direct supervision of a licensed installer;

(2) An employer may purchase pre-numbered blank temporary installer license packets which include an application form and blank license, and when the application is completed may issue the temporary license to their employee. The licensee shall be in the personal possession of the license at all times that the person is working as a temporary installer; and

(3) Each temporary license application form shall be completed, dated, and signed by the applicant on the first day of work by the person to whom the license is issued. The application shall be removed from the packet and mailed to the Division within 24 hours of the day the licensee signs the application.

Stat. Auth.: ORS 446.176, 446.400 & 446.405

Stats. Implemented: ORS 446.400 & 446.405

Hist.: BCD 19-1995, f. 12-15-95, cert. ef. 1-1-96; BCD 22-1998, f. 11-9-98, cert. ef. 1-1-99; BCD 8-2005, f. & cert. ef. 4-1-05

### 918-674-0095

#### Transfer of Approvals

When there is a change of ownership of a manufacturing business which has the Division's plan approval, or has approvals to be utilized by another manufacturer, the change shall be considered to be a renewal submittal which requires application, plans, manuals, fees and a statement releasing or transferring plans and manuals, signed by the owner or officers of each firm.

Stat. Auth.: ORS 455.030, 455.100 & 455.110

Stats. Implemented: ORS 455.110

Hist.: DC 9-1982, f. & cert. ef. 3-1-82; Renumbered from 814-050-0095; BCA 25-1992, f. 12-28-92, cert. ef. 1-1-93; BCD 8-2005, f. & cert. ef. 4-1-05

### 918-695-0010

#### Application for Examination

(1) General licensing requirements. Application for license shall be made on a division form and must be approved by the division before an applicant may sit for the examination.

(2) Education Requirement. All applicants required to take an examination shall have a high school diploma, GED or international equivalent education.

(3) Military and Trade School Training and Experience. Experience and training gained through the military or attendance at an accepted trade school shall be evaluated by the division. The experience and training shall comply with the equivalent standards for the license sought.

(4) Verification of Experience and Training. Unlawful work experience or self-verification shall not be accepted. Applicants requiring verification of plumbing work or completion of an approved apprenticeship or training program shall submit verification as follows:

(a) Applicants who complete an approved apprenticeship program shall submit a referral letter from the approved training committee specifying the applicant is qualified to take the examination, or a certificate of completion;

(b) Applicants for a reciprocal license shall submit a copy of a current, valid license which was acquired through examination by a jurisdiction maintaining a reciprocal agreement with the board.

(c) Applicants from other, nonreciprocal jurisdictions shall submit verification of equivalent experience as defined in OAR 918-695-0030. Verification of equivalent experience shall be on a division form or an original letter from current or previous employer on company letterhead.

(d) Applicants relying solely on military training and experience shall submit official documentation from the supervising officials showing type and approximate hours of plumbing work experience. Other official military documentation that reliably verifies military plumbing training and experience may be accepted when supervisory officials are not available or cannot be located.

(5) Examination. The board-approved license examination shall test an applicant's knowledge of the related training listed for the license. The applicant shall pass a board-approved examination within 60 days of the date of division approval of the application. The applicant must receive a minimum passing grade of 75 percent.

(6) Applicants not accepted as meeting the qualifications or who fail the examination shall be notified in writing of the reason for nonacceptance.

(7) Failed examinations shall be reviewed by the division for accuracy of final score, prior to the notification letter being sent to the applicant.

(8) Unless a different requirement is adopted for a specific license, if an applicant fails a test, upon payment of a separate examination fee in each instance, the applicant may take:

(a) A second test after a 30-day waiting period; and

(b) A third test and subsequent testing after a one year waiting period before retaking the examination.

(9) Licensing appeals are to the Plumbing Board under ORS 693.105.

(10) License Revocation, Cancellation or Suspension. A license may be revoked, canceled or suspended when:

(a) A "pattern of conduct" is determined and exists if a plumbing licensee is assessed civil penalties under the plumbing statutes or rules on at least three separate occasions within a three-year period;

(b) A person willfully violates a provision of the plumbing statutes or rules if the person knew or should have known it was a violation; or

(c) A person negligently violates the plumbing statutes or rules if the person carelessly or recklessly disregards the requirements.

(d) When a plumbing license is suspended for any reason, the licensee must continue to comply with continuing education requirements where applicable and to apply for and pay for renewal of the license to prevent cancellation of the license by operation of law.

Stat. Auth.: ORS 693.103

Stats. Implemented: ORS 693.103

Hist.: DC 4, f. 8-13-71, ef. 9-11-71; DC 25-1978, f. 9-5-78, ef. 9-20-78; Renumbered from 814-021-0502; DC 2-1983, f. & cert. ef. 1-3-83; Renumbered from 814-020-0010; BCA 18-1991, f. & cert. ef. 6-12-91; BCD 6-1998, f. 3-2-98, cert. ef. 4-1-98, Renumbered from 918-690-0010; BCD 22-2000, f. 9-19-00, cert. ef. 10-1-00; BCD 8-2005, f. & cert. ef. 4-1-05

### 918-695-0038

#### Special Business Registration and Installer Certification for Medical Gas Systems

(1) The State Plumbing Board shall issue a special registration to businesses that provide the following:

(a) Completed and signed division application for special business registration and evidence that demonstrates that the medical gas system installation, maintenance or repair activity of the business in Oregon was substantial during the two-year period commencing October 23, 1997, and ending October 23, 1999. "Substantial" activity under this subsection means documentary evidence in the form of two separate signed statements from an Oregon Certified Public Accountant and an Oregon business owner attesting that the company has done at least 40 medical gas piping projects or at least \$75,000 of gross business installing medical gas systems during the two-year period commencing October 23, 1997, and ending October 23, 1999;

(b) The issuance fee of \$50; and

(c) Names of all employees who are engaged in medical gas system installation, maintenance or repair of medical gas systems by the business.

(2) The division shall issue a special medical gas installer certification to qualified persons who provide the following:

(a) Completed and signed division application for special medical gas installer certification;

(b) The issuance fee of \$50; and

(c) List of companies with which employed.



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(3) All registrations and certifications issued under these rules shall be renewed annually and no registration or certificate shall be issued or active after July 1, 2006.

Stat. Auth.: 2001 OL, Ch. 629  
Stats. Implemented: 2001 OL, Ch. 629  
Hist.: BCD 3-2002, f. 3-5-02, cert. ef. 4-1-02; BCD 8-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.:** BCD 9-2005(Temp)

**Filed with Sec. of State:** 4-7-2005

**Certified to be Effective:** 4-7-05 thru 9-30-05

**Notice Publication Date:**

**Rules Amended:** 918-460-0015

**Subject:** This temporary rule adjusts current code requirements to allow code users to choose between the plumbing fixture count provisions in certain commercial buildings by either Chapter 29 in the 2004 Oregon Structural Specialty Code (OSSC), or Chapter 29 from the 1998 OSSC with certain previously approved amendments for M and E Occupancies. The 1998 OSSC is the 1997 Uniform Building Code with Oregon specific amendments and was in effect from October 1998 to October 2004.

**Rules Coordinator:** Heather L. Gravelle—(503) 373-7438

## 918-460-0015

### Amendments to the Structural Specialty Code

(1) The **Structural Specialty Code** is generally readopted every three years coinciding with the national adoption of a nationally recognized Building Code and other referenced supporting nationally recognized codes pursuant to chapter 918, division 8.

(2) Effective October 1, 2004, delete Section 2406.1.2 Wired glass.

(3) Effective April 5, 2005 to September 30, 2005 users of the code may choose between either Chapter 29 of the **2004 Oregon Structural Specialty Code** or Chapter 29 of the 1998 Oregon Structural Specialty Code as further amended by the division to include M and E Occupancies in Section 2904.2 Requirements.

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

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

Stats. Implemented: ORS 447.247, 455.110, & 455.112

Hist.: BCA 18-1993, f. 8-24-93, cert. ef. 8-29-93; BCA 28-1993, f. 10-22-93, cert. ef. 1-1-94; BCD 6-1994, f. 2-25-94, cert. ef. 5-1-94; BCD 22-1994, f. 9-28-94, cert. ef. 1-1-95; BCD 31-1994(Temp), f. & cert. ef. 12-23-94; BCD 32-1994, f. & cert. ef. 12-30-94; BCD 2-1995, f. & cert. ef. 2-9-95; BCD 5-1995, f. & cert. ef. 3-15-95; BCD 2-1996, f. 2-2-96, cert. ef. 4-1-96; BCD 6-1996, f. 3-29-96, cert. ef. 4-1-96; BCD 12-1997, f. 9-10-97, cert. ef. 10-1-97; BCD 19-1998, f. 9-30-98, cert. ef. 10-1-98; BCD 24-1998(Temp), f. & cert. ef. 12-1-98 thru 5-29-99; Temporary Rule repealed by BCD 3-1999, f. 3-12-99, cert. ef. 4-1-99; BCD 5-1999, f. 6-17-99, cert. ef. 10-1-99; BCD 12-1999(Temp), f. 9-23-99, cert. ef. 11-1-99 thru 4-28-00; BCD 2-2000 f. 1-14-00, cert. ef. 4-1-00; BCD 20-2000, f. 9-15-00, cert. ef. 10-1-00; BCD 8-2001, f. 7-17-01, cert. ef. 10-1-01; BCD 18-2001, f. 12-21-01, cert. ef. 1-1-02; BCD 14-2003, f. 8-13-03, cert. ef. 10-1-03; BCD 18-2003(Temp) f. & cert. ef. 11-14-03 thru 5-11-04; BCD 5-2004,f. & cert. ef. 4-1-04; BCD 16-2004, f. 9-24-04, cert. ef. 10-1-04; BCD 21-2004, f. & cert. ef. 10-1-04; BCD 9-2005(Temp), f. & cert. ef. 4-7-05 thru 9-30-05

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

**Adm. Order No.:** ID 4-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 11-1-04

**Rules Adopted:** 836-080-0600, 836-080-0610, 836-080-0615, 836-080-0620, 836-080-0625, 836-080-0630, 836-080-0635, 836-080-0640, 836-080-0645, 836-080-0650, 836-080-0655, 836-080-0660, 836-080-0665, 836-080-0670, 836-080-0675, 836-080-0680, 836-080-0685, 836-080-0690, 836-080-0695, 836-080-0700

**Subject:** These rules govern the use and disclosure by health insurers of personal information relating to individuals, and also govern authorization for use of that information, notice of use of personal information and the right of individuals to request access to and correction of information maintained by a health insurer.

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

## 836-080-0600

### Authority; Rule of Construction; Applicability

(1) OAR 836-080-0600 to 836-080-0700 are adopted under the authority of ORS 731.244 and 746.608, for the purpose of implementing

ORS 746.600 and 746.607 with respect to licensees transacting health insurance.

(2) The examples in OAR 836-080-0600 to 836-080-0700 are not exclusive. Compliance with an example in OAR 836-080-0600 to 836-080-0700 constitutes compliance with the rule to which the example applies.

(3) OAR 836-080-0600 to 836-080-0700 apply to health insurance activities of a licensee and not to noninsurance activities.

(4) The applicability of the exemptions in OAR 836-080-0670(1)(a) and (b) includes but is not limited to a licensee's transactions described in OAR 836-080-0670(1)(a) and (b) with a reinsurer or with an insurer with respect to stop loss or excess loss insurance.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 and 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

## 836-080-0610

### Definitions and Examples

The following definitions and examples of definitions apply to the following terms as they are defined or used in OAR 836-080-0600 to 836-080-0700:

(1) "Clear and conspicuous" means that a notice under OAR 836-080-0615 or 836-080-0620 or a disclosure authorization form under OAR 836-080-0665 is reasonably understandable and designed to call attention to the nature and significance of the information in the notice or disclosure authorization form. The following are applicable examples:

(a) Examples of "reasonably understandable." A licensee makes its notice or disclosure authorization form reasonably understandable if it:

(A) Presents the information in the notice or disclosure authorization form in clear, concise sentences, paragraphs and sections;

(B) Uses short explanatory sentences or bullet lists whenever possible;

(C) Uses definite, concrete, everyday words and active voice whenever possible;

(D) Avoids multiple negatives;

(E) Avoids legal and highly technical business terminology whenever possible; and

(F) Avoids explanations that are imprecise and readily subject to different interpretations.

(b) Designed to call attention. A licensee designs its notice or disclosure authorization form to call attention to the nature and significance of the information in it if the licensee:

(A) Uses a plain-language heading to call attention to the notice or disclosure authorization form;

(B) Uses a typeface and type size that are easy to read;

(C) Provides wide margins and ample line spacing;

(D) Uses boldface or italics for key words; and

(E) Uses distinctive type size, style and graphic devices, such as shading or sidebars, when a form combines the licensee's notice or disclosure authorization form with other information.

(c) Notices on web sites. If a licensee provides a notice on a web page, the licensee designs its notice to call attention to the nature and significance of the information in it if the licensee uses text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensures that other elements on the web site, such as text, graphics, hyperlinks or sound, do not distract attention from the notice, and the licensee either:

(A) Places the notice on a screen that consumers frequently access, such as a page on which transactions are conducted; or

(B) Places a link on a screen that consumers frequently access, such as a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(2) "Collect" means to obtain information that the licensee organizes or can retrieve by the name of an individual or by identifying number, symbol or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(3) The following examples apply to the term "consumer" as it is defined in ORS 746.600 and used in OAR 836-080-0600 to 836-080-0700:

(a) An individual who provides personal information to a licensee in connection with obtaining or seeking to obtain financial, investment or economic advisory services relating to a health insurance product or service is a consumer regardless of whether the licensee establishes an ongoing advisory relationship.

(b) An applicant for health insurance prior to the inception of health insurance coverage is a licensee's consumer.

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(c) An individual who is a consumer of another financial institution is not a licensee's consumer solely because the licensee is acting as agent for, or provides processing or other services to, that financial institution.

(d) An individual is a licensee's consumer if the licensee discloses personal information about the individual to a nonaffiliated third party other than as permitted under OAR 836-080-0670 or 836-080-0675 and the individual is a claimant under a health insurance policy issued by the licensee.

(e) If the licensee provides the initial, annual and revised notices under OAR 836-080-0615 or 836-080-0620 to the plan sponsor or group or blanket insurance policyholder, and if the licensee does not disclose personal information about such an individual to a nonaffiliated third party other than as permitted under OAR 836-080-0670 or 836-080-0675, an individual is not the consumer of the licensee solely because the individual is:

(A) A participant or a beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary; or

(B) Covered under a group or blanket health insurance policy issued by the licensee.

(f) Individuals described in paragraphs (A) and (B) of subsection (e) of this section are consumers of a licensee if the licensee does not meet all of the conditions of subsection (e) of this section. The individuals are not customers for purposes of ORS 746.600 or this rule, or OAR 836-080-0615, 836-080-0620, 836-080-0665, 836-080-0670 or 836-080-0675, solely because of their status described in paragraphs (A) and (B) of subsection (e) of this section.

(4) The following examples that indicate whether a continuing relationship exists apply to the term "customer" as it is defined in ORS 746.600 and used in OAR 836-080-0600 to 836-080-0700:

(a) A consumer has a continuing relationship with a licensee if:

(A) The consumer is a current policyholder of a health insurance product issued by or through the licensee; or

(B) The consumer obtains financial, investment or economic advisory services relating to a health insurance product or service from the licensee for a fee.

(b) A consumer does not have a continuing relationship with a licensee if:

(A) The consumer applies for health insurance but does not purchase the health insurance;

(B) The individual is no longer a current policyholder of a health insurance product or no longer obtains health insurance services with or through the licensee;

(C) The consumer is a beneficiary or claimant under a health insurance policy and has submitted a claim under a health insurance policy choosing a settlement option involving an ongoing relationship with the licensee.

(D) The consumer is a beneficiary or a claimant under a health insurance policy and has submitted a claim under that policy choosing a lump sum settlement option;

(E) The customer's health insurance policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than for annual privacy notices, material required by law or rule, communication at the direction of a state or federal authority, or promotional materials.

(F) The individual is an insured under a health insurance policy, but is not the policyholder or owner of the insurance policy; or

(G) For the purposes of this rule, the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(5) "Financial institution" means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activities as described in section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)). "Financial institution" does not include:

(a) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 USC 1 et seq.).

(b) The Federal Agricultural Mortgage Corporation or any entity charged and operating under the Farm Credit Act of 1971 (12 USC 2001 et seq.); or

(c) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales, including sales of servicing rights or similar transactions related to a transaction of a consumer, as long as the institutions do not sell or transfer nonpublic personal information to a non-affiliated third party.

(6) "Financial product or service" means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under Section 4(k) of the Bank Holding Company Act of 1956 (12 USC 1843(k)). The term includes a financial institution's evaluation or brokerage of information that the financial institution collects in connection with a request or an application from a consumer for a financial product or service.

(7) The term "nonaffiliated third party" as defined in ORS 746.600 also includes any company that is an affiliate solely because of the direct or indirect ownership or control of the company by the licensee or its affiliate in conducting merchant banking or investment banking activities of the type described in section 4(k)(4)(H) or insurance company investment activities of the type described in section 4(k)(4)(I) of the federal Bank Holding Company Act (12 USC 1843(k)(4)(H) and (I)).

(8) "Personal financial information" is the category of personal information that includes any of the following information:

(a) Information that a consumer provides to a licensee to obtain a health insurance product or service from the licensee.

(b) Information about a consumer resulting from a transaction involving a health insurance product or service between a licensee and a consumer.

(c) Information that the licensee otherwise obtains about a consumer in connection with providing a health insurance product or service to the consumer.

(d) Any list, description or other grouping of consumers, and publicly available information pertaining to those consumers, that is derived using any personal financial information that is not publicly available.

(9) For purposes of the part of the definition of "personal information" in ORS 746.600 that provides that "'Personal information' does not include information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state or local government records, widely distributed media or disclosures to the public that are required by federal, state or local law":

(a) A licensee has a reasonable basis to believe the information is lawfully made available to the general public if the licensee has taken steps to determine:

(A) That the information is of the type that is available to the general public; and

(B) Whether an individual can direct that the information not be made available to the general public and, if so, that the licensee's consumer has not done so.

(b) The following are examples:

(A) Government records. Information in government records that is not "personal information" includes information in government real estate records and security interest filings.

(B) Widely distributed media. Information from widely distributed media that is not "personal information" includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or a site operator requires a fee or a password, so long as access is available to the general public.

(C) Reasonable basis example: A licensee has a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if the licensee has located the telephone number in the telephone book or the consumer has informed the licensee that the telephone number is not unlisted.

(10) Statutory definitions of terms used in OAR 836-080-0600 to 836-080-0700, including but not limited to "insurance producer," "insurance support organization" and "privileged information," are found in ORS 746.600.

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0615

#### Personal Information Notice

(1) This rule governs the notice to be given by a licensee to an individual that informs the individual about a licensee's treatment of personal information concerning the individual when the licensee and the individual are engaging in a transaction of health insurance. A licensee shall provide a

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clear and conspicuous notice of information practices to individuals in connection with a transaction of health insurance under the circumstances and at the times as follows:

(a) In the case of an application for health insurance, a notice shall be provided no later than:

(A) At the time of delivery of the health insurance policy or certificate, when personal information is collected only from the applicant or from public records; or

(B) At the time the collection of personal information is initiated, when personal information is collected from a source other than the applicant or public records.

(b) In the case of a health insurance policy renewal, a notice shall be provided no later than the policy renewal date, except that a notice shall not be required in connection with a policy renewal if:

(A) Personal information is collected only from the policyholder or from public records; or

(B) A notice meeting the requirements of this rule has been given within the previous 24 months.

(c) In the case of a policy reinstatement or change in health insurance benefits by an insurer, a notice shall be provided no later than the time a request for the policy reinstatement or change in insurance benefits is received by the insurer, except that a notice shall not be required if personal information is collected only from the policyholder or from public records.

(2) The notice required by section (1) of this rule shall be in writing or, if the individual agrees, in an electronic format and shall include all of the following items:

(a) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage.

(b) The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect the information.

(c) The types of disclosures identified in OAR 836-080-0670 or 836-080-0675 and the circumstances under which the disclosures may be made without prior authorization. The only circumstances that need be described, however, are those that occur with such frequency as to indicate a general business practice.

(d) A description of the rights established under OAR 836-080-0695 and 836-080-0700 and the manner in which the rights may be exercised.

(e) That information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(3) In lieu of the notice required in section (2) of this rule, an insurer or insurance producer may provide an abbreviated notice in writing or, if the individual agrees, in electronic format, informing the individual that:

(a) Personal information may be collected from persons other than the individual or individuals proposed for coverage;

(b) Personal information collected under subsection (a) of this section as well as other personal or privileged information subsequently collected by the licensee may be disclosed in certain circumstances to third parties without authorization;

(c) A right of access and correction exists with respect to all personal information collected; and

(d) The notice required in section (2) of this rule will be furnished to the individual upon request.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0620

#### Notice of Personal Financial Information Practices

(1) This rule governs the notice to be given by a licensee to an individual, in fulfillment of requirements of the federal Gramm-Leach-Bliley Act (P.L. 106-102), that informs the individual about the licensee's treatment of personal financial information concerning the individual in the course of the ongoing financial relationship between the licensee and the individual, in connection with a health insurance policy. A licensee shall provide a clear and conspicuous notice of its personal financial information practices to individuals under the circumstances and at the times as follows:

(a) Except as provided in this subsection, to a consumer who becomes a customer of the licensee, not later than the date that the licensee establishes a continuing relationship under which the licensee provides one or more health insurance products or services to the consumer that are to be used primarily for personal, family or household purposes. A licensee may provide the notice within a reasonable time after the date the licensee establishes a customer relationship if:

(A) Establishing the customer relationship is not at the customer's election; or

(B) Providing notice not later than the date that the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time.

(b) To a consumer before any personal financial information about that individual is disclosed to a nonaffiliate of the licensee, if the disclosure is made other than as permitted under OAR 836-080-0665, 836-080-0670 or 836-080-0675.

(2) A licensee shall provide a clear and conspicuous notice to a customer that accurately reflects the privacy policies and practices of the licensee not less than once in any period of 12 consecutive months during which the relationship described in section (1)(a) of this rule exists. A licensee may define the period of 12 consecutive months, but the licensee must apply the period to the customer on a consistent basis.

(3) The notice required by sections (1) and (2) of this rule shall be in writing, except that the notice may be provided in electronic form if the recipient agrees. In addition to any other information the licensee wishes to provide, the notice shall include the following items of information that apply to the licensee and to the individuals to whom the licensee sends the notice:

(a) The policy and practices of the licensee with respect to disclosing personal financial information to nonaffiliated parties other than agents of the licensee, including the categories of persons to whom the information is or may be disclosed, other than the persons to whom the information may be provided pursuant to OAR 836-080-0675, and the policies and practices with respect to disclosing personal financial information of persons who have ceased to be customers of the licensees.

(b) The categories of personal financial information that the licensee collects.

(c) The policies the licensee maintains to protect the confidentiality and security of personal financial information.

(4) A licensee that does not disclose personal financial information about customers or former customers to affiliates or nonaffiliates except as authorized in OAR 836-080-0670 or 836-080-0675, and does not wish to reserve the right to do so may satisfy the requirements of this rule by providing a customer a notice that so states and that also includes:

(a) The information described in section (3)(b) and (c) of this rule; and

(b) A statement that the licensee makes disclosures to other affiliated or nonaffiliated third parties, as applicable, as permitted by law.

(5) Before a licensee discloses personal financial information to a nonaffiliated third party other than as described in the notice required in section (1) of this rule, the licensee shall send a revised notice that accurately describes its information collection and disclosure practices. The revised notice must comply with the requirements of section (3) of this rule.

(6) For purposes of this rule and OAR 836-080-0670 and 836-080-0675, an individual is not the consumer of a licensee solely because the individual is covered under a group life or health insurance policy issued by the licensee or is a participant or beneficiary of an employee benefit plan that the licensee administers or sponsors or for which the licensee acts as a trustee, insurer or fiduciary, if:

(a) The licensee provides to the policyholder the initial, annual and revised notices under this rule; and

(b) The licensee does not disclose to a nonaffiliated third party personal information about the individual other than as permitted by OAR 836-080-0675.

(7) When an individual becomes a consumer of a licensee under section (6) of this rule, then this rule and OAR 836-080-0670 and 836-080-0675 apply to the licensee with respect to the individual.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0625

#### Alternative Procedures

A licensee may satisfy the notice requirements of OAR 836-080-0615 and 836-080-0620 by either of the following alternative means:

(1) By providing separate notices or a single notice combining the requirements of both rules.

(2) By providing a single notice if two or more individuals jointly obtain or apply for an insurance product.

(3) The obligations imposed by OAR 836-080-0615 and by 836-080-0620 upon a licensee may be satisfied, either together or separately, by another licensee or another financial institution or agent authorized to act on its behalf. A licensee may provide a joint notice from the licensee and



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one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions.

(4) Except as otherwise prohibited or limited by the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191):

(a) A licensee may include any notice required pursuant to the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) with a notice provided under OAR 836-080-0615 or 836-080-0620 or under an alternative means allowed in section (1) of this rule.

(b) Notice obligations imposed by the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) upon a licensee may be satisfied together with the obligations imposed by OAR 836-080-0615 and by 836-080-0620 upon the licensee as provided in section (2) of this rule.

(5) An insurance producer is not subject to the requirements of OAR 836-080-0615 or 836-080-0620 when the insurer on whose behalf the insurance producer acts otherwise complies with the same requirements and the insurance producer does not disclose any personal information to any person other than the insurer or its affiliate, or as otherwise authorized by law.

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0630

#### Application of Notice Requirements

A licensee is not subject to the requirements stated in OAR 836-080-0615 or 836-080-0620 if the licensee is an employee or other representative of another licensee who is the principal in the relationship and the principal otherwise complies with the requirements of OAR 836-080-0615, 836-080-0620, 836-080-0625, 836-080-0665, 836-080-0670 and 836-080-0675 and:

(1) If the licensee is an insurance producer, the licensee acts in accordance with the requirements of OAR 836-080-0625(4); and

(2) If the licensee is other than an insurance producer, the licensee does not disclose any personal information to any person other than to the principal or its affiliate as provided in OAR 836-080-0670 or 836-080-0675.

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0635

#### Initial Notice to Consumers

(1) A licensee shall provide an initial notice as provided in OAR 836-080-0620(1) and also subsequently when further personal financial information is collected in connection with a renewal or reinstatement of a health insurance policy.

(2) A licensee is not required to provide an initial notice to a consumer for purposes of OAR 836-080-0620 if any of the following circumstances applies:

(a) If the licensee does not disclose any nonpublic personal financial information about the consumer to any nonaffiliated third party other than as authorized by OAR 836-080-0670 and 836-080-0675 and the licensee does not have a customer relationship with the consumer.

(b) If the licensee has a customer relationship with the consumer and the consumer consents to the licensee's searching for health insurance coverage to replace existing coverage or to perform another health insurance service for the consumer, and if disclosure of personal financial information of the consumer meets the conditions specified in OAR 836-080-0670.

(c) If a notice has been provided by an affiliated licensee, as long as the notice clearly identifies all licensees to whom the notice applies and is accurate with respect to the licensee and the other institutions.

(3) For the purpose of the notice requirement of OAR 836-080-0620, pursuant to which a licensee shall provide notice of personal financial information practices to a consumer who becomes a customer of the licensee not later than the date that the licensee establishes a continuing relationship with the consumer, a continuing relationship between a licensee and consumer is established when the consumer, as shown in the following examples:

(a) Becomes a health insurance policyholder of a licensee that is an insurer, when the insurer delivers a health insurance policy or contract to the consumer, or in the case of a licensee that is an insurance producer, obtains health insurance through that licensee; or

(b) Agrees to obtain financial, economic or investment advisory services relating to health insurance products or services for a fee from the licensee.

(4) When an existing customer obtains a new health insurance product or service from a licensee that is to be used primarily for personal, family or household purposes, either of the following provisions may apply to a licensee regarding the initial notice requirements of OAR 836-080-0620 and:

(a) The licensee may provide a revised policy notice as provided in OAR 836-080-0655; or

(b) If the initial, revised or annual notice that the licensee most recently provided to that customer was accurate with respect to the new health insurance product or service, the licensee does not need to provide a new privacy notice under OAR 836-080-0620.

(5) A licensee may provide the initial notice required by OAR 836-080-0620 within a reasonable time after the licensee establishes a customer relationship if establishing the customer relationship is not at the customer's election or if providing notice not later than when the licensee establishes a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time. The following are examples of exceptions for purposes of this section:

(a) Not at the customer's election: Establishing a customer relationship is not at the customer's election if a licensee acquires or is assigned a customer's health insurance policy from another financial institution or residual market mechanism and the customer does not have a choice about the licensee's acquisition or assignment.

(b) Substantial delay of a customer's transaction: Providing notice not later than when a licensee establishes a customer relationship would substantially delay the customer's transaction when the licensee and the individual agree over the telephone to enter into a customer relationship involving prompt delivery of the health insurance product or service.

(c) No substantial delay of a customer's transaction: Providing notice not later than when a licensee establishes a customer relationship would not substantially delay the customer's transaction when the relationship is initiated in person at the licensee's office or through other means by which the customer may view the notice, such as on a website.

(6) When a licensee is required to deliver an initial privacy notice by OAR 836-080-0620, the licensee shall deliver it according to OAR 836-080-0660. If the licensee uses an abbreviated notice according to OAR 836-080-0620, the licensee may deliver the privacy notice as provided in OAR 836-080-0640(8).

(7) A licensee that uses a standard privacy notice to comply with the requirements of the federal Gramm-Leach-Bliley Act of 1999 and its implementing regulations for its business as a financial institution or that uses such a standard privacy notice for its health insurance business in two or more states may comply with the initial privacy notice requirement by using either of the following options:

(a) By using the standard privacy notice and another supplementary privacy notice that includes the elements required by OAR 836-080-0615, 836-080-0620 and 836-080-0650 that are not contained in the standard privacy notice. The supplementary privacy notice must prominently and clearly state that any rights an individual may have as described in that notice are not abridged or limited by the standard privacy notice that the individual may receive separately.

(b) By using a single Oregon-specific privacy notice that complies in its entirety with OAR 836-080-0615 and 836-080-0620, if allowed under federal law.

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0640

#### Information to Be Included in Initial Privacy Notice

(1) This rule implements the requirement of the initial notice under OAR 836-080-0620, describes the contents of the initial notice and provides examples of categories of information required in the notice.

(2) The following are examples of categories of nonpublic personal financial information collected by a licensee. A licensee satisfies the requirement of categorizing the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, including, for example:

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from an insurance support organization.

(3) The following are examples of categories of nonpublic personal financial information disclosed by a licensee:

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(a) A licensee satisfies the requirement of categorizing nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in section (2) of this rule, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

(A) Information from the consumer, including application information such as assets and income and identifying information such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reporting agencies, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee reserves the right to disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(4) The following are examples for describing categories of affiliated and nonaffiliated third parties to which a licensee discloses nonpublic personal financial information:

(a) A licensee satisfies the requirement of categorizing the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of business in which the affiliates and nonaffiliated third parties engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee may also categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(5) A privacy notice shall include an explanation of the consumer's right under OAR 836-080-0675 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method by which the consumer may exercise that right at that time. The following are examples of disclosures under the exception for joint marketers under OAR 836-080-0675. If a licensee discloses nonpublic personal financial information under the exception in OAR 836-080-0675 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the applicable disclosure requirement of this rule if the licensee:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of section (1) of this rule.

(b) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(6) If a licensee does not disclose nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under OAR 836-080-0670 and 836-080-0675, the licensee may simply state that fact, in addition to the information it is required to provide under OAR 836-080-0615(3) (a), (h), (i) and (j) and (4).

(7) A licensee describes its policies and practices relating to protection of the confidentiality and security of personal information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(8) An abbreviated notice authorized by OAR 836-080-0615(3) must include in full the elements of the notice required by the federal Gramm-Leach-Bliley Act of 1999 for the purpose of compliance with that law and shall also include the information referred to in section (5) of this rule and in OAR 836-080-0615(3). The licensee shall deliver its abbreviated notice according to OAR 836-080-0660. The licensee is not required to deliver its

privacy notice with its abbreviated notice. The licensee instead may provide the consumer a reasonable means to obtain its privacy notice as described in OAR 836-080-0660. If a consumer who receives the licensee's abbreviated notice requests the licensee's privacy notice, the licensee shall deliver its privacy notice according to OAR 836-080-0660.

(9) A licensee's initial privacy notice may include any of the following:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0645

#### Annual Notice

(1) The personal information to which a licensee must refer in the annual notice need include only personal financial information. A licensee provides the notice annually if it defines the 12-consecutive-month period as a calendar year and provides the annual notice to the customer once in each calendar year following the calendar year in which the licensee provided the initial notice. For example, if a customer opens an account on any day of year 1, the licensee shall provide an annual notice to that customer by December 31 of year 2.

(2) Termination of customer relationship: A licensee is not required to provide an annual notice to a former customer. A former customer is an individual with whom a licensee no longer has a continuing relationship. The following are examples in which a continuing relationship no longer exists:

(a) A licensee no longer has a continuing relationship with an individual if the individual no longer is a current policyholder of an insurance product or no longer obtains services with or through the licensee.

(b) A licensee no longer has a continuing relationship with an individual if the individual's policy is lapsed, expired or otherwise inactive or dormant under the licensee's business practices, and the licensee has not communicated with the customer about the relationship for a period of 12 consecutive months, other than to provide annual privacy notices, material required by law or regulation or promotional materials.

(c) A licensee no longer has a continuing relationship with an individual if the individual's last known address according to the licensee's records is deemed invalid. An address of record is deemed invalid if mail sent to that address by the licensee has been returned by the postal authorities as undeliverable and if subsequent attempts by the licensee to obtain a current valid address for the individual have been unsuccessful.

(3) When a licensee is required by this rule to deliver an annual privacy notice, the licensee shall deliver it according to OAR 836-080-0660.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0650

#### Information to Be Included in Annual Notice

(1) This rule implements the requirement of the annual notice under OAR 836-080-0645, describes the contents of the annual notice and provides examples of categories of nonpublic personal financial information required in the annual notice.

(2) The following are examples of categories of nonpublic personal financial information collected by a licensee. A licensee satisfies the requirement of categorizing the nonpublic personal financial information it collects if the licensee categorizes it according to the source of the information, as applicable:

(a) Information from the consumer;

(b) Information about the consumer's transactions with the licensee or its affiliates;

(c) Information about the consumer's transactions with nonaffiliated third parties; and

(d) Information from an insurance support organization.

(3) The following are examples of categories of nonpublic personal financial information disclosed by a licensee:

(a) A licensee satisfies the requirement of categorizing nonpublic personal financial information it discloses if the licensee categorizes the information according to source, as described in section (2) of this rule, as applicable, and provides a few examples to illustrate the types of information in each category. These may include:

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(A) Information from the consumer, including application information such as assets and income and identifying information such as name, address and social security number;

(B) Transaction information, such as information about balances, payment history and parties to the transaction; and

(C) Information from consumer reporting agencies, such as a consumer's creditworthiness and credit history.

(b) A licensee does not adequately categorize the information that it discloses if the licensee uses only general terms, such as transaction information about the consumer.

(c) If a licensee may disclose all of the nonpublic personal financial information about consumers that it collects, the licensee may simply state that fact without describing the categories or examples of nonpublic personal financial information that the licensee discloses.

(4) The following are examples for describing categories of affiliated and nonaffiliated third parties to which a licensee discloses information:

(a) A licensee satisfies the requirement of categorizing the affiliates and nonaffiliated third parties to which the licensee discloses nonpublic personal financial information about consumers if the licensee identifies the types of business in which they engage.

(b) Types of businesses may be described by general terms only if the licensee uses a few illustrative examples of significant lines of business. For example, a licensee may use the term financial products or services if it includes appropriate examples of significant lines of businesses, such as life insurer, automobile insurer, consumer banking or securities brokerage.

(c) A licensee may also categorize the affiliates and nonaffiliated third parties to which it discloses nonpublic personal financial information about consumers using more detailed categories.

(5) An annual notice shall include an explanation of the consumer's right under OAR 836-080-0675 to opt out of the disclosure of nonpublic personal financial information to nonaffiliated third parties, including the method by which the consumer may exercise the right at that time. An annual notice that contains such an explanation satisfies the requirement of OAR 836-080-0615. If a licensee discloses nonpublic personal financial information under the exception in OAR 836-080-0675 to a nonaffiliated third party to market products or services that it offers alone or jointly with another financial institution, the licensee satisfies the applicable disclosure requirement of this rule if the licensee:

(a) Lists the categories of nonpublic personal financial information it discloses, using the same categories and examples the licensee used to meet the requirements of section (1) of this rule.

(b) States whether the third party is:

(A) A service provider that performs marketing services on the licensee's behalf or on behalf of the licensee and another financial institution; or

(B) A financial institution with whom the licensee has a joint marketing agreement.

(6) If a licensee does not disclose nonpublic personal financial information about customers or former customers to affiliates or nonaffiliated third parties except as authorized under OAR 836-080-0670(1), the licensee may state that fact, in addition to the information it is required to provide under OAR 836-080-0615(4).

(7) A licensee describes its policies and practices relating to protection of the confidentiality and security of nonpublic personal financial information if it does both of the following:

(a) Describes in general terms who is authorized to have access to the information; and

(b) States whether the licensee has security practices and procedures in place to ensure the confidentiality of the information in accordance with the licensee's policy. The licensee is not required to describe technical information about the safeguards it uses.

(8) A licensee's notice may include any of the following:

(a) Categories of nonpublic personal financial information that the licensee reserves the right to disclose in the future but does not currently disclose; and

(b) Categories of affiliates or nonaffiliated third parties to whom the licensee reserves the right in the future to disclose, but to whom the licensee does not currently disclose, nonpublic personal financial information.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0655

#### Revised Privacy Notices

(1) Except as otherwise authorized in OAR 836-080-0600 to 836-080-0700, a licensee shall not, directly or through an affiliate, disclose any

personal financial information about a consumer to a nonaffiliated third party under OAR 836-080-0675 other than as described in the initial notice that the licensee provided to the consumer under OAR 836-080-0620, unless:

(a) The licensee has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;

(b) The licensee has given the consumer a reasonable opportunity, before the licensee discloses personal financial information to the nonaffiliated third party, to opt out of the disclosure; and

(c) The consumer does not opt out.

(2) Except as otherwise allowed by OAR 836-080-0670, a licensee shall provide a revised notice to the consumer under section (1) of this rule before the licensee, for example:

(a) Discloses a new category of personal financial information to a nonaffiliated third party;

(b) Discloses personal financial information to a new category of nonaffiliated third party; or

(c) Discloses personal financial information about a former customer to a nonaffiliated third party, if that former customer has not had the opportunity to indicate that the former customer does not want disclosure.

(3) A revised privacy notice under this rule shall be delivered according to OAR 836-080-0660.

(4) The prohibition in section (1) of this rule and the requirements of section (2) of this rule do not apply with respect to a revision of an initial notice, the sole purpose of which is to incorporate a notice of a disclosure of personal information for which authorization is not required by OAR 836-080-0670 or 836-080-0675.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0660

#### Delivery

(1) A licensee shall provide any notices required by OAR 836-080-0600 to 836-080-0700 so that each consumer can be reasonably expected to receive actual notice in writing or, if the consumer agrees, electronically.

(2) The following are examples of reasonable expectation of actual notice. A licensee may reasonably expect that a consumer will receive actual notice if the licensee:

(a) Hand-delivers a printed copy of the notice to the consumer;

(b) Mails a printed copy of the notice to the last known address of the consumer separately, or in a policy, billing or other written communication;

(c) For a consumer who conducts transactions electronically, posts the notice on the electronic site and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular insurance product or service;

(d) For an isolated transaction with a consumer, such as the licensee providing an insurance quote, posts the notice and requires the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular insurance product or service.

(3) The following are examples of unreasonable expectations of actual notice. A licensee may not reasonably expect that a consumer will receive actual notice of its privacy policies and practices if the licensee:

(a) Posts only a sign in its office or generally publishes advertisements of its privacy policies and practices; or

(b) Sends the notice by electronic mail to a consumer who does not obtain an insurance product or service from the licensee electronically.

(4) A licensee may reasonably expect that a customer will receive actual notice of the licensee's annual privacy notice if:

(a) The customer uses the licensee's web site to access insurance products and services electronically and agrees to receive notices at the web site and the licensee posts its current privacy notice continuously in a clear and conspicuous manner on the web site; or

(b) The customer has requested that the licensee refrain from sending any information regarding the customer relationship, and the licensee's current privacy notice remains available to the customer upon request.

(5) For customers only, a licensee shall provide the initial notice, annual notice and revised notice required by OAR 836-080-0600 to 836-080-0700 so that the customer can retain them or obtain them later in writing or, if the customer agrees, electronically. The following are examples of retention and accessibility of notices. A licensee provides a privacy notice to a customer so that the customer can retain it or obtain it later if the licensee:

(a) Hand-delivers a printed copy of the notice to the customer;

(b) Mails a printed copy of the notice to the last known address of the customer; or



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(c) Makes its current privacy notice available on a web site or a link to another web site for the customer who obtains an insurance product or services electronically and agrees to receive the notice at the web site.

(6) If two or more consumers jointly obtain a health insurance product or service from a licensee, the licensee may satisfy the initial, annual and revised notice requirements by providing one notice to those consumers jointly.

(7) A licensee provides a reasonable means by which a consumer may obtain a copy of its privacy notice for the purpose of OAR 836-080-0640(8) if the licensee:

(a) Provides a toll-free telephone number that the consumer may call to request the notice; or

(b) For a consumer who conducts business in person at the licensee's office, maintains copies of the notice on hand and provides a copy to the consumer immediately upon request.

(8) A licensee may provide a joint notice from the licensee and one or more of its affiliates or other financial institutions, as identified in the notice, as long as the notice is accurate with respect to the licensee and the other institutions. A licensee may also provide a notice on behalf of another financial institution.

(9) A licensee may not provide any notice required by OAR 836-080-0600 to 836-080-0700 solely by orally explaining the notice, either in person or over the telephone.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0665

#### Authorization

(1) Except as provided in OAR 836-080-0670 and 836-080-0675, a licensee or insurance-support organization may not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is with the written authorization of the individual, and:

(a) If the authorization is submitted by another licensee or insurance-support organization, the authorization meets the requirements of this rule; or

(b) If the authorization is submitted by a person other than a licensee or insurance-support organization, the authorization is:

(A) Dated;

(B) Signed by the individual; and

(C) Obtained one year or less prior to the date a disclosure is sought pursuant to this subsection.

(2) A licensee or insurance-support organization may not use as its disclosure authorization form in connection with health insurance transactions a form or statement that authorizes the disclosure of personal or privileged information about an individual to the licensee or insurance-support organization unless the form or statement is clear and conspicuous, and contains all of the following:

(a) The identity of the individual who is the subject of the personal information.

(b) A general description of the categories of personal information to be disclosed.

(c) The signature of the individual who is the subject of the personal information or the individual who is legally empowered to grant authority and the date signed.

(3) An authorization may not remain valid for more than 24 months.

(4) An individual who is the subject of personal information may revoke an authorization provided pursuant to this rule at any time, subject to the rights of any individual who acted in reliance on the authorization prior to notice of the revocation.

(5) A licensee shall retain the authorization of an individual or a copy thereof in the record of the individual who is the subject of the personal information.

(6) This rule does not authorize the disclosure of personal or privileged information that is also individually identifiable health information when disclosure of the individually identifiable health information is prohibited or is otherwise regulated under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

(7) A licensee is not required to comply with this rule with respect to a disclosure of personal information for which the licensee has obtained an authorization under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0670

#### Authorization Exemptions

(1) A licensee or insurance-support organization may disclose personal or privileged information about an individual collected or received in connection with a health insurance transaction without obtaining the written authorization required by OAR 836-080-0665 if the disclosure meets one or more of the following conditions, in which a disclosure:

(a) Is reasonably necessary to enable a person other than the licensee or insurance support organization to:

(A) Perform a business, professional or insurance function for the disclosing licensee or insurance-support organization and the person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:

(i) Would otherwise be permitted by this rule if made by a licensee or insurance-support organization; or

(ii) Is reasonably necessary for the person to perform its function for the disclosing licensee or insurance-support organization.

(B) Provide information to the disclosing licensee or insurance-support organization for the purpose of:

(i) Determining an individual's eligibility for a health insurance benefit or payment; or

(ii) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with a health insurance transaction.

(b) Is to a licensee, insurance-support organization or self-insurer, if the information disclosed is limited to that which is reasonably necessary:

(A) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction; or

(B) For either the disclosing or receiving licensee or insurance-support organization to perform its function in connection with an insurance transaction involving the individual.

(c) Is to a medical care institution or medical professional and discloses only such information as is reasonably necessary to accomplish one or more of the following purposes:

(A) Verifying insurance coverage or benefits.

(B) Informing an individual of a medical problem of the individual, of which the individual may not be aware.

(C) Conducting an operations or services audit.

(D) Is required or authorized for compliance with federal, state or local laws, rules or other applicable legal requirements.

(e) Is required for compliance with a properly authorized civil, criminal or regulatory investigation or a subpoena or summons by a federal, state or local authority.

(f) Is required for response to judicial process or a government regulatory authority having jurisdiction over a licensee for examination, compliance or other purposes as authorized by law.

(g) Is required for protection of the confidentiality or security of a licensee's records pertaining to the individual, service, product or transaction.

(h) Is required for institutional risk control or for resolving disputes or inquiries relating to the individual.

(i) Is to a person holding a legal or beneficial interest relating to the individual.

(j) Is to a person acting in a fiduciary or representative capacity on behalf of the individual.

(k) Is to provide information to an insurance rate advisory organization, a guaranty fund or agency, an agency that is rating a licensee, a person that is assessing the licensee's compliance with industry standards, or the licensee's attorneys, accountants and auditors.

(l) Is allowed or required under other provisions of law and in accordance with the federal Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 et seq.) to law enforcement agencies, but only to the extent that disclosure is specifically allowed or required, including the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, the Securities and Exchange Commission, the Secretary of the Treasury, with respect to 31 U.S.C. (Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and transactions) and 12 U.S.C. Chapter 21 (Financial record-keeping), a state insurance authority, and the federal Trade Commission), a self-regulatory organization or for an investigation on a matter related to public safety, or is otherwise specifically permitted or required by law.

(m) Meets any of the following conditions:

## ADMINISTRATIVE RULES

(A) It is necessary to effect, administer or enforce a transaction that an individual requests or authorizes, in that the disclosure is required or is a usual, appropriate or acceptable method of handling the transaction. The condition in this subparagraph has the meaning given in section 509 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).

(B) It is in connection with treatment, payment or health care operations.

(C) It is in connection with servicing or processing an insurance product or service that an individual requests or authorizes.

(D) It is in connection with maintaining or servicing an individual's account with the licensee, a proposed or actual securitization, secondary market sale or similar transaction related a transaction of the individual.

(n) Is made for the purpose of conducting actuarial or research studies, if:

(A) No individual may be identified in any resulting actuarial or research report;

(B) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and

(C) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by a licensee or insurance-support organization.

(o) Is to a party or a representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the licensee or insurance-support organization.

(p) Is to an affiliate whose only use of the information will be in connection with an audit of the licensee.

(q) Is to a consumer reporting agency in accordance with the federal Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) or from a consumer report prepared by a consumer reporting agency.

(r) Is to a group policyholder for the purpose of reporting claims experience or conducting an audit of the licensee's operations or services, and the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit.

(s) Is to a licensee for purposes related to replacement of a group benefit plan, a group health plan or a group welfare plan.

(t) Is to a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional.

(u) Is to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable.

(v) Is to a policyholder or certificate holder, or an agent or other representative thereof, for the purpose of providing information regarding the status of a health insurance transaction.

(2) A licensee may disclose personal or privileged information to an affiliate in connection with the marketing of a financial product or service if the affiliate agrees not to disclose the information for any other purpose or to an unaffiliated persons except as authorized in section (1) of this rule. If a disclosure under this section is made for marketing a product or service other than the product or service of the disclosing licensee, individually identifiable health information may not be disclosed without the authorization required by OAR 836-080-0665.

(3) A licensee may disclose personal or privileged information to a nonaffiliated third party whose only use of the information will be pursuant to a joint marketing agreement for marketing of a product or service. As used in this subsection, "joint marketing agreement" means a formal written contract pursuant to which an insurer jointly offers, endorses or sponsors a financial product or service with a financial institution. Information that may be disclosed under this subsection does not include individually identifiable health information, privileged information or personal information relating to an individual's character, personal habits, mode of living or general reputation, or any classification derived from such information, except as authorized in section (1) of this rule.

(4) A licensee or insurance support organization shall not disclose an access number or access code for an individual's policy or transaction account, whether directly or through an affiliate, to any nonaffiliate for use in telemarketing, direct mail marketing or other marketing through electronic mail to an individual, other than to a consumer reporting agency. This section does not apply if a licensee or insurance support organization discloses an access number or access code:

(a) To its service provider solely in order to perform marketing for its own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To an insurance producer solely in order to perform marketing for its own products or services; or

(c) To a participant in an affinity or similar program where the participants in the program are identified to the individual when the individual enters into the program. An access number or access code does not include a number or code in an encrypted form, as long as the licensee or insurance support organization does not provide the recipient with a means to decode the number or code. For purposes of this subsection, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

(5) Personal or privileged information may be acquired by a group practice prepayment health care service contractor from providers that contract with the health care service contractor and may be transferred among providers that contract with the health care service contractor for the purpose of administering plans offered by the health care service contractor. The information may not be disclosed otherwise by the health care service contractor except in accordance with OAR 836-080-0670 or 836-080-0675.

(6) This rule does not authorize the disclosure of personal or privileged information that is also individually identifiable health information when disclosure of the individually identifiable health information is prohibited or is otherwise regulated under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0675

#### Disclosure Without Authorization

Unless disclosure is otherwise permitted pursuant to OAR 836-080-0665 or 836-080-0670, a licensee may disclose personal financial information about an individual to a nonaffiliated third party without obtaining the written authorization required by OAR 836-080-0665 only if all of the following conditions are met:

(1) The nonaffiliated third party's only use of the information will be in connection with the marketing of a product or service.

(2) No information relating to an individual's character, personal habits, mode of living or general reputation may be disclosed, and no classification derived from such information may be disclosed.

(3) Prior to disclosure, the individual must have been given the notice described in OAR 836-080-0620 and, at the same time, an opportunity to decide whether to allow disclosure of the information by means of a clear and conspicuous notice that provides the following:

(a) That the licensee discloses or reserves the right to disclose personal financial information about the individual to a nonaffiliated third party;

(b) That the individual has the right to opt out of that disclosure; and

(c) A reasonable means by which the individual may exercise the opt out right.

(4) Disclosure of personal financial information that is also individually identifiable health information is not prohibited or otherwise regulated under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

Stat. Auth.: ORS 731.244 & 746.608  
Stats. Implemented: ORS 746.600 & 746.607  
Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0680

#### Opt in Notice; Form of Opt Out Notice to Consumers and Opt Out Methods for Purpose of OAR 836-080-0675

(1) Form of opt in notice. The form of the disclosure authorization (the opt in form) is governed by OAR 836-080-0665 and is used with respect to disclosures of personal information that do not meet one or more of the conditions specified in OAR 836-080-0670 or 836-080-0675.

(2) Form of opt out notice. Sections (2) to (10) of this rule govern the form of and requirements applicable to an opt out notice when the notice is required by OAR 836-080-0675. If a licensee is required to provide an opt out notice by OAR 836-080-0675, the licensee shall accurately explain the right to opt out under that provision. The notice shall state:

(a) That the licensee discloses or reserves the right to disclose personal financial information about its consumer to a nonaffiliated third party;

(b) That the consumer has the right to opt out of that disclosure; and

(c) A reasonable means by which the consumer may exercise the opt out right.

(3) The following are examples for purposes of section (2) of this rule:

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(a) Adequate opt out notice. A licensee provides adequate notice that the consumer may opt out of the disclosure of personal financial information to a nonaffiliated third party if the licensee:

(A) Identifies all of the categories of personal financial information that it discloses or reserves the right to disclose, and all of the categories of nonaffiliated third parties to which the licensee discloses the information as permitted by OAR 836-080-0675, and states that the consumer may opt out of the disclosure of that information; and

(B) Identifies the health insurance products or services that the consumer obtains from the licensee, either singly or jointly, to which the opt out direction would apply.

(b) Reasonable opt out means. A licensee provides a reasonable means to exercise an opt out right if it:

(A) Designates check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Includes a reply form together with the opt out notice;

(C) Provides an electronic means to opt out, such as a form that can be sent by electronic mail or a process at the licensee's web site, if the consumer agrees to the electronic delivery of information; or

(D) Provides a toll-free telephone number that the consumers may call to opt out.

(c) Unreasonable opt out means. A licensee does not provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write the consumer's own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that the licensee provided with the initial notice but did not include with the subsequent notice.

(d) Specific opt out means. A licensee may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(4) Same form as initial notice permitted. A licensee may provide the opt out notice for purposes of OAR 836-080-0675 together with or on the same written or electronic form as the initial notice the licensee provides in accordance with OAR 836-080-0636.

(5) Initial notice required when opt out notice delivered subsequent to initial notice. If a licensee provides the opt out notice later than required for the initial notice in accordance with OAR 836-080-0636, the licensee shall also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

(6) The following provisions of this section govern joint relationships:

(a) If two or more consumers jointly obtain a health insurance product or service from a licensee, the licensee may provide a single opt out notice. The licensee's opt out notice shall explain how the licensee will treat an opt out direction by a joint consumer as explained in subsection (e) of this section.

(b) Any of the joint consumers may exercise the right to opt out. The licensee may either:

(A) Treat an opt out direction by a joint consumer as applying to all of the associated joint consumers; or

(B) Permit each joint consumer to opt out separately.

(c) If a licensee permits each joint consumer to opt out separately, the licensee shall permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(d) A licensee may not require all joint consumers to opt out before the licensee implements any opt out direction.

(e) The following is an example for purposes of this section. If John and Mary are both named policyholders on a health insurance policy issued by a licensee and the licensee sends policy statements to John's address, the licensee may do any of the following, but the licensee shall explain in the opt out notice of notice of the licensee which opt out policy the licensee will follow:

(A) Send a single opt out notice to John's address, but the licensee shall accept an opt out direction from either John or Mary.

(B) Treat an opt out direction by either John or Mary as applying to the entire policy. If the licensee does so and John opts out, the licensee may not require Mary to opt out as well before implementing John's opt out direction.

(C) Permit John and Mary to make different opt out directions. If the licensee does so:

(i) The licensee shall permit John and Mary to opt out for each other;

(ii) If both opt out, the licensee shall permit both of them to notify the licensee in a single response, such as on a form or through a telephone call; and

(iii) If John opts out and Mary does not, the licensee may disclose personal financial information only about Mary but not about John, and not about John and Mary jointly.

(7) Time to comply with opt out. A licensee shall comply with a consumer's opt out direction as soon as reasonably practicable after the licensee receives the direction.

(8) Continuing right to opt out. A consumer may exercise the right to opt out at any time.

(9) The duration of a consumer's opt out direction is governed as follows:

(a) A consumer's direction to opt out under this rule is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(b) When a customer relationship terminates, the customer's opt out direction continues to apply to the personal financial information that the licensee collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the licensee, the opt out direction that applied to the former relationship does not apply to the new relationship.

(10) Delivery. When a licensee is required to deliver an opt out notice by this rule, the licensee shall deliver it according to OAR 836-080-0660.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0685

#### Limits on Sharing Account Number Information for Marketing Purposes

(1) General prohibition on disclosure of account numbers. A licensee shall not, directly or through an affiliate, other than to a consumer reporting agency, disclose a policy number or similar form of access number or access code for a consumer's policy or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(2) Exceptions. Section (1) of this rule does not apply if a licensee discloses a policy number or similar form of access number or access code:

(a) To the licensee's service provider solely in order to perform marketing for the licensee's own products or services, as long as the service provider is not authorized to directly initiate charges to the account;

(b) To a licensee who is an insurance producer solely in order to perform marketing for the licensee's own products or services; or

(c) To a participant in an affinity or similar program when the participants in the program are identified to the customer when the customer enters into the program.

(3) The following are examples for purposes of this rule:

(a) Policy number. A policy number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as the licensee does not provide the recipient with a means to decode the number or code.

(b) Policy or transaction account. For the purpose of this rule, a policy or transaction account is an account other than a deposit account or a credit card account. A policy or transaction account does not include an account to which third parties cannot initiate charges.

(4) Violation of this section is an unfair trade practice for purposes of ORS 746.240.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600, 746.240 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0690

#### Authorization Request Delivery

A request for authorization and an authorization form may be delivered to a consumer or a customer as part of a notice under OAR 836-080-0615, 836-080-0620 or 836-080-0625 if the request and the authorization form are clear and conspicuous.

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0695

#### Access to Recorded Personal Information

(1) If an individual or personal representative of an individual, after proper identification, submits a written request to an insurer, insurance producer or insurance-support organization for access to recorded personal information about the individual that is reasonably described by the individual and reasonably locatable and retrievable by the insurer, insurance producer or insurance-support organization, the insurer, insurance produc-



## ADMINISTRATIVE RULES

er or insurance-support organization within 30 business days from the date the request is received shall:

(a) Inform the individual of the nature and substance of the recorded personal information in writing, by telephone or by other oral communication, whichever the insurer, insurance producer or insurance-support organization prefers;

(b) Permit access to inspect or obtain a copy of the individual's personal financial information or protected health information that is maintained in a designated record set about the individual; and

(c) Provide the individual with a summary of the procedures by which the individual may request correction, amendment or deletion of recorded personal information.

(2) Any personal information provided pursuant to this section must identify the source of the information if the source is an institutional source.

(3) If an individual requests individually identifiable health information supplied by a health care provider, the insurer, insurance producer or insurance-support organization shall provide the information, including the identity of the health care provider either directly to the individual or to a health care provider designated by the individual and licensed to provide health care with respect to the condition to which the information relates, whichever the insurer, insurance producer or insurance-support organization prefers. If the insurer, insurance producer or insurance-support organization elects to disclose the information to a health care provider designated by the individual, the insurer, insurance producer or insurance-support organization shall notify the individual, at the time of the disclosure, that the insurer, insurance producer or insurance-support organization has provided the information to the health care provider.

(4) Except for personal information provided under ORS 746.650, an insurer, insurance producer or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to an individual.

(5) The obligations imposed by this rule upon an insurer or insurance producer may be satisfied by another insurer or insurance producer authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under this rule, an insurer, insurance producer or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.

(6) The rights granted to individuals by this rule shall extend to all natural persons to the extent information about them is collected and maintained by an insurer, insurance producer or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this section does not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or a civil or criminal proceeding involving them.

(7) This rule does not authorize the disclosure of individually identifiable health information when the disclosure is prohibited or is otherwise regulated under the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191).

(8) For purposes of this rule, the term 'insurance-support organization' does not include 'consumer reporting agency.'

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

### 836-080-0700

#### Correction, Amendment or Deletion of Recorded Personal Information

(1) Within 30 business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurer, insurance producer or insurance-support organization shall either:

(a) Correct, amend or delete the portion of the recorded personal information in dispute; or

(b) Notify the individual of:

(A) Its refusal to make the correction, amendment or deletion;

(B) The reasons for the refusal; and

(C) The individual's right to file a statement as provided in subsection

(3) of this section.

(2) If the insurer, insurance producer or insurance-support organization corrects, amends or deletes recorded personal information in accordance with section (1) of this rule, the insurer, insurance producer or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:

(a) Each person specifically designated by the individual who may have, within the preceding two years, received the recorded personal information;

(b) Each insurance-support organization whose primary source of personal information is insurers, if the insurance-support organization has systematically received recorded personal information from the insurer within the preceding seven years. However, the correction, amendment or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(c) Each insurance-support organization that furnished the recorded personal information that has been corrected, amended or deleted.

(3) Whenever an individual disagrees with an insurer's, insurance producer's or insurance-support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurer, insurance producer or insurance-support organization:

(a) A concise statement setting forth what the individual thinks is the correct, relevant or fair information; and

(b) A concise statement of the reasons why the individual disagrees with the insurer's, insurance producer's or insurance-support organization's refusal to correct, amend or delete recorded personal information.

(4) In the event an individual files either or both of the statements described in section (3) of this rule, the insurer, insurance producer or insurance-support organization shall:

(a) File the statements with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statements and have access to them;

(b) In any subsequent disclosure by the insurer, insurance producer or insurance-support organization of the recorded personal information that is the subject of the disagreement, clearly identify the matter or matters in dispute and provide the individual's statements along with the recorded personal information being disclosed; and

(c) Furnish the statements to the persons and in the manner specified in section (2) of this rule.

(5) The rights granted to individuals by this rule extends to all natural persons to the extent information about them is collected and maintained by an insurer, insurance producer or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this rule does not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or a civil or criminal proceeding involving them.

(6) For purposes of this rule, the term "insurance-support organization" does not include "consumer reporting agency."

Stat. Auth.: ORS 731.244 & 746.608

Stats. Implemented: ORS 746.600 & 746.607

Hist.: ID 4-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.: ID 5-2005**

**Filed with Sec. of State: 4-7-2005**

**Certified to be Effective: 4-7-05**

**Notice Publication Date: 11-1-04**

**Rules Amended: 836-042-0045, 836-042-0085**

**Subject:** This rulemaking re-adopts amendments, because of procedural error, to a rule that prescribes a uniform statistical plan for workers' compensation insurance as required by statute, in order to adopt the updated January 1, 2004 edition of actuarial pension tables. The re-adoption will retain the January 1, 2004 effective date. This rulemaking also requires workers' compensation insurers that offer large deductible programs to report premium and other matters to the Insurance Division on a quarterly basis and to make the report on a proposed reporting form.

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

### 836-042-0045

#### Uniform Workers' Compensation Statistical Plan

(1) The Unit Report Expanded (URE) Workers Compensation Statistical Plan, Edition of July 1, 2001 filed by the National Council on Compensation Insurance and approved by the Director to become effective January 1, 2002 is prescribed as the statistical plan for workers' compensation insurance. The January 1, 2004 edition of Part 8, Pension Tables, of the NCCI URE Workers Compensation Statistical Plan is prescribed as the pension tables effective in this state January 1, 2004.

# ADMINISTRATIVE RULES

(2) The State Accident Insurance Fund Corporation and each insurer transacting workers' compensation insurance in this state shall report statistics for such business to the workers' compensation rating organization of which it is a member according to the statistical plan prescribed by section (1) of this rule.

(3) The amendments in section (1) of this rule, which were filed in ID 7-2003 with the Secretary of State on December 3, 2003 to become effective on January 1, 2004, are re-adopted with the operative date of January 1, 2004.

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

Stat. Auth.: ORS 731.244 & 737.225

Stats. Implemented: ORS 737.225

Hist.: IC 3-1982, f. 1-27-82, ef. 7-1-82; IC 10-1982, f. 6-23-82, ef. 7-1-82; IC 2-1983, f. 3-16-83, ef. 4-1-83; IC 5-1983, f. 6-30-83, ef. 7-1-83; IC 4-1984, f. 9-28-84, ef. 10-1-84; ID 2-1998, f. & cert. ef. 2-6-98; ID 15-2001, f. 12-19-01, cert. ef. 1-1-02; ID 7-2003, f. 12-3-03 cert. ef. 1-1-04; ID 5-2005, f. & cert. ef. 4-7-05

## 836-042-0085

### Statistical Data Maintenance and Reporting Requirements

An insurer that issues a policy for worker's compensation insurance including a large deductible provision must:

(1) Maintain policy premium data distinguishing credit or modification premium for large deductible provisions;

(2) Report policy unit statistical data with losses valued on a gross basis prior to deductible provisions; and

(3) Separately report financial experience data to a licensed rating organization including premium prior to credits or modifications for large deductible provisions and loss valued on a gross basis prior to deductible provisions.

(4) Report premium, deductible credit premium and reimbursements by policy year as of the end of each calendar quarter as specified in Exhibit 1 to this rule not later than the 45th day after the end of each quarter.

Stat. Auth.: ORS 731.244

Stats. Implemented: ORS 737, 737.310 & 741.001 - 742.007

Hist.: ID 4-1995, f. 7-21-95, cert. ef. 10-1-95; ID 5-2005, f. & cert. ef. 4-7-05

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**Adm. Order No.:** ID 6-2005

**Filed with Sec. of State:** 4-7-2005

**Certified to be Effective:** 4-7-05

**Notice Publication Date:** 1-1-05

**Rules Amended:** 836-085-0201, 836-085-0225

**Rules Repealed:** 836-085-0220

**Subject:** This rulemaking repeals OAR 836-085-0220, which requires each workers' compensation insurer to submit experience rating exposure, premium and loss data to the rating organization and requires the rating organization to report each late submission of data by an insurer for an employer and each instance of an insurer's failure to provide data. This rulemaking also makes changes to other rules because of the repeal.

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

## 836-085-0201

### Statutory Authority; Purpose; Applicability

(1) OAR 836-085-0201 to 836-085-0230 are adopted pursuant to the specific authority of 737.322, and the general rulemaking authority of the Director in ORS 731.244, to carry out ORS 746.240 and the orderly administration of ORS Chapter 737 with respect to the workers' compensation experience rating system and its supporting statistical plan.

(2) The purpose of OAR 836-085-0201 to 836-085-0230 is to amend the authorized workers' compensation experience rating system for timely appraising insured employers of their premium modification factors so the employers can make necessary adjustments in the cost of goods or services sold.

(3) OAR 836-085-0201 to 836-085-0230 apply to all workers' compensation policies delivered or issued for delivery to employers in this state.

Stat. Auth.: ORS 731 & 737

Stats. Implemented: ORS 737.322(2) & 746.240

Hist.: ID 3-1988, f. & cert. ef. 1-20-88; ID 6-2005, f. & cert. ef. 4-7-05

## 836-085-0225

### Unfair Trade Practices

(1) Retroactive application of experience rating modification factors in any manner other than provided for in OAR 836-085-0215 constitutes an unfair trade practice under ORS 746.240.

(2) Failure of an insurer or rating organization to comply with the statistical reporting requirements of OAR 836-042-0045 constitutes an unfair trade practice under ORS 746.240.

Stat. Auth.: ORS 731 & 737

Stats. Implemented: ORS 737.322(2) & 746.240

Hist.: ID 3-1988, f. & cert. ef. 1-20-88; ID 6-2005, f. & cert. ef. 4-7-05

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

**Adm. Order No.:** OSHA 1-2005

**Filed with Sec. of State:** 4-12-2005

**Certified to be Effective:** 4-12-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 437-002-0161, 437-002-0360, 437-002-0368, 437-003-0001, 437-005-0001

**Rules Repealed:** 437-002-0361

**Subject:** 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 repealed 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, was added.

Oregon OSHA adopted all these changes to remain at least as effective as Federal OSHA standards.

Please visit OR-OSHA's web site: [www.orosha.org](http://www.orosha.org)

**Rules Coordinator:** Sue C. Joye—(503) 947-7449

## 437-002-0161

### Medical Services and First Aid

(1) Definitions.

(a) "Emergency medical service" is the provision of care by a medically trained person, whether this service is provided by a hospital, clinic, ambulance, disaster car, or rescue vehicle.

(b) "In proximity" is defined as that which is available nearby to ensure prompt treatment in the event of need.

(c) "Qualified first aid person" means a person with evidence to show valid (current) first aid training by the American Red Cross or equivalent.

(2) First Aid Supplies.

(a) The employer shall provide first aid supplies based upon the intended use and types of injuries that could occur at the place of employment. The first aid supplies shall be available in close proximity to all employees. Either bulk pack or unit pack supplies are acceptable.

(b) First aid supplies must be stored in containers adequate to protect the contents from damage, deterioration, or contamination. The container shall be clearly marked, available when needed and must not be locked, but may be sealed.

(c) The employer shall ensure that the first aid supplies are available for each shift.

**Note:** Supplies such as gloves and a mouth barrier device are considered personal protective equipment, and are regulated by 1910.132 in Division 2/I, Personal Protective Equipment.

**Note:** The Safety Code for Motor Vehicle Transportation of Workers (Rule 735-120-000) adopted by the Motor Vehicles Division of the Department of Transportation contains requirements for the first aid kit which is required when school buses are used to transport workers. In addition, the Public Utilities Commission has adopted Federal Motor Carrier Safety Regulations which apply to for-hire buses.

(3) Personnel:

(a) The employer shall ensure the ready availability of emergency medical services for the treatment of all injured employees.

(b) Where emergency medical services are not in proximity to the place of employment, a qualified first aid person shall be available.

**NOTE:** More specific requirements for first aid training are found in: 1910.94, Ventilation, in Division 2/G; OAR 437-002-0118, Reinforced Plastics, in Division 2/H; 1910.120, Hazardous Waste Operations and Emergency Response, in Division 2/H; 1910.252 in Division 2/Q, Welding, Cutting and Brazing; OAR 437-002-0304, Ornamental Tree & Shrub Services, in Division 2/R; 1910.268, Telecommunications, in Division 2/R; Division 2/T, Commercial Diving Operations.

(4) Emergency Medical Plan.

(a) An emergency medical plan to ensure the rapid provision of medical services to employees with major illnesses and injuries shall be devel-

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oped. In such cases, the employer shall determine that the service will be available in an emergency.

(b) If a physician or an ambulance with Emergency Medical Technicians is readily accessible to the place of employment, then the minimum emergency medical plan must contain the emergency telephone number of the ambulance service. The emergency telephone number shall be posted conspicuously at the place of employment.

(c) Employers in areas with a designated 911 telephone number may utilize the 911 service in lieu of posting the specific ambulance telephone number.

(d) If the place of employment is not in proximity to emergency medical services, then the employer shall have, in addition to the information required in 437-002-0161(4)(a), a definite plan of action to be followed in the event of serious injury to an employee. The plan of action shall consist of the arrangements for:

(A) Communication. Two-way radio, telephone, or provision for emergency communication to contact the emergency medical services.

(B) Transportation. Availability of transportation to a point where an ambulance can be met or to the nearest suitable medical facility. Vehicles provided for this purpose shall be available at all times, shall have right-of-way over all vehicles or equipment under the control of the employer, and shall be equipped so that due consideration can be given to the proper care and comfort of the injured employee.

(C) Qualified medical personnel at destination.

(D) All employees shall be knowledgeable concerning the qualified first aid person(s), the first aid requirements, and emergency medical plan.

(5) Emergency Eyewash and Shower Facilities.

(a) Where employees handle substances that could injure them by getting into their eyes or onto their bodies, provide them with an eyewash, or shower, or both based on the hazard.

(A) Emergency eyewash and showers must meet the following:

(i) Locate it so that exposed employees can reach it and begin treatment in 10 seconds or less. The path must be unobstructed and cannot require the opening of doors or passage through obstacles unless other employees are always present to help the exposed employee.

(ii) Water must flow for at least 15 minutes.

(iii) Install the equipment according to the manufacturer's instructions.

(iv) The eyewash must have valves that stay open without the use of the hands. The shower must not be subject to unauthorized shut-off.

(v) Follow the system manufacturer's criteria for water pressure, flow rate and testing to assure proper operation of the system.

(vi) Emergency shower and eyewash facilities must be clean, sanitary and operating correctly.

(vii) In self-contained systems, do not use solutions or products past their expiration date.

**NOTE:** If the employer can demonstrate, with the support of a physician board certified in ophthalmology, toxicology or occupational medicine, that an alternative eyewash solution is adequate for their specific hazard, OR-OSHA will accept that solution. An example would be a buffered isotonic solution preserved with a suitable antibacterial agent, that may be less irritating when used in a 15-minute flush.

(b) If the product label, MSDS or other information about the expected contaminant gives treatment instructions different from those required in this section, follow the most protective of those instructions.

(c) If the contaminant manufacturer requires specific decontaminants or procedures, you must provide them in addition to the eyewash or shower. The employer must assure this treatment is available.

(d) If eyewash facilities or showers can freeze, take protective measures to prevent freezing.

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

Stat. Auth.: ORS 654.025(2) & 757.726(4)

Stats. Implemented: ORS 654.001 - 654.295

Hist.: WCB 13-1979, f. & ef. 7-7-75; WCB 4-1975, f. 10-6-75, ef. 11-1-75; WCB 4-1976, f. 4-5-76, ef. 4-15-76; OSHA 2-1993, f. & cert. ef. 2-3-93; OSHA 1-2000, f. & cert. ef. 1-28-00; OSHA 1-2005, f. & cert. ef. 4-12-05

## 437-002-0360

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the **Code of Federal Regulations, 29 CFR 1910, revised as of 7/1/99**, and any subsequent amendments published in the Federal Register as listed below:

(1) (Reserved) 29 CFR 1910.1000 Air contaminants, published 6/27/74, Federal Register, vol. 39, pp. 23540-23543; amended in the following FR publications: 5/28/75, vol. 40, pp. 23072-23073; 5/3/77, vol. 42, p. 22525; 1/17/78, vol. 43, p. 2600; 2/10/78, vol. 43, p. 5963; 3/29/78, vol.

43, p. 13563; 5/4/78, vol. 43, p. 19624; 6/23/78, vol. 43, p. 27394; 6/30/78, vol. 43, p. 28473; 10/3/78, vol. 43, p. 45809; 11/14/78, vol. 43, p. 53007; 12/8/78, vol. 43, pp. 57602-57603; 2/5/79, vol. 44, p. 7141; 6/18/80, vol. 45, pp. 12416-12417; 7/28/80, vol. 45, pp. 50328-50329; 6/19/81, vol. 46, p. 32022; 6/22/84, vol. 49, p. 25796; 1/02/85, vol. 50, p. 64; 12/13/85, vol. 50, p. 51173; 11/17/86, vol. 51, p. 41477; 9/11/87, vol. 52, p. 34562; 12/4/87, vol. 52, p. 46291; 1/19/89, vol. 54, pp. 2920-2983; 7/5/89, vol. 54, no. 127, pp. 28054-28061; 9/5/89, vol. 54, no. 170, pp. 36767-36768; 11/15/89, vol. 54, no. 219, p. 47513; 2/5/90, vol. 55, no. 24, pp. 3724; 5/9/90, vol. 55, no. 90, pp. 19258-19259; 11/8/90, vol. 55, no. 217, pp. 46948-46950; 7/1/92, vol. 57, no. 127, pp. 29204-29206. NOTE: 29 CFR 1910.1000 was repealed on 11/15/93 by OR-OSHA. In Oregon, OAR 437-002-0382 applies.

(2) 29 CFR 1910.1001 Asbestos, published 6/20/86, Federal Register, vol. 51, no. 119, pp. 22612-22790; amended 10/17/86, FR vol. 51, pp. 37002-37007; amended 5/12/87, FR vol. 52, pp. 17754-17755; amended 9/14/88, FR vol. 53, no. 178, pp. 35610-35627; amended 9/23/88, FR vol. 53, no. 185, p. 37080; amended 7/21/89, FR vol. 54, no. 139, p. 30704-30705; amended 12/20/89, FR vol. 54, no. 243, p. 52028; amended 2/5/90, FR vol. 55, no. 24, pp. 3731-3732; amended 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; amended 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, p. 24330; 8/10/94, FR vol. 59, no. 153, p. 41065; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 8/23/96, FR vol. 61, no. 165, pp. 43434-43459; 1/8/98, FR vol. 63, no. 5, p. 1285; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(3) 29 CFR 1910.1002 Coal tar pitch volatiles, interpretation of term, published 1/21/83, Federal Register, vol. 43, p. 2768.

(4) 29 CFR 1910.1003 13 Carcinogens, published 3/7/96, Federal Register, vol. 61, no. 46, p. 9242; 1/8/98, FR vol. 63, no. 5, p. 1286; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(5) 29 CFR 1910.1004 See §1910.1003, 13 Carcinogens.

(6) Reserved for 29 CFR 1910.1005.

(7) 29 CFR 1910.1006 See §1910.1003, 13 Carcinogens.

(8) 29 CFR 1910.1007 See §1910.1003, 13 Carcinogens.

(9) 29 CFR 1910.1008 See §1910.1003, 13 Carcinogens.

(10) 29 CFR 1910.1009 See §1910.1003, 13 Carcinogens.

(11) 29 CFR 1910.1010 See §1910.1003, 13 Carcinogens.

(12) 29 CFR 1910.1011 See §1910.1003, 13 Carcinogens.

(13) 29 CFR 1910.1012 See §1910.1003, 13 Carcinogens.

(14) 29 CFR 1910.1013 See §1910.1003, 13 Carcinogens.

(15) 29 CFR 1910.1014 See §1910.1003, 13 Carcinogens.

(16) 29 CFR 1910.1015 See §1910.1003, 13 Carcinogens.

(17) 29 CFR 1910.1016 See §1910.1003, 13 Carcinogens.

(18) 29 CFR 1910.1017 Vinyl chloride, published 10/4/74, Federal Register, vol. 39, p. 35896; amended by the following FR publications: 12/3/74, FR vol. 39, p. 41848; 3/25/75, FR vol. 40, p. 13211; 5/28/75, FR vol. 40, p. 23072; 10/24/78, FR vol. 43, p. 49751; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1286; 1/5/05, FR vol. 69, p. 1111.

(19) 29 CFR 1910.1018 Inorganic arsenic, published 5/25/78, Federal Register, vol. 43, p. 19624; amended by the following FR publications: 6/30/78, FR vol. 43, p. 28472; 5/23/80, FR vol. 45, p. 35282; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 3/7/96, FR vol. 61, no. 46, p. 9245; 1/8/98, FR vol. 63, no. 5, p. 1286; 1/5/05, FR vol. 69, p. 1111.

(20) 29 CFR 1910.1020 Access to Employee Exposure and Medical Records, published May 23, 1980, Federal Register, vol. 45, no. 102, pp. 35277-35281; amended September 29, 1988, Federal Register, vol. 53, no. 189, pp. 38163-38168; 3/7/96, FR vol. 61, no. 46, p. 9235; 6/20/96, FR vol. 61, p. 31427. Appendix A – Sample Authorization Letter. Appendix B – Availability of NIOSH RTECS.

(21) 29 CFR 1910.1025 Lead, published 11/14/78, Federal Register, vol. 44, p. 53007; amended by the following FR publications: 1/26/79, vol. 44, p. 5447; 3/13/79, vol. 44, p. 14554; 8/28/79, vol. 44 p. 50338; 10/23/79, vol. 44, p. 60981; 11/30/79, vol. 44, 68828; 5/23/80, vol. 45, p. 35283; 12/11/81, vol. 46, p. 60775; 11/12/82, vol. 47, p. 51117; 3/6/83, vol. 48, p. 9641; 4/30/84, vol. 49, p. 18295; 6/5/84, vol. 49, p. 23175; 6/5/84, vol. 49, p. 23175; and modified by OSHA Instruction CPL 2-2.47 published by the U. S. Department of Labor on 1/5/89. Amended 7/11/89, vol. 54, p. 29142; 1/30/90, vol. 55, no. 20, pp. 3166-3167; 2/13/90, vol. 55, no. 30, pp. 4998-4999; modification of OSHA Instruction CPL 2-2.47, published by Office of Health Compliance Assistance, OSHA, on 7/10/90. Amended 5/31/91, FR vol. 56, no. 105, p. 24686; amended 10/11/95, FR vol. 60, p. 52856;



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1/8/98, FR vol. 63, no. 5, p. 1287; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(22) 29 CFR 1910.1027 Cadmium, published 9/14/92, Federal Register, vol. 57, no. 178, pp. 42388-42453; corrections published 4/23/93, FR vol. 58, no. 77, pp. 21778-21787; 1/8/98, FR vol. 63, no. 5, p. 1288; 1/5/05, FR vol. 69, p. 1111.

(23) 29 CFR 1910.1028 Benzene, and Appendices A, B, C, D, and E, published 9/11/87, Federal Register, vol. 52, no. 176, pp. 34562-34578; 1/8/98, FR vol. 63, no. 5, p. 1289; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(24) 29 CFR 1910.1029 Coke oven emissions, published 10/22/76, Federal Register, vol. 41, p. 46784; amended by the following FR publications: 1/18/77, FR vol. 42, p. 3304; 5/23/80, FR vol. 45, p. 35283; 9/13/85, FR vol. 50, p. 37353; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 1/5/05, FR vol. 69, p. 1111.

(25) 29 CFR 1910.1030 Bloodborne pathogens, published 12/6/91, Federal Register, vol. 56, no. 235, pp. 64175-64182; amended 7/1/92, vol. 57, no. 127, p. 29206; 1/18/01, FR vol. 66, no. 12, p. 5318.

(26) 29 CFR 1910.1043 Cotton dust, published 6/23/78, Federal Register, vol. 43, p. 27394; amended by the following FR publications: 8/8/78, FR vol. 43, p. 35035; 10/10/80, FR vol. 45, p. 67340; 12/13/85, FR vol. 50, p. 51173; 7/3/86, FR vol. 51, p. 24325; 6/7/89, FR vol. 54, p. 24334; 1/8/98, FR vol. 63, no. 5, p. 1290; 12/7/00, FR vol. 65, no. 236, p. 76563; 1/5/05, FR vol. 69, p. 1111.

(27) 29 CFR 1910.1044 1,2-dibromo-3-chloropropane, published 3/17/78, Federal Register, vol. 43, p. 11527; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 1/5/05, FR vol. 69, p. 1111.

(28) 29 CFR 1910.1045 Acrylonitrile, published 10/3/78, Federal Register, vol. 43, p. 45809; amended by the following FR publications: 5/23/80, FR vol. 45, p. 35283; 6/7/89, FR vol. 54, p. 24334; 6/30/93, FR vol. 58, no. 124, p. 35310; 1/8/98, FR vol. 63, no. 5, p. 1291; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(29) 29 CFR 1910.1047 Ethylene oxide, published 6/22/84, Federal Register, vol. 49, p. 25796; amended 3/12/85, FR vol. 50, p. 9801; amended 10/11/85, FR vol. 50, p. 41494; amended 7/10/86, FR vol. 51, p. 25053; amended 4/6/88, FR vol. 53, p. 11437; amended 7/26/88, FR vol. 53, p. 27960; 1/8/98, FR vol. 63, no. 5, p. 1292; 1/5/05, FR vol. 69, p. 1111.

(30) 29 CFR 1910.1048 Formaldehyde, and Appendices A, B, C, D and E, published 12/4/87, Federal Register, vol. 52, no. 233, pp. 46291-46312; and amendments to 1910.1048 published 3/2/88, FR vol. 53, no. 41, pp. 6628-6629; 11/8/88, FR vol. 53, pp. 45080-45088; 11/22/88, FR vol. 53, p. 47188; 7/13/89, FR vol. 54, no. 133, pp. 29545-29546; 8/1/89, FR vol. 54, no. 146, p. 31765; 8/29/89, FR vol. 54, p. 35639; 9/11/89, FR vol. 54, p. 37531; 10/24/89, vol. 54, pp. 43344-43346; 6/13/90, FR vol. 55, no. 114, p. 24070; 8/10/90, FR vol. 55, no. 155, p. 32616; 12/17/90, FR vol. 55, no. 242, p. 51698; 3/12/91, FR vol. 56, no. 48, pp. 10377-8; 6/12/91, FR vol. 56, no. 113, p. 26909; 8/8/91, FR vol. 56, no. 153, p. 37650-1, 11/13/91, FR vol. 56, no. 219, p. 57593; 1/23/92, FR vol. 57, no. 15, p. 2681-2; 5/5/92, FR vol. 57, no. 87, p. 19262; 5/27/92, FR vol. 57, no. 102, pp. 22307-9; 6/10/92, FR vol. 57, no. 112, p. 24701; 6/18/92, FR vol. 57, no. 118, pp. 27160-1; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099; 1/5/05, FR vol. 69, p. 1111.

(31) 29 CFR 1910.1050 Methylenedianiline (MDA), published 8/10/92, Federal Register, vol. 57, no. 154, pp. 35666-35681; 1/8/98, FR vol. 63, no. 5, p. 1293; 4/23/98, FR vol. 63, no. 78, p. 20099.

(32) 29 CFR 1910.1051 1,3-Butadiene, published 11/4/96, Federal Register, vol. 61, no. 214, p. 56831; 1/8/98, FR vol. 63, no. 5, p. 1294; 1/5/05, FR vol. 69, p. 1111.

(33) 29 CFR 1910.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1601; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275; 1/8/98, FR vol. 63, no. 5, p. 1295; 4/23/98, FR vol. 63, no. 78, p. 20099; 9/22/98, FR vol. 63, no. 183, p. 50729; amended by AO 12-2001, reference typo corrected, f. and ef. 10/26/01.

**NOTE:** 29 CFR 1910.1101 Asbestos, was repealed by Federal Register, vol. 57, no. 110, issued 6/8/92, p. 24330.

(34) 29 CFR 1910.1096 Ionizing radiation, published 6/27/74, Federal Register, vol. 39, p. 23502; amended 10/24/78, FR vol. 43, p. 49746; 11/7/78, FR vol. 43, p. 51759; 4/30/84, FR vol. 49, p. 18295; 6/30/93, FR vol. 58, no. 124, p. 35309; 6/20/96, FR vol. 61, no. 46, p. 31427.

(35) 29 CFR 1910.1200 Hazard communication, published 8/24/87, Federal Register, vol. 52, p. 31877; amended by the following FR publications: 12/4/87, FR vol. 52, p. 46080; 4/27/88, FR vol. 53, p. 15035; 2/15/89,

FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478; 12/22/94, FR vol. 59, no. 245, p. 65947; 3/7/96, FR vol. 61, no. 46, p. 9245.

(36) 29 CFR 1910.1201 Retention of DOT Markings, Placards and Labels, published 7/19/94, Federal Register, vol. 59, p. 36700.

(37) 29 CFR 1910.1450 Occupational Exposure to Hazardous Chemicals in Laboratories, published 1/31/90, Federal Register, vol. 55 no. 21, pp. 3300-3335; corrected 3/6/90, FR vol. 55, no. 44, p. 7967; 7/1/92, vol. 57, no. 127, p. 29204.

(38) 29 CFR 1910.1499 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

(39) 29 CFR 1910.1500 Removed. Published 3/7/96, Federal Register, vol. 61, no. 46, p. 9245.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 13-1988, f. 8-2-88 & ef. 8-2-88; APD 14-1988, f. & ef. 9-12-88; APD 18-1988, f. & ef. 11-17-88; APD 4-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 6-1989(Temp), f. 4-20-89, ef. 5-1-89; APD 9-1989, f. & ef. 7-7-89; APD 11-1989, f. 7-14-89, ef. 8-14-89; APD 13-1989, f. & ef. 7-17-89; OSHA 1-1990(Temp), f. & ef. 1-11-90; OSHA 3-1990(Temp), f. & ef. 1-19-90; OSHA 6-1990, f. & ef. 3-2-90; OSHA 7-1990, f. & ef. 3-2-90; OSHA 9-1990, f. 5-8-90, ef. 8-8-90; OSHA 11-1990, f. 6-7-90, ef. 7-1-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 14-1990, f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & ef. 8-31-90; OSHA 20-1990, f. & ef. 9-18-90; OSHA 21-1990, f. & ef. 9-18-90; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 13-1991, f. & cert. ef. 10-10-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 1-1992, f. & cert. ef. 1-22-92; OSHA 4-1992, f. & cert. ef. 4-16-92; OSHA 5-1992, f. 4-24-92, cert. ef. 7-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 9-1992(Temp), f. & cert. ef. 9-24-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 12-1992, f. & cert. ef. 10-13-92; OSHA 14-1992, f. & cert. ef. 12-7-92; OSHA 15-1992, f. & cert. ef. 12-30-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 6-1993(Temp), f. & cert. ef. 5-17-93; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 17-1993, f. & cert. ef. 11-15-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 4-1996, f. & cert. ef. 9-13-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 8-1997, f. & cert. ef. 11-14-97; OSHA 1-1998, f. & cert. ef. 2-13-98; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 1-1999, f. & cert. ef. 3-22-99; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-2001, f. & cert. ef. 5-15-01; OSHA 10-2001, f. 9-14-01, cert. ef. 10-18-01; OSHA 12-2001, f. & cert. ef. 10-26-01; OSHA 1-2005, f. & cert. ef. 4-12-05

## 437-002-0368

### Deterioration

(1) Periodic examination, at least annually, of all asbestos containing material should be performed to detect deterioration.

(2) Asbestos which has become damaged or deteriorated shall be repaired, enclosed, encapsulated, or removed in accordance with the provisions of **29 CFR 1926.1101** in OAR 437, Division 3, Construction.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: APD 9-1989, f. & ef. 7-7-89; OSHA 12-1993, f. 8-20-93, cert. ef. 11-1-93; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 1-2005, f. & cert. ef. 4-12-05

## 437-003-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1926, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

(1) Subdivision A – General:

(a) 29 CFR 1926.1 Purpose and Scope, published 2/9/79, Federal Register (FR), vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.2 Variances from safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.3 Inspections – right of entry, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.4 Rules of practice for administrative adjudications for enforcement of safety and health standards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(2) Subdivision B – General Interpretations:

(a) 29 CFR 1926.10 Scope of subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.11 Coverage under section 103 of the act distinguished, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.12 Reorganization plan No. 14 of 1950, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.13 Interpretation of statutory terms, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

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(e) 29 CFR 1926.14 Federal contracts for 'mixed' types of performance, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.15 Relationship to the service contract act; Walsh-Healey Public Contracts Act, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.16 Rules of construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(3) Subdivision C – General Safety And Health Provisions:

(a) 29 CFR 1926.20 General safety and health provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.21 Safety training and education, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.22 Recording and reporting of injuries (Reserved)

(d) 29 CFR 1926.23 First aid and medical attention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.24 Fire protection and prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.25 Housekeeping, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.26 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.27 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.28 Personal protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.29 Acceptable certifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.30 Shipbuilding and ship repairing, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249.

(l) 29 CFR 1926.31 Incorporation by reference, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9249; 6/18/98, FR vol. 63, no. 117, p. 33468.

(m) 29 CFR 1926.32 Definitions, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35078.

(n) 29 CFR 1926.33 Access to employee exposure and medical records, published 6/20/96, FR vol. 61, no. 46, p. 31427.

(o) 29 CFR 1926.34 Means of egress, published 6/30/93, Federal Register, vol. 58, no. 124, p. 35083.

(4) Subdivision D – Occupational Health And Environmental Controls

(a) 29 CFR 1926.50 Medical services and first aid, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(b) 29 CFR 1926.51 Sanitation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35084.

(c) 29 CFR 1926.52 Occupational noise exposure, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.53 Ionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.54 Nonionizing radiation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.55 Gases, vapors, fumes, dusts, and mists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/17/86, FR vol. 51, p. 37007; 12/4/87, FR vol. 52, p. 46312; 11/4/96, FR vol. 61, no. 214, p. 56856; 1/10/97, FR vol. 62, no. 7, p. 1619.

(g) 29 CFR 1926.56 Illumination, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.57 Ventilation, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35099; 3/7/96, FR vol. 61, no. 46, p. 9250; 1/8/98, FR vol. 63, no. 5, p. 1295.

(i) 29 CFR 1926.58 Reserved, §1926.58, Asbestos, tremolite, anthophyllite and actinolite is redesignated as §1926.1101, Asbestos, and §1926.58 is reserved (8/10/94, FR vol. 59, no. 153, pp. 41131-62).

(j) 29 CFR 1926.59 Hazard Communication, published 8/24/87, FR vol. 52, p. 31852; amended 12/4/87, FR vol. 52, 46075; 4/27/88, FR vol. 53, no. 81, pp. 15033-15035; stay lifted on 2/17/89, FR vol. 54, p. 6886; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1926.60 Methylenedianiline (MDA), published 8/10/92, FR vol. 57, no. 154, pp. 35681-35695; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1296; 12/6/04, FR vol. 69, p. 70373; 1/5/05, FR vol. 69, p. 1111.

(l) 29 CFR 1926.61 Retention of DOT markings, placards and labels, published 7/19/94, FR vol. 59, no. 137, pp. 36700; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1926.62 Lead, published 5/4/93, FR vol. 58, no. 84, pp. 26626-26649; 1/8/98, FR vol. 63, no. 5, p. 1296; 1/5/05, FR vol. 69, p. 1111.

**NOTE:** Cadmium has been redesignated as §1926.1127.

(n) 29 CFR 1926.65 Hazardous Waste Operations and Emergency Response

**NOTE:** Division 2/H, 1910.120, Hazardous Waste Operations and Emergency Response, applies to Construction.

(5) Subdivision E – Personal Protective And Life Saving Equipment:

(a) 29 CFR 1926.95 Criteria for personal protective equipment, published 6/30/93, Federal Register, vol. 58, p. 35152.

(b) 29 CFR 1926.100 Head protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.101 Hearing protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.102 Eye and face protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35160.

(e) 29 CFR 1926.103 Respiratory protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 1/8/98, FR vol. 63, no. 5, p. 1297.

**NOTE:** 29 CFR 1926.104 Removed, 8/9/94, FR vol. 59, no. 152, p. 40729.

(f) 29 CFR 1926.105 Reserved, 8/9/94, FR vol. 59, no. 152, p. 40729.

(g) 29 CFR 1926.106 Working over or near water, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.107 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729.

(6) Subdivision F – Fire Protection And Prevention:

(a) 29 CFR 1926.150 Fire protection, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.151 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(c) 29 CFR 1926.152 Flammable and combustible liquids, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469; 6/30/93, FR vol. 58, no. 124, p. 35162.

(d) 29 CFR 1926.153 Liquefied petroleum gas (LP-Gas), published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35170.

(e) 29 CFR 1926.154 Temporary heating devices, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.155 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(7) Subdivision G – Signs, Signals, And Barricades

(a) 29 CFR 1926.200 Accident prevention signs and tags, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(b) 29 CFR 1926.201 Signaling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(c) 29 CFR 1926.202 Barricades, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; REPEALED with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(d) 29 CFR 1926.203 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended with OR-OSHA Admin. Order 2-2003, f. 1/30/03, ef. 1/30/03.

(8) Subdivision H – Materials Handling, Storage, Use And Disposal:

(a) 29 CFR 1926.250 General requirements for storage, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40729; 6/30/93, FR vol. 58, no. 124, p. 35173.

(b) 29 CFR 1926.251 Rigging equipment for material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35173.

(c) 29 CFR 1926.252 Disposal of waste materials, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(9) Subdivision I – Tools – Hand And Power:



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- (a) 29 CFR 1926.300 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35076; 3/7/96, FR vol. 61, no. 46, p. 9250.
- (b) 29 CFR 1926.301 Hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.302 Power operated hand tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.
- (d) 29 CFR 1926.303 Abrasive wheels and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35175.
- (e) 29 CFR 1926.304 Woodworking tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.
- (f) 29 CFR 1926.305 Jacks - lever and ratchet, screw, and hydraulic, published Federal Register vol. 58, no. 124, p. 35176.
- (10) Subdivision J – Welding And Cutting
- (a) 29 CFR 1926.350 Gas welding and cutting, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.
- (b) 29 CFR 1926.351 Arc welding and cutting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.
- (c) 29 CFR 1926.352 Fire prevention, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.353 Ventilation and protection in welding, cutting, and heating, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35179.
- (e) 29 CFR 1926.354 Welding, cutting, and heating in way of preservative coatings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (11) Subdivision K – Electrical
- (a) 29 CFR 1926.400 Introduction, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (b) 29 CFR 1926.401 (Reserved)
- (c) 29 CFR 1926.402 Applicability, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (d) 29 CFR 1926.403 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (e) 29 CFR 1926.404 Wiring design and protection, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; amended with AO 5-2002, repeal (b)(1), f. 6/28/02, ef. 10/1/03.
- (f) 29 CFR 1926.405 Wiring methods, components, and equipment for general use, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (g) 29 CFR 1926.406 Specific purpose equipment and installations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (h) 29 CFR 1926.407 Hazardous (classified) locations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (i) 29 CFR 1926.408 Special systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (j) 29 CFR 1926.409 (Reserved)
- (k) 29 CFR 1926.415 (Reserved)
- (l) 29 CFR 1926.416 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35179; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41738.
- (m) 29 CFR 1926.417 Lockout and tagging of circuits, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335; 6/30/93, FR vol. 58, no. 124, p. 35181; 3/7/96, FR vol. 61, no. 46, p. 9251; 8/12/96, FR vol. 61, no. 156, p. 41739.
- (n) 29 CFR 1926.418 (Reserved)
- (o) 29 CFR 1926.430 (Reserved)
- (p) 29 CFR 1926.431 Maintenance of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (q) 29 CFR 1926.432 Environmental deterioration of equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (r) 29 CFR 1926.433 - 29 CFR 1926.440 (Reserved)
- (s) 29 CFR 1926.441 Battery locations and battery charging, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (t) 29 CFR 1926.442 - 29 CFR 1926.448 (Reserved)
- (u) 29 CFR 1926.449 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, no. 133, pp. 25294-25335.
- (12) Subdivision L – Scaffolding
- (a) 29 CFR 1926.450 Scope, application and definitions applicable to this subpart, published 8/30/96, FR vol. 61, no. 170, p. 46104.
- (b) 29 CFR 1926.451 General requirements, published 8/30/96, FR vol. 61, no. 170, p. 46107; 11/25/96, FR vol. 61, no. 228, p. 59831.
- (c) 29 CFR 1926.452 Additional requirements applicable to specific types of scaffolds, published 8/30/96, FR vol. 61, no. 170, p. 46113.
- (d) 29 CFR 1926.453 Aerial lifts, published 8/30/96, FR vol. 61, no. 170, p. 46116; 11/25/96, FR vol. 61, no. 228, p. 59832.
- (e) 29 CFR 1926.454 Training, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (f) Appendix A to Subpart L Scaffold Specifications, published 8/30/96, FR vol. 61, no. 170, p. 46117.
- (g) Appendix B to Subpart L Criteria for determining the feasibility of providing safe access and fall protection for scaffold erectors and dismantlers (Reserved), published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (h) Appendix C to Subpart L List of National Consensus Standards, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (i) Appendix D to Subpart L List of training topics for scaffold erectors and dismantlers, published 8/30/96, FR vol. 61, no. 170, p. 46122.
- (j) Appendix E to Subpart L Drawing and illustrations, published 8/30/96, FR vol. 61, no. 170, p. 46122; 11/25/96, FR vol. 61, no. 228, p. 59832.
- (13) Subdivision M – Fall Protection:
- (a) 29 CFR 1926.500 Scope, application, and definitions applicable to this subpart. Amended 8/9/94, FR vol. 59, no. 152, p. 40730-40731; 1/18/01, FR vol. 66, no. 12, p. 5265; 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02.
- (b) 29 CFR 1926.501 Duty to have fall protection. Amended 8/9/94, FR vol. 59, no. 152, p. 40732-40733; amended 2/5/01 (Oregon Exceptions); amended with AO 6-2002, f. and ef. 7/19/02.
- (c) 29 CFR 1926.502 Fall protection systems criteria and practices. Amended 8/9/94, FR vol. 59, no. 152, p. 40733-40738; amended with AO 6-2002, f. and ef. 7/19/02.
- (d) 29 CFR 1926.503 Training requirements. Amended 8/9/94, FR vol. 59, no. 152, p. 40738; REPEALED with AO 6-2002, f. and ef. 7/19/02, replaced with OI.
- (e) Appendix A to Subpart M Determining Roof Widths, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; amended 8/9/94, FR vol. 59, no. 152, p. 40738-40742.
- (f) Appendix B to Subpart M Guardrail Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743.
- (g) Appendix C to Subpart M Personal Fall Arrest Systems, published 8/9/94, FR vol. 59, no. 152, p. 40743-40746.
- (h) Appendix D to Subpart M Positioning Device Systems, published 8/9/94, FR vol. 59, no. 152, p. 40746.
- (14) Subdivision N – Cranes, Derricks, Hoists, Elevators, And Conveyors:
- (a) 29 CFR 1926.550 Cranes and derricks, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 4/6/82, FR vol. 47, p. 14706; 8/2/88, FR vol. 53, p. 29139; 4/18/89, FR vol. 54, no. 73, p. 15405; 8/9/94, FR vol. 59, no. 152, p. 40730; 6/30/93, FR vol. 58, no. 124, p. 35183.
- (b) 29 CFR 1926.551 Helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (c) 29 CFR 1926.552 Material hoists, personnel hoists, and elevators, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (d) 29 CFR 1926.553 Base-mounted drum hoist, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (e) 29 CFR 1926.554 Overhead hoists, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.
- (f) 29 CFR 1926.555 Conveyors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.



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(15) Subdivision O – Motor Vehicles, Mechanized Equipment, And Marine Operations:

(a) 29 CFR 1926.600 Equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183.

(b) 29 CFR 1926.601 Motor vehicles, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.602 Material handling equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35183; 12/1/98, FR vol. 63, no. 230, p. 66274; amended by AO 7-2003, f. 12/5/03, ef. 12/5/03.

(d) 29 CFR 1926.603 Pile driving equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.604 Site clearing, published 6/24/74, FR vol. 39, p. 22801; amended 7/22/77, FR vol. 42, p. 37674.

(f) 29 CFR 1926.605 Marine operations and equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.606 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(16) Subdivision P – Excavations

(a) 29 CFR 1926.650 Scope, application, and definitions applicable to this subdivision, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45959-45961.

(b) 29 CFR 1926.651 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45960-45961; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.652 Requirements for protective systems, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 10/31/89, FR vol. 54, no. 209, pp. 45961-45962.

(d) Appendices A-F to Subdivision P, Excavations, published 10/31/89, FR vol. 54, no. 209, pp. 45962-45991.

(17) Subdivision Q – Concrete And Masonry Construction:

(a) 29 CFR 1926.700 Scope, application and definitions applicable to this subpart, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 10/18/90, FR vol. 55, no. 202, p. 42326.

(b) 29 CFR 1926.701 General requirements, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.702 Requirements for equipment and tools, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/16/88, FR vol. 53, p. 22612.

(d) 29 CFR 1926.703 Requirements for cast-in-place concrete, published 6/16/88, FR vol. 53, p. 22612.

(e) 29 CFR 1926.704 Requirements for precast concrete, published 6/16/88, FR vol. 53, p. 22612; amended 10/5/89, FR vol. 54, no. 192, p. 41088.

(f) 29 CFR 1926.705 Requirements for lift-slab construction operations, published 6/16/88, FR vol. 53, p. 22612; amended 10/18/90, FR vol. 55, no. 202, p. 42326.

(g) Appendix A to 1926.705 Lift-slab operations, published 10/18/90, FR vol. 55, no. 202, p. 42326.

(h) 29 CFR 1926.706 Requirements for masonry construction, published 6/16/88, FR vol. 53, p. 22612; amended with OR-OSHA Admin. Order 1-2003, f. 1/30/03, ef. 4/30/03.

(18) Subdivision R – Steel Erection:

(a) 29 CFR 1926.750 Scope, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(b) 29 CFR 1926.751 Definitions, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, 1/1/04.

(c) 29 CFR 1926.752 Site layout, site-specific erection plan and construction sequence, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(d) 29 CFR 1926.753 Hoisting and rigging, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(e) 29 CFR 1926.754 Structural steel assembly, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(f) 29 CFR 1926.755 Column anchorage, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(g) 29 CFR 1926.756 Beams and columns, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(h) 29 CFR 1926.757 Open web steel joists, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(i) 29 CFR 1926.758 Systems-engineered metal buildings, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(j) 29 CFR 1926.759 Falling object protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(k) 29 CFR 1926.760 Fall protection, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(l) 29 CFR 1926.761 Training, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; amended with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(m) Appendix A to Subpart R Guidelines for establishing the components of a site-specific erection plan: Non-Mandatory Guidelines for Complying with §1926.752(e), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(n) Appendix B to Subpart R Acceptable test methods for testing slip-resistance of walking/working surfaces: Non-Mandatory Guidelines for Complying with §1926.754(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(o) Appendix C to Subpart R Illustrations of bridging terminus points: Non-Mandatory Guidelines for Complying with §1926.757(a)(10) and §1926.757(c)(5), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(p) Appendix D to Subpart R Illustration of the use of control lines to demarcate controlled decking zones (CDZs): Non-Mandatory Guidelines for Complying with §1926.760(c)(3), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(q) Appendix E to Subpart R Training: Non-Mandatory Guidelines for Complying with §1926.761, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(r) Appendix F to Subpart R Perimeter columns: Non-Mandatory Guidelines for Complying with §1926.756(e) to Protect the Unprotected Side or Edge of a Walking/Working Surface, published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(s) Appendix G to Subpart R Fall protection systems criteria and practices from §1926.502: Non-Mandatory Guidelines for Complying with §1926.760(d), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137; REPEALED with AO 6-2002, f. and ef. 7/19/02; amended with AO 8-2003, f. 12/30/03, ef. 1/1/04.

(t) Appendix H to Subpart R Double connections: Illustration of a clipped end connection and a staggered connection: Non-Mandatory Guidelines for Complying with §1926.756(c)(1), published 1/18/01, Federal Register, vol. 66, no. 12, p. 5265; amended 7/17/01, FR vol. 66, no. 137, p. 37137.

(19) Subdivision S – Underground Construction, Caissons, Cofferdams, And Compressed Air

(a) 29 CFR 1926.800 Tunnels and shafts, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940. Underground Construction, published 6/2/89, FR vol. 54, no. 105, p. 23824; 1/8/98, FR vol. 63, no. 5, p. 1297.

(b) 29 CFR 1926.801 Caissons, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.802 Cofferdams, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.803 Compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 7/11/86, FR vol. 51, p. 25318.

(e) 29 CFR 1926.804 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

# ADMINISTRATIVE RULES

(f) Appendix A to Subpart S Decompression Tables, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(20) Subdivision T – Demolition:

(a) 29 CFR 1926.850 Preparatory operations, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.851 Stairs, passageways, and ladders, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.852 Chutes, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.853 Removal of materials through floor openings, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.854 Removal of walls, masonry sections, and chimneys, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.855 Manual removal of floors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.856 Removal of walls, floors, and materials with equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.857 Storage, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.858 Removal of steel construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.859 Mechanical demolition, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.860 Selective demolition by explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(21) Subdivision U – Blasting And Use Of Explosives:

(a) 29 CFR 1926.900 General provisions, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.901 Blaster qualifications, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.902 Surface transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(d) 29 CFR 1926.903 Underground transportation of explosives, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.904 Storage of explosives and blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35311.

(f) 29 CFR 1926.905 Loading of explosives or blasting agents, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184.

(g) 29 CFR 1926.906 Initiation of explosive charges – electric blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/18/98, FR vol. 63, no. 117, p. 33469.

(h) 29 CFR 1926.907 Use of safety fuse, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.908 Use of detonating cord, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.909 Firing the blast, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.910 Inspection after blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(l) 29 CFR 1926.911 Misfires, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(m) 29 CFR 1926.912 Underwater blasting, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(n) 29 CFR 1926.913 Blasting in excavation work under compressed air, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(o) 29 CFR 1926.914 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/30/93, FR vol. 58, no. 124, p. 35184, 35311.

(22) Subdivision V – Power Transmission And Distribution:

(a) 29 CFR 1926.950 General requirements, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.951 Tools and protective equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 8/9/94, FR vol. 59, no. 152, p. 40730.

(c) 29 CFR 1926.952 Mechanical equipment, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(d) 29 CFR 1926.953 Material handling, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(e) 29 CFR 1926.954 Grounding for protection of employees, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(f) 29 CFR 1926.955 Overhead lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(g) 29 CFR 1926.956 Underground lines, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(h) 29 CFR 1926.957 Construction in energized substations, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(i) 29 CFR 1926.958 External load helicopters, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(j) 29 CFR 1926.959 Lineman's body belts, safety straps, and lanyards, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(k) 29 CFR 1926.960 Definitions applicable to this subpart, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(23) Subdivision W – Rollover Protective Structures: Overhead Protection:

(a) 29 CFR 1926.1000 Rollover protective structures (ROPS) for material handling equipment, published 2/9/79, Federal Register, vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(b) 29 CFR 1926.1001 Minimum performance criteria for rollover protective structure for designated scrapers, loaders, dozers, graders, and crawler tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940.

(c) 29 CFR 1926.1002 Protective frame (ROPS) test procedures and performance requirements for wheel-type agricultural and industrial tractors used in construction, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(d) 29 CFR 1926.1003 Overhead protection for operators of agricultural and industrial tractors, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 3/7/96, FR vol. 61, no. 46, p. 9251.

(24) Subdivision X – Stairways And Ladders:

(a) 29 CFR 1926.1050 Scope, application and definitions applicable to this Subdivision, published 11/14/90, Federal Register, vol. 55, no. 220, p. 47687; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 6/30/93, FR vol. 58, no. 124, p. 35184.

(b) 29 CFR 1926.1051 General requirements, published 11/14/90, FR vol. 55, no. 220, p. 47688.

(c) 29 CFR 1926.1052 Stairways, published 11/14/90, FR vol. 55, no. 220, p. 47688; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 2/7/91, FR vol. 56, no. 26, p. 5061; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(d) 29 CFR 1926.1053 Ladders, published 11/14/90, FR vol. 55, no. 220, p. 47689; amended 1/23/91, FR vol. 56, no. 15, p. 2585; 8/23/91, FR vol. 56, no. 164, pp. 41793-41794.

(e) 29 CFR 1926.1054 (Reserved).

(f) 29 CFR 1926.1055 (Reserved).

(g) 29 CFR 1926.1056 (Reserved).

(h) 29 CFR 1926.1057 (Reserved).

(i) 29 CFR 1926.1058 (Reserved).

(j) 29 CFR 1926.1059 (Reserved).

(k) 29 CFR 1926.1060 Training requirements, published 11/14/90, FR vol. 55, no. 220, p. 47691.

(25) Subdivision Z – Toxic And Hazardous Substances

(a) 29 CFR 1926.1101 Asbestos, published 2/9/79, FR vol. 44, p. 8577; amended 4/6/79, FR vol. 44, p. 20940; 6/20/86, FR vol. 51, p. 22612; 10/17/86, FR vol. 52, p. 17756; 7/20/88, FR vol. 53, no. 138, p. 27346; 9/14/88, FR vol. 53, p. 35627; 9/23/88, FR vol. 53, no. 185, p. 37080; 7/21/89, FR vol. 54, no. 139, p. 30705, 12/20/89, FR vol. 54, no. 243, pp. 52027-52028; 2/5/90, FR vol. 55, no. 24, p. 3792; 12/10/90, FR vol. 55, no. 237, pp. 50685-50687; 9/4/91, FR vol. 56, no. 171, pp. 43699-43700; 3/5/92, FR vol. 57, no. 44, p. 7878; 6/8/92, FR vol. 57, no. 110, pp. 24330-1; 6/30/92, FR vol. 57, no. 126, p. 29119; 8/10/94, FR vol. 59, no. 153, pp. 41131-62; 6/29/95, FR vol. 60, no. 125, pp. 33983-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, no. 165, p. 43454; 1/8/98, FR vol. 63, no. 5, p. 1298; 4/23/98, FR vol. 63, no. 78, p. 20099; 6/29/98, FR vol. 63, no. 124, p. 35137; 1/5/05, FR vol. 69, p. 1111.

(b) 29 CFR 1926.1127 Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42453-42463; amended 4/23/93, FR vol. 58, no. 77, p. 21778; 1/3/94, FR vol. 59, no. 1, p. 215; 6/20/96, FR vol. 61, p. 31427; 1/8/98, FR vol. 63, no. 5, p. 1298; 1/5/05, FR vol. 69, p. 1111.

(c) 29 CFR 1926.1152 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619; 10/20/97, FR vol. 62, p. 54382; 12/18/97, FR vol. 62, no. 243, p. 66275.

These standards are available at the Oregon Occupational Safety and Health Division, Oregon Department of Consumer and Business Services, and the **United States Government Printing Office**.

# ADMINISTRATIVE RULES

Stat. Auth.: ORS 654.025(2) & 656.726(4)  
Stats. Implemented: ORS 654.001 - 654.295  
Hist.: APD 5-1989(Temp), f. 3-31-89, ef. 5-1-89; APD 8-1989, f. & ef. 7-7-89; APD 14-1989(Temp), f. 7-20-89, ef. 8-1-89; APD 15-1989, f. & ef. 9-13-89; OSHA 3-1990(Temp), f. & cert. ef. 1-19-90; OSHA 7-1990, f. & cert. ef. 3-2-90; OSHA 8-1990, f. & cert. ef. 3-30-90; OSHA 13-1990(Temp), f. 6-28-90, ef. 8-1-90; OSHA 19-1990, f. & cert. ef. 8-31-90; OSHA 27-1990, f. 12-12-90, cert. ef. 2-1-91; OSHA 6-1991, f. 3-18-91, cert. ef. 4-15-91; OSHA 7-1991, f. & cert. ef. 4-25-91; OSHA 15-1991, f. & cert. ef. 12-13-91; OSHA 16-1991, f. 12-16-91, cert. ef. 1-1-92; OSHA 6-1992, f. & cert. ef. 5-18-92; OSHA 11-1992, f. & cert. ef. 10-9-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 16-1993, f. & cert. ef. 11-1-93; OSHA 4-1994, f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 3-1995, f. & cert. ef. 2-22-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 6-1995, f. & cert. ef. 4-18-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 2-1997, f. & cert. ef. 3-12-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1997, f. & cert. ef. 9-15-97; OSHA 3-1998, f. & cert. ef. 7-7-98; OSHA 6-1998, f. & cert. ef. 10-15-98; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 2-1999, f. & cert. ef. 4-30-99; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 3-2000, f. & cert. ef. 2-8-00; OSHA 3-2001, f. & cert. ef. 2-5-01; OSHA 3-2002, f. 4-15-02, cert. ef. 4-18-02; OSHA 5-2002, f. 6-28-02, cert. ef. 10-1-03; OSHA 6-2002, f. & cert. ef. 7-19-02; OSHA 1-2003, f. 1-30-03, cert. ef. 4-30-03; OSHA 2-2003, f. & cert. ef. 1-30-03; OSHA 7-2003, f. & cert. ef. 12-5-03; OSHA 8-2003, f. 12-30-03, cert. ef. 1-1-04; OSHA 1-2005, f. & cert. ef. 4-12-05

## 437-005-0001

### Adoption by Reference

In addition to, and not in lieu of, any other safety and health codes contained in OAR Chapter 437, the Department adopts by reference the following federal rules as printed in the Code of Federal Regulations, 29 CFR 1915, revised as of 7/1/03, and any subsequent amendments published in the Federal Register as listed below:

#### (1) Subdivision A

(a) 29 CFR 1915.1. Purpose and authority, published 4/20/82, Federal Register (FR) vol. 47, p. 16984.

(b) 29 CFR 1915.2. Scope and application, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.3. Responsibility, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.4. Definitions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.5. Incorporation by reference, published 5/24/96, FR vol. 61, no. 102, p. 26359; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 9/15/04, FR vol. 69, p. 55667.

(f) 29 CFR 1915.6. Commercial diving operations, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.7. Competent person, published 4/20/82, FR vol. 47, p. 16984; amended 6/7/89, FR vol. 54, p. 24334; 7/25/94, FR vol. 59, p. 37856.

#### (2) Subdivision B

(a) 29 CFR 1915.11. Scope, application and definitions applicable to this Subpart, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37857.

(b) 29 CFR 1915.12. Precautions before entering confined and enclosed spaces and other dangerous atmospheres, published 4/20/82, FR vol. 47, p. 16984; amended 7/1/93, FR vol. 58, no. 125, p. 35514; amended 7/25/94, FR vol. 59, p. 37858; 3/16/95, FR vol. 60, no. 51, p. 14218.

(c) 29 CFR 1915.13. Cleaning and other cold work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37859.

(d) 29 CFR 1915.14. Hot work, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.15. Maintenance of safe conditions, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37860; 3/16/95, FR vol. 60, no. 51, p. 14218; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.16. Warning signs and labels, published 4/20/82, FR vol. 47, p. 16984; amended 7/25/94, FR vol. 59, p. 37861.

Appendix A to Subpart B, published 7/25/94, FR vol. 59, p. 37816; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart B, published 7/25/94, FR vol. 59, p. 37816.

#### (3) Subdivision C

(a) 29 CFR 1915.31. Scope & application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.32. Toxic cleaning solvents, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(c) 29 CFR 1915.33. Chemical paint & preservative remover, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(d) 29 CFR 1915.34. Mechanical paint removers, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(e) 29 CFR 1915.35. Painting, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.36. Flammable liquids, published 4/20/82, FR vol. 47, p. 16984.

#### (4) Subdivision D

(a) 29 CFR 1915.51. Ventilation & protection in welding, cutting and heating, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.52. Fire prevention, published 4/20/82, FR vol. 47, p. 16984; REMOVED 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.53. Welding, cutting and heating of hollow metal containers & structure not covered by 1915.12, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.55. Gas welding & cutting, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.56. Arc welding and cutting, published 4/20/82, FR vol. 47, p. 16984.

(f) 29 CFR 1915.57. Uses of fissionable material in ship repairing and shipbuilding, published 4/20/82, FR vol. 47, p. 16984.

#### (5) Subdivision E

(a) 29 CFR 1915.71. Scaffolds or staging, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.72. Ladders, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.73. Guarding of deck openings and edges, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.74. Access to vessels, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.75. Access to and guarding of dry docks and marine railways, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.76. Access to cargo spaces and confined spaces, published 4/20/82, FR vol. 47, p. 16984.

(g) 29 CFR 1915.77. Working surfaces, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

#### (6) Subdivision F

(a) 29 CFR 1915.91. Housekeeping, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.92. Illumination, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.93. Utilities, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.94. Work in confined or isolated spaces, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.95. Ship repairing and shipbuilding work on or in the vicinity of radar and radio, published 4/20/82, FR vol. 47, p. 16984; amended 4/30/84, FR vol. 49, p. 18295; 6/7/89, FR vol. 54, p. 24334.

(f) 29 CFR 1915.96. Work in or on lifeboats, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886.

(g) 29 CFR 1915.97. Health and sanitation, published 4/20/82, FR vol. 47, p. 16984; amended 8/24/87, FR vol. 52, p. 31886; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(h) 29 CFR 1915.98. First aid, published 4/20/82, FR vol. 47, p. 16984.

(NOTE: 29 CFR 1915.99, Hazard Communication, was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(i) 29 CFR 1915.100. Retention of DOT markings, placards and labels, published 7/19/94, Federal Register, vol. 59, no. 137, p. 36700.

#### (7) Subdivision G

(a) 29 CFR 1915.111. Inspection, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.112. Ropes, chains and slings, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.113. Shackles and hooks, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562.

(d) 29 CFR 1915.114. Chain falls and pull-lifts, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.115. Hoisting and hauling equipment, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(f) 29 CFR 1915.116. Use of gear, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.



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(g) 29 CFR 1915.117. Qualifications of operators, published 4/20/82, FR vol. 47, p. 16984.

(h) 29 CFR 1915.118. Tables, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(8) Subdivision H

(a) 29 CFR 1915.131. General precautions, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.132. Portable electric tools, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.133. Hand tools, published 4/20/82, FR vol. 47, p. 16984.

(d) 29 CFR 1915.134. Abrasive wheels, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(e) 29 CFR 1915.135. Powder actuated fastening tools, published 4/20/82, FR vol. 47, p. 16984; 5/24/96, FR vol. 61, no. 102, p. 26351.

(f) 29 CFR 1915.136. Internal combustion engines other than ship's equipment, published 4/20/82, FR vol. 47, p. 16984.

(9) Subdivision I

(a) 29 CFR 1915.151. Scope, application and definitions, published 5/24/96, FR vol. 61, no. 102, p. 26352.

(b) 29 CFR 1915.152. General requirements, published 5/24/96, FR vol. 61, no. 102, p. 26352; 6/13/96, FR vol. 61, p. 29957; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.153. Eye and face protection, published 5/24/96, FR vol. 61, no. 102, p. 26353.

(d) 29 CFR 1915.154. Respiratory protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(e) 29 CFR 1915.155. Head protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(f) 29 CFR 1915.156. Foot protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(g) 29 CFR 1915.157. Hand and body protection, published 5/24/96, FR vol. 61, no. 102, p. 26354.

(h) 29 CFR 1915.158. Lifesaving equipment, published 5/24/96, FR vol. 61, no. 102, p. 26354; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(i) 29 CFR 1915.159. Personal fall arrest systems (PFAS), published 5/24/96, FR vol. 61, no. 102, p. 26355; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(j) 29 CFR 1915.160. Positioning device systems, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix A to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26356; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix B to Subpart I, published 5/24/96, FR vol. 61, no. 102, p. 26358; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(10) Subdivision J

(a) 29 CFR 1915.161. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.162. Ship's boilers, published 4/20/82, FR vol. 47, p. 16984.

(c) 29 CFR 1915.163. Ship's piping systems, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(d) 29 CFR 1915.164. Ship's propulsion machinery, published 4/20/82, FR vol. 47, p. 16984.

(e) 29 CFR 1915.165. Ship's decking machinery, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(11) Subdivision K

(a) 29 CFR 1915.171. Scope and application of subdivision, published 4/20/82, FR vol. 47, p. 16984.

(b) 29 CFR 1915.172. Portable air receiver and other unfired pressure vessels, published 4/20/82, FR vol. 47, p. 16984; amended 9/29/86, FR vol. 51, p. 34562; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(c) 29 CFR 1915.173. Drums and containers, published 4/20/82, FR vol. 47, p. 16984.

(12) Subdivision L

(a) 29 CFR 1915.181. Electrical circuits and distribution boards, published 4/20/82, FR vol. 47, p. 16984; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(13) Subdivisions M-O (Reserved)

(14) Subdivision P

(a) 29 CFR 1915.501. General provisions, published 9/15/04, FR vol. 69, p. 55667.

(b) 29 CFR 1915.502. Fire safety plan, published 9/15/04, FR vol. 69, p. 55667.

(c) 29 CFR 1915.503. Precautions for hot work, published 9/15/04, FR vol. 69, p. 55667.

(d) 29 CFR 1915.504. Fire watches, published 9/15/04, FR vol. 69, p. 55667.

(e) 29 CFR 1915.505. Fire response, published 9/15/04, FR vol. 69, p. 55667.

(f) 29 CFR 1915.506. Hazards of fixed extinguishing systems on board vessels and vessel sections, published 9/15/04, FR vol. 69, p. 55667.

(g) 29 CFR 1915.507. Land-side fire protection systems, published 9/15/04, FR vol. 69, p. 55667.

(h) 29 CFR 1915.508. Training, published 9/15/04, FR vol. 69, p. 55667.

(i) 29 CFR 1915.509. Definitions applicable to this subpart, published 9/15/04, FR vol. 69, p. 55667.

Appendix A to Subpart P, published 9/15/04, FR vol. 69, p. 55667.

(15) Subdivision Q-Y (Reserved)

(16) Subdivision Z

(a) 29 CFR 1915.1000. Air Contaminants, published 7/1/93, FR vol. 58, no. 125, p. 35514; 11/4/96, FR vol. 61, p. 56856; 1/10/97, FR vol. 62, p. 1619; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

(b) 29 CFR 1915.1001. Asbestos, published 7/1/93, FR vol. 58, no. 125, p. 35514; 8/10/94, FR vol. 59, no. 153, p. 41080; 6/29/95, FR vol. 60, no. 125, pp. 33974-34002; 7/13/95, FR vol. 60, p. 36043; 9/29/95, FR vol. 60, p. 50411; 8/23/96, FR vol. 61, p. 43454; 6/29/98, FR vol. 63, no. 124, p. 35137; amended 7/3/02, FR vol. 67, no. 128, p. 44541; 1/5/05, FR vol. 69, p. 1111.

Appendix A to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix B to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix C to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 7/3/02, FR vol. 67, no. 128, p. 44541.

Appendix D to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix E to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix F to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix G to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix H to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix I to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964.

Appendix J to 1915.1001, published 8/10/94, FR vol. 59, p. 40964.

Appendix K to 1915.1001, published 8/10/94, FR vol. 59, p. 40964; amended 6/29/95, FR vol. 60, p. 33972.

Appendix L to 1915.1001, published 7/1/93, FR vol. 58, p. 35553; amended 8/10/94, FR vol. 59, p. 40964; amended 2/21/95, FR vol. 60, p. 9624; amended 6/28/95, FR vol. 60, p. 33343; amended 6/29/95, FR vol. 60, p. 33972; amended 7/13/95, FR vol. 60, p. 36043; amended 9/29/95, FR vol. 60, p. 50411; amended 2/13/96, FR vol. 61, p. 5507; amended 8/23/96, FR vol. 61, p. 43454.

(c) 29 CFR 1915.1002. Coal tar pitch volatiles; interpretation of term, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(d) 29 CFR 1915.1003. 13 Carcinogens (4-Nitrobiphenyl, etc.), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(e) 29 CFR 1915.1004. alpha-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(f) 29 CFR 1915.1005. (Reserved)

(g) 29 CFR 1915.1006. Methyl chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(h) 29 CFR 1915.1007. 3,3'-Dichlorobenzidene (and its salts), published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

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(i) 29 CFR 1915.1008. bis-Chloromethyl ether, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(j) 29 CFR 1915.1009. beta-Naphthylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(k) 29 CFR 1915.1010. Benzidine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(l) 29 CFR 1915.1011. 4-Aminodiphenyl, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(m) 29 CFR 1915.1012. Ethyleneimine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(n) 29 CFR 1915.1013. beta-Propiolactone, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(o) 29 CFR 1915.1014. 2-Acetylaminofluorene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(p) 29 CFR 1915.1015. 4-Dimethylaminoazobenzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(q) 29 CFR 1915.1016. N-Nitrosodimethylamine, published 7/1/93, FR vol. 58, no. 125, p. 35514; 3/7/96, FR vol. 61, no. 46, p. 9245; 6/20/96, FR vol. 61, p. 31427.

(r) 29 CFR 1915.1017. Vinyl chloride, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(s) 29 CFR 1915.1018. Inorganic arsenic, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(t) 29 CFR 1915.1020 Access to employee exposure and medical records, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(u) 29 CFR 1915.1025. Lead, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(v) 29 CFR 1915.1027. Cadmium, published 9/14/92, FR vol. 57, no. 178, pp. 42388-42452; amended 4/23/93, FR vol. 58, no. 177, p. 21778; 1/3/94, FR vol. 59, no. 1, pp. 146-215; 6/20/96, FR vol. 61, p. 31427.

(w) 29 CFR 1915.1028. Benzene, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(x) 29 CFR 1915.1030. Bloodborne pathogens, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(y) 29 CFR 1915.1044. 1,2 dibromo-3-chloropropane, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(z) 29 CFR 1915.1045. Acrylonitrile, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(aa) 29 CFR 1915.1047. Ethylene oxide, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(bb) 29 CFR 1915.1048. Formaldehyde, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(cc) 29 CFR 1915.1050. Methylenedianiline, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

(dd) 29 CFR 1915.1052 Methylene Chloride, published 1/10/97, Federal Register, vol. 62, no. 7, p. 1619.

(ee) 29 CFR 1915.1120 Access to employee exposure and medical records has been redesignated to §1915.1020.

(Note: 29 CFR 1915.99, Hazard Communication was redesignated as 1915.1200 on 7/1/93, FR vol. 58, no. 125, p. 35514.)

(ff) 29 CFR 1915.1200. Hazard communication, published 9/24/87, FR vol. 52, p. 31886; amended 4/27/88, FR vol. 53, p. 15035; 2/15/89, FR vol. 54, p. 6888; 6/7/89, FR vol. 54, p. 24334; 7/1/93, FR vol. 58, no. 125, p. 35514; 2/9/94, FR vol. 59, no. 27, pp. 6126-6184; 4/13/94, FR vol. 59, no. 71, pp. 17478-17479; 12/22/94, FR vol. 59, no. 245, p. 65947; 6/20/96, FR vol. 61, p. 31427.

(gg) 29 CFR 1915.1450. Occupational exposure to hazardous chemicals in laboratories, published 7/1/93, FR vol. 58, no. 125, p. 35514; 6/20/96, FR vol. 61, p. 31427.

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

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

Stats. Implemented: ORS 654.001 - 654.295

Hist.: OSHA 10-1992, f. 9-24-92, cert. ef. 11-1-92; OSHA 1-1993, f. & cert. ef. 1-22-93; OSHA 19-1993, f. & cert. ef. 12-29-93; OSHA 4-1994 f. & cert. ef. 8-4-94; OSHA 1-1995, f. & cert. ef. 1-19-95; OSHA 2-1995, f. & cert. ef. 1-25-95; OSHA 4-1995, f. & cert. ef. 3-29-95; OSHA 5-1995, f. & cert. ef. 4-6-95; OSHA 8-1995, f. & cert. ef. 8-25-95; OSHA 5-1996, f. & cert. ef. 11-29-96; OSHA 6-1996, f. & cert. ef. 11-29-96; OSHA 3-1997, f. & cert. ef. 3-28-97; OSHA 4-1997, f. & cert. ef. 4-2-97; OSHA 6-1997, f. & cert. ef. 5-2-97; OSHA 7-1998, f. & cert. ef. 12-18-98; OSHA 6-1999, f. & cert. ef. 5-26-99; OSHA 4-2001, f. & cert.

ef. 2-5-01; OSHA 4-2003, f. & cert. ef. 5-6-03; OSHA 8-2004, f. & cert. ef. 12-30-04; OSHA 1-2005, f. & cert. ef. 4-12-05

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

**Adm. Order No.:** WCD 2-2005

**Filed with Sec. of State:** 3-24-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 436-009-0004, 436-009-0008, 436-009-0010, 436-009-0015, 436-009-0020, 436-009-0030, 436-009-0040, 436-009-0070, 436-009-0080, 436-009-0090, 436-010-0005, 436-010-0008, 436-010-0200, 436-010-0210, 436-010-0220, 436-010-0230, 436-010-0240, 436-010-0250, 436-010-0260, 436-010-0265, 436-010-0270, 436-010-0275, 436-010-0280, 436-010-0290, 436-010-0300, 436-010-0330, 436-010-0340, 436-070-0001, 436-070-0002, 436-070-0003, 436-070-0005, 436-070-0008, 436-070-0010, 436-070-0020, 436-070-0040, 436-070-0050, 436-085-0001, 436-085-0002, 436-085-0003, 436-085-0005, 436-085-0008, 436-085-0025, 436-085-0030, 436-085-0035, 436-085-0060

**Rules Repealed:** 436-070-0060, 436-085-0006, 436-085-0020, 436-085-0065, 436-085-0070

**Subject:** OAR 436-009, the Oregon Medical Fee and Payment Rules have been amended to:

- Adopt by reference updated medical resources:
  - Centers for Medicare & Medicaid Services 2005 Medicare Resource-Based Relative Value Scale Addendum B "Relative Value Units (RVUs) and Related Information" except the "status indicators," and Addendum C "Codes with Interim RVUs," 69 Federal Register No. 219, November 15, 2004 as the fee schedule for payment of medical service providers except as otherwise provided in the rules;
  - American Society of Anesthesiologists (ASA), Relative Value Guide 2005 as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in the rules for anesthesia codes not found in the Federal Register; and
  - The Physicians' Current Procedural Terminology (CPT® 2005), Fourth Edition Revised, 2004 for billing by medical providers;
- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted;
- Provide for the determination of an adjusted cost/charge ratio for a newly established hospital based on the ratios of similar hospitals, when there is insufficient data available specific to the new hospital;
- Increase maximum fees paid to physician assistants and nurse practitioners from 80 to 85% of a physician's allowable fee for a comparable service;
- Require insurers to pay medical providers for bills they have received on or before a DCS, but which were not included in the DCS or were not paid according to the terms of the DCS. Payment must be made within 45 days of the insurer's knowledge of the unpaid bill;
- Modify "no show" notice from 24 to 48 hours for medical arbiter examinations;
- Increase by 10% the relative value units for physical capacity examinations and work capacity evaluations; and
- Replace references to Vioxx®, Celebrex®, and Bextra® with "COX-2 inhibitors" as being limited to a five-day initial supply without clinical justification.

**OAR 436-010, Medical Services has been amended to:**

- Provide that if a party submits a request for administrative review without the required information, the review may not begin until the information is submitted.

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- Provide that, for the purpose of determining attorney fees, the threshold of extraordinary circumstances is not met by merely exceeding 8 hours or exceeding a benefit amount of \$6000.

- Clarify that, in order to provide compensable medical services under ORS 656, a nurse practitioner licensed in Oregon must be assigned an authorized nurse practitioner number by the director;

- Clarify communication and notification requirements regarding elective surgery;

- Require insurers to give written notice, with specified time frames, of when a worker is no longer subject to a managed care organization (MCO), to the worker, the worker's representative, all medical service providers, and the MCO, and that such notice advise the worker how the worker may receive medical services for compensable injuries after the worker is no longer enrolled; and

- Clarify that authorized nurse practitioners must refer workers for closing examinations to medical providers who are eligible to be attending physicians only if there is a reasonable expectation of permanent impairment, and if the referral is made, that the referral must occur within five days of the examination in which the worker is declared medically stationary.

### **OAR 436-070, Workers' Benefit Fund Assessment has been amended to:**

- Clarify that employers that elect to provide workers' compensation coverage for otherwise non-subject workers are then subject to Workers' Benefit Fund assessments;

- Establish a process for the department to notify employers that filings are late or inaccurate, and to estimate assessments due under specific conditions;

- Provide that employers or the director may initiate resolution of reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years, however, no time limitation applies to cases involving fraud;

- Require employers to maintain payroll and employment records that reflect the total hours worked by all employees for the current calendar year plus three prior calendar years;

- Provide that for an overpayment of less than \$20, the director will refund the overpayment only upon written request; and

- Repeal 436-070-0060, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure.

### **OAR 436-085, Premium Assessment has been amended to:**

- Provide that the director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000;

- Provide that the director may waive an insurer's reporting liability after confirming that the insurer has no earned premium for at least four consecutive quarters;

- Provide that the director may waive a self-insured employer's reporting liability after confirming that the employer has had no Oregon payroll for four consecutive quarters;

- Provide that the self-insurer's premium reporting method remains in effect until the employer timely elects to change the method;

- Provide for the assessment of civil penalties up to the statutory maximum of \$2,000 rather than the \$1,000 maximum stated in the current rule;

- Repeal 436-085-0020, "Premium Assessment Rates; Method and Manner of Determining," because rates are now established under OAR 440-045;

- Repeal 436-085-0065, "Issuance/Service of Penalty Orders," because service of orders is sufficiently described in the Oregon Rules of Civil Procedure; and

- Repeal 436-085-0070, "Suspension and Revocation of Authorization to Issue Guaranty Contracts," because this rule duplicates provisions in OAR 436-050-0015.

Direct questions to: Fred Bruyns, Rules Coordinator; phone 503-947-7717; fax 503-947-7581; or e-mail [fred.h.bruyns@state.or.us](mailto:fred.h.bruyns@state.or.us).

Rules are available on the internet: <http://wcd.oregon.gov/policy/rules/rules.html>

For a copy of the rules, contact Publications at 503-947-7627, Fax 503-947-7630.

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

### **436-009-0004**

#### **Adoption of Standards**

(1) The director adopts, by reference, the Centers for Medicare & Medicaid Services (CMS) 2005 Medicare Resource-Based Relative Value Scale (RBRVS) Addendum B "Relative Value Units (RVUs) and Related Information" except the "status indicators," and Addendum C "Codes with Interim RVUs," 69 Federal Register No. 219, November 15, 2004 as the fee schedule for payment of medical service providers except as otherwise provided in these rules.

(2) The director adopts, by reference, the *American Society of Anesthesiologists (ASA), Relative Value Guide 2005* as a supplementary fee schedule for payment of anesthesia service providers except as otherwise provided in these rules for those anesthesia codes not found in the Federal Register.

(3) The director adopts The Physicians' *Current Procedural Terminology (CPT® 2005)*, Fourth Edition Revised, 2004 for billing by medical providers except as otherwise provided in these rules. The guidelines are adopted as the basis for determining level of service.

(4) Specific provisions contained in OAR chapter 436, divisions 009, 010, and 015 shall control over any conflicting provision in Addenda B and C, 69 Federal Register No. 219, November 15, 2004, ASA Relative Value Guide 2005, or CPT® 2005.

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

Stat. Auth.: ORS 656.248 & 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02, cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04, cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### **436-009-0008**

#### **Administrative Review and Contested Cases**

Administrative review before the director:

(1)(a) The director has exclusive jurisdiction to resolve all disputes concerning medical fees and non-payment of compensable medical bills. A party need not be represented to participate in the administrative review before the director except as provided in ORS chapter 183 and OAR chapter 436, division 001.

(b) Any party may request the director provide voluntary mediation after a request for administrative review or contested case hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement shall be reduced to writing and approved by the director. If the dispute does not resolve through mediation, a director's order shall be issued.

(2) The medical provider, injured worker, or insurer may request review by the director in the event of a dispute about either the amount of a fee or non-payment of bills for medical services on a compensable injury. The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all MCO enrolled claims where a party disagrees with an action or decision of the MCO, the aggrieved party shall first apply to the MCO for dispute resolution within 30 days pursuant to OAR 436-015-0110. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 30 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. Administrative review by the director must be requested within 60 days of receipt of the MCO's final decision under the MCO's dispute resolution process. If a party has been denied access to the MCO dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving fee and billing disputes, the insurer shall advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, or for disputes which do not involve an action or decision of the MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written



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notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due pursuant to OAR 436-009-0030. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR chapter 438, division 005.

(c) The director may, on the director's own motion, initiate a medical services review at any time.

(d) When there is a formal denial of the underlying condition or a denial of the causal relationship between the medical service and the accepted condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.

(3) Parties must submit requests for administrative review to the director in the form and format prescribed by the director. When an insurer or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may contact the director for help in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number.

(b) Specify the issues in dispute and the relief sought.

(c) Provide the specific dates of the unpaid disputed treatment or services.

(d) If the request for review is submitted by either the insurer or medical provider, it shall state specific code(s) of service(s) in dispute and include sufficient documentation to support the review request, including but not limited to copies of original HCFA/CMS bills, chart notes, bill analyses, operative reports, any correspondence between the parties regarding the dispute, and any other documentation necessary to evaluate the dispute. The insurer or medical provider requesting review shall certify that the involved parties have been provided a copy of the request for review and attached supporting documentation and, if known, that there is no issue of causation or compensability of the underlying claim or condition.

(4) The division shall investigate the matter upon which review was requested.

(a) The investigation may include, but shall not be limited to, request for and review of pertinent medical treatment and payment records, interviews with the parties to the dispute, or consultation with an appropriate committee of the medical provider's peers.

(b) Upon receipt of a written request for additional information, the party shall have 14 days to respond.

(c) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

(B) The agreement was based on misrepresentation;

(C) Implementation of the agreement is not feasible because of unforeseen circumstances; or

(D) All parties request revision or reinstatement.

(d) Pursuant to section (6) of this rule, within 30 days of the administrative order, any party may appeal to a contested case before the Office of Administrative Hearings.

(5) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party may also request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new information which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed to the director before the administrative order becomes final.

(6) Contested cases before the Office of Administrative Hearings: Pursuant to ORS 183.310 through 183.690, as modified by OAR chapter 436, division 001 and ORS 656.704(2), any party that disagrees with an action or order of the director pursuant to these rules, may request a contested case hearing. For purposes of these rules, "contested case" has the meaning prescribed in ORS 183.310(2) and OAR chapter 436 division 001. A party may appeal to the director as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds

upon which the order or other action of the director is contested and include a copy of the order being appealed.

(b) The appeal must be mailed within 30 days of the mailing date of the order or notice of action being appealed.

(7) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director pursuant to ORS 656.254, or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as described in OAR 436-010-0008(15).

(8) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (7) of this rule, pursuant to these rules, may request administrative review by the director. Any party may request administrative review as follows:

(a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.

(b) The division may require and allow such input and information as it deems appropriate to complete the review.

(c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (6) of this rule.

Stat. Auth.: ORS 656.704 & 656.726(4)

Stats. Implemented: ORS 656.704

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-89; (Former sections (3), (4), & (7) Renumbered to 436-010-0130); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0110; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0010

### General Requirements for Medical Billings

(1) Only treatment that falls within the scope and field of the practitioner's license to practice will be paid under a worker's compensation claim.

(2) All medical providers shall submit bills to the insurer or managed care organization, as provided by their contract for medical services, on a current UB92 or HCFA/CMS 1500 form, except for:

(a) Dental billings which shall be submitted on American Dental Association dental claim forms;

(b) Pharmacy billings, which shall be submitted on the most current NCPDP form;

(c) EDI transmissions of medical bills pursuant to OAR 436-009-0030(3)(c). Computer-generated reproductions of these forms may also be used. Billings shall include the worker's full name, date of injury, the employer's name and, if available, the insurer's claim number.

(3)(a) All original medical provider billings shall be accompanied by legible chart notes documenting services which have been billed, and identifying the person performing the service and license number of person providing the service. Medical doctors are not required to provide their medical license number if they are already providing other identification such as a federal tax reporting identification number, or Unique Provider Identification Number (UPIN).

(b) When processing billings via EDI, the insurer may waive the requirement that billings be accompanied by chart notes. The insurer remains responsible for payment of only compensable medical services. The medical provider may submit their chart notes separately or at regular intervals as agreed with the insurer.

(4) Codes listed in CPT® 2005 or Oregon Specific Codes (OSC) shall be used when billing medical services. All billings shall be fully itemized and include ICD-9-CM codes. Services shall be identified by the code numbers and descriptions provided in these rules. A "zz" qualifier shall be used when billing electronically for services that use Oregon Specific Codes.

(a) If there is no specific code for the medical service, the medical provider shall use the appropriate unlisted code at the end of each medical service section of CPT® 2005 and provide a description of the service provided.

(b) Any service not identifiable with a code number shall be adequately described by report.

(5) Billings for treatment shall be rendered at reasonable intervals not to exceed 60 days following treatment. Late billings may be subject to discounts, not to exceed 10 percent for each 30 day period or fraction thereof,

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beyond 60 days, provided the medical provider has notice or knowledge of the responsible workers' compensation insurer or processing agent.

(6) Rebillings shall indicate that the charges have been previously billed.

(7) The medical provider shall bill their usual and customary fee charged to the general public. The submission of the bill by the medical provider shall serve as a warrant that the fee submitted is the usual fee of the medical provider for the services rendered. The department shall have the right to require documentation from the medical provider establishing that the fee under question is the medical provider's usual fee charged to the general public. For purposes of this rule, "general public" means any person who receives medical services, except those persons who receive medical services subject to specific billing arrangements allowed under the law which require providers to bill other than their usual fee.

(8) Medical providers shall not submit false or fraudulent billings. As used in this section, "false or fraudulent" shall mean an intentional deception or misrepresentation issued with the knowledge that the deception could result in unauthorized benefit to the provider or some other person. The medical provider shall not bill for services not provided.

(9) When a worker with two or more separate compensable claims receives treatment for more than one injury or illness costs shall be divided among the injuries or illnesses, irrespective of whether there is more than one insurer.

(10) Workers may make a written request to a medical provider to receive copies of medical billings. Upon receipt of a request, the provider may furnish the worker a copy during the next billing cycle, but in no event later than 30 days following receipt of the request. Thereafter, worker copies shall be furnished during the regular billing cycle.

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

Stat. Auth.: ORS 656.245, 656.252 & ORS 656.254

Stats. Implemented: ORS 656.245, 656.252 & ORS 656.254

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0015

### Limitations on Medical Billings

(1) An injured worker shall not be liable to pay for any medical service related to an accepted compensable injury or illness or any amount reduced by the insurer pursuant to OAR chapter 436. A medical provider shall not attempt to collect payment for any medical service from an injured worker, except as follows:

(a) When the injured worker seeks treatment for conditions not related to the accepted compensable injury or illness;

(b) When the injured worker seeks treatment that has not been prescribed by the attending physician or authorized nurse practitioner, or a specialist physician upon referral of the attending physician or authorized nurse practitioner. This would include, but not be limited to, ongoing treatment by non-attending physicians in excess of the 30 day/12 visit period or by nurse practitioners in excess of the 90 day period, as set forth in ORS 656.245 and OAR 436-010-0210;

(c) When the injured worker seeks palliative care that is either not compensable or not authorized by the insurer or the director pursuant to OAR 436-010-0290, after the worker has been provided notice that the worker is medically stationary;

(d) When the injured worker seeks treatment outside the provisions of a governing MCO contract after insurer notification in accordance with OAR 436-010-0275; or

(e) When the injured worker seeks treatment after being notified that such treatment has been determined to be unscientific, unproven, outmoded, or experimental.

(2) A medical provider may not charge any fee for completing a medical report form required by the director under this chapter or for providing chart notes required by OAR 436-009-0010(3) of this rule.

(3) The preparation of a written treatment plan and the supplying of progress notes are integral parts of the fee for the medical service.

(4) No fee shall be paid for the completion of a work release form or completion of a PCE form where no tests are performed.

(5) No fee is payable for a missed appointment except a closing examination or an appointment arranged by the insurer or for a Worker Requested Medical Examination. Except as provided in OAR 436-009-0070 (9)(d) and (10)(d), when the worker fails to appear without providing the medical provider at least 24 hours notice, the medical provider shall be paid at 50 percent of the examination or testing fee.

(6) Pursuant to ORS 656.245 (3), the director has excluded from compensability the following medical treatment. While these services may be provided, medical providers shall not be paid for the services or for treatment of side effects.

(a) DMSO, except for treatment of compensable interstitial cystitis;

(b) Intradiscal electrothermal therapy (IDET);

(c) Surface EMG (electromyography) tests;

(d) Rolifing;

(e) Prolotherapy; and

(f) Thermography.

(7) Only one office visit code may be used for each visit except for those code numbers relating specifically to additional time.

(8) Mechanical muscle testing may be paid a maximum of three times during a treatment program when prescribed and approved by the attending physician or authorized nurse practitioner: once near the beginning, once near the middle, and once near the end of the treatment program. Additional mechanical muscle testing shall be paid for only when authorized in writing by the insurer prior to the testing. The fee for mechanical muscle testing includes a copy of the computer printout from the machine, written interpretation of the results, and documentation of time spent with the patient.

(9)(a) When a physician or authorized nurse practitioner provides services in hospital emergency or outpatient departments which are similar to services that could have been provided in the physician's or authorized nurse practitioner's office, such services shall be identified by CPT® codes and paid according to the fee schedule.

(b) When a worker is seen initially in an emergency department and is then admitted to the hospital for inpatient treatment, the services provided immediately prior to admission shall be considered part of the inpatient treatment. Diagnostic testing done prior to inpatient treatment shall be considered part of the hospital services subject to the hospital fee schedule.

(10) Physician assistant, authorized nurse practitioner, or out-of-state nurse practitioner fees shall be paid at the rate of 85 percent of a physician's allowable fee for a comparable service. The bills for services by these providers must be marked with modifier "81." Chart notes shall document when medical services have been provided by a physician assistant or nurse practitioner.

(11) Except as otherwise provided in OAR 436-009-0070, when a medical provider is asked to prepare a report, or review records or reports prepared by another medical provider, insurance carrier or their representative, the medical provider should bill for their report or review of the records utilizing CPT® Codes such as 99080. Refer to specific code definitions in the CPT® for other applicable codes. The billing should include the actual time spent reviewing the records or reports.

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

Stat. Auth.: ORS 656.245, 656.252 & 656.254

Stats. Implemented: ORS 656.245, 656.252 & 656.254

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 8-2001, f. 9-13-01, cert. ef. 9-17-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0020

### Hospital Fees

(1) Hospital inpatient charges billed to insurers shall include ICD-9-CM diagnostic and procedural codes. Unless otherwise provided for by a governing MCO contract, insurers shall pay hospitals for inpatient services using the current adjusted cost/charge ratio (see Bulletin 290). For purposes of this rule, hospital inpatient services include, but are not limited to, those bills coded "111" through "118" in space #4 on the UB92 billing form. The audited bill shall be multiplied by the hospital's adjusted cost/charge ratio to determine the allowable payment.

(2) Hospital outpatient charges billed to insurers shall include ICD-9-CM diagnostic and procedural codes, CPT® codes, HCPCS codes, and National Drug Codes (NDC), where applicable. Unless otherwise provided for by a governing MCO contract, insurers shall pay hospitals for outpatient services according to the following: the insurer shall first separate out and pay charges for services covered under the CPT® and RBRVS. These charges should be subtracted from the total bill and the adjusted cost/charge ratio should be applied only to the balance. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the non-facility total column. All other charges billed using both the hospital name and tax identification number will be paid as if provided by the hospital.

(3) Each hospital's HCFA/CMS 2552 form and financial statement shall be the basis for determining its adjusted cost/charge ratio. If a current

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2552 is not available, then financial statements may be used to develop estimated data. If the adjusted cost/charge ratio is determined from estimated data, the hospital will receive the lower ratio of (1) the hospital's last published cost/charge ratio or, (2) the hospital's cost/charge ratio based on estimated data.

(a) The basic cost/charge ratio shall be developed by dividing the total net expenses for allocation shown on Worksheet A, and as modified in subsection (b), by the total patient revenues from Worksheet G-2.

(b) The net expenses for allocation derived from Worksheet A shall be modified by adding, from Worksheet A-8, the expenses for:

(A) Provider-Based physician adjustment;

(B) Patient expenses such as telephone, television, radio service and other expenses determined by the department to be patient-related expenses; and

(C) Expenses identified as for physician recruitment.

(c) The basic cost/charge ratio shall be further modified to allow a factor for bad debt and the charity care provided by each hospital. The adjustment for bad debt and charity care is calculated in two steps. Step one: Add the dollar amount for net bad debt to the dollar amount for charity care. Divide this sum by the dollar amount of the total patient revenues, from Worksheet G-2, to compute the bad debt and charity ratio. Step two: Multiply the bad debt and charity ratio by the basic cost/charge ratio calculated in (3)(a) to obtain the factor for bad debt and charity care.

(d) The basic cost/charge ratio shall be further modified to allow an adequate return on assets. The director will determine a historic real growth rate in the gross fixed assets of Oregon hospitals from the audited financial statements. This real growth rate, and the projected growth in a national fixed weight price deflator will be added together to form a growth factor. This growth factor will be multiplied by the total fund balance, from Worksheet G of each hospital's HCFA/CMS 2552 to produce a fund balance amount. The fund balance amount is then divided by the total patient revenues from Worksheet G-2, to compute the fund balance factor.

(e) The factors resulting from subsections (3)(c) and (3)(d) of this rule will be added to the ratio calculated in subsection (3)(a) of this rule to obtain the adjusted cost/charge ratio. In no event will the adjusted cost/charge ratio exceed 1.00.

(f) The adjusted cost/charge ratio for each hospital will be revised annually, at a time based on their fiscal year, as described by bulletin. Each hospital shall submit a copy of their HCFA/CMS 2552 and financial statements each year within 150 days of the end of their fiscal year to the Information Management Division, Department of Consumer and Business Services. The adjusted cost/charge ratio schedule will be published by bulletin twice yearly, to be effective for the six-month period beginning April 1, and to be effective for the six-month period beginning October 1.

(g) For those newly formed or established hospitals for which no HCFA/CMS 2552 has been filed or for which there is insufficient data, or for those hospitals that do not file Worksheet G-2 with the submission of their HCFA/CMS 2552, the division shall determine an adjusted cost/charge ratio for the hospital based upon the adjusted cost/charge ratios of a group of hospitals of similar size and/or geographic location.

(h) If the financial circumstances of a hospital unexpectedly and/or dramatically change, the division may revise the hospital's adjusted cost/charge ratio to allow equitable payment.

(i) If audit of a hospital's HCFA/CMS 2552 by the CMS produces significantly different data from that obtained from the initial filing, the division may revise the hospital's adjusted cost/charge ratio to reflect the data developed subsequent to the initial calculation.

(j) Notwithstanding subsections (c) through (i) of this section, the cost/charge ratio shall be 1.000 for out-of-state hospitals, unless a lower rate is negotiated between the insurer and the hospital.

(k) Notwithstanding section (1) and (2) of this rule, the director may exclude rural hospitals from imposition of the adjusted cost/charge ratio based upon a determination of economic necessity. The rural hospital exclusion will be based on the financial health of the hospital reflected by its financial flexibility index, as originally developed by Dr. William Cleverley. All rural hospitals having a financial flexibility index at or below the median for hospitals nationwide with a bond rating of BBB+, BBB, or BBB- will qualify for the rural exemption. Rural hospitals that are designated as critical access hospitals under the Oregon Medicare Rural Hospital Flexibility Program are automatically exempt from imposition of the adjusted cost/charge ratio.

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

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

Stat. Auth.: ORS 656.726(4), 656.012, 656.236(5), 656.327(2)

Stats. Implemented: ORS 656.248, 656.252, 656.256 & OL 1991, Ch. 771, Sect. 2

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84;

WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0701, 5-1-85;

WCD 3-1985(Admin)(Temp), f. & ef. 9-4-85; WCD 4-1985(Admin)(Temp), f. & ef. 9-11-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1986(Admin)(Temp), f. 2-5-86, ef. 2-6-86; WCD 2-1986(Admin), f. 3-10-86, ef. 3-17-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 15-1990, f. & cert. ef. 8-7-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0090; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; Administrative correction 6-18-97; WCD 8-1997(Temp), f. & cert. ef. 7-9-97; WCD 16-1997, f. & cert. ef. 12-15-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0030

### Insurer's Duties and Responsibilities

(1) The insurer shall pay for medical services related to a compensable injury claim, except as provided by OAR 436-060-0055.

(2) The insurer, or its designated agent, may request from the medical provider, any and all necessary records needed to review accuracy of billings. The medical provider may charge an appropriate fee for copying documents in accordance with OAR 436-009-0070(1). If the evaluation of the records must be conducted on-site, the provider shall furnish a reasonable work-site for the records to be reviewed at no cost. These records shall be provided or made available for review within 14 days of a request.

(3) Insurers shall date stamp medical bills and reports upon receipt and pay bills for medical services on accepted claims within 45 days of receipt of the bill, if the billing is submitted in proper form in accordance with OAR 436-009-0010(2) through (4) and clearly shows that the treatment is related to the accepted compensable injury or disease. Billings not submitted in the proper form must be returned or a request for chart notes on EDI billings must be made, to the medical provider within 20 days of receipt of the bill. The number of days between the date the insurer returns the billing or requests for chart notes from the provider and the date the insurer receives the corrected billing or chart notes, shall not apply toward the 45 days within which the insurer is required to make payment.

(a) The insurer shall retain a copy of each medical provider's bill received by the insurer or shall be able to reproduce upon request data relevant to the bill, including but not limited to, provider name, date of service, date the insurer received the bill, type of service, billed amount, coding submitted by the medical provider as described in OAR 436-009-0010(2) and insurer action, for any fee reduction other than a fee schedule reduction. This includes all bills submitted to the insurer even when the insurer determines no payment is due.

(b) Any service billed with a code number commanding a higher fee than the services provided shall be returned to the medical provider for correction or paid at the value of the service provided.

(c) When a medical provider renders a bill via EDI, it shall be considered "mailed" in accordance with OAR 436-010-0005.

(4) Payment of medical bills is required within 14 days of any action causing the service to be payable, or within 45 days of the insurer's receipt of the bill, whichever is later.

(5) Failure to pay for medical services timely may render insurer liable to pay a reasonable monthly service charge for the period payment was delayed, if the provider customarily levies such a service charge to the general public.

(6) When there is a dispute over the amount of a bill or the appropriateness of services rendered, the insurer shall, within 45 days, pay the undisputed portion of the bill and at the same time provide specific reasons for non-payment or reduction of each medical service code. Resolution of billing disputes shall be made in accordance with OAR 436-009-0008, 436-010-0008 and 436-015.

(7) Bills for medical services rendered at the request of the insurer and bills for information submitted at the request of the insurer, which are in addition to those required in OAR 436-010-0240 must be paid for within 45 days of receipt by the insurer even if the claim is denied.

(8) The insurer shall establish an audit program for bills for all medical services to determine that the bill reflects the services provided, that appropriate prescriptions and treatment plans are completed in a timely manner, that payments do not exceed the maximum fees adopted by the director, and that bills are submitted in a timely manner. The audit shall be continuous and shall include no fewer than 10 percent of medical bills. The insurer shall provide upon request documentation establishing that the insurer is conducting a continuous audit of medical bills. This documentation shall include, but not be limited to, medical bills, internal audit forms, and any medical charge summaries prepared by private medical audit companies.



# ADMINISTRATIVE RULES

(9) The insurer must pay a medical provider for any bill related to the claimed condition received by the insurer on or before the date the terms of a disputed claim settlement (DCS) were agreed on, but was either not listed in the approved DCS or was not paid to the medical provider as set forth in the approved DCS. Payment must be made by the insurer as prescribed by ORS 656.313(4)(d) and OAR 438-009-0010(2)(g) as if the bill had been listed in the approved settlement or as set forth in the approved DCS, except if the DCS payments have already been made, the payment must not be deducted from the settlement proceeds. Payment must be made within 45 days of the insurer's knowledge of the outstanding bill.

(10) Insurers that had at least 100 accepted disabling claims in the previous calendar year, as determined by the director, are required to submit detailed medical service billing data to the Information Management Division of the Department of Consumer and Business Services at 350 Winter St NE, Room 300, PO Box 14480, Salem OR 97309-0405. Once an insurer has reached the minimum number of accepted disabling claims, they must continue to report in subsequent years unless there is a significant decrease below the 100 claim minimum which is expected to continue. If the insurer drops below the 100 disabling claim level or encounters other significant hardships, the insurer may apply to the director for exemption from the reporting requirement. The reporting requirements are as follows:

(a) The director will notify the affected insurers when they reach the minimum. The transmission data and format requirements are included in Appendix A;

(b) The data shall include all payments made during each calendar quarter for medical services that are covered by the department's fee schedules. The following apply:

(A) Hospital Inpatient: Each hospital inpatient stay should be reported as one record summarizing all services related to the inpatient stay using provider type "HI." Report ICD-9-CM procedure code in the service code field.

(B) Hospital Outpatient: Report at the individual service-code level using provider type "HO." A service code, whether CPT®, HCPCS or other, is required on all "HO" records in addition to the ICD-9-CM diagnostic code.

(C) Adjustments to payments must be associated with specific services.

(c) The affected insurers shall submit the medical data within 45 days of the end of each calendar quarter. A grace period of two calendar quarters may be granted for revised requirements and also for insurers which are newly affected by these requirements. The calendar quarter due dates are as outlined in the table below: [Table not included. See ED. NOTE.]

(d) Technical Requirements: Data for each quarter calendar year must be transmitted as an individual file. Insurers transmitting data for more than one insurer may batch multiple insurer data files in one transmission. Data must be transmitted in electronic text files either on a 3.5 inch diskette, CD, or by file transfer protocol (FTP). Contact the Information Management Division (IMD) to arrange submission by FTP files or other electronic transmission methods. The record length must be fixed, 129 bytes, no packed fields, and in conformance with the records layout in Appendix A. Diskettes must be ASCII format, high density. Diskettes and CDs must have a physical label that indicates "Medical Data," the name of the group submitting, the quarter reported, and the date the file was created. Include a cover letter in the same package with each diskette or CD. Contact IMD for e-mail cover letter instructions. The cover letter must include the label information and the following: a list of all insurance companies' data included in the transmission; number of records; a contact person's name, address, and telephone number; and any known problems with the data.

(e) Data Quality: The director will conduct electronic edits for blank or invalid data. Affected insurers are responsible for pre-screening the data they submit to check that all the required information is reported. Files which have more than five percent missing or invalid data in any field, based on initial computerized edits, will be returned to the insurer for correction and must be resubmitted within three weeks (21 days) from the date it was returned by the department.

(f) Audit Quality: The director may also conduct field audits of actual payments reported for individual claims. When an audit occurs, in order to be in compliance with this rule and OAR 436-009-0025, audited data must have no more than 15 percent inaccurate data in any field.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 20-1996, f. 10-2-96, cert. ef. 1-1-97; WCD 5-1997, f. 4-21-97, cert. ef. 7-1-97; WCD 5-1998, f. 4-3-98, cert. ef. 7-1-98; WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 3-2002, f.

2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0040

### Calculating Medical Provider Fees

(1) Medical fees shall be paid at the provider's usual and customary fee or in accordance with the fee schedule whichever is less. For all MCO enrolled claims, payment of medical fees shall be at the provider's usual and customary fee or according to the fee schedule, whichever is less, unless otherwise provided by MCO contract. Where there is no maximum payment established by the fee schedule, an insurer may challenge the reasonableness of a provider's billing on a case by case basis by asking the director to review the billing under OAR 436-009-0008. If the director determines the amount billed is unreasonable, the director may establish a different fee to be paid to the provider based on at least one, but not limited to, the following: reasonableness, the usual and customary fees of similar providers, the services provided in the specific case, fees for similar services in similar geographic regions, and any extenuating circumstances.

(2)(a) When using RBRVS, the RVU is determined by reference to the appropriate CPT® code. Where the procedure is performed inside the medical service provider's office, use Year 2004 non-facility total column. Where the procedure is performed outside the medical service provider's office, use Year 2004 facility total column. Use the global column to identify the follow up days when applicable. For all outpatient therapy services (physical therapy, occupational therapy, and speech language pathology), use the Year 2004 non-facility total column. No other column applies.

(b) When an Oregon Specific Code is assigned, the RVU for multidisciplinary program services is found in OAR 436-009-0060(5), or for other services in OAR 436-009-0070(13).

(c) When using the ASA Relative Value Guide, a basic unit value is determined by reference to the appropriate Anesthesia code. The anesthesia value includes the basic unit value, time units, and modifying units.

(3) Payment according to the fee schedule shall be determined by multiplying the assigned RVU or basic unit value by the applicable conversion factor. Where the code is designated by an RVU of "0.00" or IC (individual consideration) for Anesthesia codes, it shall be paid at the provider's usual and customary rate.

(4) The table below lists the conversion factors to be applied to services, assigned an RVU, rendered by all medical professionals. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-009-0070

### Oregon Specific Code, Other Services

(1) Copies of requested medical records shall be paid under OSC-R0001.

(2) A brief narrative by the attending physician or authorized nurse practitioner, including a summary of treatment to date and current status, and, if requested, brief answers to one to five specific questions related to the attending physician's or authorized nurse practitioner's current or proposed treatment, shall be paid under OSC-N0001.

(3) A complex narrative by the attending physician or authorized nurse practitioner, may include past history, history of present illness, attending physician's or authorized nurse practitioner's treatment to date, current status, impairment, prognosis, and medically stationary information, shall be paid under OSC-N0002.

(4) Fees for a PCE and a WCE shall be based upon the type of evaluation requested. The description of each level of evaluation and the maximum allowable payment shall be as follows:

(a) FIRST LEVEL PCE: This is a limited evaluation primarily to measure musculoskeletal components of a specific body part. These components include such tests as active range of motion, motor power using the 5/5 scale, and sensation. This level requires not less than 45 minutes of actual patient contact. A first level PCE shall be paid under OSC-99196 which includes the evaluation and report. Additional 15-minute increments may be added if multiple body parts are reviewed and time exceeds 45 minutes. Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(b) SECOND LEVEL PCE: This is a PCE to measure general residual functional capacity to perform work or provide other general evaluation information, including musculoskeletal evaluation. It may be used to establish Residual Functional Capacities for claim closure. This level requires

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not less than two hours of actual patient contact. The second level PCE shall be paid under OSC-99197 which includes the evaluation and report. Additional 15 minute increments may be added to measure additional body parts, to establish endurance and to project tolerances. Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report.

(c) WCE: This is a residual functional capacity evaluation which requires not less than 4 hours of actual patient contact. The evaluation may include a musculoskeletal evaluation for a single body part. A WCE shall be paid under OSC-99198 which includes the evaluation and report. Additional 15 minute increments (per additional body part) may be added to determine endurance (e.g. cardiovascular) or to project tolerances (e.g., repetitive motion). Each additional 15 minutes shall be paid under OSC-99193 which includes the evaluation and report. Special emphasis should be given to:

(A) The ability to perform essential physical functions of the job based on a specific job analysis as related to the accepted condition;

(B) The ability to sustain activity over time; and

(C) The reliability of the evaluation findings.

(5) When an attorney requires a consultation with a medical provider, the medical provider shall bill under OSC-D0001.

(6) The fee for a deposition shall be billed under OSC-D0002. This code should include time for preparation, travel and deposition. Payment of the hourly rate may be limited to a customary fee charged by similar providers.

(7) When an insurer obtains an Insurer Medical Examination (IME), the medical service provider shall bill under OSC-D0003. This code shall be used for a report, file review or examination.

(8) The fee for interpretive services shall be billed under OSC-D0004.

(9) Fees for all arbiters and panel of arbiters used for director reviews pursuant to OAR 436-030-0165 shall be established by the director. This fee determination will be based on the complexity of the examination, the report requirements and the extent of the record review. The level of each category is determined by the director based on the individual complexities of each case as compared to the universe of claims in the medical arbiter process. When the examination is scheduled, the director shall notify the medical arbiter and the parties of the authorized fee for that medical arbiter review based on a combination of separate components.

(a) Level 1 — OSC-A0001 Exam: Level 2 — OSC-A0002 Exam: Level 3 — OSC-A0003 Exam: Limited — OSC-A0004 Exam.

As determined by the director, a level 1 exam generally involves a basic medical exam with no complicating factors. A level 2 exam generally involves a moderately complex exam and may have complicating factors. A level 3 exam generally involves a very complex exam and may have several complicating factors. A limited exam generally involves a newly accepted condition, or some other partial exam.

(b) Level 1 — OSC-A0011 Report: Level 2 — OSC-A0012 Report: Level 3 — OSC-A0013 Report.

As determined by the director, a level 1 report generally includes standard questions. A level 2 report generally includes questions regarding complicating factors. A level 3 report generally includes questions regarding multiple complicating factors.

(c) Level 1 — OSC-A0021 File Review: Level 2 — OSC-A0022 File Review: Level 3 — OSC-A0023 File Review: Level 4 — OSC-A0024 File Review: Level 5 — OSC-A0025 File Review.

As determined by the director, a level 1 file review generally includes review of a limited record. A level 2 file review generally includes review of an average record. A level 3 file review generally includes review of a large record or disability evaluation without an exam. A level 4 file review generally includes an extensive record. A level 5 file review generally includes an extensive record with unique factors.

(d) The director shall notify the medical arbiter and the insurer of the approved code for each component to establish the total fee for the medical arbiter review. If a worker fails to appear for a medical arbiter examination without giving each medical arbiter at least 48 hours notice, each medical arbiter shall be paid at 50 percent of the examination or testing fee. A medical arbiter may also receive payment for a file review as determined by the director.

(e) If the director determines that a supplemental medical arbiter report is necessary to clarify information or address additional issues, an additional report fee may be established. The fee is based on the complexity of the supplemental report as determined by the director. The additional fees are established as follows: Limited OSC-A0031, Complex OSC-A0032.

(f) Prior to completion of the reconsideration process, the medical arbiter may request the director to redetermine the authorized fee by providing the director with rationale explaining why the physician believes the fee should be different than authorized.

(g) The director may authorize testing which shall be paid according to OAR 436-009.

(h) Should an advance of costs be necessary for the worker to attend a medical arbiter exam, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(10) A single physician selected pursuant to ORS 656.327 or 656.260, to review treatment, perform reasonable and appropriate tests, or examine the worker, and submit a report to the director shall be paid at an hourly rate up to a maximum of 4 hours for record review and examination.

(a) The physician will be paid for preparation and submission of the report. Billings for services by a single physician shall be billed under OSC-P0001 for the examination and under OSC-P0003 for the report.

(b) Physicians selected pursuant to OAR 436-010-0008, to serve on a panel of physicians shall each receive payment based on an hourly rate up to a maximum of 4 hours for record review and panel examination. Each physician shall bill for the record review and panel examination under OSC-P0002. The panel member who prepares and submits the panel report shall receive an additional payment under OSC-P0003.

(c) The director may in a complex case requiring extensive review by a physician pre-authorize an additional fee. Complex case review shall be billed under OSC-P0004.

(d) If a worker fails to appear for a director required examination without providing the physician with at least 48 hours notice, each physician shall bill under OSC-P0005.

(e) Should an advance of costs be necessary for the worker to attend an exam under ORS 656.327 or 656.260, a request for advancement shall be made in sufficient time to ensure a timely appearance. After receiving a request, the insurer must advance the costs in a manner sufficient to enable the worker to appear on time for the exam. If the insurer believes the request is unreasonable, the insurer shall contact the director in writing. If the director agrees the request is unreasonable, the insurer may decline to advance the costs. Otherwise, the advance must be made timely as required in this subsection.

(11) The fee for a Worker Requested Medical Examination shall be billed under OSC-W0001. This code shall be used for a report, file review, or examination.

(12) The table below lists the Oregon Specific Codes for Other Services. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2000, f. 3-15-00, cert. ef. 4-1-00; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-009-0080

#### Durable Medical Equipment and Medical Supplies

(1) Fees for durable medical equipment shall be paid as follows:

(a) The insurer shall pay for the purchase of all compensable DME and other devices that are ordered and approved by the physician, at 85% of the manufacturer's suggested retail price (MSR).

(b) The DME provider shall be entitled to payment for any labor and reasonable expenses directly related to any subsequent modifications other than those performed at the time of purchase, or repairs. A subsequent modification is one done other than as a part of the initial set-up at the time of purchase. Labor shall be paid at the provider's usual and customary rate.

(c) The provider may offer a service agreement at an additional cost.

(d) Rental of all compensable DME and other devices shall be billed at the provider's usual and customary rate. Within 90 days of the beginning of the rental, the insurer shall be entitled to purchase the DME or device at the fee provided in this rule, with a credit for rental paid up to 2 months.

(2) Fees for all prosthetics as defined in OAR 436-010-0230(12), orthotics, and other medical supplies shall be listed as 0.00.

(a) Testing for hearing aids must be done by a licensed audiologist or an otolaryngologist.

(b) Based on current technology, the preferred types of hearing aids for most workers are programmable BTE, ITE, and CIC multi channel. Any other types of hearing aids needed for medical conditions will be considered based on justification from the attending physician or authorized nurse practitioner.

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(c) Without approval from the insurer or director, hearing aids should not exceed \$5000.00 for a pair of hearing aids, or \$2500.00 for a single hearing aid.

(3) The worker shall have the right to select the service provider, except for claims enrolled in a managed care organization (MCO) where service providers are specified by the MCO contract.

(4) Except as provided in subsection (2)(c) of this rule, this rule shall not apply to a worker's direct purchase of DME and medical supplies, and shall not limit a worker's right to reimbursement for actual out-of-pocket expenses pursuant to OAR 436-009-0025.

(5) DME, medical supplies and other devices dispensed by a hospital (inpatient or outpatient) shall be billed and paid pursuant to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-009-0090

#### Pharmacy Fees

(1) Except for in-patient hospital charges, pharmacy fees shall be paid at the provider's usual and customary rate or the maximum allowable fee established by this rule, whichever is the lower.

(a) The Average Wholesale Price (AWP) effective on the day the drug was dispensed shall be used to determine the maximum allowable fee.

(b) The maximum allowable fee is determined as follows:

(A) For generic drugs and for brand name drugs without a generic equivalent, 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee.

(B) For brand name drugs with a generic equivalent, if the prescribing medical service provider writes "Do not substitute" or a similar notation on the prescription, 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee.

(C) For brand name drugs with a generic equivalent, if the prescribing medical service provider did not write "Do not substitute" or a similar notation on the prescription, the lower of 88% of the AWP for the dispensed drug plus \$8.70 dispensing fee, or 88% of the average AWP for the class of generic drugs plus \$8.70 dispensing fee, or, in the event that the pricing guides have not established an average AWP, 88% of the calculated average AWP of the generic drugs listed in the pricing guide plus \$8.70 dispensing fee.

(c) All providers who are licensed to dispense medications in accordance with their practice must be paid similarly regardless of profession.

(2) All prescription medications are required medical services and do not require prior approval under the palliative care provisions of OAR 436-010-0290.

(3) Under ORS 689.515(2) licensed providers may dispense generic drugs to injured workers.

(4) Payment for Oxycontin and COX-2 inhibitors is limited to an initial five-day supply unless the prescribing medical service provider writes a clinical justification for prescribing that drug rather than a less costly drug with a similar therapeutic effect.

(a) The clinical justification may accompany the prescription and be submitted by the pharmacist or may be given directly to the insurer by the medical provider.

(b) Clinical justification means a written document from the medical service provider stating the reason he or she believes the drug ordered is the one the patient should have. The justification may be included on the prescription itself and may simply be a brief statement. Insurers and self-insured employers cannot challenge the adequacy of the clinical justification. However, they can challenge whether or not the medication is excessive, inappropriate, or ineffectual in accordance with ORS 656.327.

(c) An additional clinical justification is not necessary for refills of that medication.

(5) Insurers shall use the prescription pricing guide published by First DataBank Inc, Thomson Healthcare, Inc., or Facts & Comparisons (a Wolters Kluwer Health, Inc., Company) for calculating payments to the licensed provider. Insurers must update their source at least monthly.

(6) The worker shall have the right to select the pharmacy, except for claims enrolled in a managed care organization (MCO) where pharmacy service providers are specified by the MCO contract.

(7) Except for sections 2, 3, 4 and 6 of this rule, this rule shall not apply to a worker's direct purchase of prescription medications, and shall not limit a worker's right to reimbursement for actual out-of-pocket expenses pursuant to OAR 436-009-0025.

(8) The insurer shall be required to pay the retail-based fee for over-the-counter medications.

(9) Drugs dispensed by a hospital (inpatient or outpatient) shall be billed and paid pursuant to OAR 436-009-0020.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.248

Hist.: WCD 9-1999, f. 5-27-99, cert. ef. 7-1-99; WCD 2-2001, f. 3-8-01, cert. ef. 4-1-01; WCD 3-2002, f. 2-25-02 cert. ef. 4-1-02; WCD 6-2003, f. 5-28-03, cert. ef. 7-1-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0005

#### Definitions

For the purpose of these rules, OAR 436-009, and 436-015, unless the context otherwise requires:

(1) "Administrative Review" means any decision making process of the director requested by a party aggrieved with an action taken under these rules except the contested case process described in OAR 436-001.

(2) "Attending Physician" means a doctor or physician who is primarily responsible for the treatment of a worker's compensable injury or illness and who is:

(a) A medical doctor or doctor of osteopathy licensed under ORS 677.100 to 677.228 by the Board of Medical Examiners for the State of Oregon or an oral surgeon licensed by the Oregon Board of Dentistry;

(b) A medical doctor, doctor of osteopathy, or oral surgeon practicing in and licensed under the laws of another state;

(c) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits, during that 30 day period, whichever first occurs, a doctor or physician licensed by the State Board of Chiropractic Examiners for the State of Oregon;

(d) For a period of 30 days from the date of first chiropractic visit on the initial claim or for 12 chiropractic visits during that 30 day period, whichever first occurs, a doctor or physician of chiropractic practicing and licensed under the laws of another state; or

(e) Any medical service provider authorized to be an attending physician in accordance with a managed care organization contract.

(3) "Authorized nurse practitioner" means a nurse practitioner licensed under ORS 678.375 to 678.390 who has certified to the director that the nurse practitioner has reviewed informational materials about the workers' compensation system provided by the director and has been assigned an authorized nurse practitioner number by the director.

(4) "Chart note" means a notation made in chronological order in a medical record in which the medical service provider records such things as subjective and objective findings, diagnosis, treatment rendered, treatment objectives, and return to work goals and status.

(5) "Contested Case" means a proceeding as defined in ORS 183.310(2) and conducted under OAR 436-001.

(6) "Coordinated Health Care Program" means an employer program providing for the coordination of a separate policy of group health insurance coverage with the medical portion of workers' compensation coverage, for some or all of the employer's workers, which provides the worker with health care benefits even if a worker's compensation claim is denied.

(7) "Current Procedural Terminology" or "CPT"® means the Current Procedural Terminology codes and terminology most recently published by the American Medical Association unless otherwise specified in these rules.

(8) "Customary Fee" means a fee that falls within the range of fees normally charged for a given service.

(9) "Days" means calendar days.

(10) "Direct control and supervision" means the physician is on the same premises, at the same time, as the person providing a medical service ordered by the physician. The physician can modify, terminate, extend, or take over the medical service at any time.

(11) "Division" means the Workers' Compensation Division of the Department of Consumer and Business Services.

(12) "Eligible" means an injured worker who has filed a claim and is employed by an employer who is located in an MCO's authorized geographical service area, covered by an insurer who has a contract with that MCO. "Eligible" also includes a worker with an accepted claim having a date of injury prior to contract when that worker's employer later becomes covered by an MCO contract.

(13) "Enrolled" means an eligible injured worker has received notification from the insurer that the worker is being required to treat under the auspices of the MCO. However, a worker may not be enrolled who would otherwise be subject to an MCO contract if the worker's primary residence is more than 100 miles outside the managed care organization's certified geographical service area.

(14) "First Chiropractic Visit" means a worker's first visit to a chiropractic physician on the initial claim.



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(15) "Health Care Practitioner" has the same meaning as a "medical service provider."

(16) "HCFA form 2552" (Hospital Care Complex Cost Report) means the annual report a hospital makes to Medicare.

(17) "Hearings Division" means the Hearings Division of the Workers' Compensation Board.

(18) "Home Health Care" means medically necessary medical and medically related services provided in the injured worker's home environment. These services might include, but are not limited to, nursing care, medication administration, personal hygiene, or assistance with mobility and transportation.

(19) "Hospital" means an institution licensed by the State of Oregon as a hospital.

(20) "Initial Claim" means the first open period on the claim immediately following the original filing of the occupational injury or disease claim until the worker is first declared to be medically stationary by an attending physician or authorized nurse practitioner. For nondisabling claims, the "initial claim" means the first period of medical treatment immediately following the original filing of the occupational injury or disease claim ending when the attending physician or authorized nurse practitioner does not anticipate further improvement or need for medical treatment, or there is an absence of treatment for an extended period.

(21) "Inpatient" means an injured worker who is admitted to a hospital prior to and extending past midnight for treatment and lodging.

(22) "Insurer" means the State Accident Insurance Fund Corporation; an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in the state; or, an employer or employer group that has been certified under ORS 656.430 meeting the qualifications of a self-insured employer under ORS 656.407.

(23) "Interim Medical Benefits" means those services provided under ORS 656.247 on initial claims with dates of injury on or after January 1, 2002 that are not denied within 14 days of the employer's notice of the claim.

(24) "Mailed or Mailing Date," for the purposes of determining timeliness under these rules, means the date a document is postmarked. Requests submitted by facsimile or "fax" are considered mailed as of the date printed on the banner automatically produced by the transmitting fax machine. Hand-delivered requests will be considered mailed as of the date stamped or punched in by the Workers' Compensation Division. Phone or in-person requests, where allowed under these rules, will be considered mailed as of the date of the request.

(25) "Managed Care Organization" or "MCO" means an organization formed to provide medical services and certified in accordance with OAR chapter 436, division 015.

(26) "Medical Evidence" includes, but is not limited to: expert written testimony; written statements; written opinions, sworn affidavits, and testimony of medical professionals; records, reports, documents, laboratory, x-ray and test results authored, produced, generated, or verified by medical professionals; and medical research and reference material utilized, produced, or verified by medical professionals who are physicians or medical record reviewers in the particular case under consideration.

(27) "Medical Service" means any medical, surgical, diagnostic, chiropractic, dental, hospital, nursing, ambulances, and other related services, and drugs, medicine, crutches and prosthetic appliances, braces and supports and where necessary, physical restorative services.

(28) "Medical Service Provider" means a person duly licensed to practice one or more of the healing arts.

(29) "Medical Provider" means a medical service provider, a hospital, medical clinic, or vendor of medical services.

(30) "Medical Treatment" means the management and care of a patient for the purpose of combating disease, injury, or disorder. Restrictions on activities are not considered treatment unless the primary purpose of the restrictions is to improve the worker's condition through conservative care.

(31) "Non-attending Physician" means a medical service provider who is not qualified to be an attending physician, or a chiropractor who no longer qualifies as an attending physician under ORS 656.005 and subsections (2)(c) and (2)(d) of this rule.

(32) "Outpatient" means a worker not admitted to a hospital prior to and extending past midnight for treatment and lodging. Medical services provided by a health care provider such as emergency room services, observation room, or short stay surgical treatments which do not result in admission are also outpatient services.

(33) "Parties" mean the worker, insurer, MCO, attending physician, and other medical provider, unless a specific limitation or exception is expressly provided for in the statute.

(34) "Physical Capacity Evaluation" or "PCE" means an objective, directly observed, measurement of a worker's ability to perform a variety of physical tasks combined with subjective analyses of abilities by worker and evaluator. Physical tolerance screening, Blankenship's Functional Evaluation, and Functional Capacity Assessment will be considered to have the same meaning as Physical Capacity Evaluation.

(35) "Physical Restorative Services" means those services prescribed by the attending physician or authorized nurse practitioner to address permanent loss of physical function due to hemiplegia, a spinal cord injury, or to address residuals of a severe head injury. Services are designed to restore and maintain the injured worker to the highest functional ability consistent with the worker's condition. Physical restorative services are not services to replace medical services usually prescribed during the course of recovery.

(36) "Report" means medical information transmitted in written form containing relevant subjective and/or objective findings. Reports may take the form of brief or complete narrative reports, a treatment plan, a closing examination report, or any forms as prescribed by the director.

(37) "Residual Functional Capacity" means an individual's remaining ability to perform work-related activities despite medically determinable impairment resulting from the accepted compensable condition. A residual functional capacity evaluation includes, but is not limited to, capability for lifting, carrying, pushing, pulling, standing, walking, sitting, climbing, balancing, bending/stooping, twisting, kneeling, crouching, crawling, and reaching, and the number of hours per day the worker can perform each activity.

(38) "Specialist Physician" means a licensed physician who qualifies as an attending physician and who examines a worker at the request of the attending physician or authorized nurse practitioner to aid in evaluation of disability, diagnosis, and/or provide temporary specialized treatment. A specialist physician may provide specialized treatment for the compensable injury or illness and give advice and/or an opinion regarding the treatment being rendered, or considered, for a workers' compensable injury.

(39) "Usual Fee" means the fee charged the general public for a given service.

(40) "Work Capacity Evaluation" or "WCE" means a physical capacity evaluation with special emphasis on the ability to perform a variety of vocationally oriented tasks based on specific job demands. Work Tolerance Screening will be considered to have the same meaning as Work Capacity Evaluation.

(41) "Work Hardening" means an individualized, medically prescribed and monitored, work oriented treatment process. The process involves the worker participating in simulated or actual work tasks that are structured and graded to progressively increase physical tolerances, stamina, endurance, and productivity to return the worker to a specific job.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.000 et seq. & 656.005

Hist.: WCB 4-1976, f. 10-20-76, ef. 11-1-76; WCD 7-1978(Admin), f. & ef. 6-5-78; WCD 2-1980(Admin), f. 1-28-80, ef. 2-1-80; WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0005, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 4-1986(Admin), f. 6-26-86, ef. 7-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0008

#### Administrative Review and Contested Cases

(1) Administrative review before the director:

(a) Except as otherwise provided in ORS 656.704, the director has exclusive jurisdiction to resolve all matters concerning medical services arising under ORS 656.245, 656.247, 656.260, and 656.327.

(b) A party need not be represented to participate in the administrative review before the director except as provided in ORS chapter 183 and OAR chapter 436, division 001.

(c) Any party may request that the director provide voluntary mediation or alternative dispute resolution after a request for administrative review or contested case hearing is filed. When a dispute is resolved by agreement of the parties to the satisfaction of the director, any agreement must be reduced to writing and approved by the director. Any mediated

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agreement may include an agreement on attorney fees, if any, to be paid to the claimant or claimant's attorney. If the dispute does not resolve through mediation or alternative dispute resolution, a director's order will be issued.

(2) Administrative review and contested case processes for change of attending physician or authorized nurse practitioner issues are in OAR 436-010-0220; additional insurer medical examination (IMEs) matters are in OAR 436-010-0265; and fees and non-payment of compensable medical billings are described in OAR 436-009-0008.

(3) Except for disputes regarding interim medical benefits, when there is a formal denial of the compensability of the underlying claim, the parties must first apply to the Hearings Division of the Workers' Compensation Board to resolve the compensability issues. After the compensability of the underlying claim is finally decided, any party may request director's review of appropriate medical issues within 30 days after the date the decision becomes final by operation of law.

(4) When there is a denial of the causal relationship between the medical service and the accepted condition or the underlying condition, the issue must first be decided by the Hearings Division of the Workers' Compensation Board.

(5) All issues pertaining to disagreement about medical services within a Managed Care Organization (MCO), including disputes under ORS 656.245(4)(a) about whether a change of provider will be medically detrimental to the injured worker, are subject to the provisions of ORS 656.260. A party dissatisfied with an action or decision of the MCO must first apply for and complete the internal dispute resolution process within the MCO before requesting an administrative review of the matter by the director.

(6) The following time frames and conditions apply to requests for administrative review before the director under this rule:

(a) For all disputes subject to dispute resolution within a Managed Care Organization, upon completion of the MCO process, the aggrieved party must request administrative review by the director within 60 days of the date the MCO issues its final decision. If a party has been denied access to an MCO internal dispute process or the process has not been completed for reasons beyond a party's control, the party may request director review within 60 days of the failure of the MCO process. If the MCO does not have a process for resolving the particular type of dispute, the insurer must advise the medical provider or worker that they may request review by the director.

(b) For all claims not enrolled in an MCO, the aggrieved party must request administrative review by the director within 90 days of the date the party knew, or should have known, there was a dispute over the provision of medical services. This time frame only applies if the aggrieved party other than the insurer is given written notice that they have 90 days in which to request administrative review by the director. When the aggrieved party is a represented worker, and the worker's attorney has given written notice of representation, the 90 day time frame begins when the attorney receives written notice or has actual knowledge of the dispute. For purposes of this rule, the date the insurer should have known of the dispute is the date action on the bill was due. For disputes regarding interim medical benefits on denied claims, the date the insurer should have known of the dispute is no later than one year from the claim denial, or 45 days after the bill is perfected, whichever ever occurs last. Filing a request for administrative review under this rule may also be accomplished in the manner prescribed in OAR 438 chapter, division 005.

(c) Disputes regarding elective surgery must be processed in accordance with OAR 436-010-0250.

(d) The director may, on the director's own motion, initiate a medical services review at any time.

(e) Medical provider bills for treatment or services which are subject to director's review will not be deemed payable pending the outcome of the review.

(7) Parties must submit requests for administrative review to the director in the form and format provided in Bulletin 293. When an insurer or the worker's representative submits a request without the required information, at the director's discretion the administrative review may not be initiated until the information is submitted. Unrepresented workers may seek help from the director in meeting the filing requirements. The requesting party must simultaneously notify all other interested parties of the dispute, and their representatives, if known, as follows:

(a) Identify the worker's name, date of injury, insurer, and claim number;

(b) Specify what issues are in dispute and specify with particularity the relief sought;

(c) Provide the specific dates of the unpaid disputed treatment or services.

(8) In addition to medical evidence relating to the medical services dispute, all parties may submit other relevant information, including but not limited to, written factual information, sworn affidavits, and legal argument for incorporation into the record. Such information may also include timely written responses and other evidence to rebut the documentation and arguments of an opposing party. The director may take or obtain additional evidence consistent with statute.

(9) When a request for administrative review is filed under ORS 656.247, 656.260, or 656.327, the insurer must provide a record packet, without cost, to the director and all other parties or their representatives as follows:

(a) Except for disputes regarding interim medical benefits, the packet must include certification that there is no issue of compensability of the underlying claim or condition. If there is a denial which has been reversed by the Hearings Division, the Board, or the Court of Appeals, a statement from the insurer regarding its intention, if known, to accept or appeal the decision.

(b) The packet must include a complete, indexed copy of the worker's medical record and other documents that are arguably related to the medical service in dispute, arranged in chronological order, with oldest documents on top, and numbered in Arabic numerals in the lower right corner of each page. The number must be preceded by the designation "Ex." and pagination of the multiple page documents must be designated by a hyphen followed by the page number. For example, page two of document ten must be designated "Ex. 10-2." The index must include the document numbers, description of each document, author, number of pages, and date of the document. The packet must include the following notice in bold type:

As required by OAR 436-010-0008, we hereby notify you that the director is being asked to review the medical care of this worker. The director may issue an order which could affect reimbursement for the disputed medical service(s).

(c) If the insurer requests review, the packet must accompany the request, with copies sent simultaneously to the other parties.

(d) If the requesting party is other than the insurer, or if the director has initiated the review, the director will request the record from the insurer. The insurer must provide the record within 14 days of the director's request in the form and format described in this rule.

(e) If the insurer fails to submit the record in the time and format specified in this rule, the director may penalize or sanction the insurer under OAR 436-010-0340.

(10) If the director determines a review by a physician is indicated to resolve the dispute, the director, in accordance with OAR 436-010-0330, may appoint an appropriate medical service provider or panel of providers to review the medical records and, if necessary, examine the worker and perform any necessary and reasonable medical tests, other than invasive tests. Notwithstanding ORS 656.325(1), if the worker is required by the director to submit to a medical examination as a step in the administrative review process, the worker may refuse an invasive test without sanction.

(a) A single physician selected to conduct a review must be a practitioner of the same healing art and specialty, if practicable, of the medical service provider whose treatment is being reviewed.

(b) When a panel of physicians is selected, at least one panel member must be a practitioner of the healing art and specialty, if practicable, of the medical service provider whose treatment is being reviewed.

(c) When such an examination of the worker is required, the director will notify the appropriate parties of the date, time, and location of the examination. The physician or panel must not be contacted directly by any party except as it relates to the examination date, time, location, and attendance. If the parties wish to have special questions addressed by the physician or panel, these questions must be submitted to the director for screening as to the appropriateness of the questions. Matters not related to the issues before the director are inappropriate for medical review and will not be submitted to the reviewing physician(s). The examination may include, but is not limited to:

(A) A review of all medical records and diagnostic tests submitted;

(B) An examination of the worker; and

(C) Any necessary and reasonable medical tests.

(11) The director will review the relevant information submitted by all parties and the observations and opinions of the reviewing physician(s).

(a) A dispute may be resolved by agreement between the parties to the dispute. When the parties agree, the director may issue a letter of agreement in lieu of an administrative order, which will become final on the 10th day after the letter of agreement is issued unless the agreement specifies otherwise. Once the agreement becomes final, the director may revise the agreement or reinstate the review only under one or more of the following conditions:

(A) A party fails to honor the agreement;

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- (B) The agreement was based on misrepresentation;
- (C) Implementation of the agreement is not feasible because of unforeseen circumstances; or
- (D) All parties request revision or reinstatement of the dispute.
- (b) If the dispute is not resolved by agreement and if the director determines that no bona fide dispute exists in a claim not enrolled in an MCO, the director will issue an order under ORS 656.327(1). If any party disagrees with an order of the director that no bona fide medical services dispute exists, the party may appeal the order to the Workers' Compensation Board within 30 days of the mailing date of the order. Upon review, the order of the director may be modified only if it is not supported by substantial evidence in the record developed by the director.
- (c) When a bona fide dispute exists, the director will issue an administrative order and provide notice of the record used in the review.
- (A) A request for contested case hearing must be mailed to the director within 30 days from the issuance of an order under ORS 656.245, 656.260, or 656.327, or 60 days from the issuance of an order under ORS 656.247.
- (B) The director may on the director's own motion reconsider or withdraw any order that has not become final by operation of law. A party also may request reconsideration of an administrative order upon an allegation of error, omission, misapplication of law, incomplete record, or the discovery of new material evidence which could not reasonably have been discovered and produced during the review. The director may grant or deny a request for reconsideration at the director's sole discretion. A request must be mailed before the administrative order becomes final.
- (C) During any reconsideration of the administrative review order, the parties may submit new material evidence consistent with this subsection and may respond to such evidence submitted by others.
- (D) Any party requesting reconsideration or responding to a reconsideration request must simultaneously notify all other interested parties of their contentions and provide them with copies of all additional information presented.
- (12) If the director issues an order declaring an already rendered medical service inappropriate, or otherwise in violation of the statute or medical services rules, the worker is not obligated to pay for such medical service.
- (13) In any dispute in which a represented worker prevails after a proceeding has commenced before the director, the director will award an attorney fee to be paid by the insurer or self-insured employer, as provided in ORS 656.385. The attorney fee will be proportionate to the benefit to the injured worker. Primary consideration will be given to the results achieved and the time devoted to the case. Absent extraordinary circumstances or agreement by the parties, the fee may not exceed \$2000, nor fall outside the ranges for fees as provided in the following matrix: [Matrix not included. See ED. NOTE.]
- (a) An attorney must submit the following to the director in order to be awarded an attorney fee:
- (A) A current, valid retainer agreement; and
- (B) A statement of hours spent on the case if greater than two hours. In the absence of such a statement, the director will assume the time spent on the case was 1-2 hours.
- (b) In determining the value of the results achieved, the director may consider, but is not limited to, the following:
- (A) The fee allowed by the fee schedule provided in OAR 436-009;
- (B) The overall cost of the medical treatment or service; or
- (C) A written agreement between the parties regarding the value of the benefit to the worker submitted to the director prior to the issuance of an order.
- (c) If any party believes extraordinary circumstances exist that justify a fee outside of the ranges provided in the above matrix or above \$2000, they may submit a written or faxed statement of the extraordinary circumstances to the director. Extraordinary circumstances are not established by merely exceeding eight hours or exceeding a benefit of \$6000.
- (d) In order to provide parties an opportunity to inform the director of agreements, or submit statements of extraordinary circumstances or professional hours for consideration in determining the attorney fee, the director will provide the parties notice by phone or fax at least 3 business days in advance that an order or other written resolution of the dispute will be issued. Any information or statements provided to the director must simultaneously be provided to all other parties to the dispute.
- (e) An assessed attorney fee must be paid within 30 days of the date the order authorizing the fee becomes final.

(14) Contested cases before the Office of Administrative Hearings: Any party that disagrees with an action or order under this rule, may request a contested case hearing as follows:

- (a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested, and include a copy of the administrative order being appealed.
- (b) The appeal must be mailed within 30 days of the mailing date of the order or notice of action being appealed.
- (c) The hearing will be conducted in accordance with the rules governing contested case hearings in OAR 436-001.
- (d) In the review of orders issued under ORS 656.327(2), 656.260(14) and (16), and 656.247, no new medical evidence or issues will be admitted at the contested case hearing. In these reviews, an administrative order may be modified at hearing only if it is not supported by substantial evidence in the record or if it reflects an error of law.
- (e) For claims not enrolled in an MCO, disputes about whether a medical service after a worker is medically stationary is compensable within the meaning of ORS 656.245(1)(c) and whether a medical treatment is unscientific, unproven, outmoded, or experimental under ORS 656.245(3), are subject to administrative review by the director. If appealed, review at contested case hearing is not subject to the "no new medical evidence or issues rule" in subsection (13)(d) of this rule. However, if the disputed medical service is determined compensable under ORS 656.245(1)(c) or 656.245(3) all disputes and assertions about whether the compensable medical services are excessive, inappropriate, ineffectual, or in violation of the director's rules regarding the performance of medical services are subject to the substantial evidence rule at contested case hearing.

(15) Contested case hearings of sanction and civil penalties: Under ORS 656.740, any party that disagrees with a proposed order or proposed assessment of a civil penalty issued by the director under ORS 656.254 or 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board as follows:

- (a) A written request for a hearing must be mailed to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the proposed order or assessment is contested.
- (b) The request must be mailed to the division within 60 days after the mailing date of the order or notice of assessment.
- (c) The division will forward the request and other pertinent information to the Hearings Division of the Workers' Compensation Board.
- (16) Director's administrative review of other actions: Any party seeking an action or decision by the director or aggrieved by an action taken by any other party, not covered under sections (1) through (15) of this rule, under these rules, may request administrative review by the director. Any party may request administrative review as follows:

- (a) A written request for review must be sent to the administrator of the Workers' Compensation Division within 90 days of the disputed action and must specify the grounds upon which the action is contested.
- (b) The division may require and allow such input and information as it deems appropriate to complete the review.
- (c) A director's order may be issued and will specify if the order is final or if it may be appealed in accordance with section (14) of this rule.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.254, 656.256, 656.260, 656.268, 656.313, 656.325, 656.327, 656.331 & 656.704

Hist.: WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 18-1995(Temp), f. & cert. ef. 12-4-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0200

#### Advisory Committee on Medical Care

The Advisory Committee on Medical Care will be appointed by the director. The committee will include one representative of insurers, one representative of employers, one representative of workers, one representative of managed care organizations, a diverse group of health care providers representative of those providing medical care to injured workers, and other persons as the director may determine are necessary to carry out the purpose of the committee. Health care providers must comprise a majority of the committee at all times. The selection of health care providers will consider the perspective of specialty care, primary care, and ancillary care providers, and the ability of members to represent the interests of the community at large.

Stat. Auth.: ORS 656.726(4)



# ADMINISTRATIVE RULES

Stats. Implemented: ORS 656.794

Hist.: WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0095; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0210

### Who May Provide Medical Services and Authorize Timeloss

(1) Attending physicians and authorized nurse practitioners may authorize time loss and manage medical services subject to the limitations of these rules. However, an MCO may designate any medical service provider as an attending physician who may provide medical services to an enrolled worker in accordance with ORS 656.260.

(2) Authorized primary care physicians and authorized nurse practitioners may provide medical services to injured workers subject to the terms and conditions of the governing MCO.

(3) Attending physicians and authorized nurse practitioners may prescribe treatment to be carried out by persons licensed to provide a medical service. Attending physicians may prescribe treatment to be carried out by persons not licensed to provide a medical service or treat independently only when such treatment is rendered under the physician's direct control and supervision. Reimbursement to a worker for home health care provided by a worker's family member is not required to be provided under the direct control and supervision of the attending physician if the family member demonstrates competency to the satisfaction of the attending physician.

(4) Physician assistants may provide compensable medical services for a period of 30 days from the date of injury or 12 visits on the initial claim, whichever occurs first. Thereafter, medical services provided are not compensable without authorization of an attending physician. Additionally, those physician assistants practicing in Type A, Type B, and Type C rural hospital areas as specified in ORS 656.245, may authorize the payment of temporary disability compensation for a period not to exceed 30 days from the date of first visit on the initial claim. Definitions of Type A, Type B, and Type C rural hospitals are contained in ORS 442.470.

(5) Authorized nurse practitioners, out-of-state nurse practitioners, and physician assistants working within the scope of their license and as directed by the attending physician, need not be working under a written treatment plan as prescribed in OAR 436-010-0230(4)(a), nor under the direct control and supervision of the attending physician.

(6) A physician assistant, licensed under ORS 677.515, may provide services when the physician assistant is approved for practice by the Board of Medical Examiners.

(7) Effective October 1, 2004, in order to provide any compensable medical service under ORS chapter 656, a nurse practitioner licensed under ORS 678.375 to 678.390 must certify in a form provided by the director that the nurse practitioner has reviewed a packet of materials which the director will provide upon request and must have been assigned an authorized nurse practitioner number by the director. An authorized nurse practitioner may:

(a) Provide compensable medical services to an injured worker for a period of 90 days from the date of the first nurse practitioner visit on the initial claim. Thereafter, medical services provided by an authorized nurse practitioner are not compensable without authorization of an attending physician; and

(b) Authorize temporary disability benefits for a period of up to 60 days from the date of the first nurse practitioner visit on the initial claim.

(8) In accordance with ORS 656.245(2)(a), with the approval of the insurer, the worker may choose an attending physician outside the state of Oregon. Upon receipt of the worker's request, or the insurer's knowledge of the worker's request to treat with an out-of-state physician, the insurer must give the worker written notice of approval or denial of the worker's choice of attending physician within 14 days.

(a) If the insurer does not approve the worker's out-of-state physician, notice to the worker must clearly state the reason(s) for the denial which may include, but are not limited to, the out-of-state physician's refusal to comply with OAR 436-009 and 436-010, and identify at least two other physicians of the same healing art and specialty whom it would approve. The notice must also inform the worker that if the worker disagrees with the denial, the worker may refer the matter to the director for review under the provisions of OAR 436-010-0220.

(b) If the insurer approves the worker's choice of out-of-state attending physician, the insurer must immediately notify the worker and the medical service provider in writing of the following:

(A) The Oregon fee schedule requirements;

(B) The manner in which the out-of-state physician may provide compensable medical services to Oregon injured workers; and

(C) Billings for compensable services in excess of the maximum allowed under the fee schedule may not be paid by the insurer.

(9) After giving prior approval, if the out-of-state physician does not comply with these rules, the insurer may object to the worker's choice of physician and must notify the worker and the physician in writing of the reason for the objection, that payment for services rendered by that physician after notification will not be reimbursable, and that the worker may be liable for payment of services rendered after the date of notification.

(10) If the worker is aggrieved by an insurer decision to object to an out-of-state attending physician, the worker or the worker's representative may refer the matter to the director for review under the provisions of OAR 436-010-0220.

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.005(12), 656.245 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; Renumbered from 436-069-0301, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0050; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0220

### Choosing and Changing Medical Providers

(1) A newly selected attending physician, authorized nurse practitioner, or a specialist physician who becomes primarily responsible for the worker's care, must notify the insurer not later than five days after the date of change or first treatment, using Form 827. An attending physician or authorized nurse practitioner:

(a) Is primarily responsible for the worker's care,

(b) Authorizes time loss,

(c) Monitors ancillary care and specialized care, and

(d) Is determined by the facts of the case and the actions of the physician, not whether a Form 827 is filed.

(2) The worker may have only one attending physician or authorized nurse practitioner at a time. Simultaneous or concurrent treatment by other medical service providers must be based upon a written request of the attending physician or authorized nurse practitioner, with a copy of the request sent to the insurer. Except for emergency services, or otherwise provided for by statute or these rules, all treatments and medical services must be authorized by the injured worker's attending physician or authorized nurse practitioner to be reimbursable. Fees for treatment by more than one physician at the same time are payable only when treatment is sufficiently different that separate medical skills are needed for proper treatment.

(3) The worker is allowed to change his or her attending physician or authorized nurse practitioner by choice two times after the initial choice. Referral by the attending physician or authorized nurse practitioner to another attending physician or authorized nurse practitioner, initiated by the worker, will count in this calculation. The limitations of the worker's right to choose physicians or authorized nurse practitioners under this section begin with the date of injury and extend through the life of the claim. For purposes of this rule, the following are not considered changes by choice of the worker:

(a) Emergency services by a physician;

(b) Examinations at the request of the insurer;

(c) Consultations or referrals for specialized treatment initiated by the attending physician or authorized nurse practitioner;

(d) Referrals to radiologists and pathologists for diagnostic studies;

(e) When workers are required to change medical service providers to receive compensable medical services, palliative care, or time loss authorization because their medical service provider is no longer qualified as an attending physician or authorized to continue providing compensable medical services.

(f) Changes of attending physician or authorized nurse practitioner required due to conditions beyond the worker's control. This could include, but not be limited to:

(A) When the physician terminates practice or leaves the area;

(B) When a physician is no longer willing to treat an injured worker;

(C) When the worker moves out of the area requiring more than a 50 mile commute to the physician;

(D) When the 90 day period for treatment by an authorized nurse practitioner has expired;

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(E) When the nurse practitioner is required to refer the worker to an attending physician for a closing examination or because of a possible worsening of the worker's condition following claim closure; and

(F) When a worker is subject to managed care and compelled to be treated inside an MCO;

(g) A Worker Requested Medical Examination;

(h) Whether a worker has an attending physician or authorized nurse practitioner who works in a group setting/facility and the worker sees another group member due to team practice, coverage, or on-call routines; or

(i) When a worker's attending physician or authorized nurse practitioner is not available and the worker sees a medical provider who is covering for that provider in their absence.

(4) When a worker has made an initial choice of attending physician or authorized nurse practitioner and subsequently changed two times by choice or reaches the maximum number of changes established by the MCO, the insurer must inform the worker by certified mail that any subsequent changes by choice must have the approval of the insurer or the director. If the insurer fails to provide such notice and the worker subsequently chooses another attending physician or authorized nurse practitioner, the insurer must pay for compensable services rendered prior to notice to the worker. If an attending physician or authorized nurse practitioner begins treatment without being informed that the worker has been given the required notification, the insurer must pay for appropriate services rendered prior to the time the insurer notifies the medical service provider that further payment will not be made and informs the worker of the right to seek approval of the director.

(5)(a) If a worker not enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the limit established in section (3) of this rule, the worker must request approval from the insurer. Within 14 days of receipt of a request for a change of medical service provider or a Form 827 indicating the worker is choosing to change his or her attending physician or authorized nurse practitioner, the insurer must notify the worker in writing whether the change is approved. If the insurer objects to the change, the insurer must advise the worker of the reasons, advise that the worker may request director approval, and provide the worker with Form 2332 (Worker's Request to Change Attending Physician or Authorized Nurse Practitioner) to complete and submit to the director if the worker wishes to make the requested change.

(b) If a worker enrolled in an MCO wishes to change his or her attending physician or authorized nurse practitioner beyond the changes allowed in the MCO contract or certified plan, the worker must request approval from the insurer. Within 14 days of receiving the request, the insurer must notify the worker in writing whether the change is approved. If the insurer denies the change, the insurer must provide the reasons and give notification that the worker may request dispute resolution through the MCO. If the MCO does not have a dispute resolution process for change of attending physician or authorized nurse practitioner issues, the insurer shall give notification that the worker may request director approval and provide the worker with a copy of Form 2332.

(6) Upon receipt of a worker's request for an additional change of attending physician or authorized nurse practitioner, the director may notify the parties and request additional information. Upon receipt of a written request from the director for additional information, the parties will have 14 days to respond in writing.

(7) After receipt and review, the director will issue an order advising whether the change is approved. The change of attending physician or authorized nurse practitioner will be approved if the change is due to circumstances beyond the worker's control as described in section (3) of this rule. On a case by case basis consideration may be given, but is not limited to, the following:

(a) Whether there is medical justification for a change, including whether the attending physician or authorized nurse practitioner can provide the type of treatment that is appropriate for the worker's condition.

(b) Whether the worker has moved to a new area and wants to establish an attending physician or authorized nurse practitioner closer to the worker's residence.

(c) Whether such a change will cause unnecessary travel costs and/or lost time from work.

(8) Any party that disagrees with the director's order may request a contested case hearing before the director, under ORS 183.310(2) and OAR 436-001, as follows:

(a) The party must send a written request to the administrator of the Workers' Compensation Division. The request must specify the grounds upon which the order or other action of the director is contested.

(b) The appeal must be mailed within 30 days of the mailing date of the order.

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

Stat. Auth: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252 & 656.260

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0401, 5-1-85; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0060; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0230

#### Medical Services and Treatment Guidelines

(1) Medical services provided to the injured worker must not be more than the nature of the compensable injury or the process of recovery requires. Services which are unnecessary or inappropriate according to accepted professional standards are not reimbursable.

(2) An employer or insurer representative may not attend a worker's medical appointment without written consent of the worker. The consent form must state that the worker's benefits cannot be suspended if the worker refuses to have a representative present. The worker has the right to refuse such attendance. The insurer must retain a copy of a signed consent form in the claim file.

(3) Insurers have the right to require evidence of the frequency, extent, and efficacy of treatment. Unless otherwise provided for by statute, or within utilization and treatment standards under an MCO contract, treatment typically does not exceed 15 office visits by any and all attending physicians or authorized nurse practitioners in the first 60 days from first date of treatment, and two visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment.

(4)(a) Except as otherwise provided by an MCO, ancillary services including but not limited to physical therapy or occupational therapy, by a medical service provider other than the attending physician, authorized nurse practitioner, or specialist physician will not be reimbursed unless prescribed by the attending physician, authorized nurse practitioner, or specialist physician and carried out under a treatment plan prepared prior to the commencement of treatment and sent by the ancillary medical service provider to the attending physician, authorized nurse practitioner, or specialist physician, and the insurer within seven days of beginning treatment. The treatment plan shall include objectives, modalities, frequency of treatment, and duration. The treatment plan may be recorded in any legible format including, but not limited to, signed chart notes. Treatment plans required under this subsection do not apply to services provided under ORS 656.245(2)(b)(A).

(b) The attending physician, authorized nurse practitioner, or specialist physician must sign a copy of the treatment plan within 30 days of the commencement of treatment and send it to the insurer. Failure of the physician or nurse practitioner to sign or mail the treatment plan may subject the attending physician or authorized nurse practitioner to sanctions under OAR 436-010-0340, but shall not affect payment to the ancillary medical service provider.

(c) Medical services prescribed by an attending physician, specialist physician, or authorized nurse practitioner and provided by a chiropractor, naturopath, acupuncturist, or podiatrist will be subject to the treatment plan requirements set forth in subsection (4)(a) and (b) of this rule.

(d) Unless otherwise provided for within utilization and treatment standards under an MCO contract, the usual range for therapy visits does not exceed 20 visits in the first 60 days, and 4 visits a month thereafter. This rule does not constitute authority for an arbitrary provision of or limitation of services, but is a guideline for reviewing treatment. The attending physician or authorized nurse practitioner must document the need for services in excess of these guidelines when submitting a written treatment plan. The process outlined in OAR 436-010-0008 should be followed when an insurer believes the treatment plan is inappropriate.

(5) The attending physician or authorized nurse practitioner, when requested by the insurer or the director through the insurer to complete a physical capacity or work capacity evaluation, must complete the evaluation within 20 days, or refer the worker for such evaluation within seven days. The attending physician or authorized nurse practitioner must notify the insurer and the worker in writing if the worker is incapable of participating in such evaluation.

(6) Prescription medications are required medical services under the provisions of ORS 656.245(1)(a), (1)(b), and (1)(c) and do not require prior

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approval under the palliative care provisions of OAR 436-010-0290. A pharmacist, dispensing physician, or authorized nurse practitioner must dispense generic drugs to injured workers in accordance with and under ORS 689.515. For the purposes of this rule, the worker will be deemed the "purchaser" and may object to the substitution of a generic drug. However, payment for brand name drugs are subject to the limitations provided in OAR 436-009-0090. Workers may have prescriptions filled by a provider of their choice, unless otherwise provided for in accordance with an MCO contract. Except in an emergency, drugs and medicine for oral consumption supplied by a physician's or authorized nurse practitioner's office are compensable only for the initial supply to treat the worker with the medication up to a maximum of 10 days, subject to the provisions of this rule and OAR 436-009-0090. Compensation for certain drugs are limited as provided in OAR 436-009-0090.

(7) Dietary supplements including, but not limited to, minerals, vitamins, and amino acids are not reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured worker or they are provided in accordance with a utilization and treatment standard adopted by the director. Vitamin B-12 injections are not reimbursable unless necessary because of a specific dietary deficiency of malabsorption resulting from a compensable gastrointestinal condition.

(8) X-ray films must be of diagnostic quality and accompanied by a report. 14" x 36" lateral views are not reimbursable.

(9) Upon request of either the director or the insurer, original diagnostic studies must be forwarded to the director or the insurer. Films must be returned to the medical provider. A reasonable charge may be made for the costs of delivery of films. If a medical provider refuses to forward the films to the director or the insurer within 14 days of receipt of a written request, civil penalties may be imposed.

(10) Articles including but not limited to beds, hot tubs, chairs, Jacuzzis, and gravity traction devices are not compensable unless a need is clearly justified by a report which establishes that the "nature of the injury or the process of recovery requires" the item be furnished. The report must specifically set forth why the worker requires an item not usually considered necessary in the great majority of workers with similar impairments. Trips to spas, to resorts or retreats, whether prescribed or in association with a holistic medicine regimen, are not reimbursable unless special medical circumstances are shown to exist.

(11) Physical restorative services may include but are not limited to a regular exercise program or swim therapy. Such services are not compensable unless the nature of the worker's limitations requires specialized services to allow the worker a reasonable level of social and/or functional activity. The attending physician or authorized nurse practitioner must justify by report why the worker requires services not usually considered necessary for the majority of injured workers.

(12) The cost of repair or replacement of prosthetic appliances damaged when in use at the time of and in the course of a compensable injury, is a compensable medical expense, including when the worker received no physical injury. For purposes of this rule, a prosthetic appliance is an artificial substitute for a missing body part or any device by which performance of a natural function is aided, including but not limited to hearing aids and eye glasses.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 5-1984(Admin), f. & ef. 8-20-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0201, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-1987(Admin), f. 2-20-87, ef. 3-16-87; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 2-1989, f. 8-21-89, cert. ef. 9-1-89; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0040; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0240

### Reporting Requirements for Medical Providers

(1) The act of the worker in applying for workers' compensation benefits constitutes authorization for any medical provider and other custodians of claims records to release relevant medical records under ORS 656.252. Medical information relevant to a claim includes a past history of complaints or treatment of a condition similar to that presented in the claim or other conditions related to the same body part. The authorization is valid for the duration of the work related injury or illness and is not subject to revocation by the worker or the worker's representative. However, this authorization does not authorize the release of information regarding:

(a) Federally funded drug and alcohol abuse treatment programs governed by Federal Regulation 42, CFR 2, which may only be obtained in compliance with this federal regulation, or

(b) The release of HIV related information otherwise protected by ORS 433.045(3). HIV related information should only be released when a claim is made for HIV or AIDS or when such information is directly relevant to the claimed condition(s).

(2) Any physician, hospital, clinic, or other medical service provider, must provide all relevant information to the director, the insurer or their representative upon presentation of a signed Form 801, 827, or 2476 (Release of Information). "Signature on file," printed on the worker's signature line of any authorized Release of Information prescribed by the director, is a valid medical release, provided the insurer maintains the signed original in accordance with OAR 436-010-0270. However, nothing in this rule will prevent a medical provider from requiring a signed authorized Release of Information.

(3) When the worker has initiated a claim or wishes to initiate a claim, the worker and the first medical service provider on the initial claim must complete the first medical report (Form 827) in every detail, to include the worker's name, address, and social security number (SSN), and information required by ORS 656.252 and 656.254. The medical service provider must mail it to the proper insurer no later than 72 hours after the worker's first visit (Saturdays, Sundays, and holidays will not be counted in the 72-hour period).

(a) Diagnoses stated on Form 827 and all subsequent reports must conform to terminology found in the International Classification of Disease-9-Clinical Manifestations (ICD-9-CM) or taught in accredited institutions of the licentiate's profession.

(b) The worker's SSN will be used by the director to carry out its duties under ORS chapter 656. The worker may voluntarily authorize additional use of the worker's SSN by various government agencies to carry out their statutory duties.

(4) All medical service providers must notify the worker at the time of the first visit of the manner in which they can provide compensable medical services and authorize time loss. The worker must also be notified that they may be personally liable for noncompensable medical services. Such notification should be made in writing or documented in the worker's chart notes.

(5) Attending physicians or authorized nurse practitioners must, upon request from the insurer, submit verification of the worker's medical limitations related to the worker's ability to work, resulting from an occupational injury or disease. If the insurer requires the attending physician or authorized nurse practitioner to complete a release to return to work form, the insurer must use Form 3245.

(6) Medical providers must maintain records necessary to document the extent of services provided to injured workers.

(7) Progress reports are essential. When time loss is authorized by the attending physician or authorized nurse practitioner, the insurer may require progress reports every 15 days through the use of the physician's report, Form 827. Chart notes may be sufficient to satisfy this requirement. If more information is required, the insurer may request a brief or complete narrative report. Fees for such narrative reports must be in accordance with OAR 436-009-0015(11), 436-009-0070(2) or (3), whichever applies

(8) Reports may be handwritten and include all relevant or requested information.

(9) All records must be legible and cannot be kept in a coded or semi-coded manner unless a legend is provided with each set of records.

(10) The medical provider must respond within 14 days to the request for relevant medical records as specified in section (1) of this rule, progress reports, narrative reports, and any or all necessary records needed to review the efficacy of treatment, frequency, and necessity of care. The medical provider must be reimbursed for copying documents in accordance with OAR 436-009-0070(1). If the medical provider fails to provide such information within fourteen (14) days of receiving a request sent by certified mail, penalties under OAR 436-010-0340 or 436-015-0120 may be imposed.

(11) The attending physician or authorized nurse practitioner must inform the insurer and the worker of the anticipated date of release to work, the anticipated date the worker will become medically stationary, the next appointment date, and the worker's medical limitations. To the extent any medical provider can determine these matters they must be included in each progress report. The insurer must not consider the anticipated date of becoming medically stationary as a release to return to work.

(12) At the time the attending physician or authorized nurse practitioner declares the worker medically stationary, the attending physician or



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authorized nurse practitioner must notify the worker, the insurer, and all other medical providers who are providing services to the worker. For disabling claims, if the worker has been under the care of an authorized nurse practitioner, the authorized nurse practitioner must follow the requirements of OAR 436-010-0280 regarding the determination and reporting of permanent impairment and closing examinations. The attending physician must send a closing report to the insurer within 14 days of the examination in which the worker is declared medically stationary, except where a consulting physician examines the worker. The procedures and time frames for a consulting physician to perform the closing exam are provided in OAR 436-010-0280.

(13) The attending physician or authorized nurse practitioner must advise the worker, and within five days provide the insurer with written notice, of the date the injured worker is released to return to regular or modified work. The physician or nurse must not notify the insurer or employer of the worker's release to return to regular or modified work without first advising the worker.

(14) An injured worker's claim for aggravation must be filed on Form 827 and must be accompanied by a medical report from the attending physician supported by objective findings that can be used to determine whether the worker has suffered a worsened condition attributable to the compensable injury under the criteria contained in ORS 656.273. The attending physician, on the worker's behalf, must submit within five days the claim for aggravation and the medical report directly to the insurer.

(15) The attending physician, authorized nurse practitioner, or the MCO may request consultation regarding conditions related to an accepted claim. The attending physician, authorized nurse practitioner, or the MCO must promptly notify the insurer of the request for consultation. This requirement does not apply to diagnostic studies performed by radiologists and pathologists. The attending physician, authorized nurse practitioner, or MCO must provide the consultant with all relevant clinical information. The consultant must submit a copy of the consultation report to the attending physician, authorized nurse practitioner, the MCO, and the insurer within 10 days of the date of the examination or chart review. No additional fee beyond the consultation fee is allowed for this report. MCO requested consultations that are initiated by the insurer, which include examination of the worker, must be considered insurer medical examinations subject to the provisions of 436-010-0265.

(16) A medical service provider must not unreasonably interfere with the right of the insurer, under OAR 436-010-0265(1), to obtain a medical examination of the worker by a physician of the insurer's choice.

(17) Any time an injured worker changes his or her attending physician or authorized nurse practitioner:

(a) The new provider is responsible for:

(A) Submitting Form 827 to the insurer not later than five days after the change or the date of first treatment; and

(B) Requesting all available medical information, including information concerning previous temporary disability periods, from the previous attending physician, authorized nurse practitioner, or from the insurer.

(b) The requirements of paragraphs (A) and (B) also apply anytime a worker is referred to a new physician qualified to be an attending physician or to a new authorized nurse practitioner primarily responsible for the worker's care.

(c) Anyone failing to forward requested information within 14 days to the new physician or nurse will be subject to penalties under OAR 436-010-0340.

(18) Injured workers, or their representatives, are entitled to copies of all protected health information in the medical records. These records should ordinarily be available from the insurers, but may also be obtained from medical providers under the following conditions:

(a) A medical provider may charge the worker for copies in accordance with OAR 436-009-0070(1), but a patient may not be denied summaries or copies of his/her medical records because of inability to pay.

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

(A) The past, present, or future physical or mental health of the patient;

(B) The provision of health care to the patient; and

(C) The past, present, or future payment for the provision of health care to the patient.

(c) A worker or the worker's representative may request all or part of the record. A summary may substitute for the actual record only if the patient agrees to the substitution. Upon request, the entire health information record in the possession of the medical provider will be provided to the

worker or the worker's representative. This includes records from other healthcare providers, except that the following may be withheld:

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

(B) Psychotherapy notes;

(C) Information compiled for use in a civil, criminal, or administrative action or proceeding; and

(D) Other reasons specified by federal regulation.

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

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

Stat. Auth: ORS 656.276(4)

Stats. Implemented: ORS 656.245, 656.252, 656.254 & 656.273

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0101, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 14-1990(Temp), f. & cert. ef. 7-20-91; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0030; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0250

#### Elective Surgery

(1) "Elective Surgery" is surgery which may be required in the process of recovery from an injury or illness but need not be done as an emergency to preserve life, function or health.

(2) Except as otherwise provided by the MCO, when the attending physician or surgeon upon referral by the attending physician or authorized nurse practitioner, believes elective surgery is needed to treat a compensable injury or illness, the attending physician, authorized nurse practitioner, or the surgeon must give the insurer actual notice at least seven days prior to the date of the proposed surgery. Notification must provide the medical information that substantiates the need for surgery, and the approximate surgical date and place if known.

(3) When elective surgery is recommended, the insurer may require an independent consultation with a physician of the insurer's choice. The insurer must notify the recommending physician, the worker and the worker's representative, within seven days of receipt of the notice of intent to perform surgery, whether or not a consultation is desired by submitting a completed Form 440-3228 (Elective Surgery Notification) to the recommending physician. If the form is not completed the physician is not required to respond. When requested, the consultation must be completed within 28 days after notice to the physician.

(4)(a) Within seven days of the consultation, the insurer must notify the recommending physician of the insurer's consultant's findings.

(b) When the insurer's consultant disagrees with the proposed surgery, the recommending physician and insurer should endeavor to resolve any issues raised by the insurer's consultant's report. Where medically appropriate, the recommending physician, with the insurer's agreement to pay, may obtain additional diagnostic testing, clarification reports or other information designed to assist them in their attempt to reach an agreement regarding the proposed surgery.

(c) The recommending physician must notify the insurer, the worker and the worker's representative by signing Form 440-3228 or providing other written notification that further attempts to resolve the matter would be futile.

(5) If the insurer believes the proposed surgery is excessive, inappropriate, or ineffectual and cannot resolve the dispute with the recommending physician, the insurer must request an administrative review by the director within 21 days of the notice provided in subsection (4)(c) of this rule. Failure of the insurer to timely respond to the physician's elective surgery request by submitting a completed Form 440-3228, or to timely request administrative review under this rule shall bar the insurer from later disputing whether the surgery is or was excessive, inappropriate, or ineffectual.

(6) If the recommending physician and consultant disagree about the need for surgery, the insurer may inform the worker of the consultant's opinion. The decision whether to proceed with surgery remains with the attending physician and the worker.

(7) A recommending physician who prescribes or proceeds to perform elective surgery and fails to comply with the notification requirements in section (2) of this rule, may be subject to civil penalties as provided in ORS 656.254 and OAR 436-010-0340.

(8) Surgery which must be performed promptly, i.e., before seven days, because the condition is life threatening or there is rapidly progressing deterioration or acute pain not manageable without surgical interven-

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tion, is not considered elective surgery. In such cases the attending physician or authorized nurse practitioner should endeavor to notify the insurer of the need for emergency surgery.

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

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.260 & 656.327

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; WCD 2-1985(Admin), f. 4-29-85, ef. 6-3-85; Renumbered from 436-069-0501, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0070; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0260

### Monitoring and Auditing Medical Providers

(1) The department will monitor and conduct periodic audits of medical providers to ensure compliance with ORS Chapter 656 and these rules.

(2) All records maintained or required to be maintained must be disclosed upon request of the director.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.252

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0101; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0265

### Insurer Medical Examinations (IME)

(1) The insurer may obtain three medical examinations of the worker by physicians of their choice for each opening of the claim. These examinations may be obtained prior to or after claim closure. A claim for aggravation, Board's Own Motion, or reopening of a claim where the worker becomes enrolled or actively engaged in training according to rules adopted under ORS 656.340 and 656.726 permits a new series of three medical examinations. For purposes of this rule, "insurer medical examination" (IME) means any medical examination including a physical capacity or work capacity evaluation or consultation that includes an examination, except as provided in section (5) of this rule, that is requested by the insurer and completed by any medical service provider, other than the worker's attending physician. The examination may be conducted by one or more medical providers with different specialty qualifications, generally done at one location and completed within a 72-hour period. If the medical providers are not at one location, the examination is to be completed within a 72-hour period and at locations reasonably convenient to the worker.

(2) When the insurer has obtained the three medical examinations allowed under this rule and wishes to require the worker to attend an additional examination, the insurer must first notify and request authorization from the director. Insurers that fail to first notify and request authorization from the director, may be assessed a civil penalty. The process for requesting such authorization will be as follows:

(a) The insurer must submit a request for such authorization to the director in a form and format as prescribed by the director in Bulletin 252 including, but not limited to, the reasons for an additional IME, the conditions to be evaluated, dates, times, places, and purposes of previous examinations, copies of previous IME notification letters to the worker, and any other information requested by the director. A copy of the request must be provided to the worker and the worker's attorney; and

(b) The director will review the request and determine if additional information is necessary prior to issuing an order approving or disapproving the request. Upon receipt of a written request for additional information from the director, the parties will have 14 days to respond. If the parties do not provide the requested information, the director will issue an order approving or disapproving the request based on available information.

(3) In determining whether to approve or deny the request for an additional IME, the director may give consideration, but is not limited, to the following:

(a) Whether an IME involving the same discipline(s) and/or review of the same condition has been completed within the past six months.

(b) Whether there has been a significant change in the worker's condition.

(c) Whether there is a new condition or compensable aspect introduced to the claim.

(d) Whether there is a conflict of medical opinion about a worker's treatment, impairment, stationary status, or other issue critical to claim processing/benefits.

(e) Whether the IME is requested to establish a preponderance for medically stationary status.

(f) Whether the IME is medically harmful to the worker.

(g) Whether the IME requested is for a condition for which the worker has sought treatment or the condition has been included in the compensable claim.

(4) Any party aggrieved by the director's order may request a hearing by the Hearings Division of the Workers' Compensation Board under ORS 656.283 and OAR chapter 438.

(5) For purposes of determining the number of insurer required examinations, any examinations scheduled but not completed are not counted as a statutory IME. The following examinations are not considered IMEs and do not require approval as outlined in section (2) of this rule:

(a) An examination conducted by or at the request or direction of the worker's attending physician or authorized nurse practitioner;

(b) An examination obtained at the request of the director;

(c) A consultation obtained in accordance with OAR 436-010-0250(3);

(d) An examination of a permanently totally disabled worker required under ORS 656.206(5); and

(e) An examination by a consulting physician that has been arranged by the worker's attending physician or authorized nurse practitioner in accordance with OAR 436-010-0280.

(6) Examinations must be at times and intervals reasonably convenient to the worker and must not delay or interrupt proper treatment of the worker.

(7) When a worker is required to attend an examination by a physician of the insurer's choice, the insurer must comply with the notification and reimbursement requirements contained in OAR 436-009-0025 and 436-060-0095.

(8) When scheduling an IME, the insurer must provide Form 440-3227 (Invasive Medical Procedure Authorization) to the medical service provider.

(9) If a medical service provider intends to perform an invasive procedure as part of an IME, the worker must sign Form 440-3227 and may refuse the procedure. For the purposes of this rule, an invasive procedure is a procedure in which the body is entered by a needle, tube, scope, or scalpel.

(10) The person conducting the examination will determine the conditions under which the examination will be conducted. Subject to the physician's approval, the worker may use a video camera or tape recorder to record the examination. Also subject to the physician's approval, the worker may be accompanied by a family member or friend during the examination. If the physician does not approve a worker's request to record an examination or allow the worker to be so accompanied, the physician must document the reasons.

(11) Upon completion of the examination, the examining physician(s) must send a copy of the report to the insurer within seven days. The insurer shall forward a copy of the report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-1999(Temp), f. & cert. ef. 2-11-99 thru 8-10-99; WCD 7-1999, f. & cert. ef. 4-28-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 9-2002, f. 9-27-02, cert. ef. 11-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0270

### Insurer's Rights and Duties

(1) Insurers must notify the injured worker in writing, immediately following receipt of notice or knowledge of a claim, of the manner in which they may receive medical services for compensable injuries.

(2) Insurers may obtain relevant medical records, using a computer-generated equivalent of Form 2476 (Release of Information), with "signature on file" printed on the worker's signature line, provided the insurer maintains a worker-signed original of the release form.

(3) The insurer must notify the attending physician or authorized nurse practitioner, if known, and the MCO, if any, when it denies or partially denies a previously accepted claim. In claims which have been denied, the insurer shall notify the medical service provider and MCO, if any, within ten days of any change of status of the claim.

(4) Upon request, the insurer must forward all relevant medical information to return-to-work specialists, vocational rehabilitation organizations, or new attending physician or authorized nurse practitioner within 14 days.

(5) In disabling and non-disabling claims, immediately following notice or knowledge that the worker is medically stationary, insurers must notify the injured worker and the attending physician or authorized nurse

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practitioner in writing which medical services remain compensable under the system. This notice must list all benefits the worker is entitled to receive under ORS 656.245(1)(c).

(6) When a medically stationary date is established by the insurer and is not based on the findings of an attending physician or authorized nurse practitioner, the insurer must notify all medical service providers of the worker's medically stationary status. Applicable to all injuries occurring on or after October 23, 1999, the insurer will be responsible for reimbursement to all medical service providers for services rendered until the insurer provides the notice to the attending physician or authorized nurse practitioner.

(7) Insurers must reimburse workers for actual and reasonable costs for travel, prescriptions, and other claim related services paid by a worker in accordance with ORS 656.245(1)(e), 656.325, and 656.327.

(a) Reimbursement by the insurer to the worker for transportation costs to visit his or her attending physician may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate attending physician of the same specialty who is in a geographically closer medical community in relationship to the worker's home. If a worker seeks treatment from an authorized nurse practitioner, reimbursement by the insurer to the worker for transportation costs to visit his or her authorized nurse practitioner may be limited to the theoretical distance required to realistically seek out and receive care from an appropriate nurse practitioner of the same specialty who is in a geographically closer medical community in relationship to the worker's home. All medical practitioners within a metropolitan area are considered part of the same medical community and therefore are not considered geographically closer than any other physician in that metropolitan medical community for purposes of travel reimbursement.

(b) A worker who relocates within the State of Oregon may continue treating with the established attending physician or authorized nurse practitioner and be reimbursed transportation costs.

(c) Prior to limiting reimbursement under subsection (7)(a) of this rule, the insurer must provide the worker a written explanation and a list of providers who can timely provide similar services within a reasonable traveling distance for the worker. The insurer must inform the worker that treatment may continue with the established attending physician or authorized nurse practitioner; however, reimbursement of transportation costs may be limited as described.

(d) When the director decides travel reimbursement disputes at administrative review or contested case level, the determination will be based on principles of reasonableness and fairness within the context of the specific case circumstances as well as the spirit and intent of the law.

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

Stat. Auth.: ORS 656.726(4)

Stats. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0801, 5-1-85; WCD 6-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 6-1988, f. 9-6-88, cert. ef. 9-15-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0100; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-1999(Temp), f. & cert. ef. 10-25-99 thru 4-21-00; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

### 436-010-0275

#### Insurer's Duties Under MCO Contracts

(1) Insurers who enter into an MCO contract in accordance with OAR 436-015, must notify the affected insured employers of the following:

(a) The names and addresses of the complete panel of MCO medical providers within the employer's geographical service area(s);

(b) The manner in which injured workers can receive compensable medical services within the MCO;

(c) The manner in which injured workers can receive compensable medical services by medical providers outside the MCO; and

(d) The geographical service area governed by the MCO.

(2) Insurers under contract with an MCO must notify all newly insured employers in accordance with section (1) of this rule, prior to or on the effective date of coverage.

(3) At least 30 days prior to any significant changes to an MCO contract affecting injured worker benefits, the insurer must notify in accordance with OAR 436-015-0035 all affected insured employers and injured workers of the manner in which injured workers will receive medical services.

(4) When the insurer is enrolling a worker in an MCO, the insurer must simultaneously provide written notice to the worker, the worker's rep-

resentative, all medical service providers, and the MCO of enrollment. The notice must:

(a) Notify the worker of the eligible attending physicians within the relevant MCO geographic service area and describe how the worker may obtain the names and addresses of the complete panel of MCO medical providers;

(b) Advise the worker of the manner in which the worker may receive medical services for compensable injuries within the MCO;

(c) Describe how the worker can receive compensable medical treatment from a primary care physician or authorized nurse practitioner qualified to provide services as described in OAR 436-015-0070, who is not a member of the MCO, including how to request qualification of their primary care physician or authorized nurse practitioner;

(d) Advise the worker of the right to choose the MCO when more than one MCO contract covers the worker's employer except when the employer provides a coordinated health care program as defined in OAR 436-010-0005(6);

(e) Provide the worker with the title, address and telephone number of the contact person at the MCO responsible for ensuring the timely resolution of complaints or disputes;

(f) Advise the worker of the time lines for appealing disputes beginning with the MCO's internal dispute resolution process through administrative review before the director, that disputes to the MCO must be in writing and filed within 30 days of the disputed action and with whom the dispute is to be filed, and that failure to request review to the MCO precludes further appeal; and

(g) Notify the MCO of any request by the worker for qualification of a primary care physician or authorized nurse practitioner.

(5) Insurers under contract with MCOs who enroll workers prior to claim acceptance must inform the worker in writing that the insurer will pay as provided in ORS 656.248 for all reasonable and necessary medical services received by the worker that are not otherwise covered by health insurance, even if the claim is denied, until the worker receives actual notice of the denial or until three days after the denial is mailed, whichever occurs first.

(6) Insurers enrolling a worker who is not yet medically stationary and is required to change medical providers, must notify the worker of the right to request review by the MCO if the worker believes the change would be medically detrimental.

(7) If, at the time of MCO enrollment, the worker's medical service provider is not a member of the MCO and does not qualify as a primary care physician or authorized nurse practitioner, the insurer must notify the worker and medical service provider regarding provision of care under the MCO contract, including the provisions for continuity of care.

(8) When an insurer under contract with an MCO receives a dispute regarding a matter that is to be resolved through the MCO dispute resolution process and that dispute has not been simultaneously provided to the MCO, the insurer must within 14 days:

(a) Send a copy of the dispute to the MCO; or

(b) If the MCO does not have a dispute resolution process for that issue, the insurer must notify the parties in writing to seek administrative review before the director.

(9) The insurer must also notify the MCO of the name, address, and telephone number of the worker and, if represented, the name of the worker's attorney, and must keep the MCO informed of any changes.

(10) Insurers under contract with MCOs must maintain records as requested including, but not limited to, a listing of all employer's covered by MCO contracts, their WCD employer numbers, the estimated number of employees governed by each MCO contract, a list of all injured workers enrolled in the MCO, and the effective dates of such enrollments.

(11) When the insurer is dis-enrolling a worker from an MCO, the insurer must simultaneously provide written notice of the dis-enrollment to the worker, the worker's representative, all medical service providers, and the MCO. The notice must be mailed no later than seven days prior to the date the worker is no longer subject to the contract. The notice must advise the worker of the manner in which the worker may receive compensable medical services after the worker is no longer enrolled.

(12) When a managed care contract expires or terminates without renewal, the insurer must simultaneously provide written notice to the worker, the worker's representative, all medical service providers, and the MCO, that the worker is no longer subject to the MCO contract. The notice must be mailed no later than three days prior to the date of the contract's expiration or termination. The notice must advise the worker of the manner in which the worker may receive compensable medical services after the worker is no longer subject.

Stat. Auth.: ORS 656.726(4)



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Stat. Implemented: ORS 656.252, 656.325, 656.245, 656.248, 656.260 & 656.264  
Hist.: WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-04; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0280

### Determination of Impairment

(1) The attending physician or authorized nurse practitioner must notify the insurer of the date on which the worker became medically stationary from the compensable injury or illness and whether or not the worker is released to any form of work. The medically stationary date should not be a projected date and should relate to an examination. On disabling claims, when finding or notification that the worker is medically stationary, a determination of permanent impairment for claim closure must be done under OAR 436-030-0020(2). An authorized nurse practitioner must refer the worker to a licensed physician who qualifies as an attending physician to complete a closing examination if there is a reasonable expectation of permanent impairment under ORS 656.214(1)(a) and OAR 436-030-0020(2)(b).

(2) A report must be submitted to the insurer by the attending physician or authorized nurse practitioner within 14 days of the examination in which the worker was determined medically stationary unless:

(a) The attending physician does not wish to perform the closing examination, in which case he or she must arrange or request the insurer arrange, within five days of the examination in which the worker is declared medically stationary, for the worker to be examined by a consulting physician for all or any part of the closing examination; or

(b) The authorized nurse practitioner refers the worker for a closing examination, in which case he or she must arrange or request the insurer arrange, within five days of the examination in which the worker is declared medically stationary, for the worker to have a closing examination under section (1) of this rule.

(3) An examination must be performed when the attending physician or authorized nurse practitioner is notified by the insurer that the worker's accepted injury is no longer the major contributing cause of the worker's condition and a denial has been issued.

(a) The attending physician must submit a closing report within 14 days of the examination. If the attending physician refers the worker to a consulting physician for all or any part of the closing examination, the examination must be scheduled within five days of the denial notification.

(b) The authorized nurse practitioner must either refer the worker for a closing examination or provide a written statement, in accordance with sections (1) and (2) of this rule.

(4) Closing reports for examinations performed by a specialist physician under this rule must be submitted to the attending physician within seven days of the examination. The attending physician must review the report and, within seven days of receipt of the report, concur in writing or provide a report to the insurer describing any finding/conclusion with which the attending physician disagrees.

(5) The physician conducting the examination must provide all objective findings of impairment pursuant to these rules and in accordance with OAR 436-035-0007.

(6) The closing examination report does not include any rating of impairment or disability, but describes impairment findings to be rated by either the insurer or the director. Physicians must provide comments regarding the validity of the examination findings as they pertain to the accepted compensable conditions.

(7) The director may prescribe by bulletin what comprises a complete closing report, including, but not limited to, those specific clinical findings related to the specific body part or system affected. The bulletin may also include the impairment reporting format or form to be used as a supplement to the narrative report.

(8) The attending physician must specify the worker's residual functional capacity or refer the worker for completion of a second level PCE or WCE (as described in OAR 436-009-0070(4) pursuant to the following:

(a) A PCE when the worker has not been released to return to regular work, has not returned to regular work, has returned to modified work, or has refused an offer of modified work.

(b) A WCE when there is question of the worker's ability to return to suitable and gainful employment. It may also be required to specify the worker's ability to perform specific job tasks.

(9) When the worker's condition is not medically stationary and a denial has been issued because the worker's accepted injury is no longer the major contributing cause of the worker's condition, the physician must estimate the worker's future impairment and residual functional capacity according to OAR 436-035-0014.

Stat. Auth: ORS 656.726(4) & 656.245(2)(b)(B)

Stats. Implemented: ORS 656.245 & 656.252

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0601, 5-1-85; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0080; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0290

### Palliative Care

(1) When the worker's attending physician believes that palliative care is appropriate to enable the worker to continue current employment or a current vocational training program, the attending physician must first submit a written request for approval to the insurer. The request must:

(a) Describe any objective findings;

(b) Identify by ICD-9-CM diagnosis, the medical condition for which palliative care is requested;

(c) Detail a treatment plan which includes the name of the provider who will render the care, specific treatment modalities, and frequency and duration of the care, not to exceed 180 days;

(d) Explain how the requested care is related to the compensable condition; and

(e) Describe how the requested care will enable the worker to continue current employment, or a current vocational training program, and the possible adverse effect if the care is not approved.

(2) Insurers must date stamp all palliative care requests upon receipt. Within 30 days of receipt, the insurer must send written notification to the attending physician, worker, and worker's attorney approving or disapproving the request as prescribed.

(a) Palliative treatment may begin following submission of the request to the insurer. If approved, services are payable from the date the approved treatment begins. If the requested care is ultimately disapproved, the insurer is not liable for payment of the treatment.

(b) If the insurer disapproves the requested care, the insurer must explain, in writing:

(A) Any disagreement with the medical condition for which the care is requested;

(B) Why the requested care is not acceptable; and/or

(C) Why the requested care will not enable the worker to continue current employment or a current vocational training program.

(3) If the insurer fails to respond in writing within 30 days, the attending physician or injured worker may request approval from the director within 120 days from the date the request was first submitted to the insurer. If the request is from a physician, it must include a copy of the original request and may include any other supporting information.

(4) When the attending physician or the injured worker disagrees with the insurer's disapproval, the attending physician or the injured worker may request administrative review by the director in accordance with OAR 436-010-0008, within 90 days from the date of insurer's notice of disapproval. In addition to information required by OAR 436-010-0008(6), if the request is from a physician, it must include:

(a) A copy of the original request to the insurer; and

(b) A copy of the insurer's response.

(5) When the worker, insurer, or director believes palliative care, compensable under ORS 656.245(1)(c)(J), is excessive, inappropriate, infelicitous, or in violation of the director's rules regarding the performance of medical services, the dispute will be resolved in accordance with ORS 656.327 and OAR 436-010-0008.

(6) Subsequent requests for palliative care are subject to the same process as the initial request; however, the insurer may waive the requirement that the attending physician submit a supplemental palliative care request.

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

Stat. Auth: ORS 656.726

Stats. Implemented: ORS 656.245

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 16-1990(Temp), f. & cert. ef. 8-17-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0041; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0300

### Process for Requesting Exclusion of Medical Treatment from Compensability

(1) If an injured worker or insurer believes that any medical treatment is unscientific, unproven as to its effectiveness, outmoded, or experimental, either party may initiate a request for exclusion of the medical treatment

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from compensability under ORS 656.245(3). The request must include documentation on why the medical treatment should be excluded from compensability for workers' compensation claims. Request for administrative review of an individual worker's treatment under ORS 656.327 does not initiate review under this process.

(2) The investigation will include a request for advice from the licensing boards of practitioners who might be affected and the Medical Advisory Committee.

(3) The director will issue an order and may adopt a rule declaring the treatment to be non-compensable. The decision of the director is appealable to the director for a contested case hearing.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245

Hist.: WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0045; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0330

### Medical Arbiters and Panels of Physicians

(1) In consultation with the Workers' Compensation Management-Labor Advisory Committee under ORS 656.790, the director will establish and maintain a list of physicians to be used as follows:

(a) To appoint a medical arbiter or a panel of medical arbiters in accordance with ORS 656.268 and to select a physician in accordance with ORS 656.325(1)(b).

(b) To appoint an appropriate physician or a panel of physicians to review medical treatment or medical services disputes under ORS 656.245 and 656.327.

(2) Arbiters, panels of arbiters, physicians, and panels of physicians will be selected by the director.

(3) When a worker is required to attend an examination under this rule the director will provide notice of the examination to the worker and all affected parties. The notice will inform all parties of the time, date, location and purpose of the examination. Such examinations will be at a place reasonably convenient to the worker, if possible.

(4) The arbiters, the panels of arbiters, the physicians and the panels of physicians selected under this rule must be paid by the insurer in accordance with OAR 436-009-0070(9) to (11).

(5) The insurer must pay the worker for all necessary related services in accordance with ORS 656.325(1).

Stat. Auth: ORS 656.736(4)

Stats. Implemented: ORS 656.268, 656.325 & 656.327

Hist.: WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0047; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-010-0340

### Sanctions and Civil Penalties

(1) If the director finds any medical provider in violation of the medical reporting requirements established under ORS 656.245, 656.252, and 656.254(1), as found in OAR 436-009 and 436-010, the director may impose one or more of the following sanctions:

(a) Reprimand by the director;

(b) Non-payment, reduction or recovery of fees in part, or whole, for services rendered;

(c) Referral to the appropriate licensing board; or

(d) Civil penalty not to exceed \$1,000 for each occurrence. In determining the amount of penalty to be assessed, the director will consider:

(A) The degree of harm inflicted on the worker or the insurer;

(B) Whether there have been previous violations; and

(C) Whether there is evidence of willful violations.

(2) The director may impose a penalty of forfeiture of fees and a fine not to exceed \$1,000 for each occurrence on any health care practitioner who, under ORS 656.254 and 656.327, has been found to:

(a) Fail to comply with the medical rules;

(b) Provide medical treatment that is excessive, inappropriate or ineffectual; or

(c) Engage in any conduct demonstrated to be dangerous to the health or safety of a worker.

(3) If the conduct as described in section (2) is found to be repeated and willful, the director may declare the practitioner ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years.

(4) A health care practitioner whose license has been suspended or revoked by the licensing board for violations of professional ethical standards may be declared ineligible for reimbursement for treating workers' compensation claimants for a period not to exceed three years. A certified copy of the revocation or suspension order will be prima facie justification for the director's order.

(5) If a financial penalty is imposed on the attending physician or authorized nurse practitioner for violation of these rules, no recovery of penalty fees may be sought from the worker.

(6) If an insurer or worker believes sanctions under sections (1) or (2) of this rule are appropriate, either may submit a complaint in writing to the director.

(7) If the director finds an insurer in violation of the notification provisions of OAR 436-010 limiting medical treatment, the director may order the insurer to reimburse any affected medical service providers for services rendered until the insurer complies with the notification requirement. Any penalty will be limited to the amounts listed in section (8) of this rule.

(8) If the director finds any insurer in violation of OAR 436-009 or 436-010, or an order of the director, the insurer may be subject to penalties under ORS 656.745 of not more than \$2000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, will be considered a separate violation.

Stat. Auth: ORS 656.726(4)

Stats. Implemented: ORS 656.245, 656.254 & ORS 656.745

Hist.: WCD 5-1982(Admin), f. 2-23-82, ef. 3-1-82; WCD 1-1984(Admin), f. & ef. 1-16-84; Renumbered from 436-069-0901, 5-1-85 WCD 1-1988, f. 1-20-88, cert. ef. 2-1-88; WCD 1-1990, f. 1-5-90, cert. ef. 2-1-90; Renumbered from 436-010-0110(3)(4) & (7); WCD 12-1990(Temp), f. 6-20-90, cert. ef. 7-1-90; WCD 30-1990, f. 12-10-90, cert. ef. 12-26-90; WCD 11-1992, f. 6-11-92, cert. ef. 7-1-92; WCD 13-1994, f. 12-20-94, cert. ef. 2-1-95; WCD 12-1996, f. 5-6-96, cert. ef. 6-1-96; Renumbered from 436-010-0130; WCD 11-1998, f. 12-16-98, cert. ef. 1-1-99; WCD 3-2000, f. 4-3-00, cert. ef. 4-21-00; WCD 13-2001, f. 12-17-01, cert. ef. 1-1-02; WCD 14-2003(Temp), f. 12-15-03, cert. ef. 1-1-04 thru 6-28-03; WCD 3-2004, f. 3-5-04 cert. ef. 4-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0001

### Authority for Rules

These rules are adopted under the director's authority contained in ORS 656.726 and 656.506.

Stat. Auth.: ORS 656.726 & 656.506

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-0055-101, 5-1-85; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0002

### Purpose

The purpose of these rules is to:

(1) Prescribe the manner and intervals in which the assessment rate is to be calculated;

(2) Prescribe the manner and intervals employers are to withhold, file, and remit assessments; and

(3) Prescribe the conditions affecting the adjustment of the assessments as authorized by ORS 656.506.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0108, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0003

### Applicability of Rules

(1) These rules govern the Workers' Benefit Fund assessment pursuant to ORS 656.506 on or after the effective date of these rules.

(2) These rules apply to all subject employers as defined in ORS 656.005 and any otherwise non-subject employer who elects coverage pursuant to ORS 656.039.

(3) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0103, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0005

### Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions in the Workers' Compensation Law and as follows:

# ADMINISTRATIVE RULES

(1) "Assessments" means the funds due from employees and employers pursuant to ORS 656.506.

(2) "Employee" means a subject Oregon worker as defined in ORS 656.005 and any otherwise nonsubject worker for whom coverage is elected under ORS 656.039.

(3) "Fund" means the Workers' Benefit Fund as created in ORS 656.506.

(4) "Fund balance" means the balance of the fund after revenue and investment income has been added and expenditures have been subtracted.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0105, 5-1-85; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0008

### Administrative Review

(1) Contested case hearings regarding sanctions and civil penalties: Any employer as defined by ORS 656.005 aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be sent to the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Contested case hearings regarding estimation actions and orders: Any employer as defined by ORS 656.005 aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), may request review pursuant to ORS 183.310 through 183.690 and OAR 436-001. The process for review will be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered to the administrator within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an administrative law judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: ORS 656.735 & 656.740

Stats. Implemented: ORS 656.735 & 656.740

Hist.: WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0010

### Assessment Rate: Method and Manner of Determining

Prior to November 15 each year, the director will compute and notify employers of the following calendar year's assessment rate necessary to meet the needs of the fund. Factors considered in developing the rate include, but are not limited to:

(1) The estimated annual fund expenditures and revenues;

(2) The fund balance requirements;

(3) The estimated annual hours worked per employee;

(4) The estimated number of employees covered by workers' compensation insurance; and

(5) Other records relating to fund expenditures and revenues.

Stat. Auth.: ORS 656.506

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0120, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0020

### Assessments: Manner and Intervals for Filing and Payment

(1) Every employer must compute the total assessment amount due for each employee by multiplying the assessment rate determined in OAR 436-070-0010 by the number of hours or parts of an hour the employee worked in the pay period.

(a) If actual hours worked are not tracked, an employer may either calculate the assessments using a flat rate, use contract information stating the number of hours an employee works, or come up with a reasonable method for calculating hours worked. If the flat rate method is used, the cal-

culation must be based on 40 hours per week for employees paid weekly or biweekly, or 173.33 hours per month for employees paid monthly or semi-monthly.

(b) The employer will retain from the moneys earned by each employee one half (1/2) of the amount due. In addition, the employer will be assessed an amount equal to the amount retained from each employee.

(2) Every employer must file a report of employee hours worked and remit amounts due upon a combined tax and assessment report form prescribed by the Department of Revenue. The report must be filed with the Department of Revenue:

(a) At the times and in the manner prescribed in ORS 316.168 and 316.171; or

(b) Annually as required or allowed pursuant to ORS 316.197 or 657.571.

(3) For employers required to report quarterly, reports and payments are due on or before the last day of the first month after the close of each calendar quarter. For employers that report annually, reports and payments are due on or before the last day of January following the close of each calendar year.

(4) Employers who fail to timely and accurately file and remit assessments may be charged interest on all overdue balances at the rate established by ORS 82.010 and may be assessed civil penalties in accordance with OAR 436-070-0050.

(5) If an employer fails to file a report and remit assessments due timely and accurately, the director may send to the employer a written Failure to File Notice or Notice of Audit Findings. The notice will include a warning that failure to timely and accurately resolve all issues addressed in the written notice may result in the imposition of a civil penalty. The director may coordinate with the Department of Revenue and Employment Department to provide written notice of failure to file.

(a) Within 30 days of the Failure to File Notice or the Notice of Audit Findings, the employer must file an accurate report and remit the assessments due, or otherwise resolve to the satisfaction of the director all issues identified in the written notice. If an employer fails to comply with the notice, the director may estimate the assessments due, including penalties and interest, and send to the employer a Notice of Estimation.

(b) Within 30 days of the Notice of Estimation, the employer must pay the director's estimated assessment or file and remit accurate assessment due. If the employer fails to comply with the notice, the director may send to the employer an Order of Default assessing all amounts due as calculated by the director.

(c) Within 30 days of the Order of Default, the employer must remit the estimated assessment due, unless the order is timely appealed as provided in OAR 436-070-0008.

(6) Employers or the director may initiate activity to resolve reporting errors, omissions, or discrepancies for a period not to exceed the current calendar year plus three prior calendar years. No calendar year limitation applies to cases involving fraud.

(7) When the director determines that the department has received moneys in excess of the amount legally due and payable or that it has received moneys to which it has no legal interest, the director will refund or credit the excess amount. For amounts less than \$20, the director will refund to employers the excess amount only upon receipt of a written request from the employer or the employer's legal representative.

Stat. Auth.: ORS 656.506 & 182.010

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0125, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0040

### Monitoring/Auditing

(1) Employers must maintain payroll and employment records which reflect the total hours worked by all employees for the current calendar year plus three prior calendar years.

(2) Pursuant to ORS 656.726, the director may inspect the books, records and payrolls of employers pertinent to the administration of these rules. Employers must provide the director with all pertinent books, records and payrolls upon request.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.506

Hist.: WCD 3-1983(Admin), f. 6-30-83, ef. 7-1-83; Renumbered from 436-055-0135, 5-1-85; WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-070-0050

### Assessment of Civil Penalties

(1) The director pursuant to ORS 656.745 may assess a civil penalty against an employer.



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(2) If the director finds any employer in violation of OAR 436-070 or an order of the director, the employer may be subject to penalties pursuant to ORS 656.745 of not more than \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation, or each day a violation continues, will be considered a separate violation.

(3) An employer may be assessed a penalty for late filing or payment when received more than 10 calendar days after the due date established in OAR 436-070-0020(2). The penalty will be assessed at 10% of the outstanding balance, with a minimum of \$50 for each violation up to \$2,000. Penalties are in addition to interest and assessments owed.

Stat. Auth.: ORS 656.745(2)  
Stats. Implemented: ORS 656.745  
Hist.: WCD 9-1994, f. 10-31-94, cert. ef. 1-1-95; WCD 2-1996, f. & cert. ef. 1-12-96; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0001

### Authority for Rules

These rules are adopted under the director's authority contained in ORS 656.726.

Stat. Auth.: ORS 656  
Stats. Implemented: ORS 656.612, 656.614 & 656.726  
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0002

### Purpose

The purpose of these rules is to establish guidelines to assure accurate and timely reporting and remittance of premium assessment moneys due the director.

Stat. Auth.: ORS 656  
Stats. Implemented: ORS 656.612 & 656.614  
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0003

### Applicability of Rules

(1) These rules are effective April 1, 2005, to carry out the provisions of:

(a) ORS 656.612 — Consumer and Business Services Fund; purpose, administration, assessments, and collections.

(b) ORS 656.614 — Self-Insured Employers Adjustment Reserve; Self-Insured Employer Group Adjustment Reserve.

(2) Applicable to this chapter, the director may, unless otherwise obligated by statute, in the director's discretion waive any procedural rules as justice so requires.

Stat. Auth.: ORS 656.612, 656.614 & 656.726(4)  
Stats. Implemented: ORS 656.612 & 656.614  
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0005

### Definitions

Except where the context requires otherwise, the construction of these rules is governed by the definitions in the Workers' Compensation Law and as follows:

(1) "Assessable earned premium" means the amount of earned premium, minus exempted earned premium, plus large deductible premium credits or modifications that are subject to the premium assessment.

(2) "Direct earned premium" for the purposes of these rules means "assessable earned premium."

(3) "Director" means the director of the Department of Consumer and Business Services or the director's delegate for the matter.

(4) "Earned premium" means the amount reported to the Oregon Insurance Division in the insurer's Annual Statement, Exhibit of Premiums and Losses (Statutory Page 14), Business in the State of Oregon, Column 2 Direct Premiums Earned, Line 16 Workers' Compensation. These premiums:

(a) Exclude reinsurance accepted and are without deduction of reinsurance ceded;

(b) Are before application of any large deductible credits or modification; and

(c) Are after application of experience rating, premium discounts, retrospective rating, audit premiums, foreign terrorism premiums, domestic terrorism and catastrophic premiums, or other individual risk rating adjustments, and are exclusive of deposit premiums.

(5) "Exempted earned premium" means premium earned on insurance under jurisdiction of the federal government (e.g. U.S. Longshore and Harbor Workers' Compensation Act, Federal Employer's Liability Act, and

Jones Act), employer liability increased limits premium, and excess coverage premium. All exempted earned premium must be stated on a direct basis prior to reinsurance transactions.

(6) "Insurer" means the State Accident Insurance Fund Corporation or an insurer authorized under ORS chapter 731 to transact workers' compensation insurance in this state.

(7) "Premium Assessments" means moneys due the director under ORS 656.612 and 656.614.

(8) "Self-Insured Employer" means an employer who has been certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

(9) "Self-Insured Employer Group" means five (5) or more employers in the same industry certified under ORS 656.430 as having met the qualifications of a self-insured employer set out by ORS 656.407.

Stat. Auth.: ORS 656.726  
Stats. Implemented: ORS 656.726  
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0008

### Administrative Review

(1) Any insurer or self-insured employer aggrieved by a proposed order or proposed assessment of civil penalty of the director issued pursuant to ORS 656.745 may request a hearing by the Hearings Division of the Workers' Compensation Board in accordance with ORS 656.740.

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the person requesting the hearing contests the proposed order or assessment.

(b) The request for hearing must be filed with the administrator of the Workers' Compensation Division within 60 days after the mailing of the proposed order or assessment. No hearing will be granted unless the request for hearing is mailed or delivered to the administrator within 60 days after the mailing date of the proposed order or assessment.

(2) Any insurer or self-insured employer aggrieved by an action or order of the director pursuant to these rules, other than as described in section (1), where such action or order qualifies for review as a contested case, may request review pursuant to ORS 183.310 through 183.690 and OAR 436-001. When the matter qualifies for review as a contested case, the process for review will be as follows:

(a) The request for hearing must be sent in writing to the administrator of the Workers' Compensation Division. No hearing will be granted unless the request specifies the grounds upon which the action or order is contested and is mailed or delivered within 30 days of the action or from the date of mailing or other service of an order.

(b) The hearing will be conducted by an administrative law judge of the Office of Administrative Hearings.

(c) Any proposed order issued by the administrative law judge is subject to revision by the director. The director may allow objections to the proposed order to be filed for the director's consideration within 30 days of issuance of the proposed order.

Stat. Auth.: 656.612, 656.614 & 656.726(4), 656.740  
Stats. Implemented: ORS 183.310 - 183.690, 656.740, 656.745, 656.735  
Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0025

### Premium Assessment; Manner and Intervals for Payments: Insurers

Insurers must report and remit premium assessment moneys to the director using a completed Form 440-910, or its electronic equivalent, as follows:

(1) No later than the 15th day of the second month following the last day of a calendar quarter, the insurer must report and remit premium assessment based upon the insurer's assessable earned premium for that quarter.

(2) Upon written request from the insurer, the director may allow an insurer to report and remit premium assessments annually when the annual premium assessment is less than \$1,000.

(3) The director may waive an insurer's reporting liability after confirming that the insurer has no earned premium for at least four consecutive quarters. The waiver will remain in effect until premium is earned.

(4) Assessable earned premium reported by insurers will be final except for corrections made as a result of audits by the director, examinations by the Insurance Division or insurance regulator of the insurer's state of domicile, or detection by the insurer of clerical error. All such corrections will be made at the premium assessment rate in effect for the year being corrected.

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(5) A separate report using Form 440-910 or its electronic equivalent, and remittance check must be submitted for each insurer, including each insurer operating within a group of insurance companies.

(6) The insurer must maintain sufficient documentation to support the assessable earned premium reported to the director and any adjustments or corrections thereto. The documentation must be sufficient for the director to verify the amount reported, adjusted, or corrected.

Stat. Auth.: 656.612, 656.614, 656.726(4)

Stats. Implemented: ORS 656.612 & ORS 656.614

Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; WCD 7-1995, f. 7-20-95, cert. ef. 10-1-95; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0030

### Premium Assessment; Manner and Intervals for Payments: Self-Insured Employers and Self-Insured Employer Groups

(1) As used in this rule the term "self-insured employers" includes self-insured employer groups.

(2) For premium assessment purposes the premium of all self-insured employers will be determined by using those rates filed with the Insurance Division by a single insurer effective and filed by April 1, which the director has determined will provide the lowest overall rates to all self-insured employers.

(3) Self-insured employers may elect to have their premium calculated either by using:

(a) The normal method of calculation which is manual premium modified by experience rating and premium discount; or

(b) A one-year retrospective rating plan developed and approved by the director. However, any employer becoming self-insured after July 1, may not elect a retrospective rating plan for that fiscal year.

(4) Self-insured employers are required to calculate and remit premium assessments based on the normal method of premium calculation unless the current method elected is to use the one-year retrospective rating plan.

(5) On or before May 31 of each year, the director will issue a bulletin notifying all self-insured employers of the premium rates and the retrospective rating plans developed pursuant to sections (2) and (3) of this rule.

(6) On or before July 1 of each year, every self-insured employer electing to change their current method of premium calculation must submit written notification of the election to the director. Once elected, the method may not be changed for that fiscal year and remains in effect until the self-insured employer timely elects to change the method.

(7) No later than the last calendar day of the month that follows the last day of a calendar quarter, the self-insured employer must report and remit premium assessment using Form 440-900 or Form 440-937 or its electronic equivalent. The premium assessment must be based upon the self-insured employer's premium for that quarter and the premium assessment rate in effect for that quarter as prescribed in OAR 440-045. For retrospective rating plans the premium assessment must be based upon 80 percent of the self-insured employer's standard premium until adjusted by retrospective rating. The director may waive the self-insured reporting requirement after confirming that the self-insured employer has no Oregon payroll for four consecutive quarters.

(8) Notwithstanding section (7) of this rule all premium adjustments resulting from retrospective rating plans or payroll audits must be made by using the premium assessment rate or rates in effect for the period being adjusted.

(9) Retrospective rating adjustments covering periods where more than one assessment rate applied will have the adjusted premium prorated in direct proportion to the self-insured employer's standard premium for each of the periods the assessment rates differed. Total premium assessment due for the entire period will be adjusted on the same basis.

(10) An experience rating modification will be determined individually for each self-insurance plan. The director will use the same method as that used by the Oregon Council on Compensation Insurance, except that the director will use only Oregon claims and payroll exposure and will assign a policy period of July 1 through the following June 30. Loss information necessary to calculate the experience rating modification must be provided to the director by the authorized claims processing location(s). If sufficient experience is not available to promulgate an experience modification based on Oregon experience only, the self-insured employer will be assigned an experience rating modification of 1.00.

(11) When the director orders an adjustment in the experience rating modification applicable for a particular policy period, the adjustment will be applied retroactively to the beginning of the period. Any resulting increase in the assessment is payable on demand. Any resulting decrease may be applied against the next quarterly assessment payment.

(12) When payroll information submitted for use in calculating the experience rating modification has been determined to be inaccurate, the director or the self-insured employer may request a revision of the experience rating modification. A payroll revision may be made only for the three most current years. Any experience modification using that revised payroll information will be recalculated by the director.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.612 & ORS 656.614

Hist.: WCB 2-1976(Admin)(Temp), f. & ef. 4-12-76; WCD 3-1976(Admin), f. & ef. 6-15-76; WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 3-1981(Admin)(Temp), f. 10-30-81, ef. 11-1-81; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 7-1982(Admin), f. & ef. 4-1-82; WCD 8-1982(Admin), f. & ef. 5-17-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 1-1983(Admin)(Temp), f. 6-30-83, ef. 7-1-83; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; WCD 5-1985(Admin), f. 12-10-85, cert. ef. 1-1-86; Renumbered from OAR 436-051-0020 & 0025; WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 5-1987, f. 12-18-87, ef. 1-1-88; WCD 24-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0035

### Audits

To ensure compliance with these rules, insurers, self-insured employers and self-insured employer groups will be subject to periodic audits as authorized by ORS 656.726 and 656.745.

Stat. Auth.: ORS 656.726

Stats. Implemented: ORS 656.726, 656.745

Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## 436-085-0060

### Assessment of Civil Penalties

(1) The director pursuant to ORS 656.745 may assess a civil penalty against an insurer, self-insured employer, or self-insured employer group.

(2) An insurer, self-insured employer or self-insured employer group in violation of OAR 436-085, may be assessed a civil penalty of up to \$2,000 for each violation or \$10,000 in the aggregate for all violations within any three month period. Each violation or each day a violation continues, will be considered a separate violation.

Stat. Auth.: ORS 656.612, 656.614, 656.726(4)

Stats. Implemented: ORS 656.735, 656.740, 656.745

Hist.: WCD 5-1985(Admin), f. 12-10-85, ef. 1-1-86; WCD 10-1991, f. 12-13-91, cert. ef. 1-1-92; Administrative correction; WCD 2-2005, f. 3-24-05, cert. ef. 4-1-05

## Department of Corrections Chapter 291

**Adm. Order No.:** DOC 4-2005

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**Certified to be Effective:** 3-21-05

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**Rules Adopted:** 291-086-0046, 291-086-0047, 291-086-0060

**Rules Amended:** 291-086-0010, 291-086-0020, 291-086-0030, 291-086-0040, 291-086-0045, 291-086-0050

**Subject:** These rule amendments are necessary to revise the approval process and establish criteria that allow inmates to access and use computer equipment. Implementation of new automated inmate legal libraries and changes in inmate work and program assignments has created a greater need to allow inmates to access and use computer equipment.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-086-0010

### Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 179.040, 423.020, 423.030 and 423.075.

(2) Purpose: The purpose of these rules is to establish the approval process and set standards that allow inmates to use computer equipment in the normal course of their work or program assignment.

(3) Policy: It is the policy of the Department of Corrections that security not be compromised by inmate use of computer equipment. Inmate use of computer equipment shall not jeopardize the safety, security or orderly operation of any Department of Corrections facility. Appropriate supervision and management practices shall be maintained to ensure adequate security safeguards.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 17-1999, f. 9-24-99, cert. ef. 10-1-99; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

# ADMINISTRATIVE RULES

## 291-086-0020

### Definitions

(1) Computer Equipment: Any automated processing or data storage devices including, but not limited to, personal computers, work stations, terminals, controllers, printers, and communication devices.

(2) Department of Corrections (DOC) Functional Unit Manager: Any person within the Department of Corrections who reports to either the Director, Deputy Director, an Assistant Director, or an administrator and has responsibility for delivery of program services or coordination of program operations.

(3) DOC Standard Access: The combination(s) of hardware and software which the Assistant Director for General Services/designee and the Assistant Director for Operations/designee determine to be the standard computer configuration for inmates.

(4) Information Systems Unit (ISU): The unit that is responsible for providing technical or operational support to the DOC Information System or DOC Inmate Network.

(5) Inmate: Any person under the supervision of the Department of Corrections who is not under parole, probation or post-prison supervision status.

(6) Inmate Access: Inmate access to, or use of, computer equipment which is granted because of work, program assignment, or authorized by Department of Corrections rule or policy.

(7) Inmate Supervisor: Any employee of the Department of Corrections, any OCE employee, or any DOC/OCE contractor that is responsible for supervising an inmate.

(8) Oregon Corrections Enterprises (OCE): A semi-independent state agency that is a non-Department of Corrections agency or division, which is under the authority of the Director of the Department of Corrections. For purposes of this rule only, Oregon Corrections Enterprises shall not be considered an external organization.

(9) OCE Functional Unit Manager: Any person within the Oregon Corrections Enterprises who reports to either the Administrator or the Deputy Administrator and has responsibility for delivery of business services or coordination of business operations.

(10) OCE Standard Access: The combination(s) of hardware and software which the OCE Administrator and the Assistant Director for Operations/designee determine will be accessed by inmates within each correctional institution.

(11) Program Assignment: Any assignment fulfilling the requirement of the inmate's Oregon corrections plan, or other Department of Corrections approved performance recognition program.

(12) Special Access: The combination(s) of hardware and software beyond what is determined to be standard access.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 17-1999, f. 9-24-99, cert. ef. 10-1-99; DOC 27-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 15-2000, f. & cert. ef. 6-19-00; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0030

### General

(1) These rules (OAR 291-086-0010 through 291-086-0060) establish the approval process and set the standards for inmate access to and use of any information systems equipment; specifically computer hardware and software, peripheral devices, data communications devices, terminals, personal computers, and printers.

(2) Inmates shall only be granted access to computer equipment because of work or program assignment, except for access to resource materials as provided in Department of Corrections rule or policy.

(3) Approval for inmate access to computer equipment is not a privilege or benefit. Any decision to deny or restrict an inmate access to computer equipment may not be appealed by the inmate.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 17-1999, f. 9-24-99, cert. ef. 10-1-99; DOC 15-2000, f. & cert. ef. 6-19-00; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0040

### Approval Process for Inmate Access to Computer Equipment

(1) All requests for inmate computer equipment use shall be approved by the DOC functional unit manager or the OCE functional unit manager, depending on the area of responsibility, prior to granting access to the inmate.

(2) The DOC functional unit manager or the OCE functional unit manager may grant standard access. Any request for access that includes hardware or software that is purchased or donated beyond what is deter-

mined to be standard access (special access) shall require a recommendation from the functional unit manager requesting the access, a technical review by ISU or OCE for implementation problems, and approval by the Institutions Administrator.

(3) All requests for inmate access to computer equipment shall be submitted on the Inmate Access to Automation Equipment and Work Assignment Request form (CD-1426A). The inmate supervisor shall submit the request to the DOC functional unit manager or OCE functional unit manager for approval. If approved, the inmate supervisor and the DOC functional unit manager or OCE functional unit manager shall sign the request form, and forward it to ISU or OCE technical support for implementation. If special access is required, the Institutions Administrator shall approve and sign the request form.

(4) The Assistant Director for General Services/designee and the Assistant Director for Operations/designee will determine specifically what software and hardware combinations constitute DOC standard access.

(5) The OCE Administrator/designee and the Assistant Director for Operations/designee will determine specifically what software and hardware combinations constitute OCE standard access.

(6) ISU or OCE technical support will configure a computer as specified in the Inmate Access to Automation Equipment and Work Assignment Request form.

(a) Login accounts will be created for the number of inmates specified in the form.

(b) An inmate shared folder(s) on the computer or network hard drive will be created. This folder(s) is the only authorized data storage location on the computer or network.

(7) No inmate shall be granted access to computer equipment or systems which contain data or are connected in any way to the DOC information system network unless the request for access has been reviewed, approved and recommended by either the DOC functional unit manager or the OCE functional unit manager and the Institutions Administrator. The Assistant Director for General Services shall determine final approval for such access.

(8) The inmate supervisor shall review the standards for computer use listed in OAR 291-086-0050 or 291-085-0060 with the inmate prior to allowing the inmate to use computer equipment.

(9) Inmate supervisors shall abide by all the department rules and standards governing inmate access to computer equipment. Inmate supervisors are responsible for all work done by inmates on computer equipment and shall:

(a) Perform periodic audits of software and data on the equipment to ensure appropriateness;

(b) Ensure that regular backups of department data are performed; and

(c) Maintain contingency plans for the accidental or willful destruction of data, software, or hardware.

(10) The DOC functional unit manager or designee or the OCE functional unit manager or designee shall maintain a file of all approved requests for inmate access to computer equipment and proof of licenses for installed software per computer.

(11) As appropriate, ISU or OCE technical support will perform random reviews of the DOC or OCE computer equipment respectively to ensure the configuration conforms to the configuration on the request form. The DOC or OCE functional unit manager may contact ISU or OCE technical support to request an audit of specific computer equipment.

(12) Any DOC or OCE manager may suspend the authorization for an inmate to use computer equipment if violations to this rule are suspected.

(a) The institution assignment office will be notified of the suspension and remove the inmate from the work assignment and place him/her on "Review" status.

(b) Staff shall remove the computer from the work area or secure it in such a manner as to ensure that inmates will not have access to it.

(c) As provided in this rule, the inmate supervisor(s) will audit the data on the computer and may request ISU or OCE to conduct an investigation of the computer equipment by sending a formal request to ISU or OCE management. DOC requests will be through the ISU Helpdesk. OCE requests will be through OCE technical support. Findings will be reported to the functional unit manager who signed the original request form.

(d) If rule violations are found to have occurred, appropriate actions will be taken including, but not be limited to, disciplinary misconduct reports, program failures, and permanent restriction from any DOC inmate work or program computer system.



# ADMINISTRATIVE RULES

(e) As part of this process, ISU or OCE technical support may recommend to the functional unit manager a course of action to mitigate any problem which arises because of an inmate's use of computer equipment.

(13) Any changes from the original Inmate Access to Automation Equipment and Work Assignment Request form, must follow the same approval process as a new request. Changes include hardware requirements, application software additions or deletions, modification to automation request purpose, and adjustments to the number of inmates using the automation equipment.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 17-1999, f. 9-24-99, cert. ef. 10-1-99; DOC 27-1999(Temp), f. & cert. ef. 12-22-99 thru 6-19-00; DOC 15-2000, f. & cert. ef. 6-19-00; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0045

### Approval Process for Inmate Computer Operator on a Work Assignment Computer

(1) Supervisors who need an inmate(s) for a work assignment which involves use of computer equipment shall submit a request through the institution assignment office. The assignment office will screen the inmate(s) for the appropriateness of the assignment and report any ineligibility to the requestor.

(2) Criterion that will exclude an inmate from working on computers includes, but is not limited to, computer crime or documented violation of this rule.

(3) Inmates approved for access to computer equipment must sign the Inmate Access to Automation Acknowledgement Statement (CD-1426B) prior to using the automation equipment.

(4) Inmates approved for access to computer equipment will need to obtain an inmate password from ISU or OCE.

(a) The supervisor shall request a password for the inmate by forwarding a copy of the Inmate Access to Automation Acknowledgement Statement (CD-1426B) to ISU or OCE.

(b) ISU or OCE will issue a password to the inmate.

(c) In the event the inmate shares the password, he/she shall send an Inmate Communication Form to the supervisor. The inmate supervisor shall request ISU or OCE to provide another password.

(d) The inmate supervisor shall inform ISU or OCE of any changes in inmate operator(s). ISU or OCE will update the inmate computer access to reflect the change.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 15-2000, f. & cert. ef. 6-19-00; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0046

### Approval Process for Inmate Computer Operator on a Program Assignment Computer

(1) Inmate access shall be restricted to those in an approved inmate program assignment. Inmate supervisors will determine inmate eligibility to program assignments requiring access to computers.

(2) The inmate supervisor shall request ISU provide a login account(s) for each program assignment computer. ISU will create the inmate login account(s). The login account will provide access to only the needed program assignment materials.

(3) The inmate supervisor shall inform ISU of any changes in a program assignment that requires access to other computer resources on the computer equipment. ISU will update the inmate login accounts to reflect the change.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0047

### Approval Process for Inmate Computer Operator on a Resource Computer

(1) Inmate access to resource computer equipment (e.g., legal library) shall be restricted to services provided by department rule or policy.

(2) The inmate supervisor shall request ISU provide a login account for the resource computer equipment. ISU will issue a login account for the resource computer equipment. The login account will restrict inmate access to only the needed resources.

(3) The inmate supervisor shall inform ISU of any change in resource computer login requirement. ISU will update the inmate computer login to reflect the change.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0050

### Standards for Use of Standalone Computer Equipment by Inmates

(1) No inmate shall be permitted to enter, view, update or manipulate information on computer equipment except as authorized by the DOC functional unit manager or the OCE functional unit manager.

(2) Once an inmate has been granted access to computer equipment, he/she shall not be allowed to use the equipment without specific assignment by supervising staff. No inmate shall create, modify or change programs or program scripts that will be used on the DOC Information System or DOC Inmate Network without the approval of the Assistant Director of General Services or his/her designee.

(3) An inmate shall be supervised at all times while using computer equipment.

(4) An inmate shall only use computer equipment which has been authorized in accordance with the department's rule on **Inmate Access to Automation** (OAR 291-086).

(5) An inmate shall not repair or modify computer equipment except as part of an authorized Department of Corrections workforce development program.

(6) An inmate shall not be allowed direct access to printers. Printers for inmate use shall be caged or secured to eliminate direct inmate access, except as authorized by the DOC functional unit manager or the OCE functional unit manager and Institutions Administrator. All print outs shall be reviewed by staff.

(7) An inmate shall not gather or store personal data relating to staff, contractors or volunteers.

(8) An inmate shall not view, gather or store personal data relating to members of the general public.

(9) An inmate shall not view, gather or store personal data relating to other inmates or offenders, unless authorized by department rule or policy.

(10) An inmate shall not have in his/her control or possession any computer media; e.g., diskettes, CDs or tapes except as authorized by supervising staff. An inmate shall not use or take computer equipment to his/her housing area or from his/her immediate work site without approval.

(11) An inmate shall not have any unique passwords, except as authorized by ISU or OCE. The password will be created, recorded, and issued by ISU or OCE and will not be changed by the inmate.

(12) An inmate shall not be allowed to manage any programs that affect inmate assignments or allocations.

(13) Without the approval of the Director or designee, no inmate shall create or maintain Internet or website content that is published to an official department Internet/web site.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 17-1999, f. 9-24-99, cert. ef. 10-1-99; DOC 4-2000, f. & cert. ef. 1-13-00 thru 6-19-00; DOC 15-2000, f. & cert. ef. 6-19-00; DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

## 291-086-0060

### Standards for Use of Network Computer Equipment by Inmates

(1) No inmate shall be permitted to store any data on the computer or network hard drive except as authorized by the inmate supervisor. A folder(s) will be created by ISU or OCE and shall be the only authorized data storage location.

(2) Once an inmate has been granted access to computer equipment, he/she shall not be allowed to use the computer equipment without specific assignment by supervising staff. No inmate shall create, modify or change programs or program scripts that will be used on the DOC Information System or DOC Inmate network without the approval of the Assistant Director of General Services or his/her designee.

(3) An inmate shall be supervised while using computer equipment.

(4) An inmate shall only use computer equipment which has been authorized in accordance with the department's rule on Inmate Access to Automation (OAR 291-086).

(5) An inmate shall not repair or modify network computer equipment except as part of an authorized Department of Corrections workforce development program.

(6) An inmate shall not be allowed direct access to printers. Printers for inmate use shall be caged or secured to eliminate direct inmate access, except as authorized by the DOC functional unit manager or the OCE functional unit manager and Institutions Administrator or his/her designee. All print outs shall be reviewed by staff.

(7) An inmate shall not use the network for electronic communications with other inmates.

# ADMINISTRATIVE RULES

(8) An inmate shall not gather or store personal data relating to staff, contractors or volunteers.

(9) An inmate shall not view, gather or store personal data relating to members of the general public.

(10) An inmate shall not view, gather or store personal data relating to other inmates or offenders except as authorized by department rule or policy.

(11) An inmate shall not have in his/her control or possession any computer media, e.g., diskettes, CDs or tapes except as authorized by supervising staff. An inmate shall not use or take computer equipment to his/her housing area or from his/her immediate work site without approval.

(12) An inmate shall not have any unique passwords, except as authorized by ISU. The password will be created, recorded and issued by ISU or OCE and will not be changed by the inmate.

(13) An inmate shall not be allowed to manage any programs that affect inmate assignments or allocations.

(14) Without the approval of the Director or designee, no inmate shall create or maintain Internet or website content that is published to an official department Internet/web site.

Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075

Stats Implemented: ORS 179.040, 423.020, 423.030 & 423.075

Hist.: DOC 10-2004(Temp), f. & cert. ef. 9-28-04 thru 3-27-05; DOC 4-2005, f. 3-18-05, cert. ef. 3-21-05

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**Rules Amended:** 291-100-0005, 291-100-0008, 291-100-0013, 291-100-0070, 291-100-0080, 291-100-0090, 291-100-0100, 291-100-0110, 291-100-0120, 291-100-0130, 291-100-0140, 291-100-0150

**Subject:** These rules amendments are necessary to clarify and update the policy and procedures regarding computation of sentences, and the admission and release of inmates consistent with applicable law. Additional amendments are necessary to reflect operational and organizational changes within the department.

**Rules Coordinator:** Janet R. Worley—(503) 945-0933

## 291-100-0005

### Authority, Purpose and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.315, 137.320, 137.370, 137.372, 137.375, 137.635, 144.108, 144.110, 144.245, 161.610, 179.040, 421.120, 421.121, 421.122, 423.020, 423.030, 423.075, and 426.675.

(2) Purpose: To establish department policy and procedures for the computation of sentences, and for the admission and release of inmates.

(3) Policy: It is the policy of the Department of Corrections to admit and release inmates, and to compute sentences, in accordance with ORS 137.315, 137.320, 137.370, 137.372, 137.375, 137.635, 144.108, 144.110, 144.245, former 144.390 (repealed 1989 Oregon Laws, Chapter 790, §47a) 161.610, 421.120, 421.121, 421.122, and 426.675.

Stat. Auth.: ORS 137, 144, 161.610, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 42(Temp), f. 10-3-77, ef. 10-4-77; CD 1-1978, f. & ef. 2-1-78; Renumbered from 291-020-0005; CD 23-1983, f. & ef. 5-2-83; CD 51-1985, f. & ef. 8-16-85; CD 45-1986, f. & ef. 10-21-86; CD 7-1989, f. & cert. ef. 5-25-89; CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0008

### Definitions

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

(2) Commitments: A sentence of incarceration to the legal and physical custody of the Department of Corrections.

(3) Concurrent/Consecutive Ghosts: Inmates with Oregon Department of Corrections sentences who are housed in a federal or another state's jurisdiction (not physically housed in an Oregon Department of Corrections facility) and their Oregon sentence is ordered to be served either concurrently or consecutively to a sentence from the federal or other state's jurisdiction.

(4) Custodial Authority: The authority holding physical custody of the inmate, who is responsible for certifying time served while in their custody.

(5) Department of Corrections Facility: Any institution, facility or staff office, including the grounds, operated by the Department of Corrections.

(6) Earned Time Credits: Sentence reduction credits that can be earned by an inmate sentenced under Sentencing Guidelines, pursuant to ORS 421.121 and the department's rule on Prison Term Modification, OAR 291-097.

(7) Escape: Unauthorized departure of an inmate from the physical or legal custody of the Department of Corrections. Escape includes "constructive escape" where an inmate has any unserved felony sentence(s) in excess of 12 months and, by no effort of the inmate, is voluntarily absent from the Department of Corrections (for example, where an inmate is released from custody after serving a local supervisory sentence despite the inmate having any unserved felony sentence(s) in excess of 12 months).

(8) Extra Good Time Credits: Sentence reduction credits that can be earned by an inmate sentenced for crimes committed prior to November 1, 1989, (Non-Sentencing Guidelines), pursuant to ORS 421.120(1)(c), (d) and (e) and 421.122, and the department's rule on Prison Term Modification, OAR 291-097.

(9) Face Sheet: Document that shows a summary of sentences for which an inmate is incarcerated by the Department of Corrections.

(10) Good Time Date: An indeterminate sentence release date calculated for inmates serving a sentence(s) for crime(s) committed prior to November 1, 1989, (Non-Sentencing Guidelines), achieved through reduction in the sentence due to granting of statutory good time and extra good time credits.

(11) Inmate: A person under the supervision of the Department of Corrections who is not on parole, post-prison supervision, or probation status.

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

(13) Intake Facility: A Department of Corrections facility designated by the department to receive inmates upon commitment to the legal and physical custody of the department, and to conduct intake evaluation of the inmate, including custody classification, needs assessment and some program assessments.

(14) Jail Good Time/Work Time Credits: Time credits for good behavior and work performed as allowed for inmates in a county local correctional facility pursuant to ORS 169.110 and 169.120, which are included as time thus served toward a probation revocation sentence if certified as part of the probationary sentence.

(15) Judgment: Document issued by the court that commits an inmate to the legal and physical custody of the Department of Corrections, and reflects the inmate's sentence length, any applicable statutes, term of post-prison supervision (for crimes committed on or after November 1, 1989), and court-ordered supervision conditions, if any.

(16) Maximum Sentence Expiration Date: The very latest date that a person can be held or supervised by the department on a particular sentence.

(17) Offender: Any person under the supervision of the Department of Corrections, local supervisory authority or community corrections who is on probation, parole, or post-prison supervision status.

(18) ORS 137.635 Sentence: A determinate sentence resulting from a conviction of one or more of ten listed felony crimes (i.e., Murder, including any aggravated form of Murder, Manslaughter I, Assault I, Kidnapping I, Rape I, Sodomy I, Sexual Penetration With a Foreign Object I, Burglary I, Arson I and Robbery I), if the inmate also has a prior conviction for one or more of those ten listed felony crimes.

(19) Parole Release Date: The date on which an inmate is ordered to be released from an indeterminate prison sentence(s) to parole by the Board of Parole and Post-Prison Supervision. Parole release may be to the community, detainer or to another Department of Corrections sentence.

(20) Parole Suspension: Issuance of an arrest and detain warrant by the Board of Parole and Post-Prison Supervision which ceases the running of an inmate's parole.

(21) Parole Violator: Any person whose parole has been revoked by the Board of Parole and Post-Prison Supervision.

(22) Post-Prison Supervision: A period of community supervision ordered by the sentencing judge for offenders convicted of a crime(s) committed on or after November 1, 1989.

(23) Post-Prison Supervision Violator: Any person whose post-prison supervision has been revoked by the Board of Parole and Post-Prison Supervision.

## ADMINISTRATIVE RULES

(24) Predicate Crime: A crime listed in ORS 137.635(2) that serves as a previous conviction in designating an inmate as an ORS 137.635 felon.

(25) Pre-sentencing Guidelines Sentences: Sentences imposed for crimes committed on or after October 4, 1977 and prior to November 1, 1989. Also may be referred to as "Matrix" sentences.

(26) Prison Term:

(a) Sentencing Guidelines Sentences: The length of incarceration time within a Department of Corrections facility as established by the court in the judgment.

(b) Pre-Sentencing Guidelines Sentences: The length of required incarceration time within a Department of Corrections facility as established by the order of the Board of Parole and Post-Prison Supervision setting of a parole release date.

(27) Projected Release Date: A release date calculated for inmates serving a sentence(s) for crimes committed on or after November 1, 1989 (Sentencing Guidelines), based on earned time sentence reduction credits earned through the last review period and a projected full compliance of earned time sentence reduction credits on the remaining sentence to be served.

(28) Qualifying ORS 137.635 Conviction: Conviction of a crime listed in ORS 137.635 that was committed following a predicate conviction of any of the ten crimes listed in ORS 137.635.

(29) Release Date Adjustment Form (CD 1417): A standardized form used by the Department of Corrections for documentation of the request and approval/disapproval for early release as authorized by the Department of Corrections.

(30) Revocation Sanction: A term of incarceration or confinement designated by the Board of Parole and Post-Prison Supervision (or its designee) for violation of conditions of parole and post-prison supervision.

(31) Sentence: The punishment given to a person who has been convicted (i.e. found to be guilty) of a crime.

(a) Sentencing Guidelines Sentences: For purposes of these rules and Department of Corrections sentence computation, "sentence" means the length of incarceration time within a Department of Corrections facility, as established by the court in the judgment.

(b) Pre-Sentencing Guidelines Sentences: The length of time an inmate is ordered to the legal and physical custody of the Department of Corrections, up to the maximum indeterminate amount authorized by Oregon law, as established by the court in the judgment and reduced by statutory and extra good time credits.

(32) Sentencing Guidelines Sentences: Sentences imposed for crimes committed on or after November 1, 1989.

(33) Statutory Good Time Credits: Prison term reduction credits granted to an inmate sentenced for crimes committed prior to November 1, 1989, (Non-Sentencing Guidelines), pursuant to ORS 421.120(1)(a) and (1)(b), and these rules.

(34) Time Served Certification: A signed statement by a sheriff of the number of days an inmate was imprisoned prior to delivery of the inmate to a Department of Corrections facility.

(35) Time Served Credits: Pre-sentence time an inmate is confined in a county jail prior to sentencing, as certified in accordance with this rule. Time served credits also include time confined in jail between sentencing and arrival at a Department of Corrections intake facility.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1983, f. & ef. 5-2-83; CD 51-1985, f. & ef. 8-16-85; CD 45-1986, f. & ef. 10-21-86; CD 7-1989, f. & cert. ef. 5-25-89; CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

### 291-100-0013

#### Admissions

(1) In-State Commitments:

(a) Intake Facility: The Coffee Creek Correctional Facility is the general intake facility for male and female inmates committed to the Oregon Department of Corrections except as outlined in (c), (d) and (h)-(j) below.

(b) Pursuant to ORS 137.320(1), the sheriff shall deliver with the inmate a copy of the judgment and a time served certification. Pursuant to ORS 137.315, the sentencing court or the sheriff may transmit a notice of the judgment by electronic telecommunication, as long as the notice is followed by a duplicate or photographic copy of the judgment.

(c) Male inmates sentenced to death will be delivered by the sheriff to the Oregon State Penitentiary. Female inmates sentenced to death will be delivered by the sheriff to the Coffee Creek Correctional Facility.

(d) In extraordinary circumstances where intensive confinement or special immediate treatment of an inmate is essential; e.g., medical/mental health problems, the sheriff may deliver the inmate directly to an approved department facility other than the designated department intake facility. In

such cases, the sheriff must obtain prior approval by contacting the Department of Correction's Population Management Administrator or designee.

(e) Upon receipt of the judgment and the time served certification, the Offender Information and Sentence Computation Unit (OISC) staff will establish a case file and compute the inmate's sentence. After the case file is established and the inmate's sentence is computed, OISC staff will send a copy of the face sheet, judgment, and time served certification to the Board of Parole and Post-Prison Supervision.

(f) In the event the sheriff does not deliver a time served certification with the inmate, the department will accept a time served certification by fax, mail, or teletype at OISC.

(g) If a time served certification is received after admission of the inmate, the OISC staff designated to perform sentence calculation shall amend the sentence computation pursuant to ORS 137.370 and send a copy of the amended face sheet, along with the new time served certification to the Board of Parole and Post-Prison Supervision.

(h) Parole violators will be accepted at the designated Department of Corrections intake facility with a revocation order issued by the Board of Parole and Post-Prison Supervision chairperson, or for a Board of Parole and Post-Prison Supervision warrant from out-of-state.

(i) A post-prison supervision violator is to be returned to the appropriate Department of Corrections intake facility by Community Corrections Branch staff or the county sheriff upon receipt of authorization from the Board of Parole and Post-Prison Supervision. The authorization must include the date of arrest, suspend and detain, revocation, the days to be served on the violation sanction and the sanction release date, or pending future disposition hearing.

(j) Inmates being returned from escape will be accepted at the Department of Corrections intake facility or other designated Department of Corrections facility (as approved) upon verification of escape status and positive identification.

(2) Concurrent/Consecutive Ghosts:

(a) Pursuant to ORS 137.320(2), if an inmate is surrendered to another state or federal authority after sentencing, the sheriff shall forward to the OISC Unit at the Department of Corrections intake facility a copy of the judgment, a statement of the number of days the inmate was imprisoned in the county jail prior to surrender and an identification of the authority to whom the prisoner was surrendered.

(b) Upon receipt of the judgment and the time served certification, OISC staff will establish a case file and compute the inmate's sentence(s). After the case file is established and the inmate's sentence(s) is computed, OISC staff will send a copy of the face sheet, judgment, and time served certification to the Board of Parole and Post-Prison Supervision.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1983, f. & ef. 5-2-83; CD 24-1983(Temp), f. & ef. 7-11-83; CD 44-1983, f. & ef. 11-4-83; CD 51-1985, f. & ef. 8-16-85; CD 45-1986, f. & ef. 10-21-86; CD 7-1989, f. & cert. ef. 5-25-89; CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

### 291-100-0070

#### First/Last Day Credit

(1) An inmate will receive a full day of credit for the date of commitment to the department.

(2) An inmate will receive a full day of credit for the last day of the sentence in a department facility.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

### 291-100-0080

#### Credit for Pre-sentence Time Served (ORS 137.370)

(1) OISC must receive time served certifications directly from the county sheriff or other qualified certifying authority. Time served certifications will not be accepted from an inmate. Time served must be certified by the custodial authority.

(2) It is the inmate's responsibility to direct inquiries to OISC regarding pre-sentence time served certified by the county if he/she believes it does not include all the time they were confined in that county's jail. Form letters for this purpose will be available at the institution law library.

(3) Pursuant to ORS 137.320(3) and 137.370:

(a) An inmate will receive time served credit only for the actual number of days confined after arrest in a county jail or other non-Department of Corrections facility (as authorized by statute) as a result of the charge or of the conduct which gave rise to the charge for which the sentence is later imposed. Credit will be given only for the presentence time the inmate was confined in the county jail or other non-Department of Corrections facility



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(as authorized by statute). The days must be certified by the county sheriff or other qualified certifying authority, or if the time served certification is erroneous (for example, days certified when the inmate was not actually confined in that county's jail), as can be verified.

(b) An inmate will receive time served credit for time confined in a county jail or other non-Department of Corrections facility (as authorized by statute) against only the first of multiple consecutive sentences unless different dates are indicated for the consecutive sentences.

(c) An inmate will receive time served credit for time confined in a county jail or other non-Department of Corrections facility (as authorized by statute) against each of multiple concurrent sentences, if certified individually by case number.

(d) An inmate will not receive time served credit for the time the inmate is incarcerated in a Department of Corrections facility while awaiting trial and sentencing on additional criminal charges against the incarceration term arising out of those additional charges.

(e) An inmate will not receive time served credit on a department sentence if, while incarcerated in the county jail, the inmate was serving an existing department sentence, probation, parole or post-prison supervision revocation sanction, county jail sentence, or other state or federal sentence.

(f) An inmate will not receive time served credit for time in custody on a warrant or detainer unless that custody is the sole result of the warrant/detainer.

(g) An inmate will not receive time served credit for time not confined in the county jail, such as time spent on house arrest, electronic monitoring, or in a county work release program.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0085

### Credit for Time Served Toward a Probationary Sentence (ORS 137.372(2))

An inmate who has been ordered confined as part of a probationary sentence for a crime committed on or after July 18, 1995, shall receive credit for time served in jail after arrest and before commencement of the probationary term unless the sentencing judge orders otherwise.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0090

### Credit for Time Served Toward a Probation Revocation Sentence

(1) Time served as a condition of probation:

(a) Crimes committed prior to November 1, 1989: Pursuant to *former* ORS 137.550, an inmate will receive credit for time served as a condition of probation pursuant to ORS 137.540 against the incarceration term of any subsequent sentence resulting from revocation of probation. Time served includes jail good time and work time credits as certified.

(b) Crimes committed on or after November 1, 1989 and judgments entered prior to July 18, 1995: Pursuant to ORS 137.372 and *former* ORS 137.550(6), an inmate will receive credit for time served as a condition of probation pursuant to ORS 137.540, or as part of a probationary sentence pursuant to the rules of the Oregon Criminal Justice Commission, against the incarceration term of any subsequent sentence resulting from revocation of probation only if ordered by the sentencing judge in the judgment. Time thus served includes jail good time and work time credits as certified.

(c) Crimes committed on or after November 1, 1989 and judgments entered on or after July 18, 1995: Pursuant to ORS 137.372, *former* ORS 137.550(6), and 137.545(7), an inmate will receive credit for time served as a condition of probation pursuant to ORS 137.540, or as part of a probationary sentence pursuant to the rules of the Oregon Criminal Justice Commission, against the incarceration term of any subsequent sentence resulting from revocation of probation unless the sentencing judge orders otherwise in the judgment. Time thus served includes jail good time and work time credits as certified.

(2) Time served prior to commencement of probation:

(a) Pursuant to ORS 137.370(2)(a), an inmate who has been revoked from a probationary sentence for a crime committed on or after November 1, 1989 and prior to July 18, 1995, will receive credit for the time served in jail after arrest and before commencement of the probationary sentence.

(b) Pursuant to ORS 137.370(2)(a) and 137.372(1), an inmate who has been revoked from a probationary sentence for a crime committed on or after July 18, 1995, will receive credit for the time served in jail after arrest and before commencement of the probationary sentence unless the sentencing judge orders otherwise.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0100

### Prison Term and Sentence Reduction Credits

(1) Statutory Good Time and Extra Good Time Credits: Each inmate confined in execution of the judgment of sentence upon any conviction for a crime committed prior to November 1, 1989, for any term other than life, and whose record of conduct shows that the inmate faithfully has observed the rules of the institution, shall be entitled to a deduction from the term of sentence to be computed in accordance with ORS 421.120(1), 421.122, and the department's rule on **Prison Term Modification**, OAR 291-097.

(2) Earned Time Credits: Each inmate sentenced to the custody of the Department of Corrections for felonies committed on or after November 1, 1989 under Sentencing Guidelines, except those inmates subject to the provisions of ORS 137.635, any other Oregon statutes restricting earned time credits, or those inmates serving a term of incarceration as a sanction for violation of conditions of post-prison supervision, shall be eligible to earn sentence reduction credits up to 20 percent of the total sentencing guidelines incarceration term for acceptable participation in work and self-improvement programs in accordance with the Oregon Corrections Plan, as well as maintaining appropriate institution conduct, in accordance with ORS 421.121 and the department rule on **Prison Term Modification**, OAR 291-097.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0105

### ORS 137.700 and 137.707

When a person is convicted of an offense listed in ORS 137.700 or 137.707 for a crime committed on or after the effective dates listed in ORS 137.700 and 137.707, the person shall serve the entire term imposed by the court and is not eligible for earned time, work release, alternative incarceration programs, release on post prison supervision or any form of temporary leave from custody during the service of the term of imprisonment in accordance with ORS 137.700, 137.707 and the department's rules on Prison Term Modification, OAR 291-097; Work Release Programs, OAR 291-149; Alternative Incarceration Programs, OAR 291-062 and Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips, OAR 291-063.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0110

### Ballot Measure 4 Sentences (ORS 137.635)

(1) Prior Convictions for ORS 137.635 Predicate Crimes:

(a) For purposes of ORS 137.635, an inmate has a prior conviction for an ORS 137.635 predicate crime if the inmate committed and was previously convicted for one of the crimes listed in ORS 137.635 prior to the commission of an ORS 137.635 crime for which the inmate is currently sentenced.

(b) A prior conviction for an ORS 137.635 predicate crime may have occurred either before, on or after January 1, 1990, the effective date of ORS 137.635.

(c) A prior conviction for an ORS 137.635 predicate crime may be a prior conviction from another state or federal jurisdiction that is the equivalent of a listed ORS 137.635 felony crime.

(d) Determination of a prior conviction for an ORS 137.635 predicate crime:

(A) For crimes committed on or after January 1, 1990 with judgments entered prior to August 23, 1993, OISC staff will determine whether an inmate has a qualifying prior conviction for an ORS 137.635 predicate crime and whether an inmate is subject to the sentencing provisions of ORS 137.635. If a prior conviction for an ORS 137.635 predicate crime is from another state or federal jurisdiction, OISC staff will obtain documents necessary to verify that the elements of the predicate felony crime for which the inmate was previously convicted are identical to the elements of one or more of the ten felony crimes listed in ORS 137.635.

(B) For crimes committed on or after January 1, 1990 with judgments entered on or after August 23, 1993, the court will determine whether an inmate has a qualifying prior conviction for an ORS 137.635 predicate crime and whether an inmate is subject to the sentencing provisions of ORS 137.635.

(2) Qualifying ORS 137.635 Convictions:

(a) An inmate who is currently convicted of one or more ORS 137.635 crimes committed on or after January 1, 1990, who is sentenced by the court to a determinate sentence and who has a prior conviction for an ORS 137.635 predicate crime is subject to the sentence computation

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requirements of ORS 137.635 on the qualifying second or repeat conviction.

(b) An inmate who receives two or more qualifying ORS 137.635 convictions arising out of the same criminal episode (e.g., convictions are separate counts in the same criminal case, convictions arise in the same court appearance), is not subject to an ORS 137.635 sentence as a result of the convictions, unless the inmate has a prior conviction for an ORS 137.635 predicate crime.

(3) Sentence Computation of ORS 137.635 Sentences:

(a) The incarceration term of a current determinate ORS 137.635 sentence is determined by the court as indicated in the judgment committing the offender to the legal and physical custody of the Department of Corrections.

(b) An inmate that is determined to be subject to an ORS 137.635 sentence shall serve the entire incarceration term of the sentence imposed by the court, and is not eligible to earn sentence reduction credits (i.e., earned time) during service of the qualifying ORS 137.635 sentence.

(c) An inmate that is determined to be subject to an ORS 137.635 sentence is not eligible for parole, earned time, work release, alternative incarceration programs, release on post prison supervision or any form of temporary leave from custody, including medical leave, during the service of the term of imprisonment in accordance with ORS 137.635, and the department's rules on Prison Term Modification, OAR 291-097; Work Release Programs, OAR 291-149; Alternative Incarceration Programs, OAR 291-062; and Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips, OAR 291-063.

(d) An inmate serving a sentence for a predicate conviction for a crime committed on or after November 1, 1989, may be eligible for earned time credits on that prior sentence pursuant to ORS 421.121, but not during service of the qualifying ORS 137.635 sentence.

(e) An inmate serving a sentence for a predicate conviction for a crime committed prior to November 1, 1989, may be eligible for statutory good time and extra good time credits on that prior sentence pursuant to ORS 421.120(1) and 421.122 and in accordance with the department's rule on **Prison Term Modification**, OAR 291-097.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; CD 5-1994, f. 2-18-94, cert. ef. 3-1-94; DOC 22-1998(Temp), f. & cert. ef. 12-23-98 thru 6-21-99; DOC 6-1999, f. 3-26-99, cert. ef. 4-1-99; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0115

### ORS 137.750 (Sentences Imposed for Crimes Committed on or After December 5, 1996)

(1) Pursuant to ORS 137.750, when the court sentences a defendant for any crime committed on or after December 5, 1996, the court must order on the record in open court if the defendant may be eligible for any form of temporary leave from custody, reduction in sentence, work release, alternative incarceration program or program of conditional or supervised release.

(2) The Department of Corrections may consider the inmate for any form of temporary leave, sentence reduction credits, work release, alternative incarceration programs, or programs of conditional or supervised release, only upon order of the sentencing court appearing in the judgment.

(3) The Department of Corrections will not consider an inmate eligible for ORS 137.750 programming unless a sentencing court specifically orders, in writing, that the inmate is eligible for such program(s) in the judgment.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0120

### ORS 161.610 Gun Minimums

(1) Pre-Sentencing Guidelines:

(a) Pursuant to ORS 161.610, inmates serving a sentence(s) for crime(s) committed prior to November 1, 1989, containing an ORS 161.610 gun minimum incarceration term will begin the gun minimum incarceration term on the begin date of the sentence, less eligible time served credits.

(b) Inmates serving an ORS 161.610 minimum incarceration term shall not become eligible for work release or parole until the minimum incarceration term, less reductions for statutory good time, is served.

(c) Inmates shall be released upon completion of the ORS 161.610 minimum incarceration term, or upon the parole release date, whichever is longer.

(2) Sentencing Guidelines Sentences:

(a) Pursuant to ORS 137.637, inmates serving a sentence(s) for crime(s) committed on or after November 1, 1989, containing an ORS 161.610 gun enhancement penalty shall have their sentence release date computed on the determinate sentence imposed less earned time under ORS 421.121, or the presumptive sentence as provided by the rules of the Oregon Criminal Justice Commission, whichever is longer.

(b) Inmates serving an ORS 161.610 minimum incarceration term will not be eligible for work release, alternative incarceration programs, release on post-prison supervision or any form of temporary leave from custody during the service of the term of imprisonment in accordance with the department's rules on Prison Term Modification, OAR 291-097; Work Release Programs, OAR 291-149; Alternative Incarceration Programs, OAR 291-062 and Short-Term Transitional Leaves, Emergency Leaves and Supervised Trips, OAR 291-063.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0130

### Computation of Sentences for Inmates on Escape Status ("Inoperative Time" Computation)

(1) Pursuant to 137.370(2), time on escape outside a Department of Corrections or other assigned facility status will not be credited toward service of a department sentence.

(2) An inmate's service of a department sentence ceases on the date that the inmate escapes from a Department of Corrections or other assigned facility. A full day of credit will be given for the day of escape. The sentence commences to run again on the date the inmate arrives at the designated department intake facility, with a full day of credit given for the day of return.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0140

### Computation of Sentences for Parole Violators

(1) Upon parole revocation, the suspend, revocation, and arrest dates provided by the Board of Parole and Post-Prison Supervision will be used by OISC staff to calculate new good time and maximum sentence expiration dates.

(2) A new sentence received by a parolee who has been returned to the Department of Corrections without revocation will be calculated in the same manner as a new commitment.

(3) Inmates paroled before September 13, 1975, who are revoked and returned to a Department of Corrections facility will not receive any credit toward their indeterminate sentence(s) for time served on parole prior to the revocation.

(4) Pursuant to former ORS 144.390 (repealed 1975 Oregon Laws, Chapter 589), inmates paroled on or after September 13, 1975, who are revoked and returned to a Department of Corrections intake facility will receive credit toward their indeterminate sentence for time served on parole prior to revocation, except inoperative time.

(5) Absconders from parole will cease to accrue time served on parole toward their indeterminate sentence as of the date of issuance of the parole suspend warrant. Parole time resumes upon arrest in Oregon for the abscond warrant. If the absconder is arrested out of state, parole time resumes upon return to the Department of Corrections intake facility or placement in an Oregon local correctional facility (as approved).

(6) All previously granted statutory good time and extra good time credits are forfeited upon revocation of parole.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075  
Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075  
Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0150

### Release

(1) An inmate shall not be released from confinement in a Department of Corrections facility except as authorized in writing by an appropriate releasing authority.

(2) Inmates serving a sentence(s) for crime(s) committed on or after November 1, 1989, shall be released from confinement on that sentence(s) only upon completion of their incarceration term, or upon receipt and verification of:

(a) A court order or judgment requiring the inmate's release; or

(b) A commutation or pardon order issued by the Governor requiring the inmate's release.

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(c) An order of release to post-prison supervision issued by the Board of Parole and Post-Prison Supervision for those sentences (in accordance with statutes) the Board has release authority over.

(3) Inmates serving a sentence(s) for crime(s) committed prior to November 1, 1989, shall be released from confinement on that sentence(s) only upon:

(a) Receipt and verification of:

(A) An order of parole release issued by the Board of Parole and Post-Prison Supervision; or

(B) An order of parole-like release six months prior to the inmate's good time date in the event an inmate refuses parole for crimes committed prior to September 20, 1985; or

(C) A court order or judgment requiring the inmate's release; or

(D) A commutation or pardon order issued by the Governor requiring the inmate's release.

(b) Discharge of sentence, upon:

(A) The good time date, when the good time date is reached on or before a parole release date set by the Board of Parole and Post-Prison Supervision; or

(B) The good time date, when the good time date is reached and the offender has refused parole, for crimes committed prior to September 20, 1985.

(C) Compelled parole pursuant to ORS 144.245(2) for crimes committed on or after September 20, 1985 and prior to November 1, 1989.

(4) OISC staff shall receive and distribute to the Department of Corrections facilities having physical custody of the inmate, any verified court order or judgment requiring the inmate's release.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: CD 23-1993, f. 9-16-93, cert. ef. 9-20-93; DOC 2-2002(Temp), f. & cert. ef. 1-15-02 thru 7-14-02; DOC 9-2002, f. & cert. ef. 7-12-02; DOC 5-2005, f. & cert. ef. 4-13-05

## 291-100-0160

### Adjusted Release Date

(1) Pursuant to ORS 137.375, when an inmate's release date falls on a Saturday, Sunday or legal holiday, the inmate shall be released at the discretion of the releasing authority, on the first, second, or third day preceding the date of release which is not a Saturday, Sunday or legal holiday. The inmate may be released on the Wednesday or Thursday immediately prior to the release date if the release date interferes with community supervision or transitional planning.

(2) Approval Process: To request an adjusted release, the following process will occur:

(a) The institution counselor shall send the release plan/packet to the county community corrections office when the inmate has no less than 90 days remaining prior to their scheduled release. If the institution counselor determines a Friday release could be problematic, he/she will note this on the release plan/packet with a brief explanation why; i.e., bus schedule. The institution counselor shall document all early release actions in the computer system.

(b) Upon receiving the release plan/packet, community corrections staff shall request an early release by submitting a written request to the institution counselor when there is no less than 60 days remaining prior to the projected release date. In the written request, community corrections staff shall indicate a preferred release date (Wednesday or Thursday), briefly explain circumstances that make the release date problematic, briefly describe why the release date may interfere with community supervision or transitional planning, and briefly describe a plan for receiving the inmate. Community corrections staff should document all early release actions in the computer system (chronos).

(c) Upon receiving an adjusted release request from community corrections staff, the institution counselor shall submit a Release Date Adjustment form (CD 1417) to the designated Central Office staff for approval within 14 days of receiving the request from the county community corrections. The institution counselor shall document in the computer system (chronos) that an early release request was received from community corrections staff and a Release Date Adjustment form was submitted to Central Office.

(d) Upon receiving an adjusted release request from an institution counselor, the designated Central Office staff shall respond to the institution counselor within seven days of receiving the request. Realizing that situations change, requests not received within the above timeframes will be considered on a case-by-case basis.

(3) Communication Process:

(a) Upon approval of the requested adjusted release by the designated Central Office staff, the institution counselor will notify the county com-

munity corrections office, Board of Parole and Post-Prison Supervision, and inmate of the new release date. The counselor will also notify OISC of the new release date by providing the facility's OISC institution office with a copy of the approved Release Date Adjustment form.

(b) If the adjusted release is denied by the designated Central Office staff, the institution counselor will notify the county community corrections office and inmate of the denial and provide the facility's OISC institution office with a signed copy of the denied Release Date Adjustment form.

(c) If a release date changes and there is no longer a need for an adjusted release date, the designated Central Office staff will write "canceled" across the top of the Adjusted Release Date form and send a copy to the institution counselor who will forward a copy to the county community corrections office, Board of Parole and Post-Prison Supervision, inmate, and the facility's OISC institution office.

Stat. Auth.: ORS 137, 144, 161.620, 179.040, 421, 423.020, 423.030 & 423.075

Stats. Implemented: ORS 137, 144, 161.610, 179.050, 421, 423.020, 423.030 & 423.075

Hist.: DOC 5-2005, f. & cert. ef. 4-13-05

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## Department of Fish and Wildlife Chapter 635

**Adm. Order No.:** DFW 19-2005(Temp)

**Filed with Sec. of State:** 3-16-2005

**Certified to be Effective:** 4-15-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-018-0090

**Subject:** Amend rule to allow the sport harvest of hatchery spring chinook in the Deschutes and Hood Rivers.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-018-0090

#### Inclusions and Modifications

(1) The **2005 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2005 Oregon Sport Fishing Regulations**.

(2) The Deschutes River from the mouth at the I-84 Bridge upstream to Sherars Falls and the Hood River from the mouth to the Powerdale Dam are open to the retention of adipose fin-clipped chinook salmon April 15 to July 31, 2005.

(a) The catch limit is two adult adipose fin-clipped salmon per day and five adipose fin-clipped jack salmon per day.

(b) All nonadipose fin-clipped salmon must be released unharmed.

(c) It is *unlawful* to continue to angle for jack salmon, steelhead or trout between Sherars Falls and the upper railroad trestle (three miles) after taking a daily bag limit of adult chinook salmon.

Stat. Auth.: ORS 496.138 & 496.146

Stats. Implemented: ORS 496.162

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96; FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp), f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; FWC 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02, cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04; Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05

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**Adm. Order No.:** DFW 20-2005(Temp)

**Filed with Sec. of State:** 3-29-2005



# ADMINISTRATIVE RULES

**Certified to be Effective:** 3-29-05 thru 3-30-05

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

**Rules Suspended:** 635-042-0022(T)

**Subject:** This rule will open the non-Treaty spring chinook tangle net commercial fishery in the Columbia River mainstem. Adoption is consistent with action taken March 28, 2005 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 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).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(C) 6:00 p.m., March 8, 2005 to 6:00 a.m., March 9, 2005.

(D) 6:00 p.m., March 10, 2005 to 2:00 p.m., March 11, 2005.

(E) 6:00 p.m., March 15, 2005 to 6:00 a.m., March 16, 2005.

(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.

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by tangle net during the following open period: 9:00 p.m., March 29, 2005 to 5:00 a.m., March 30, 2005.

(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 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 submersed 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.

# ADMINISTRATIVE RULES

(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. & cert. ef. 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; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05

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**Adm. Order No.:** DFW 21-2005(Temp)

**Filed with Sec. of State:** 3-31-2005

**Certified to be Effective:** 3-31-05 thru 4-1-05

**Notice Publication Date:**

**Rules Amended:** 635-042-0022

**Rules Suspended:** 635-042-0022(T)

**Subject:** This rule will extend the non-Treaty spring chinook tangle net commercial fishery in the Columbia River mainstem. Adoption is consistent with action taken March 30, 2005 by the Columbia River Compact.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 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).

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by gill net during the following open period:

(A) 5:00 p.m., March 1, 2005 to 5:00 a.m., March 2, 2005.

(B) 6:00 p.m., March 3, 2005 to 6:00 a.m., March 4, 2005.

(C) 6:00 p.m., March 8, 2005 to 6:00 a.m., March 9, 2005.

(D) 6:00 p.m., March 10, 2005 to 2:00 p.m., March 11, 2005.

(E) 6:00 p.m., March 15, 2005 to 6:00 a.m., March 16, 2005.

(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.

(c) From the area as described in section (1) of this rule, adipose fin-clipped chinook salmon and sturgeon may be taken for commercial purposes by tangle net during the following open period:

(A) 9:00 p.m., March 29, 2005 to 5:00 a.m., March 30, 2005.

(B) 10:00 p.m. March 31, 2005 to 6:00 a.m., April 1, 2005.

(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 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 headline) 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.

## ADMINISTRATIVE RULES

(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, Elokom-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. & cert. ef. 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; DFW 9-2005(Temp), f. & cert. ef. 3-1-05 thru 7-31-05; DFW 11-2005(Temp), f. & cert. ef. 3-2-05, cert. ef. 3-3-05 & 7-31-05; DFW 13-2005(Temp), f. & cert. ef. 3-7-05 thru 7-31-05; DFW 14-2005(Temp), f. & cert. ef. 3-10-05 thru 7-31-05; DFW 18-2005(Temp), f. & cert. ef. 3-15-05 thru 3-21-05; DFW 20-2005(Temp), f. & cert. ef. 3-29-05 thru 3-30-05; DFW 21-2005(Temp), f. & cert. ef. 3-31-05 thru 4-1-05

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**Adm. Order No.:** DFW 22-2005(Temp)

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-30-05 thru 7-31-05

**Notice Publication Date:**

**Rules Amended:** 635-023-0095

**Subject:** Amend rule to close sturgeon sport fishing in the mainstem Columbia River.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 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), (4) and (5) 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 Beacon Rock (River Mile 141) upstream to Bonneville Dam is closed to all sturgeon angling effective 11:59 p.m., April 30, 2005 through July 31, 2005.

(4) 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.

(5) 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.

(6) During the fishing period as identified in section (5)(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 & 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; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05

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**Adm. Order No.:** DFW 23-2005(Temp)

**Filed with Sec. of State:** 4-8-2005

**Certified to be Effective:** 4-8-05 thru 10-4-05

**Notice Publication Date:**

**Rules Amended:** 635-004-0019

**Subject:** Amend rule in order to adopt inseason actions that have been implemented by the federal government for commercial fisheries for groundfish.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

### 635-004-0019

#### Inclusions and Modifications

(1) OAR chapter 635, division 004, modifies or is in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart G, West Coast Groundfish Fisheries**.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart G, provides requirements for commercial groundfish fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the **Code of Federal Regulations**.

(3) Notwithstanding the regulations identified in OAR 635-004-0018, the National Marine Fisheries Service (NMFS), by means of NMFS-SEA-05-01, announced inseason management changes, effective April 1, 2005, to commercial fisheries including limited entry fixed-gear sablefish tier limits, minor corrections to Rockfish Conservation Area (RCA) coordinates, and clarification of requirements when multiple gear types are on board limited entry trawl vessels.

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

Stat. Auth.: ORS 506.119

Stats. Implemented: ORS 506.109 & 506.129

Hist.: DFW 76-1999(Temp), f. 9-30-99, cert. ef. 10-1-99 thru 12-31-99; DFW 81-1999(Temp), f. & cert. ef. 10-12-99 thru 12-31-99; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 23-2005(Temp), F. & cert. ef. 4-8-05 thru 10-4-05

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**Adm. Order No.:** DFW 24-2005

**Filed with Sec. of State:** 4-15-2005

**Certified to be Effective:** 5-1-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 635-004-0003, 635-011-0072

**Rules Amended:** 635-017-0090

**Subject:** Adopt and amend rules to ban the use of lamprey used as bait Statewide. Housekeeping and technical corrections to the regulations may occur to ensure rule consistency.

**Rules Coordinator:** Katie Thiel—(503) 947-6033



# ADMINISTRATIVE RULES

## 635-004-0003

### Bait Restrictions

It is *unlawful* to use lamprey as bait in any commercial fishery.

Stat. Auth.: ORS 506.109, 506.119 & 506.129

Stats. Implemented: ORS 506.036 & 508.306

Hist.: DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05

## 635-011-0072

### Bait Restrictions

Notwithstanding rules as incorporated in the 2005 Oregon Sport Fishing Regulations, it is *unlawful* to use lamprey as bait in any recreational fishery.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.162, 506.129 & 508.306

Hist.: DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05

## 635-017-0090

### Inclusions and Modifications

(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) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Saturday through Monday each week. All harvest is prohibited Tuesday through Friday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) No permit holder shall harvest more than one hundred (100) lamprey during each lamprey season;

(f) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(g) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

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

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & cert. ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp), f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp), f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp), f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert. ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp), f. 8-19-02, cert. ef. 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03

thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05

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**Adm. Order No.:** DFW 25-2005

**Filed with Sec. of State:** 4-15-2005

**Certified to be Effective:** 4-15-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 635-003-0003, 635-003-0004, 635-013-0003, 635-013-0009, 635-023-0130

**Subject:** Amend rules relating to commercial and sport salmon fishing in the Pacific Ocean, sport salmon fishing in specific nearshore ocean waters, bays and coastal streams, and sport salmon fishing in the Columbia River and tributaries.

**Rules Coordinator:** Katie Thiel—(503) 947-6033

## 635-003-0003

### Purpose and Scope

(1) The purpose of Division 003 is to provide for management of commercial salmon fisheries off the Oregon Coast over which the state has jurisdiction.

(2) Division 003 incorporates into Oregon Administrative Rules, by reference, the annual ocean troll salmon specifications and management measures for 2005, included in the **Pacific Fishery Management Council — Adopted 2005 Ocean Salmon Management Measures and Impacts, dated April 2005**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H (61FR34572, July 2, 1996, as amended** to incorporate the standards in the **Pacific Fishery Management Council referenced document**). Therefore, persons must consult the **Pacific Fishery Management Council referenced document** and **Federal Regulations** in addition to Division 003 to determine all applicable troll salmon fishing requirements. A copy of the **Pacific Fishery Management Council referenced document** and the **Federal Regulations** may be obtained by contacting Pacific Council News at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1383.

(3) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 20-1996, f. & cert. ef. 4-29-96; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 25-2005, f. & cert. ef. 4-15-05

## 635-003-0004

### Inclusions and Modifications

(1) OAR 635-003-0005 through 635-003-0076 modify or are in addition to provisions contained in **Code of Federal Regulations, Title 50, Part 660, Subpart H**.

(2) The **Code of Federal Regulations (CFR), Title 50, Part 660, Subpart H**, provides requirements for commercial salmon fishing in the Pacific Ocean off the Oregon coast. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

(3) This rule contains requirements which modify commercial salmon fishing regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean commercial salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by **Federal Regulations (CFR, Title 50, Part 660, Subpart H)**.

(4) General Requirements, Definitions, Restrictions or Exceptions: Vessels prevented by unsafe weather conditions or mechanical problems from meeting management area landing restrictions, must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. Notification shall include the vessel name, port where delivery will be made, approximate number of salmon (by species) on board, and estimated time of arrival.

(5) South of Cape Falcon to Humbug Mountain:

(a) Open for all salmon except coho March 15–March 25 and April 1–April 15;

# ADMINISTRATIVE RULES

- (b) It is *unlawful* to take chinook salmon less than 27 inches in length;
- (c) It is *unlawful* to retain incidentally caught halibut during the March/April salmon season;
- (d) It is *unlawful* to fish with gear having more than four spreads per wire, and only single point, single shank barbless hooks are allowed;
- (e) A triangular area offshore is open to the retention of all chinook salmon consistent with seasons adopted by the Pacific Fishery Management Council in adjacent waters, except that prior to August 1 only fin-clipped chinook salmon may be retained in this area. This triangular area extends from the green buoy approximately one-half mile offshore from the mouth of Tillamook Bay northeasterly to Twin Rocks (45°35'49" N. lat.) and southeasterly to Pyramid Rock (45°29'49" N. lat.).

(6) Humbug Mountain, Oregon, to Humboldt South Jetty: When the fishery is closed north of the Oregon/California border and open to the south, vessels with fish on board taken in the open area may request authorization to temporarily moor in Brookings, Oregon, prior to landing in California. Such vessels shall first notify the Chetco River Coast Guard Station via VHF Channel 22A between the hours of 0500 and 2200. Proper notification shall include the vessel name, number of fish on board, and estimated time of arrival.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 506.129

Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 40-1995(Temp), f. & cert. ef. 5-18-95; FWC 62-1995(Temp), f. 7-27-95, cert. ef. 7-28-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 26-1996(Temp), f. 5-16-96, cert. ef. 5-17-96; FWC 31-1996(Temp), f. & cert. ef. 6-4-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 33-1997(Temp), f. & cert. ef. 5-28-97; FWC 44-1997(Temp), f. & cert. ef. 8-13-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 36-1998(Temp), f. 5-12-98, cert. ef. 5-13-98 thru 5-15-98; DFW 38-1998(Temp), f. & cert. ef. 5-15-98 thru 6-15-98; DFW 39-1998(Temp), f. 5-19-98, cert. ef. 5-20-98 thru 5-23-98; DFW 44-1998(Temp), f. 6-1-98, cert. ef. 6-2-98 thru 6-4-98; DFW 64-1998(Temp), f. 8-14-98, cert. ef. 8-15-98 thru 8-21-98; DFW 65-1998(Temp), f. & cert. ef. 8-21-98 thru 8-31-98; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 45-2000(Temp), f. 8-10-00, cert. ef. 8-11-00 thru 8-31-00; DFW 46-2000(Temp), f. 8-10-00, cert. ef. 8-10-00 thru 9-30-00; DFW 49-2000(Temp), f. 8-17-00, cert. ef. 8-18-00 thru 9-30-00; DFW 56-2000(Temp), f. 8-31-00, cert. ef. 9-1-00 thru 9-30-00; DFW 59-2000(Temp), f. & cert. ef. 9-6-00 thru 9-30-00; DFW 73-2000(Temp), f. 10-26-00, cert. ef. 10-28-00 thru 11-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 48-2001(Temp), f. 6-14-01, cert. ef. 6-15-01 thru 6-30-01; DFW 58-2001(Temp), f. 7-18-01, cert. ef. 7-20-01 thru 9-30-01; DFW 67-2001(Temp), f. 8-2-01, cert. ef. 8-3-01 thru 9-30-01; DFW 69-2001(Temp), f. & cert. ef. 8-8-01 thru 9-30-01; DFW 74-2001(Temp), f. & cert. ef. 8-17-01 thru 9-30-01; DFW 83-2001(Temp), f. 8-30-01, cert. ef. 8-31-01 thru 9-30-01; DFW 22-2002(Temp), f. 3-19-02, cert. ef. 3-20-02 thru 4-30-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 58-2002(Temp), f. 6-6-02, cert. ef. 6-7-02 thru 6-30-02; DFW 65-2002(Temp), 6-27-02, cert. ef. 7-1-02 thru 12-27-02; DFW 72-2002(Temp), f. 7-11-02 cert. ef. 7-12-02 thru 12-31-02; DFW 76-2002(Temp), f. 7-25-02, cert. ef. 7-26-02 thru 12-31-02; DFW 77-2002(Temp), f. & cert. ef. 7-26-02 thru 12-31-02; DFW 84-2002(Temp), f. 8-8-02, cert. ef. 8-9-02 thru 12-31-02; DFW 86-2002(Temp), f. & cert. ef. 8-9-02 thru 12-31-02; DFW 92-2002(Temp), f. & cert. ef. 8-22-02 thru 12-31-02; DFW 101-2002(Temp), f. & cert. ef. 9-9-02 thru 12-31-02; DFW 111-2002(Temp), f. 10-8-02, cert. ef. 10-14-02 thru 12-31-02; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 47-2003(Temp), f. 6-5-03, cert. ef. 6-6-03 thru 6-30-03; Administrative correction, 2-18-05; DFW 10-2005(Temp), f. 3-2-05, cert. ef. 3-15-05 thru 4-30-05; DFW 17-2005(Temp), f. & cert. ef. 3-15-05 thru 4-15-05; DFW 25-2005, f. & cert. ef. 4-15-05

## 635-013-0003

### Purpose and Scope

(1) The purpose of Division 013 is to provide for management of sport salmon fisheries off the Oregon Coast over which the State has jurisdiction.

(2) This rule incorporates by reference, the annual ocean sport salmon specifications and management measures for **2005**, included in the **Pacific Fishery Management Council — Adopted 2005 Ocean Salmon Management Measures and Impacts, dated April 2005**, and in addition to the extent they are consistent with these rules, **Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H**.

(3) This rule also incorporates by reference the **2005 Oregon Sport Fishing Regulations**.

(4) A copy of the **Pacific Fishery Management Council** referenced document and the **Federal Regulations** may be obtained by contacting Pacific Council News at [www.pcouncil.org](http://www.pcouncil.org) or at 7700 NE Ambassador Place, Suite 200, Portland, OR 97220-1383.

(5) To the extent not preempted by Federal law, these regulations apply within the State of Oregon's Fisheries Conservation Zone (out to fifty miles from shore).

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

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 44-1984(Temp), f. & ef. 8-23-84; FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 52-1989(Temp), f. & cert. ef. 7-28-89; FWC 37-1990, f. & cert. ef. 5-1-90; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98;

DFW 34-1998, f. & cert. ef. 5-4-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 38-2000, f. & cert. ef. 7-3-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05

## 635-013-0009

### Tillamook Terminal Area Ocean Fishery

(1) In addition to the open seasons prescribed in OAR 635-013-0004 there are open seasons for chinook salmon in the areas described in Sections (2) and (3) of this rule.

(2) The Pacific Ocean waters inside an area south of Twin Rocks (45°35'49" N. lat.) and north of Pyramid Rock (45°29'45" N. lat.) and seaward three nautical miles offshore are open for chinook salmon March 15–November 15.

(3) A triangular area offshore is open to salmon angling for fin-clipped chinook salmon from March 15 through July 31 and open to angling for all chinook from August 1 through November 15. This triangular area extends from the green buoy approximately one-half mile offshore from the mouth of Tillamook Bay northeasterly to Twin Rocks (45°35'49" N. lat.) and southeasterly to Pyramid Rock (45°29'49" N. lat.).

(4) During the open season for adipose fin-clipped coho salmon in the ocean, the Terminal Area and the Triangular Control Zone described in sections (2) and (3) of this rule are open to angling for salmon consistent with federal sport salmon management measures for the area from Cape Falcon to Humbug Mountain.

(5) During the period August 1–December 31, in the area described in sections (2) and (3), no more than two adult salmon may be retained per day, no more than four adult chinook salmon may be retained in any seven consecutive days, and no more than 10 adult chinook salmon may be retained per season. Adult chinook salmon catch limits include, in aggregate, salmon taken in Tillamook, Nehalem, and Nestucca bays and tributaries (see OAR 635-014-0090). For purposes of this rule, adult salmon are chinook having a length greater than 20 inches.

(6) No more than two single-point, single-shank barbless hooks are required in the ocean adipose fin-clipped coho salmon fishery and in the ocean outside the Terminal Area at all times.

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: ORS 496.162 & 506.129

Hist.: FWC 45-1983(Temp), f. & ef. 9-16-84; FWC 57-1984(Temp), f. & ef. 9-15-84; FWC 64-1984(Temp), f. & ef. 9-21-84; FWC 59-1985(Temp), f. & ef. 9-13-85; FWC 59-1986(Temp), f. & ef. 9-19-86; FWC 76-1987, f. & ef. 9-15-87; FWC 84-1988, f. & cert. ef. 9-9-88; FWC 83-1989, f. 8-31-89, cert. ef. 9-16-89; FWC 86-1990, f. 8-24-90, cert. ef. 9-1-90; FWC 42-1991, f. 4-29-91, cert. ef. 5-1-91; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 25-2005, f. & cert. ef. 4-15-05

## 635-023-0130

### Fall Sport Fishery

(1) Notwithstanding, all other specifications and restrictions as outlined in the current 2005 Oregon Sport Fishing Regulations, the following conditions apply:

(2) Effective August 1 through December 31, 2005, in the mainstem Columbia River from a north-south line through Buoy 10 upstream to a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank the bag limit is two salmon per day of which only one may be a chinook.

(3) Effective August 1 through December 31, 2005, in the mainstem Columbia River from a line projected from Rocky Point on the Washington bank through Red Buoy 44 to the navigation light at Tongue Point on the Oregon bank upstream to Bonneville Dam the bag limit for adult salmon and steelhead is two fish of which only one may be a chinook.

[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 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05

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

Adm. Order No.: CWP 6-2005

Filed with Sec. of State: 4-1-2005

Certified to be Effective: 4-1-05

# ADMINISTRATIVE RULES

**Notice Publication Date:** 3-1-05

**Rules Amended:** 413-015-1000

**Subject:** 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 manufactured. This rule amendment will reflect this language in Oregon Administrative Rule. This rule is also being changed to correct punctuation.

**Rules Coordinator:** Annette Tesch—(503) 945-6067

## 413-015-1000

### The CPS Assessment Dispositions

(1) This rule describes child abuse for the purpose of making CPS assessment dispositions.

(2) Following the completion of the CPS assessment, the CPS worker must determine whether there is reasonable cause to believe child abuse occurred. The possible determinations are:

(a) "Founded," which means there is reasonable cause to believe that child abuse occurred.

(b) "Unfounded," which means no evidence of child abuse was identified or disclosed.

(c) "Unable to determine," which 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 occurred.

(3) When determining whether there is reasonable cause to believe child abuse occurred, the CPS worker shall consider, among others, the following parental behavior, conduct, and conditions:

(a) Abandonment, including parental behavior showing an intent to permanently give up all rights and claims to the child.

(b) Child selling, including the selling of a child that consists of buying, selling, bartering, trading or offering to buy or sell the legal or physical custody of a child.

(c) Mental injury (psychological maltreatment), including cruel or unconscionable acts or statements made, threatened to be made, or permitted to be made by the parent or caregiver that has a direct effect on the child. The parent or caregiver's behavior, intentional or unintentional, must be related to the observable and substantial impairment of the child's psychological, cognitive, emotional or social well-being and functioning.

(d) Neglect, including failure, through action or omission, to provide and maintain adequate food, clothing, shelter, medical care, supervision, protection, or nurturing. Chronic neglect is a persistent pattern of family functioning in which the parent or caregiver does not sustain or meet the basic needs of a child resulting in an accumulation of harm that can have long term effect on the child's overall physical, mental, or emotional development. Neglect includes the following:

(A) Physical neglect, which includes:

(i) Failing to provide for the child's basic physical needs including adequate shelter, food, and clothing.

(ii) Permitting a child to enter or remain in a place where methamphetamines are being manufactured.

(B) Medical neglect is a refusal or failure to seek, obtain, or maintain necessary medical, dental, or mental health care. Medical neglect includes withholding medically indicated treatment from disabled infants with life threatening conditions. However, failure to provide the child with immunizations or routine well child care alone does not constitute medical neglect.

(C) Lack of supervision and protection, including failure to provide supervision and protection appropriate to the child's age, mental ability, and physical condition.

(D) Desertion, which includes the parent or caregiver leaving the child with another person and failing to reclaim the child, or parental or caregiver failure to provide information about their whereabouts, providing false information about their whereabouts, or failing to establish a legal guardian or custodian for the child.

(E) Psychological neglect, which includes serious inattention to the child's need for affection, support, nurturing, or emotional development. The parent or caregiver behavior must be related to the observable and substantial harm of the child's psychological, cognitive, emotional, or social well-being and functioning.

(e) Physical abuse, including an injury to a child that is inflicted or allowed to be inflicted by non-accidental means that results in harm. Physical abuse may include injury that could not reasonably be the result of the explanation given. Physical abuse may also include injury that is a

result of discipline or punishment. Examples of injuries that may result from physical abuse include:

(A) Head injuries;

(B) Bruises, cuts, lacerations;

(C) Internal injuries;

(D) Burns or scalds;

(E) Injuries to bone, muscle, cartilage, and ligaments;

(F) Poisoning;

(G) Electrical shock;

(H) Death.

(f) Sexual abuse, which includes a person's use or attempted use of a child for the person's own sexual gratification, the sexual gratification of another person, or the sexual gratification of the child. Sexual abuse includes incest, rape, sodomy, sexual penetration, fondling, and voyeurism.

(g) Sexual exploitation, including the use of a child in a sexually explicit way for personal gain, for example, to make money, in exchange for food stamps or drugs, or to gain status. Sexual exploitation also includes using children in prostitution or using children to create pornography.

(h) Threat of harm, including all activities, conditions, and circumstances that place the child at threat of substantial harm of physical or sexual abuse, neglect or mental injury, or other maltreatment.

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 6-2005, f. & cert. ef. 4-1-05

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

**Adm. Order No.:** OMAP 19-2005

**Filed with Sec. of State:** 3-21-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 410-121-0030, 410-121-0155, 410-121-0160

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

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-121-0030

### Practitioner-Managed Prescription Drug Plan (PMPDP)

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that fee for service clients of the Oregon Health Plan will have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners (informed by the latest peer-reviewed research), make decisions concerning the clinical effectiveness of the prescription drugs;

(b) The licensed health care practitioners also consider the health condition of a client or characteristics of a client, including the client's gender, race or ethnicity.

(2) PMPDP Plan Drug List (PDL):

(a) The PDL is the primary tool that the Department of Human Services (DHS) has developed to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL consists of prescription drugs in selected classes that DHS, in consultation with the Health Resources Commission (HRC), has determined represent effective drug(s) available at the best possible price;

(c) For each selected drug class, the PDL will identify a drug(s) as the benchmark drug that DHS determines to be the most effective drug(s) available for the best possible price;

(d) The PDL will include other drugs in the class that are Medicaid reimbursable and which the Food and Drug Administration (FDA) has determined to be safe and effective if the relative cost is less than the benchmark drug(s). If pharmaceutical manufacturers enter into supplemental discount agreements with DHS that reduce the cost of their drug below that of the benchmark drug for the class, DHS will include their drug in the PDL;



# ADMINISTRATIVE RULES

(e) A copy of the current PDL is available on the web at [www.dhs.state.or.us/policy/healthplan/guides/pharmacy/](http://www.dhs.state.or.us/policy/healthplan/guides/pharmacy/).

## (3) PMPDP PDL Selection Process:

(a) DHS will utilize the recommendations made by the HRC, which result from an evidence-based evaluation process, as the basis for identifying the most effective drug(s) within a selected drug class;

(b) DHS will determine the drug(s) identified in (3)(a) that is (are) available for the best possible price and will consider any input from the HRC about other FDA-approved drug(s) in the same class that are available for a lesser relative price. DHS will determine relative price using the methodology described in subsection (4);

(c) DHS will review drug classes and selected drug(s) for the drug classes periodically:

(A) Review will occur more frequently at the discretion of DHS if new safety information or the release of new drugs in a class or other information makes a review advisable;

(B) DHS will not add new drugs to the PDL until they have been reviewed by the HRC;

(C) DHS will make all changes or revisions to the PDL, using the rulemaking process and will publish the changes on DHS's Pharmaceutical Services provider rules Web page.

(4) Relative cost and best possible price determination: DHS will determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) DHS may also consider dosing issues, patterns of use and compliance issues. DHS will weigh these factors with any advice provided by the HRC in reaching a final decision;

(c) DHS will determine the benchmark drug based on (4)(b) and on the Estimated Acquisition Cost (EAC) on the first of the month (OAR 410-121-0155) in which DHS reviews that specific drug class;

(d) Once the cost of the benchmark drug is determined, DHS will recalculate the cost of the other FDA-approved drugs in the class using the EAC in effect for retail pharmacies on the first of the month in which DHS reviews that specific drug class less average available rebate. DHS will include drugs with prices under the benchmark drug cost on the PDL.

(5) Regardless of the PDL, pharmacy providers shall dispense prescriptions in the generic form, unless the practitioner requests otherwise, subject to the regulations outlined in OAR 410-121-0155. Table 121-0030-1, PMPDP PDL (updated effective 04/01/05)

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

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05

## 410-121-0155

### Reimbursement

Payment for fee-for-service pharmaceutical prescriptions will be the lesser of the usual and customary amount billed or the Estimated Acquisition Cost (EAC) of the generic form, minus any applicable copayments, plus a professional dispensing fee. Refer to OAR 410-120-1230 for client copayment details.

(1) EAC is the lesser of:

(a) Centers for Medicaid and Medicare Services (CMS) federal upper limits (FUL) for payment; or

(b) Oregon Maximum Allowable Cost (OMAC); or

(c) Retail pharmacies: eighty-five percent of Average Wholesale Price (AWP) of the drug; or

(d) Unit dose or modified unit dose pharmacies: eighty-nine percent of AWP for long-term care clients in a nursing facility or for clients covered by the CMS community based waiver; or

(e) Contracted mail order pharmacy: seventy-nine percent of AWP for brand (trade) name drugs, forty percent of AWP for generic drugs and eighty-two percent of AWP for injectable drugs.

(2) The Office of Medical Assistance Programs (OMAP) shall revise its estimated acquisition cost file twice monthly.

(3) Pharmacies must make available to OMAP any information necessary to determine the pharmacy's actual acquisition cost of pharmaceutical goods dispensed to OMAP clients.

(4) Payment for trade name forms of multisource products will be the lesser of the amount billed or the EAC of the trade name form of the prod-

uct, minus applicable copayments, plus a professional dispensing fee only if the prescribing practitioner has received a prior authorization for a trade name drug.

(5) Payment for individual special admixtures, fluids or supplies shall be limited to the lesser of:

(a) Eighty percent of the usual and customary charges to the general public;

(b) The amount Medicare allows for the same product or service;

(c) The amount the agency negotiates with an individual provider, less any amount paid or payable by another third party; or

(d) The amount established or determined by OMAP.

(6) No professional dispensing fee is allowed for dispensing:

(a) Condoms, contraceptive foams, suppositories, inserts, jellies, and creams;

(b) Pill splitters/cutters;

(c) Medical supplies and equipment; or

(d) Oral nutritional supplements.

(7) Over-the-counter contraceptive drugs and devices will be reimbursed at the lesser of billed amount or EAC, plus fifty percent of EAC;

(8) Oral nutritional supplements will be reimbursed at the lesser of billed amount or EAC, plus one third of EAC.

(9) Pill splitters/cutters with a National Drug Code (NDC) number will be reimbursed at the lesser of billed amount, or EAC. A practitioner prescription is not required. The limit is one per client in a twelve-month period.

Stat. Auth.: ORS 184.750, 184.770, 409, 411 & 414

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 846(Temp), f. & ef. 7-1-77; PWC 858, f. 10-14-77, ef. 11-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 15-1979(Temp), f. 6-29-79, ef. 7-1-79; AFS 41-1979, f. & ef. 11-1-79; AFS 15-1981, f. 3-5-81, ef. 4-1-81; AFS 35-1981(Temp), f. 6-26-81, ef. 7-1-81; AFS 53-1981(Temp), f. & ef. 8-14-81; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices. AFS 74-1982(Temp), f. 7-22-81, ef. 8-1-82; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 113-1982(Temp), f. 12-28-82, ef. 1-1-83; AFS 13-1983, f. & ef. 3-21-83; AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 18-1984, f. 4-23-84, ef. 5-1-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 42-1986(Temp), f. 6-10-86, ef. 7-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0100; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; Renumbered from 461-016-0250; HR 20-1991, f. & cert. ef. 4-16-91; HR 20-1994, f. 4-29-94, cert. ef. 5-1-94; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 32-2002, f. & cert. ef. 8-1-02; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05

## 410-121-0160

### Dispensing Fees

(1) Pharmacy providers must apply for an Office of Medical Assistance Programs (OMAP) review of their pharmacy dispensing fee level by completing a Pharmacy Prescription Survey (OMAP 3062) when one of the following situations occurs:

(a) The pharmacy initiates dispensing medications to clients in facilities and the most recent two months worth of dispensing data is available. OMAP will only accept the most recent two months worth of data; or

(b) The pharmacy discontinues dispensing medications to clients in facilities. The pharmacy provider is required to notify OMAP within 60 days and complete a new Pharmacy Prescription Survey with the most recent two-months worth of dispensing data available. OMAP will only accept the most recent two months worth of data; or

(c) A completed Pharmacy Prescription Survey signed by the pharmacist in charge must be submitted to OMAP to initiate a review of dispensing fees.

(2) Unless otherwise provided, the professional dispensing fee allowance for services is as follows:

(a) \$3.50 – Retail Pharmacies;

(b) \$3.91 – Institutional Pharmacies operating with a True or Modified Unit Dose Delivery System as defined by OMAP;

(A) This dispensing fee applies to clients identified on DHS case files as residing in a Long Term Care Nursing Facility or for clients covered by the Centers for Medicare and Medicaid Services community based waiver;

(B) All other dispensing fees for institutional pharmacies will be at the retail rate;

(c) \$7.50 – Compound prescriptions with two or more ingredients.

(3) The True or Modified Unit Dose Delivery System applies to those providers who give this service to over fifty percent of their patient population base associated with a particular Medicaid provider number.

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

Stat. Auth.: ORS 409

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 414.065

Hist.: AFS 51-1983(Temp), f. 9-30-83, ef. 10-1-83; AFS 56-1983, f. 11-17-83, ef. 12-1-83; AFS 41-1984(Temp), f. 9-24-84, ef. 10-1-84; AFS 1-1985, f. & ef. 1-3-85; AFS 54-1985(Temp), f. 9-23-85, ef. 10-1-85; AFS 66-1985, f. 11-5-85, ef. 12-1-85; AFS 13-1986(Temp), f. 2-5-86, ef. 3-1-86; AFS 36-1986, f. 4-15-86, ef. 6-1-86; AFS 52-1986, f. & ef. 7-2-86; AFS 12-1987, f. 3-3-87, ef. 4-1-87; AFS 28-1987(Temp), f. & ef. 7-14-87; AFS 50-1987, f. 10-20-87, ef. 11-1-87; AFS 41-1988(Temp), f. 6-13-88, cert. ef. 7-1-88; AFS 64-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; Renumbered from 461-016-0101; AFS 63-1989(Temp), f. & cert. ef. 10-17-89; AFS 79-1989, f. & cert. ef. 12-21-89; HR 20-1990, f. & cert. ef. 7-9-90; Renumbered from 461-016-0260; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; HR 21-1993(Temp), f. & cert. ef. 9-1-93; HR 12-1994, f. 2-25-94, cert. ef. 2-27-94; OMAP 5-1998(Temp), f. & cert. ef. 2-11-98 thru 7-15-98; OMAP 22-1998, f. & cert. ef. 7-15-98; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 50-2001(Temp) f. 9-28-01, cert. ef. 10-1-01 thru 3-1-02; OMAP 60-2001, f. & cert. ef. 12-11-01; OMAP 32-2003(Temp), f. & cert. ef. 4-15-03 thru 9-15-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; OMAP 21-2004, f. 3-15-04, cert. ef. 4-15-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05

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**Adm. Order No.:** OMAP 20-2005

**Filed with Sec. of State:** 3-21-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 410-124-0105

**Subject:** 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 adopted rule 410-124-0105 to establish criteria for intestine and liver-intestine transplants.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-124-0105

### Criteria and Contraindications for Intestine and Intestine-Liver Transplants

(1) Prior authorization for intestine and intestine-liver transplants will be approved only for:

(a) A client who has failed Total Parenteral Nutrition (TPN) or who has developed life-threatening complications from TPN;

(b) A client in whom irreversible, progressive intestine and/or liver disease has advanced to the point where conventional therapy offers no prospect for prolonged survival, there is no reasonable alternative medical or surgical therapy and the client's five (5) year survival rate subsequent to the transplant, is at least twenty (20) percent as supported by the medical literature.

(2) Intestine and Intestine-Liver transplant is covered only for a medically documented diagnosis of Short Bowel Syndrome and for patients age 5 years or under with diagnosis of ICD-9-CM 557, ICD-9-CM 579.3, or ICD-9-CM 777.5.

(3) Small intestine transplant using a living related donor is considered investigational and will not be covered by OMAP.

(4) The following are contraindications for intestine or intestine-liver transplants:

(a) Incurable and untreatable malignancy outside the hepatobiliary system;

(b) Terminal state due to diseases other than liver or intestinal disease;

(c) Uncontrolled sepsis, or active systemic infection;

(d) HIV positive test results;

(e) Alternative effective medical or surgical therapy;

(f) Presence of uncorrectable significant organ system failure other than liver or Short-Bowel Syndrome.

(5) The following may be considered contraindications to the extent that the evaluating transplant center and/or specialist who completed the comprehensive evaluation of the client believe these condition(s) may interfere significantly with the recovery process:

(a) Crigler-Najjar Syndrome Type II;

(b) Amyloidosis;

(c) Other major system diseases affecting brain, lung, heart, or renal systems;

(d) Major, non-correctable congenital anomalies;

(e) Serious psychological disorders.

(6) OMAP will prior authorize and reimburse for intestine and intestine-liver transplant if:

(a) All OMAP criteria are met; and

(b) Both the transplant center's and the specialist's evaluations recommend that the transplant be authorized; and

(c) The ICD-9-CM diagnosis code(s) and CPT procedure code(s) are paired on the same currently funded line on the Prioritized List of Health Services adopted under OAR 410-141-0520.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05

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**Adm. Order No.:** OMAP 21-2005

**Filed with Sec. of State:** 3-21-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 410-125-0141, 410-125-0195

**Subject:** 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 OAR 410-125-0195, to reflect reimbursement methodology and rate changes for DRG Hospitals for inpatient and outpatient hospital services. OMAP permanently amended rules OAR 410-125-0141 and OAR 410-125-0195. These rules are permanently amended April 1, 2005 and effective retroactively to March 15, 2005.

**Rules Coordinator:** Darlene Nelson—(503) 945-6927

## 410-125-0141

### DRG Rate Methodology

(1) Diagnosis Related Groups:

(a) Diagnosis Related Groups (DRG) is a system of classification of diagnoses and procedures based on the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM);

(b) The DRG classification methodology assigns a DRG category to each inpatient service, based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status.

(2) Medicare Grouper: The Medicare Grouper is the software used to assign an individual claim to a DRG category. Medicare revises the Grouper program each year in October. The Office of Medical Assistance Programs (OMAP) uses the Medicare Grouper program in the assignment of inpatient hospital claims. The most recent version of the Medicare grouper will be installed each year within 90 days of the date it is implemented by Medicare. Where better assignment of claims is achieved through changes to the grouper logic, OMAP may modify the logic of the grouper program. OMAP will work with representatives of hospitals that may be affected by grouper logic changes in reaching a cooperative decision regarding changes. OMAP DRG weight tables can be found on the DHS web site.

(3) DRG Relative Weights:

(a) Relative weights are a measure of the relative resources required in the treatment of the average case falling within a specific DRG category;

(b) For most DRGs, OMAP establishes a relative weight based on federal Medicare DRG weights. For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs, Oregon Title XIX fee-for-service claims history is used. To determine whether enough claims exist to establish a reasonable weight for each state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRG, OMAP uses the following methodology: Using the formula  $N = \frac{Z \cdot S}{R}$  where  $Z = 1.15$  (a 75% confidence level),  $S$  is the standard deviation, and  $R = 10\%$  of the mean. OMAP determines the minimum number of claims required to set a stable weight for each DRG ( $N$  must be at least 5). For state-specific Rehabilitation, Neonate, and Adolescent Psychiatric DRGs lacking sufficient volume, OMAP sets a relative weight using:

(A) OMAP non-Title XIX claims data; or

(B) Data from other sources expected to reflect a population similar to the OMAP Title XIX caseload.

(c) When a test shows at the 90% confidence level that an externally derived weight is not representative of the average cost of services provided to the OMAP Title XIX population in that DRG, the weight derived from OMAP Title XIX claims history is used instead of the externally derived weight for that DRG.

(d) Those relative weights based on Federal Medicare DRG weights, will be established when changes are made to the DRG Grouper logic. State specific relative weights shall be adjusted, as needed, as determined by OMAP. When relative weights are recalculated, the overall Case Mix Index (CMI) will be kept constant. Reweighting of DRGs or the addition or mod-

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ification of the grouper logic will not result in a reduction of overall payments or total relative weights.

(4) Case Mix Indexed: The hospital-specific case mix index is the total of all relative weights for all services provided by a hospital during a period, divided by the number of discharges.

(5) Unit Value: Hospitals larger than fifty (50) beds are reimbursed using the Diagnosis Related Grouper (DRG) as described in (2). Effective for services on or after March 1, 2004, the Unit Value payment is 80% of the 2004 Medicare Unit Value and related data published in Federal Register/Vol.68, No. 148, August 1, 2003. The unit value is also referred to as the operating cost per discharge.

(6) DRG Payment: The DRG payment to each Oregon DRG hospital is calculated by adding the unit value to the capital amount, then multiplied by the claim assigned DRG relative weight (out of state hospitals do not receive the capital amount).

(7) Cost Outlier Payments:

(a) Cost outlier payments are an additional payment made to in-state and contiguous hospitals for exceptionally costly services or exceptionally long lengths of stay provided to Title XIX and SF (State Facility) clients.

(b) For dates of service on and after March 1, 2004 the calculation to determine the cost outlier payment for Oregon DRG hospitals is as follows:

(A) Non-covered services (such as ambulance charges) are deducted from billed charges;

(B) The remaining billed charges are converted to hospital-specific costs using the hospital's cost-to-charge ratio derived from the most recent audited Medicare cost report and adjusted to the Medicaid caseload;

(C) If the hospital's net costs as determined above are greater than 270 percent of the DRG payment for the admission and are greater than \$25,000, an additional cost outlier payment is made;

(D) Costs which exceed the threshold (\$25,000 or 270% of the DRG payment, whichever is greater) are reimbursed using the following formula:

- (i) Billed charges less non-covered charges, times;
- (ii) Hospital-specific cost-to-charge ratio equals;
- (iii) Net Costs, minus;
- (iv) 270% of the DRG or \$25,000 (whichever is greater), equals;
- (v) Outlier Costs, times;
- (vi) Cost Outlier Percentage, (cost outlier percentage is 50%), equals;
- (vii) Cost Outlier Payment.

(E) Third party reimbursements are deducted from the OMAP calculation of payable amount;

(F) When hospital cost reports are audited, an adjustment will be made to cost outlier payments to reflect the actual Medicaid hospital-specific cost-to-charge ratio during the time cost outlier claims were incurred. The cost-to-charge ratio in effect for that period of time will be determined from the audited Medicare Cost Report and OMAP 42, adjusted to reflect the Medicaid mix of services.

(8) Capital:

(a) The capital payment is a reimbursement to in-state hospitals for capital costs associated with the delivery of services to Title XIX, non-Medicare persons. OMAP uses the Medicare definition and calculation of capital costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) For the dates of service on and after March 1, 2004 the Capital cost per discharge is one hundred (100) percent of the published Medicare capital rate for fiscal year 2004, see (5). The capital cost is added to the Unit Value and paid per discharge.

(9) Direct Medical Education:

(a) The direct medical education payment is a reimbursement to in-state hospitals for direct medical education costs associated with the delivery of services to Title XIX eligible persons. The Office of Medical Assistance Programs uses the Medicare definition and calculation of direct medical education costs. These costs are taken from the Hospital Statement of Reimbursable Cost (Medicare Report);

(b) Direct Medical Education cost per discharge is calculated as follows:

(A) The direct medical education cost proportional to the number of Title XIX non-Medicare discharges during the period from July 1, 1986 through June 30, 1987 are divided by the number of Title XIX non-Medicare discharges. This is the Title XIX Direct Medical Education Cost per discharge;

(B) The Title XIX Direct Medical Education cost per discharge for this period is inflated forward to January 1, 1992, using the compounded HCFA-DRI market basket adjustment.

(c) Direct Medical Education Payment Per Discharge:

(A) The number of Title XIX non-Medicare discharges from each hospital for the quarterly period is multiplied by the inflated Title XIX cost per discharge. This determines the current quarter's Direct Medical Education costs. This amount is then multiplied by 85%. Payment is made within thirty days of the end of the quarter;

(B) The Direct Medical Education Payment per Discharge will be adjusted at an inflation factor determined by the Department in consideration of inflationary trends, hospital productivity and other relevant factors.

(10) Indirect Medical Education:

(a) The indirect medical education payment is a reimbursement made to in-state hospitals for indirect medical education costs associated with the delivery of services to Title XIX non-Medicare clients;

(b) Indirect medical education costs are those indirect costs identified by Medicare as resulting from the effect of teaching activity on operating costs;

(c) Indirect medical education payments are made to in-state hospitals determined by Medicare to be eligible for such payments. The indirect medical education factor in use by Medicare for each of these eligible hospitals at the beginning of the State's fiscal year is the Office of Medical Assistance Program's indirect medical education factor. This factor is used for the entire Oregon fiscal year;

(d) For dates of service on and after March 1, 2004 the calculation for the Indirect Medical Education quarterly payment is as follows: Total paid discharges during the quarter multiplied by the Case Mix Index, multiplied by the hospital specific February 29, 2004 Unit Value, multiplied by the Indirect Factor equals the Indirect Medical Education Payment;

(e) This determines the current quarter's Indirect Medical Education Payment. Indirect medical education payments are made quarterly to each eligible hospital. Payment for indirect medical education costs will be made within thirty days of the end of the quarter.

[Publications referenced are available from the agency.]

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-15-120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0006, 461-015-0020 & 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-570, 461-015-0590, 461-105-0600 & 461-015-0610; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 36-1990(Temp), f. 10-29-90, cert. ef. 11-1-90; HR 42-1990, f. & cert. ef. 11-30-90; HR 3-1991, f. & cert. ef. 1-4-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91; Renumbered from 410-125-0840, 410-125-0880, 410-125-0900, 410-125-0920, 410-125-0960 & 410-125-0980; HR 35-1993(Temp), f. & cert. ef. 12-1-93; HR 23-1994, f. 5-31-94, cert. ef. 6-1-94; HR 11-1996(Temp), f. & cert. ef. 7-1-96; HR 22-1996, f. 11-29-96, cert. ef. 12-1-96; OMAP 45-1998, f. & cert. ef. 12-1-98; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 35-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05

## 410-125-0195

### Outpatient Services In-State DRG Hospitals

DRG hospital outpatient services are reimbursed under a cost based methodology.

(1) Interim reimbursement:

(a) For dates of service on and after March 1, 2004 the interim reimbursement percentage is developed using the cost-to-charge ratio methodology, derived from the Medicare cost report, and applied to billed charges. The interim payment is the estimated percentage needed to achieve 80% of hospital cost in aggregate. This interim percentage is applied to all outpatient charges except for the following services: for laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management.

(b) The OMAP fee schedule is used as interim reimbursement for laboratory, diagnostic and therapeutic radiology, nuclear medicine, CT scans, MRI services, other imaging services, and maternity case management services.

(2) Settlement reimbursement:

(a) For Title XIX/Title XXI clients; an adjustment to 80 percent of outpatient costs for dates of service on and after March 1, 2004. This adjustment is made during the cost settlement process.



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(b) For GA clients; outpatient hospital services are reimbursed at 50 percent of billed charges or 59 percent of costs, whichever is less.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: AFS 14-1980, f. 3-27-80, ef. 4-1-80; AFS 57-1980, f. 8-29-80, ef. 9-1-80; AFS 18-1982(Temp), f. & ef. 3-1-82; AFS 60-1982, f. & ef. 7-1-82; Renumbered from 461-015-0120(5); AFS 37-1983(Temp), f. & ef. 7-15-83; AFS 1-1984, f. & ef. 1-9-84; AFS 45-1984, f. & ef. 10-1-84; AFS 6-1985, f. 1-28-85, ef. 2-1-85; AFS 52-1985, f. 9-3-85, ef. 10-1-85; AFS 46-1986(Temp), f. 6-25-86, ef. 7-1-86; AFS 61-1986, f. 8-12-86, ef. 9-1-86; AFS 33-1987(Temp), f. & ef. 7-22-87; AFS 46-1987, f. & ef. 10-1-87; AFS 62-1987(Temp), f. 12-30-87, ef. 1-1-88; AFS 12-1988, f. 2-10-88, cert. ef. 6-1-88; AFS 26-1988, f. 3-31-88, cert. ef. 4-1-88; AFS 47-1988(Temp), f. 7-13-88, cert. ef. 7-1-88; AFS 63-1988, f. 10-3-88, cert. ef. 12-1-88; AFS 7-1989(Temp), f. 2-17-89, cert. ef. 3-1-89; AFS 15-1989(Temp), f. 3-31-89, cert. ef. 4-1-89; AFS 36-1989(Temp), f. & cert. ef. 6-30-89; AFS 37-1989(Temp), f. 6-30-89, cert. ef. 7-1-89; AFS 45-1989, f. & cert. ef. 8-21-89; AFS 49-1989(Temp), f. 8-24-89, cert. ef. 9-1-89; AFS 72-1989, f. & cert. ef. 12-1-89; Renumbered from 461-015-0124; HR 18-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; HR 21-1990, f. & cert. ef. 7-9-90; Renumbered from 461-015-0540 & 461-015-0550; HR 31-1990(Temp), f. & cert. ef. 9-11-90; HR 2-1991, f. & cert. ef. 1-4-91; HR 15-1991(Temp), f. & cert. ef. 4-8-91; HR 28-1991(Temp), f. & cert. ef. 7-1-91; HR 32-1991(Temp), f. & cert. ef. 7-29-91; HR 53-1991, f. & cert. ef. 11-18-91; Renumbered from 410-125-0780 & 410-125-0800; HR 22-1993(Temp), f. & cert. ef. 9-1-93; HR 36-1993, f. & cert. ef. 12-1-93; OMAP 34-1999, f. & cert. ef. 10-1-99; OMAP 13-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 16-2003(Temp), f. & cert. ef. 3-10-03 thru 8-1-03; OMAP 37-2003, f. & cert. ef. 5-1-03; OMAP 90-2003, f. 12-30-03 cert. ef. 1-1-04; OMAP 78-2004(Temp), f. & cert. ef. 10-1-04 thru 3-15-05; Administrative correction, 3-18-05; OMAP 21-2005, f. 3-21-05, cert. ef. 4-1-05

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**Rules Amended:** 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

**Subject:** 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.

**Rules Coordinator:** Pat Bougher—(503) 945-5844

## 410-007-0210

### Definitions

As used in OAR chapter 410, division 007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Adult Foster Home" has the same definition as is provided in ORS 443.705.

(2) "Approved" means that a subject individual has completed the criminal history check process, including any required fitness determination, and is eligible to provide care or reside in an environment covered by these rules.

(3) "Authorized Designee" means a person who is designated by an approved qualified entity and authorized by the Department to receive and process criminal history check request forms from subject individuals and criminal history information from the Department. The authorized designee conducts fitness determinations under the authority of the Department.

(4) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, transportation, recreation or support to children, the elderly or persons with disabilities.

(5) "Client" means any person who receives care, or funding for care, through the Department.

(6) "Contact Person" means a person who is designated by an approved qualified entity to receive and process criminal history check request forms from subject individuals, but who is not authorized to receive criminal history information from the Department. The contact person is not allowed to make final fitness determinations. The contact person is allowed to make the preliminary fitness determinations under the authority of the Department only if there is no indication of potentially disqualifying crimes or conditions.

(7) "Conviction" means that the subject individual was convicted in a court of law, or was adjudicated in a juvenile court and found responsible for the crime. "Conviction" as used in these rules includes a finding of

"guilty except by reason of insanity," "guilty except for insanity," "not guilty by reason of insanity," or similarly worded findings. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges.

(8) "Criminal History Check Rules" or "These Rules" means OAR chapter 410, division 007.

(9) "Criminal History Check" or "CHC" means the Oregon Criminal History Check and when required, a National Criminal History Check and/or a State-Specific Criminal History Check, and the processes and procedures required by these rules.

(10) "Criminal History Information" means criminal justice records, fingerprints, court records, sexual offender registration records, warrants, DMV information, information provided on the Department's criminal history check forms, and any other information obtained by or provided to the Department pursuant to these rules for the purpose of conducting a fitness determination. "Criminal history information" does not include violations or infractions (See ORS 161.505-161.585).

(11) "Denied" means that a subject individual following a fitness determination, including a weighing test, has been found to be not eligible to hold the position, be employed, certified, licensed, registered or otherwise authorized by the Department to provide care or to reside in an environment covered by these rules.

(12) "Department" means the Oregon Department of Human Services or any subdivision thereof.

(13) "Employer," if the qualified entity is a corporation, means the corporation or parent corporation.

(14) "Facility" means any entity that is licensed or certified by the Department and which provides care.

(15) "Homecare Worker" or "Home Care Worker" means a provider who is enrolled in the Department's client-employed provider program and who provides either hourly or live-in services, as defined in ORS 410.600.

(16) "Independent Provider" means a person who meets the qualifications described in OAR 411-305-0020, 411-330-0020 or 411-340-0020.

(17) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources.

(18) "Oregon Criminal History Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal History Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division, local or regional criminal history information systems, or other official law enforcement agency or court records in Oregon.

(19) "Personal Care Services Provider" means a person who is directly employed by a client of the Department to provide assistance with activities of daily living and other activities as described in OAR chapter 411, division 34.

(20) "Potentially Disqualifying Crime" means a crime listed in OAR-410-007-0280.

(21) "Probationary Status" means a condition in which a subject individual may be allowed by the authorized designee to work, volunteer, be trained or reside in an environment covered by these rules following submission of a completed DHS Criminal History Request form. The term "probationary status" is applicable only during the timeframe prior to a final fitness determination.

(22) "Qualified Entity" means the Department; local government agency; community mental health or developmental disability program, local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(23) "Qualified Vendor" means a supplier of criminal history information who is approved by the Department of Human Services as having access to substantially the same criminal offender information as the Law Enforcement Data System.

(24) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(25) "Service Provider" means a person or entity that is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department and that provides care.

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(26) "State-Specific Criminal History Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal history information resources located in a state or jurisdiction outside Oregon.

(27) "Subject Individual" means a person who is required to complete a criminal history check pursuant to these rules.

(a) "Subject individual" includes:

(A) An employee of the Department, person who has been offered employment by the Department, volunteer or student over whom the Department has direction and control.

(B) A person who is licensed, certified, registered or otherwise regulated or authorized for payment by the Department and who provides care.

(C) An employee or volunteer who provides care within any entity or agency licensed, certified, registered or otherwise regulated by the Department.

(D) A direct care staff person secured through the services of a personnel services or staffing agency who works in any long term care facility licensed by the Department pursuant to ORS chapter 441.

(E) Except as provided in paragraphs (27)(b)(C) and (D) of this rule, a person who lives in a facility that is licensed, certified, registered or otherwise regulated by the Department to provide care.

(F) An individual working for a private, licensed child caring agency or system of care contractors providing child welfare services pursuant to ORS chapter 418.

(G) A homecare worker, personal care services provider or an independent provider employed by a Department client and who provides services to the client if the Department helps to pay for the services.

(H) A child care provider reimbursed through the Department's child care program, and employees and other persons in child care facilities that are exempt from certification or registration by the Child Care Division of the Employment Department. This includes all persons who reside in or who are frequent visitors to the residence or facility where the child care services are provided and who may have unsupervised access to the children. (REF: OAR chapter 461, division 165.)

(I) A contact person or authorized designee as defined in OAR 410-007-0210.

(J) A person providing training to staff within a long term care facility.

(K) Any person serving as an owner, operator or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(L) Any person applying for a paid or volunteer position, any employee, any volunteer, any contractor, or any employee of any contractor of a State-operated group home within the Department's State-Operated Community Programs, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, and Oregon State Hospital.

(M) Notwithstanding subsection (27)(b) of this rule, any person who is required to complete a criminal history check pursuant to a contract or written agreement with the Department or by other Oregon Administrative Rules of the Department, if the requirement is within the statutory authority granted to the Department. Specific statutory authority must be specified in the contract.

(b) "Subject Individual" does not include:

(A) Any person under 16 years of age.

(B) A person receiving training in a DHS-licensed facility as a part of the required curriculum through any college, university or other training program and who is not an employee in the facility in which training is provided. Facilities must ensure that all such students have passed a substantially equivalent background check process through the training program or are:

(i) Actively supervised at all times as defined in OAR 410-007-0310, and

(ii) Not allowed to have unsupervised access to vulnerable people.

(C) Residents of facilities licensed, certified or registered by the Department who are receiving care or treatment, unless specific, written permission to conduct a criminal history check is received from the Department. The only circumstance in which the Department will allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in subsection (27)(a) of this rule.

(D) Persons who live in or visit relative adult foster homes. This exemption does not apply to the licensee.

(E) Individuals working in child care facilities certified or registered by the Employment Department.

(F) Individuals receiving spousal pay from the Department for care of a spouse.

(G) Individuals employed by a private business that provides services to clients and the general public and that is not regulated by the Department.

(H) Individuals employed by a business that provides appliance repair or structural repair to clients and the general public, and who are temporarily providing such services in an environment regulated by the Department. This exclusion does not apply to a business that receives funds from the Department for care provided by an employee of the business.

(I) Individuals employed by a private business in which a client of the Department is working as part of an employment service program sponsored by the Department. This exclusion does not apply to an employee of a business that receives funds from the Department for care provided by the employee.

(J) Employees and volunteers working in hospitals, ambulatory surgical centers, special inpatient care facilities, outpatient renal dialysis facilities, and freestanding birthing centers as defined in ORS 442.015, in-home care agencies as defined on ORS 443.305, and home health agencies as defined in ORS 443.005. This exclusion does not apply to subject individuals in State-operated group homes within the Department's State-Operated Community Programs, Eastern Oregon Psychiatric Center, Eastern Oregon Training Center, or Oregon State Hospital as defined in subsection (27)(a) of this rule.

(K) Volunteers who are not under the direction and control of the Department or any entity licensed, certified, registered or otherwise regulated by the Department.

(L) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(M) People working in restaurants or at public swimming pools.

(N) Hemodialysis technicians.

(O) Individuals employed by Alcohol and Drug Programs that are certified, licensed, or approved by the Office of Mental Health and Addictions Services to provide Prevention, Evaluation or Treatment Services. This exclusion does not apply to programs specifically required by other Department rules to conduct criminal history checks in accordance with these rules.

(P) Persons working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(Q) Persons being certified by the Department as interpreters pursuant to ORS 409.623. This paragraph is not intended to exempt a Department-certified interpreter from a criminal history check when being considered for a specific position.

(R) Provider group categories that were authorized for payment by the Department for care if such provider group categories were not covered by a Department criminal record check process prior to 2004.

(S) Foster and adoptive parents providing care for children pursuant to ORS chapter 418.

(T) Emergency Medical Technicians and First Responders certified by the Department of Human Services Emergency Medical Services and Trauma Systems program.

(U) A person employed by an entity that provides services solely contracted under ORS 414.022.

(28) "Weighing Test" means a process carried out by one or more authorized designees in which known negative and positive information is considered to determine if a subject individual is approved or denied. See OAR 410-007-0320(5)(c).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

### 410-007-0220

#### Criminal History Check Required

(1) Who Conducts Check. The Department, or a qualified entity authorized by the Department, conducts criminal history checks on all subject individuals.

(2) When Check is Required (New Checks and Re-checks). A subject individual is required to have a check in the following circumstances:

(a) A person who becomes a subject individual on or after the effective date of these rules is required to have a criminal history check in accordance with these rules.

(b) The subject individual changes employers. If the subject individual's employer merges with another agency or changes names, this would not be considered a change of employers.

(c) The subject individual changes positions, licenses, certifications or registrations.

NOTE: "Licenses," "certifications" and "registrations" refers only to licenses, certifications and registration issued by the Department.

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(d) A check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract or written agreement with the Department.

(e) The Department or the authorized designee has reason, such as any indication of possible criminal behavior, to believe that a check is justified.

(3) When a Check is Not Required. A new check is not required only under the following circumstances:

(a) A personal care services provider, respite care provider or an independent provider who is paid with funds received from the Department changes clients or adds another client, and the prior, documented criminal history check conducted within the previous twenty-four (24) months through the Department has been approved without a restriction as described in OAR 410-007-0320(5)(c)(C).

(b) The subject individual is a child care provider as described in OAR 461-165-0180 who changes clients or begins providing services to another client.

(c) There is no change of employer, there are no new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous fitness determination identified no potentially disqualifying history and the authorized designee determines that the previous fitness determination is sufficient for the new position.

(B) The authorized designee determines that the new position requires the same or less contact with vulnerable persons, personal information, financial information, or client funds.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

### 410-007-0230

#### Qualified Entity

(1) Approval Required. A qualified entity must be approved in writing by the Department pursuant to these rules in order to appoint an authorized designee or contact person. Unless specifically indicated in these rules, all qualified entities discussed are considered approved.

(2) Appointment of Authorized Designees and Contact People. Unless indicated under section (3) of this rule, all qualified entities are responsible for ensuring the completion of criminal history checks for subject individuals who are the qualified entity's employees, volunteers, or other subject individuals under the direction or control of the qualified entity. Qualified entities approved by the Department must appoint authorized designees or contact persons within 30 days of Department approval.

(a) Unless indicated under section (3) of this rule, all qualified entities must appoint one or more authorized designees, or have a written agreement with another qualified entity to handle the responsibilities of an authorized designee.

(b) All qualified entities may also appoint one or more contact persons, or have a written agreement with another qualified entity to handle the responsibilities of a contact person.

(3) The Department Acts as Authorized Designee. The Department will handle the responsibilities of an authorized designee listed in OAR 410-007-0240(3)(c)(A) through 410-007-0240(3)(c)(C) in the following circumstances:

(a) Private qualified entity with fewer than 10 employees. These entities are not eligible to appoint authorized designees.

(A) The private qualified entity with fewer than 10 employees may use another qualified entity to handle the responsibilities of a authorized designee instead of using the Department. If another qualified entity is used, there must be a written agreement between the two qualified entities and the Department must be notified.

(B) The private qualified entity with fewer than 10 employees must appoint one or more contact persons, or must have a written agreement with another qualified entity to handle the responsibilities of a contact person and the Department must be notified.

(b) Qualified entities with subject individuals not under the direction and control of the qualified entity but who provide care under programs administered by the qualified entity.

(A) For these subject individuals, the qualified entity must appoint one or more contact persons, or use an authorized designee or contact person appointed under section (2) of this rule to handle the responsibilities of a contact person.

(B) Notwithstanding section (3)(b), the qualified entity will appoint an authorized designee for these subject individuals if the qualified entity chooses to do so, or is required to do so under other DHS program administrative rules or contract with DHS. The qualified entity must notify the

Department of which programs are affected and which qualified entity will handle the responsibilities of authorized designee for each program.

(4) Revocation of Approval. Approval of the qualified entity may be revoked by the Department if the Department determines that the qualified entity, or a contact person or authorized designee appointed by the qualified entity, has failed to comply with these rules.

(5) Managing CHC Process. The qualified entity will appoint authorized designees and contact persons as needed to remain in compliance with these rules.

(6) Training and Technical Assistance. The Department will provide qualified entities with periodic training and on-going technical assistance for contact persons and authorized designees.

Stat. Auth.: ORS 181.537, 409.010, 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

### 410-007-0240

#### Contact Person and Authorized Designee

(1) Requirements. All requirements in this section must be completed within a 90-day time period. To be approved by the Department, all contact persons and authorized designees must:

(a) Be appointed by a qualified entity, and apply to and be registered by the Department. The application must be in writing on a form provided by the Department.

(b) Complete both an Oregon and a national criminal history check in accordance with these rules and must have:

(A) No conviction for a potentially disqualifying permanent review crime,

(B) No convictions for any other crime in the past fifteen years, and

(C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 410-007-0290.

(c) Complete a training program and successfully pass any testing as required by the Department.

(2) Denial of Contact Person or Authorized Designee Status. A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the qualified entity.

(a) If the Department denies the person to be an authorized designee or contact person, the qualified entity may request an exception under this rule in writing. If an exception is requested, the Department will review the qualified entity's exception request, the person's application, criminal history, and any supplemental information as listed in OAR 410-007-0300, to determine if the appointment of the person would pose a significant risk to the physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(b) Denial or termination of contact person or authorized designee status under OAR 410-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position. Persons losing employment or position have the same hearing rights as other subject individuals under these rules.

(3) Responsibilities.

(a) A contact person must:

(A) Ensure that adequate measures are taken to protect the confidentiality of the records required by these rules.

(B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license) and confirming information written on the DHS Criminal History Request form with information on the photo identification.

(C) Ensure that when a subject individual must be on probationary status, the need for active supervision pursuant to OAR 410-007-0310 is understood by each person responsible for ensuring that active supervision is provided.

(D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision.

(E) Monitor status of criminal history check applications and investigate any delays in processing.

(F) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.



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(b) The contact person may review the DHS Criminal History Request form completed by the subject individual to determine if the subject individual has any potentially disqualifying history.

(A) The contact person may allow a subject individual to work or function on probationary status only after the contact person has reviewed the DHS Criminal History Request form and determined there is no indication that the subject individual has any potentially disqualifying history or condition.

(B) The contact person must not allow a subject individual who discloses any potentially disqualifying history to work or function on probationary status.

(c) An authorized designee has all the responsibilities of a contact person as listed in (3)(a)(A) through (3)(a)(F) of this rule, and in addition must:

(A) Review the DHS Criminal History Request form completed by the subject individual (if not already done so by a contact person) and conduct a preliminary fitness determination under the authority of the Department in accordance with OAR 410-007-0320 prior to forwarding the DHS Criminal History Request form to the Department to determine eligibility for probationary status.

(B) Conduct a final fitness determination under the authority of the Department in accordance with OAR 410-007-0320.

(C) Participate in the appeal process if requested by the Department.

(4) Conflict of Interest (Authorized Designee). An authorized designee must not have access to LEDS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.

(a) A conflict of interest exists when one or more of the following circumstances is true:

(A) The authorized designee is related to the subject individual.

(B) The authorized designee has a close personal or financial relationship, other than an employee-employer relationship, with the subject individual.

(b) When there is a conflict of interest, and the qualified entity has no other authorized designees available to conduct the fitness determination, the qualified entity must submit the application to the Department and the Department will complete the determination.

(5) Termination of Contact Person or Authorized Designee Status.

(a) When the authorized designee's or contact person's position with the qualified entity ends, or when the qualified entity terminates the appointment, the Department's registration of a contact person or authorized designee is revoked. The qualified entity must notify the Department immediately upon the termination of the appointment.

(b) The Department or the qualified entity must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Department or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable. After suspending or revoking the appointment, the qualified entity taking the action must notify the Department's Criminal Records Unit in writing immediately. If the Department takes the action, it must notify the qualified entity in writing immediately.

(6) Not Transferable. If the person holding the status of a contact person or authorized designee leaves employment of the qualified entity for any reason, the person will no longer be considered a contact person or authorized designee. If the person finds employment with another qualified entity, a new appointment, application and registration must be conducted under these rules.

(7) Review of Appointment. The Department will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal history check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Department has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, indication of criminal behavior.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

### 410-007-0250

#### Oregon Criminal History Check Process

(1) Forms Required. A qualified entity, authorized designee and subject individual must use the Department's form to request the criminal history check. The Department will make the DHS Criminal History Request form and other forms required under these rules available for use or reproduction to all qualified entities.

(2) Processing.

(a) The Department obtains criminal history information from the Oregon State Police Law Enforcement Data System and from what other sources of criminal, judicial and motor vehicle information as the Department determines necessary to complete the check.

(b) Only an approved qualified entity, working through an authorized designee, may:

(A) Receive and evaluate Oregon criminal history information from the Department as allowed by applicable statutes.

(B) Conduct fitness determinations.

(c) The Department or the authorized designee may require that a subject individual obtain and provide additional criminal, judicial or other background information.

(d) Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15)

(3) Additional Information Required. In order to conduct an Oregon check and fitness determination, the Department may require additional information from the subject individual as necessary, such as but not limited to proof of identity; or additional criminal, judicial, or other background information.

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 410-007-0300 before completing the fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

### 410-007-0260

#### State-Specific Criminal History Check Process

(1) State-Specific Check. Notwithstanding the provisions of OAR 410-007-0270, the Department may conduct a state-specific criminal history check in lieu of a national check when the Department has reason to believe that out-of-state history may exist and that a nationwide criminal history check is not warranted.

(2) Supplement to National Check. The Department may conduct a state-specific check in addition to a national check in order to clarify incomplete or conflicting information.

(3) Additional Information Required. In order to conduct a state-specific check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information

(4) Imminent Danger.

(a) If the Department determines there is indication of criminal behavior that could pose a potential immediate risk to vulnerable persons, the Department will authorize a new criminal history check without the completion of a new DHS Criminal History Request form. This applies to a subject individual who:

(A) Has been previously approved under these rules or prior DHS criminal history check rules.

(B) Has been previously approved with restrictions under these rules or prior DHS criminal history check rules, or

(C) Has a criminal history check pending a final fitness determination or the outcome of an appeal under these rules.

(b) If the Department determines that a fitness determination based on the new criminal history check would be adverse to the subject individual, the Department will provide the subject individual the opportunity to disclose criminal history and other information as indicated in OAR 410-007-0300 before completing the fitness determination.

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(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0270

### National Criminal History Check Process

(1) National Criminal History Check. In addition to an Oregon check (OAR 410-007-0250), a national criminal history check may be required by the Department under any of the following circumstances:

(a) Out-of-State Residency. The subject individual has lived outside Oregon for 60 or more consecutive days during the previous three (3) years with the following exceptions:

(A) Child Care Providers (18 months). The subject individual is a child care provider or other person included in OAR 410-007-0210(27)(a)(H) who has lived outside Oregon for 60 or more consecutive days during the previous eighteen months.

(B) Child Welfare System (5 years). The subject individual is working for private, licensed child caring agencies and system of care contractors providing child care pursuant to ORS chapter 418 and has lived outside Oregon for 60 or more consecutive days during the previous five years.

(b) Criminal History Outside Oregon. The LEDS check, or any other information obtained by the Department, indicates there may be criminal history outside of Oregon, or the subject individual self-discloses criminal history outside of Oregon.

(c) Identity or History Questioned. The social security number appears not to be valid or is not provided to the Department on the DHS Criminal History Request form, the subject individual has no Oregon driver's license or Oregon identification card, or the Department has other reason to question the identity or history of the subject individual.

(d) Oregon State Institutions. The subject individual meets the definition under OAR 410-007-0210(27)(a)(L).

(2) Fingerprinting a Juvenile. Consent of the parent or guardian is required to obtain fingerprints from a child under the age of 18 years.

(3) Processing. The subject individual must complete and submit a fingerprint card when requested by the Department.

(a) Fingerprint Cards. The subject individual must use a fingerprint card (Example: FBI Form FD 258) provided by the Department.

(b) Time Frame for Return. The card must be submitted within 21 days of the request to the Department's Criminal Records Unit to avoid closure of application pursuant to OAR 410-007-0320(5)(e).

(c) Extension. The Department may extend the time allowed for good cause.

(4) Additional Information Required. In order to conduct a national check and complete a fitness determination, the Department or the authorized designee may require additional information from the subject individual as necessary, such as but not limited to proof of identity; residential history; names used while living at each residence; or additional criminal, judicial, or other background information.

(5) Department Makes Final Fitness Determination. When a subject individual has a potentially disqualifying national criminal history or discloses potentially disqualifying out of state criminal history, the Department makes the final fitness determination.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0280

### Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

- (a) ORS 162.155, Escape II;
- (b) ORS 162.165, Escape I;
- (c) ORS 162.325, Hindering prosecution;
- (d) ORS 163.005, Criminal homicide;
- (e) ORS 163.095, Aggravated murder;
- (f) ORS 163.115, Murder;
- (g) ORS 163.118, Manslaughter I;

- (h) ORS 163.125, Manslaughter II;
- (i) ORS 163.145, Criminally negligent homicide;
- (j) ORS 163.160, Assault IV;
- (k) ORS 163.165, Assault III;
- (l) ORS 163.175, Assault II;
- (m) ORS 163.185, Assault I;
- (n) ORS 163.187, Strangulation;
- (o) ORS 163.200, Criminal mistreatment II;
- (p) ORS 163.205, Criminal mistreatment I;
- (q) ORS 163.205, Female genital mutilation;
- (r) ORS 163.208, Assault of Public Safety Officer;
- (s) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or

mace I;

- (t) ORS 163.225, Kidnapping II;
- (u) ORS 163.235, Kidnapping I;
- (v) ORS 163.257, Custodial interference I;
- (w) ORS 163.355, Rape III;
- (x) ORS 163.365, Rape II;
- (y) ORS 163.375, Rape I;
- (z) ORS 163.385, Sodomy III;
- (aa) ORS 163.395, Sodomy II;
- (bb) ORS 163.405, Sodomy I;
- (cc) ORS 163.408, Unlawful Sexual penetration II;
- (dd) ORS 163.411, Unlawful Sexual penetration I;
- (ee) ORS 163.415, Sexual abuse III;
- (ff) ORS 163.425, Sexual abuse II;
- (gg) ORS 163.427, Sexual abuse I;
- (hh) ORS 163.515, Bigamy;
- (ii) ORS 163.525, Incest;
- (jj) ORS 163.535, Abandonment of a child;
- (kk) ORS 163.537, Buying or selling a person under 18 years of age;
- (ll) ORS 163.545, Child neglect II;
- (mm) ORS 163.547, Child neglect I;
- (nn) ORS 163.555, Criminal nonsupport;
- (oo) ORS 163.575, Endangering the welfare of a minor;
- (pp) ORS 163.670, Using child in display of sexually explicit conduct;

- (qq) ORS 163.673, Dealing sexual condition of children;
- (rr) ORS 163.675, Sale sexual condition of children;
- (ss) ORS 163.680, Paying for sexual view of children;
- (tt) ORS 163.684, Encouraging child sexual abuse I;
- (uu) ORS 163.686, Encouraging child sexual abuse II;
- (vv) ORS 163.687, Encouraging child sexual abuse III;
- (ww) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;

(xx) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;

- (yy) ORS 163.693, Failure to report child pornography;
- (zz) ORS 163.732, Stalking;
- (aaa) ORS 164.057, Aggravated theft I;
- (bbb) ORS 164.075, Theft by extortion;
- (ccc) ORS 164.125, Theft of services;
- (ddd) ORS 164.225, Burglary I;
- (eee) ORS 164.325, Arson I;
- (fff) ORS 164.395, Robbery III;
- (ggg) ORS 164.405, Robbery II;
- (hhh) ORS 164.415, Robbery I;
- (iii) ORS 165.581, Cellular counterfeiting I;
- (jjj) ORS 166.005, Treason;
- (kkk) ORS 166.015, Riot;
- (lll) ORS 166.085, Abuse of corpse II;
- (mmm) ORS 166.087, Abuse of corpse I;
- (nnn) ORS 166.155, Intimidation II;
- (ooo) ORS 166.165, Intimidation I;
- (ppp) ORS 166.220, Unlawful use of weapon;
- (qqq) ORS 166.270, Possession of weapons by certain felons;
- (rrr) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
- (sss) ORS 166.275, Possession of weapons by inmates of institutions;
- (ttt) ORS 166.429, Firearms used in felony;
- (uuu) ORS 166.720, Racketeering activity unlawful;
- (vvv) ORS 167.012, Promoting prostitution;
- (www) ORS 167.017, Compelling prostitution;
- (xxx) ORS 167.062, Sadomasochistic abuse or sexual conduct in live

show;

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(yyy) ORS 167.065, Furnishing obscene materials to minors;  
(zzz) ORS 167.070, Sending obscene materials to minors;  
(aaaa) ORS 167.075, Exhibiting an obscene performance to a minor;  
(bbbb) ORS 167.080, Displaying obscene materials to minors;  
(cccc) ORS 167.087, Disseminating obscene material;  
(dddd) ORS 167.262, Adult using minor in commission of controlled substance offense;

(eeee) ORS 167.315, Animal abuse II;  
(ffff) ORS 167.320, Animal abuse I;  
(gggg) ORS 167.322, Aggravated animal abuse I;  
(hhhh) ORS 167.333, Sexual assault of animal;  
(iiii) ORS 181.599, Failure to report as sex offender;  
(jjjj) ORS 475.525, Sale of drug paraphernalia prohibited;  
(kkkk) ORS 475.805, Providing hypodermic device to minor prohibited;

(llll) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;

(mmmm) ORS 475.986, Application of controlled substance to the body of another person;

(nnnn) ORS 475.992, Prohibited acts generally (regarding drug crimes);

(oooo) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);

(pppp) ORS 475.995, Distribution to minors;

(qqqq) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;

(rrrr) ORS 677.080, Prohibited acts (regarding the practice of medicine);

(ssss) Any federal crime.

(tttt) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule.

(uuuu) Any other felony in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.

(vvvv) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155.

(wwww) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.

(xxxx) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(yyyy) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the DHS Criminal History Request form was signed.

- (a) ORS 162.015, Bribe giving;
- (b) ORS 162.025, Bribe receiving;
- (c) ORS 162.065, Perjury;
- (d) ORS 162.075, False swearing;
- (e) ORS 162.117, Public investment fraud;
- (f) ORS 162.145, Escape III;
- (g) ORS 162.175, Unauthorized departure;
- (h) ORS 162.185, Supplying contraband;
- (i) ORS 162.195, Failure to appear II;
- (j) ORS 162.205, Failure to appear I;
- (k) ORS 162.247, Interfering with a peace officer;
- (l) ORS 162.265, Bribing a witness;
- (m) ORS 162.275, Bribe receiving by a witness;
- (n) ORS 162.285, Tampering with a witness;
- (o) ORS 162.295, Interfering with physical evidence;
- (p) ORS 162.305, Tampering with public records;
- (q) ORS 162.335, Compounding;
- (r) ORS 162.355, Simulating legal process;
- (s) ORS 162.365, Criminal impersonation;
- (t) ORS 162.367, Criminal impersonation of peace officer;
- (u) ORS 162.369, Possession of false law enforcement identification card;

(v) ORS 162.375, Initiating a false report;  
(w) ORS 162.385, Giving false information to police officer for a citation;

(x) ORS 162.405, Official misconduct II;  
(y) ORS 162.415, Official misconduct I;  
(z) ORS 162.425, Misuse of confidential information;  
(aa) ORS 163.190, Menacing;  
(bb) ORS 163.195, Recklessly endangering another person;  
(cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;

(dd) ORS 163.245, Custodial interference II;  
(ee) ORS 163.275, Coercion;  
(ff) ORS 163.435, Contributing to the sexual delinquency of a minor;  
(gg) ORS 163.445, Sexual misconduct;  
(hh) ORS 163.465, Public indecency;  
(ii) ORS 163.467, Private indecency;  
(jj) ORS 163.700, Invasion of personal privacy;  
(kk) ORS 163.750, Violating court's stalking protective order;  
(ll) ORS 164.043, Theft III;  
(mm) ORS 164.045, Theft II;  
(nn) ORS 164.055, Theft I;  
(oo) ORS 164.085, Theft by deception;  
(pp) ORS 164.095, Theft by receiving;  
(qq) ORS 164.135, Unauthorized use of a vehicle;  
(rr) ORS 164.140, Criminal possession of rented or leased personal property;

(ss) ORS 164.162, Mail theft or receipt of stolen mail;  
(tt) ORS 164.215, Burglary II;  
(uu) ORS 164.235, Possession of burglar's tools;  
(vv) ORS 164.255, Criminal trespass I;  
(ww) ORS 164.265, Criminal trespass while in possession of firearm;  
(xx) ORS 164.272, Unlawful entry into motor vehicle;  
(yy) ORS 164.315, Arson II;  
(zz) ORS 164.335, Reckless burning;  
(aaa) ORS 164.354, Criminal Mischief II;  
(bbb) ORS 164.365, Criminal Mischief I;  
(ccc) ORS 164.369, Interfering with police animal;  
(ddd) ORS 164.377, Computer crime;  
(eee) ORS 165.007, Forgery II;  
(fff) ORS 165.013, Forgery I;  
(ggg) ORS 165.017, Criminal possession of a forged instrument II;  
(hhh) ORS 165.022, Criminal possession of a forged instrument I;  
(iii) ORS 165.032, Criminal possession of a forgery device;  
(jjj) ORS 165.037, Criminal simulation;  
(kkk) ORS 165.042, Fraudulently obtaining a signature;  
(lll) ORS 165.055, Fraudulent use of a credit card;  
(mmm) ORS 165.065, Negotiating a bad check;  
(nnn) ORS 165.070, Possessing fraudulent communications device;  
(ooo) ORS 165.074, Unlawful factoring of credit card transaction;  
(ppp) ORS 165.080, Falsifying business records;  
(qqq) ORS 165.085, Sports bribery;  
(rrr) ORS 165.090, Sports bribe receiving;  
(sss) ORS 165.095, Misapplication of entrusted property;  
(ttt) ORS 165.100, Issuing a false financial statement;  
(uuu) ORS 165.102, Obtaining execution of documents by deception;  
(vvv) ORS 165.540, Obtaining contents of communication;  
(www) ORS 165.543, Interception of communications;  
(xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;

(yyy) ORS 165.572, Interference with making a report;  
(zzz) ORS 165.577, Cellular counterfeiting III;  
(aaaa) ORS 165.579, Cellular counterfeiting II;  
(bbbb) ORS 165.692, Making false claim for health care payment;  
(cccc) ORS 165.800, Identity theft;  
(dddd) ORS 166.025, Disorderly conduct;  
(eeee) ORS 166.065, Harassment;  
(ffff) ORS 166.076, Abuse of a memorial to the dead;  
(gggg) ORS 166.115, Interfering with public transportation;  
(hhhh) ORS 166.180, Negligently wounding another;  
(iiii) ORS 166.190, Pointing firearm at another;  
(jjjj) ORS 166.240, Carrying of concealed weapon;  
(kkkk) ORS 166.250, Unlawful possession of firearms;  
(llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;  
(mmmm) ORS 166.382, Possession of destructive device prohibited;



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(nnnn) ORS 166.384, Unlawful manufacture of destructive device;  
(oooo) ORS 166.470, Limitations and conditions for sales of firearms;  
(pppp) ORS 166.480, Sale or gift of explosives to children;  
(qqqq) ORS 166.649, Throwing an object off an overpass II;  
(rrrr) ORS 166.651, Throwing an object off an overpass I;  
(ssss) ORS 166.660, Unlawful paramilitary activity;  
(tttt) ORS 167.007, Prostitution;  
(uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;  
(vvvv) ORS 167.212, Tampering with drug records;  
(wwwv) ORS 167.222, Frequenting a place where controlled substances are used;  
(xxxx) ORS 167.325, Animal neglect II;  
(yyyy) ORS 167.330, Animal neglect I;  
(zzzz) ORS 167.355, Involvement in animal fighting;  
(aaaaa) ORS 167.365, Dogfighting;  
(bbbbb) ORS 167.370, Participation in dogfighting;  
(ccccc) ORS 167.820, Concealing the birth of an infant;  
(ddddd) ORS 411.630, Unlawfully obtaining public assistance;  
(eeeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);  
(fffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;  
(ggggg) ORS 417.990, Penalty for placement of children in violation of compact;  
(hhhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;  
(iiiii) ORS 418.140, Sharing assistance prohibited;  
(jjjjj) ORS 418.250, Supervision of child-caring agencies;  
(kkkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;  
(lllll) ORS 433.010, Spreading disease (willfully) prohibited;  
(mmmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;  
(nnnnn) ORS 475.950, Failure to report precursor substance;  
(ooooo) ORS 475.955, Failure to report missing precursor substances;  
(ppppp) ORS 475.960, Illegally selling drug equipment;  
(qqqqq) ORS 475.965, Providing false information on precursor substances report;  
(rrrrr) ORS 474.991, Unlawful delivery of imitation controlled substance;  
(sssss) ORS 475.992, Prohibited acts generally (regarding misdemeanor drug crimes);  
(ttttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);  
(uuuuu) ORS 475.994, Prohibited acts involving records and fraud;  
(vvvvv) ORS 475.996, Commercial drug offense;  
(wwwww) ORS 657A.280, Failure to certify child care facility  
(xxxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration  
(yyyyy) ORS 807.620, Giving false information to police officer  
(zzzzz) ORS 811.140, Reckless driving  
(aaaaa) ORS 811.540, Fleeing or attempting to elude police officer;  
(bbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;  
(ccccc) ORS 811.705, Failure to perform duties of driver to injured persons;  
(ddddd) ORS 819.300, Possession of a stolen vehicle;  
(eeeee) ORS 830-475, Failure to perform the duties of an operator (boat);  
(fffff) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.  
(ggggg) Any other misdemeanor in Oregon Revised Statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable persons, as determined by the authorized designee.  
(hhhhh) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.  
(iiiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee.

(jjjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(kkkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee.

(3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the DHS Criminal History Request form was signed.

(a) ORS 162.085, Unsworn falsification;  
(b) ORS 162.235, Obstructing governmental or judicial administration;  
(c) ORS 162.315, Resisting arrest;  
(d) ORS 164.245, Criminal trespass II;  
(e) ORS 164.345, Criminal mischief III;  
(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;  
(g) ORS 166.075, Abuse of venerated objects;  
(h) ORS 166.090, Telephonic harassment;  
(i) ORS 166.095, Misconduct with emergency telephone calls;  
(j) ORS 167.340, Animal abandonment;  
(k) ORS 418.630, Operate uncertified foster home;  
(l) ORS 811.182, Criminal driving while suspended or revoked;  
(m) ORS 813.010, Driving under the influence of intoxicants (DUII);  
(n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;  
(o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155.

(p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (3)) as determined by the authorized designee.

(q) A combination of any three crimes not listed in these rules which were committed on three different dates within the previous five years.

(r) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.

(s) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.

(4) Evaluation Based on Oregon Laws. Evaluations of crimes shall be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0290

### Other Potentially Disqualifying Conditions

The following are potentially disqualifying conditions:

(1) False Statement. A "false statement" by the subject individual to the qualified entity, authorized designee or Department, including provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history.

(2) Sex Offender. The subject individual is a registered sex offender in Oregon or any other jurisdiction.

(3) Warrants. An outstanding warrant against the subject individual for any crime in any jurisdiction.

(4) Deferred Sentence, Diversion Program, Parole or Probation. The subject individual has a deferred sentence, conditional discharge, is participating in a diversion program, or has not completed a required diversion program or any condition of post-prison supervision, parole or probation, for any potentially disqualifying crime listed in OAR 410-007-0280.

(5) Parole or Probation Violation. A post-prison supervision, parole or probation violation during the previous five years for any potentially disqualifying crime listed in OAR 410-007-0280.

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(6) Unresolved Arrests, Charges or Indictments. An unresolved arrest, charge, or a pending indictment, for a potentially disqualifying crime. (Example: An unresolved arrest for a ten-year review crime during the previous ten years).

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0300

### Other Information Considered

(1) Consideration of Other Information. When other information is disclosed by the subject individual, or is otherwise known by the authorized designee, the authorized designee must consider such information in addition to potentially disqualifying crimes and conditions when making the fitness determination, including but not limited to:

(a) Potentially disqualifying crimes or conditions. Circumstances regarding the nature of potentially disqualifying crimes and conditions. These may include, but are not limited to:

(A) Age of the subject individual at time of the crime.

(B) Domestic relationships or situations, when applicable.

(C) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(D) Facts that support the conviction, pending indictment, the making of a false statement, or other potentially disqualifying condition.

(E) Consideration of Oregon or federal laws, regulations, or rules covering the position, facility, employer, qualified entity or service provider, in regard to the potentially disqualifying crimes or conditions.

(b) Other Circumstances. The authorized designee must also consider factors when relevant information is provided by the Department or the subject individual including, but not limited to:

(A) Other information related to criminal activity including charges, arrests, and convictions.

(B) Periods of incarceration of the subject individual.

(C) Passage of time since commission of the crime.

(D) Parole or probation status.

(E) Evidence of drug or alcohol issues, including history of use, manufacturing, delivery, treatment, and rehabilitation.

(F) Evidence of other treatment or rehabilitation related to criminal activity or other factors listed in this rule.

(G) Likelihood of repetition of criminal behavior, including, but not limited to, the subject individual's acknowledgment and honesty relative to past behavior, patterns of criminal activity, and whether the subject individual appears to accept responsibility for past actions, as determined by the authorized designee.

(H) Changes in circumstances subsequent to the criminal activity or disqualifying condition.

(I) Information from Department protective services investigations and other investigations.

(J) Education.

(K) Work history (employee or volunteer).

(L) Written recommendations from current or past employer(s), including DHS client employers.

(M) Indication that criminal history or protective services history has been disclosed to employer, DHS client, or qualified entity.

(N) Indication of the subject individual's cooperation and honesty during the criminal history check process as described in these rules.

(c) Relevancy of History to Position. The relevancy of the subject individual's criminal history to the paid or volunteer position, or to the environment in which the subject individual will reside or work, must be considered.

(2) Fitness Information with Available Information. If the authorized designee requests other information for the purpose of conducting a weighing test under OAR 410-007-0320(5)(c), and the subject individual does not respond in a stated time period, the authorized designee will make a fitness determination based on the potentially disqualifying crimes or conditions, and the available information.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0310

### Probationary Status

A subject individual may work, volunteer, reside, or be trained in a facility or other environment identified in these rules prior to a final fitness determination only under the following conditions and will be considered to be on probationary status:

(1) DHS Criminal History Request Form Completed. A DHS Criminal History Request form must have been completed by the subject individual and reviewed by the contact person or authorized designee.

(2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 410-007-0320.

(3) Active Supervision. A subject individual who is on probationary status must be actively supervised at all times by someone who completes a history check and is approved pursuant to these rules.

(a) Duties. The person providing active supervision at all times must meet all of the following conditions:

(A) Be in the same building as the subject individual or be within line-of-sight, except as provided in subsection (5)(b) of this rule,

(B) Know where the person on probationary status is and what the person is doing, and

(C) Periodically observe the actions of the person on probationary status.

(b) Supervision by Exempt Person. A client of the Department, an adult client's related adult family member, or a child's parent or guardian, may provide active supervision if authorized in section (5)(b) or (5)(c) of this rule without a history check.

(c) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal history check pursuant to these rules or prior DHS criminal history check rules may function on probationary status without active supervision. The qualified entity must maintain the documentation.

NOTE: Time frame (24 months) is based on length of time between date of previous approval and date starting new position. This exemption is not allowed:

(A) If the subject individual discloses criminal history that occurred within the previous 24 months.

(B) If the subject individual is currently involved in an appeal under these rules.

(C) If, as determined by the authorized designee or the Department, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for probationary status be allowed to work, volunteer, reside, or be trained in a facility prior to a final fitness determination.

(5) Criteria for Specific Provider Types.

(a) Adult Foster Homes (AFH).

(A) Before a new license or a license renewal is issued, the AFH provider and all subject individuals living or working in the AFH must complete the final fitness determination and be approved by the Department.

(B) Substitute caregivers in AFHs must complete the Oregon criminal history check and, when required, have submitted fingerprint cards, before being allowed to work in an AFH. An expedited review process is available when requested by an AFH because of an immediate staffing need.

(b) Child Care Providers. Responsibility for providing active supervision in the case of child care providers is with the child's parent or guardian, but the supervision is not required to be performed by someone in the building.

(c) Homecare Worker, Personal Care Services Provider and Independent Provider.

(A) A homecare worker, personal care services provider, or independent provider may be actively supervised by the client if the client makes an informed decision to employ the provider.

(B) The Department may allow a homecare worker, personal care services provider, Department volunteer or an independent provider to be actively supervised by someone related to the client.

(d) Child Foster Care. Probationary status is not allowed in child foster care.

(6) Termination of Probationary Status.

(a) Probationary status may be terminated by the qualified entity or the Department immediately for the following reasons:

(A) There is any indication of falsification of application.

(B) The criminal history check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual.

(C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest.

(D) The subject individual failed to disclose an arrest that did not result in a conviction.

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(E) The qualified entity or Department determines that probationary status is not appropriate, based on the application, criminal history, position duties, or Oregon Administrative Rules regarding the program.

(b) Termination of probationary status is not subject to appeal under these rules.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0320

### Fitness Determinations

(1) Fitness Determination Before Work or Placement. The qualified entity must not allow a subject individual to be certified or licensed, or to work, volunteer, reside or be trained in a facility or other environment, prior to a fitness determination.

(2) Termination Following Denial. When a subject individual is denied, the individual must not be allowed to provide care, work, volunteer, reside or be trained in an environment covered by these rules and must be terminated immediately. A denial applies only to the position and application in question.

(3) Preliminary Fitness Determination. A preliminary fitness determination must be completed prior to allowing a subject individual to be on probationary status. The preliminary fitness determination must be made by an authorized designee, or when allowed by subsection (3)(a) of this rule, by a contact person. A person on probationary status must meet all the criteria in either subsection (a) or (b) as listed below:

(a) No Indication of Potentially Disqualifying Crime. If there is no indication of a potentially disqualifying crime or condition on the DHS Criminal History Request form and the authorized designee or contact person has no reason to believe the subject individual has potentially disqualifying history, the subject individual may be placed on probationary status.

(b) Self-Disclosed Criminal History. When a subject individual discloses a conviction or arrest for a potentially disqualifying crime, or any other potentially disqualifying condition, the individual may be on probationary status only after a preliminary fitness determination using a weighing test is completed by an authorized designee. An authorized designee may complete a preliminary fitness determination regardless of whether the disclosed information occurred in Oregon or outside Oregon.

(4) Final Fitness Determination. Upon receipt of the criminal history, the authorized designee must complete the fitness determination on a timely basis. The fitness determination must be completed within 21 days after receiving the history.

(a) The deadline may be extended by the authorized designee when a criminal history check generates a need to obtain or consider additional information.

(b) The deadline may be extended by the authorized designee when the decision is based on a pending charge for a potentially disqualifying crime.

(5) Potential Outcomes.

(a) Probationary Status. A subject individual may be placed on probationary status following a preliminary fitness determination as described in section (3) of this rule.

(b) Automatic Approval. A subject individual is approved in a final fitness determination without a weighing test if after all required criminal history information is received the subject individual meets all of the following conditions:

(A) No potentially disqualifying crimes, warrants, sex offender registration, or probation or parole status,

(B) No unresolved arrests for potentially disqualifying crimes within the previous five years; and

(C) No discrepancies, and no failure to disclose conviction history or out-of-state arrests.

(c) Weighing Test. Only authorized designees may conduct and participate in a weighing test. The weighing test must be used to assess fitness unless the subject individual receives automatic approval pursuant to subsection (5)(b) of this rule or the application is closed pursuant to subsection (5)(e) of this rule. In the weighing test, the authorized designee must consider the criminal history disclosed by the subject individual and other information as described in OAR 410-007-0280, 410-007-0290 and 410-007-0300 in order to assess fitness. When the weighing test is used in a final fitness determination, criminal history discovered during the criminal history check must also be considered. The authorized designee may rely on official written communications and records from law enforcement agencies and judicial systems, and on criminal history provided by the subject individual. Possible outcomes of a weighing test are as follows:

(A) Probationary Status. In a weighing test for a preliminary fitness determination, the outcome is either to allow, or to disallow, probationary status. Probationary status is not a possible outcome in a final fitness determination.

(B) Approval. A subject individual may be approved by one or more authorized designees after a weighing test.

(C) Restricted Approval. If the subject individual has potentially disqualifying history, the authorized designee:

(i) May restrict the approval to specific client(s), job duties, or environment(s).

(ii) Must complete a new criminal history check and fitness determination on the subject individual before removing a restriction.

(D) Denial. A subject individual who, following such consideration, is determined to pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities, must be denied by the authorized designee.

(i) Volunteered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history disclosed by the subject individual without conducting an Oregon, state-specific, or national criminal history check.

(ii) Discovered History. A subject individual may be denied following a weighing test based upon potentially disqualifying history discovered by the authorized designee or the Department following an Oregon, state-specific, or national criminal history check.

(d) Fitness Determination by the Department. In addition to situations in which the Department will act as authorized designee as listed in OAR 410-007-0230(3), the Department will conduct the fitness determination in the following circumstances:

(A) A qualified entity must request that the Department conduct the fitness determination when the qualified entity is temporarily unable to provide an authorized designee qualified to conduct a fitness determination as required under OAR 410-007-0230.

(B) If the Department has reason to believe a fitness determination has not been conducted in compliance with these rules, the Department may repeat the criminal history check and conduct a fitness determination.

(C) The Department may review fitness determinations made by local authorized designees and make a new fitness determination at its discretion.

(D) If a national or state-specific check identifies potentially disqualifying history, the final fitness determination must be made by the Department. When the Department obtains criminal history information through the Federal Bureau of Investigation that is not in itself potentially disqualifying, but which is related to potentially disqualifying Oregon history, the Department may assess fitness.

NOTE: The Department may not disseminate information obtained through the Federal Bureau of Investigation.

(e) Closed Case.

(A) If the subject individual discontinues the application or fails to cooperate with the criminal history check process then the application is considered incomplete. Discontinuance or failure to cooperate includes, but is not limited to, the following circumstances, and will result in a closed case:

(i) The subject individual refuses to be fingerprinted when required by these rules.

(ii) The subject individual fails to respond within a stated period of time to a request from the authorized designee or the Department for corrections to the application, fingerprints, any other information necessary to conduct a criminal history check under these rules, or any information described in OAR 410-007-0300.

(iii) The subject individual withdraws the application, leaves the position prior to completion of the check, or cannot be located or contacted by the authorized designee.

(iv) The subject individual is determined to not be eligible for the position for reasons other than the criminal history check.

(B) The incomplete application is closed without a final fitness determination and there is no right to a contested case hearing.

(6) Independent Choices. Clients receiving services through the DHS Independent Choices program (OAR chapter 411, division 36) are not bound by the fitness determination conducted under these rules when selecting care providers.

(7) Notice to Subject Individual. Upon completion of a final fitness determination resulting in a denial or restricted approval, the authorized designee must provide written notice to the subject individual. The notice must be:

(a) In a format approved by the Department, and



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(b) Mailed or hand-delivered to the subject individual as soon as possible, but in no case later than fourteen days after the decision. The date of the decision must be recorded on the form.

(8) Documentation. Preliminary and final fitness determinations must be documented in writing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0330

### Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Department, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Department's appeal process described in this rule.

(b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Department, the Department will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Department.

(a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available by contacting the DHS Criminal Records Unit.

(b) Deadline for Appeal. The completed and signed form must be received by the Department not later than:

(A) 10 days after the notice of the fitness determination is mailed for subject individuals who are employees, applicants, and volunteers of the Department (subject individuals under OAR 410-007-0210(27)(a)(A) and 410-007-0210(27)(a)(L)).

(B) 45 days after the notice of the fitness determination is mailed for all other subject individuals.

(c) Extension of Deadline. The Department may extend the time to appeal if the Department determines the delay was caused by factors beyond the reasonable control of the subject individual.

(d) Hearing on timeliness. The Department may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(4) Informal Administrative Review (Mandatory). When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Department conducts an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, must participate in the informal administrative review.

(A) Participation may include, but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 410-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Department will review a request to reinstate hearing rights if received in writing by the Department within 14 days.

(b) Criminal history check.

(A) If the denial was based on disclosed criminal history, the Department will conduct a criminal history check during the informal administrative review.

(B) The Department may conduct additional criminal history checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Department will use the weighing test as described in these rules during the administrative review.

(d) Content of Administrative Review. The Department representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(3). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial.

(B) Ensure the subject individual understands the reason for the denial.

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law (See OAR 410-007-0340(2)).

(D) Give the Department and subject individual an opportunity to research or provide additional information to consider as listed in OAR 410-007-0300.

(E) Give the Department and the subject individual the opportunity to correct any misunderstanding of the facts.

(F) Provide an opportunity for the Department and the subject individual to resolve the situation, including developing an agreement whereby the subject individual may be approved with restrictions.

(G) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Department in writing of the finding within 14 days.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Department reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.

(b) Department Representation. Employees of the Department may in accordance with ORS 183.452 be authorized by the Department's Director to represent the Department for the contested case hearing. Authorization from the Office of Attorney General is also required. The Department retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal history check information as follows:

(A) In the case of federal criminal history and criminal history from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Department may also provide out-of-state information received from other official sources.

(B) In the case of Oregon criminal history, the Department may provide a copy of the LEDS print-out, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(C) Criminal history information and correspondence regarding the subject individual's criminal history check are prima facie evidence if certified by the Department representative as a true copy.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. The informal conference and hearing are not open to the public.

# ADMINISTRATIVE RULES

(f) Coordination with Licensure or Certification Hearing. A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the subject individual.

(g) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Department or the Office of Administrative Hearings. A dismissal order will be issued by the Department or the Office of Administrative Hearings. The subject individual may cancel the withdrawal up to 14 days after the date the order is served.

(7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Department will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Department will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative law judge issues a proposed order. If no written exceptions are received by the Department within 14 days after the service of the proposed order, the proposed order becomes the final order.

(d) Exceptions. If timely written exceptions to the proposed order are received by the Department, the Department Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

(e) Results to qualified entity. The Department may provide the qualified entity with the results of the appeal after the informal administrative review or contested case hearing.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537, 183.341

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0340

### Record Keeping, Confidentiality

(1) LEDS Reports.

(a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access. The subject individual must be allowed to inspect the LEDS report if the subject individual requests to see it. The LEDS report, and photocopies of the LEDS report, must not be given to the subject individual.

NOTE: Photocopies of the LEDS report should not be made under any circumstances.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination. National criminal information provided by the FBI is confidential and may not be disseminated by the Department.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) DHS Forms and Other Documentation.

(a) Confidentiality. All completed DHS Criminal History Request forms must be kept confidential and disseminated only on a need-to-know basis.

(b) Retention.

(A) DHS forms and other records documenting the criminal history check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(B) Documentation must be retained by the qualified entity to demonstrate that the fitness determination was completed pursuant to these rules.

(4) DHS Criminal History Database. The Department maintains a database regarding criminal history checks.

(a) Data. The Department will develop a system that maintains information regarding criminal history checks and minimizes the administrative burden that these rules impose upon subject individuals and providers.

(b) Confidentiality. Records maintained under section (4) of this rule are confidential and are not disseminated by the Department except for the purpose of this section and in accordance with the rules of the Department and the Department of State Police (Oregon State Police).

(c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0370

### Variances

(1) Criteria for a Variance. The Department may grant a variance to any section of these rules based upon a demonstration by the qualified entity that the variance would not pose a significant risk to physical, emotional or financial well-being of children, the elderly or persons with disabilities.

(2) Variance Application. The qualified entity requesting a variance must submit in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept or procedure proposed; and

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought.

(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance period is in effect.

(3) Department Review. The Administrator for the Department or designee may approve or deny the request for a variance.

(4) Notification. The Department must notify the qualified entity of the decision. This notice must be sent within 60 calendar days of the receipt of the request by the Department with a copy to other relevant sections of the Department.

(5) Appeal Application. Appeal of the denial of a variance request must be made in writing to the Administrator of the Department, whose decision is final.

(6) Duration of Variance. The duration of the variance must be determined by the Department. All variances must be reapplied for before the duration of the variance expires.

(7) Implementation. The provider may implement a variance only after written approval from the Department is received.

(8) No Precedent. Granting a variance does not set a precedent that must be followed by the Department when evaluating subsequent requests for variances.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

## 410-007-0380

### Fees

(1) National Check. The fingerprint processing fee for nursing facilities, assisted living facilities, and residential care facilities and adult foster homes licensed under OAR chapter 411 is \$12 per check.

(2) Fees Established by Contract. The Department may establish fees by contract or written agreement with a qualified entity. Fees may not exceed the cost of providing the service.

Stat. Auth.: ORS 181.537, 409.010 & 409.050

Stats. Implemented: ORS 181.537

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05

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**Adm. Order No.:** OMAP 23-2005(Temp)

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05 thru 9-1-05

**Notice Publication Date:**

**Rules Amended:** 410-121-0300

**Subject:** The Pharmaceutical Rules govern Office of Medical Assistance Programs payment for pharmaceutical products provided to clients. OMAP temporarily amended 410-121-0300 to update the

## ADMINISTRATIVE RULES

CMS Federal Upper Limits for Drug Payments listing. This temporary filing is to immediately update Transmittal #37, with Title XIX State Agency Letter Number 05-01, changes to the list, effective for services rendered on or after February 14, 2005, 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 05-01, with changes to be effective on or after February 14, 2005, and is available for downloading on OMAP's Website (contact OMAP for most current website address). To request a hard copy, call OMAP.

[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; OMAP 23-2005(Temp), f. & cert. ef. 4-1-05 thru 9-1-05

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**Adm. Order No.:** OMAP 24-2005(Temp)

**Filed with Sec. of State:** 4-5-2005

**Certified to be Effective:** 4-5-05 thru 10-1-05

**Notice Publication Date:**

**Rules Adopted:** 410-133-0245

**Rules Amended:** 410-133-0000, 410-133-0040, 410-133-0060, 410-133-0080, 410-133-0090, 410-133-0100, 410-133-0120, 410-133-0140, 410-133-0160, 410-133-0180, 410-133-0200, 410-133-0220, 410-133-0280, 410-133-0300, 410-133-0320, 410-133-0340

**Subject:** Upon assumption of the School-Based Health Services (SBHS) program, a systematic review of the SBHS rules was conducted and changes to the rules were made in anticipation of the state plan for SBHS. The proposed rule changes previous to these rules were proposed with a notice of proposed rulemaking hearing that was

held August 30, 2004 at 9 a.m. in room 137A at Department of Human Services building located at 500 Summer St. NE in Salem, Oregon. Due to a combination of factors that occurred in our negotiations with CMS regarding a significant rewrite of the SBHS state plan, along with comments we received from the previous proposed rulemaking hearing, and recent changes in OMAP General Rules that affected the SBHS program, it was decided to schedule a meeting seeking input from the Oregon Department of Education, OMAP Policy Analysts, Oregon Department of Justice Medicaid Fraud Unit and General Counsel Division of the Human Services Section. A meeting was held that resulted in a very positive comparative discussion that brought about significant revisions to the SBHS rules meeting the approval of all the parties involved in this process. We are now ready to move forward with these rules as temporary rules with an effective date of March 29, 2005 to be made permanent September 24, 2005. These temporary SBHS rules will now work in tandem with the new CMS approved SBHS state plan.

**Rules Coordinator:** Pat Bougher—(503) 945-5844

### 410-133-0000

#### Purpose

(1) School-Based Health Services (SBHS) rules describe the Medicaid covered services available to Medicaid-eligible students receiving Health Services on a fee-for-service basis when "Necessary and Appropriate" and within the limitations established by the Medical Assistance Program and these rules, consistent with the requirements of the Individuals with Disabilities Education Act (IDEA). These rules are to be used in conjunction with the General Rules governing the Office of Medical Assistance Programs (OMAP) (OAR 410 Division 120) and the Oregon Health Plan (OHP) rules (OAR 410 Division 141). The School-Based Health Services rules are also a user's manual designed to assist the Educational Agency (EA) in matching State and Federal Funds for Oregon's Medicaid-eligible students with disabilities.

(2) The Oregon Administrative Rules (OARs) in chapter 581, division 15 for the Oregon Department of Education (ODE) outline Oregon's program to meet the federal provisions of the IDEA. These SBHS rules define Oregon's fee-for-service program to reimburse publicly funded education agencies for the Health Services provided under the IDEA to Oregon's Medicaid-eligible children.

(3) The Department of Human Services (DHS) and ODE recognize the unique intent of Health Services provided for Medicaid-eligible students with disabilities in the special education setting. The School-Based Health Services rules address the health aspects of special education services that are covered by Medicaid or the Children's Health Insurance Program.

(4) DHS endeavors to furnish School Medical Providers with up-to-date billing, procedural information, and guidelines to keep pace with program changes and governmental requirements. DHS does so by providing information on it's website.

(5) Enrolled School-Based Health Services Providers are responsible to maintain current publications provided by DHS and OMAP, and to comply with the OARs in effect on the date of service the Health Service is provided.

(6) In order for DHS to reimburse for Health Services provided in the school, the Health Services must be included as a covered service under the Oregon Health Plan. There is no benefit category in the Medicaid statute titled "school health services" or "early intervention services." These rules do not create a new category of health benefits for this fee for service program.

(7) These rules describe Health Services that are covered services for Medicaid-eligible students, which are authorized and provided consistent with these rules.

(8) Medicaid-eligible students retain the ability to obtain services from any qualified Medicaid provider that undertakes to provide services to them. These rules do not require a Medicaid-eligible student to receive their Health Services solely from School Medical Providers.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05



# ADMINISTRATIVE RULES

## 410-133-0040

### Definitions

(1) Adapted Vehicle — Vehicle specifically designed or modified to transport passengers with disabilities.

(2) Adequate Recordkeeping — In addition to General Rules OAR 410-120-0000, Definitions and 410-120-1360, Requirements for Financial, Clinical, and Other Records, documentation in the student's Educational Record and on the Individualized Education Plan or Individualized Family Service Plan (IEP/IFSP) showing the Necessary and Appropriate Health Services provided to the student detailed in DHS SBHS rules (See Definitions 30 & 31 and OAR 410-133-0320).

(3) Assessment — A process of obtaining information to determine if a student qualifies for or continues to qualify for OMAP covered School-Based Health Services.

(4) Assistive Technology Service — Services provided by Medically Qualified Staff within the scope of practice under State law with training and expertise in the use of assistive technology (see 410-133-0080 Coverage and 410-133-0200 Not Covered Services in these rules).

(5) Audiologist — A person licensed to practice audiology by the State Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA).

(6) Audiology — Assessment of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders; provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child's need for individual amplification; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services.

(7) Automated Information System (AIS) — A computer system that provides information on Medicaid client current eligibility status under the Medical Assistance Program. (See General Rules OAR 410-120-0000 Definitions).

(8) Benefit Package — The "package" of covered health care services for which the Medicaid-eligible student is eligible. (See General Rules OAR 410-120-0000 Definitions and 410-120-1210 Medical Assistance Benefit Packages and Delivery System and OHP rules OAR 410-141-0480 and 410-141-0520). The benefit package is identified on the Medical ID card issued by DHS.

(9) Billing Provider (BP) — A person, agent, business, corporation, clinic, group, institution, or other entity that submits claims to and/or receives payment from the Medical Assistance Program on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider. (See General Rules OAR 410-120-1260 and SBHS Rules 410-133-0140.)

(10) Billing Time Limit — Refers to the rules concerning the period of time allowed to bill services to OMAP under "Timely Submission of Claims" (See OAR 410-120-1300). In general, those rules require initial submission within 12 months of the date of service or 18 months for resubmission.

(11) Centers for Medicare and Medicaid Services (CMS) — The federal regulatory agency for Medicaid programs.

(12) CMS-1500 — The standard federal billing form used to bill medical services.

(13) Certification — See "licensure."

(14) Children's Health Insurance Program (CHIP) — A Federal and State funded portion of the Medical Assistance Program established by Title XXI of the Social Security Act and administered in Oregon by the Department of Human Services Office of Medical Assistance Programs (see Medical Assistance Program).

(15) COTA — Certified Occupational Therapy Assistant — A person who is licensed as an occupational therapy assistant assisting in the practice of occupational therapy under the supervision of a licensed occupational therapist.

(16) Clinical Social Work Associate (CSWA) — A person working toward LCSW licensure under the supervision of a LCSW for two years of post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon.

(17) Coordinated care — Services directly related to SBHS covered Health Services specified in the IEP/IFSP, performed by Medically Qualified Staff, and allowed under 410-133-0080, Coverage to manage integration of those Health Services in the school setting. Coordinated Care includes the following activities:

(a) Conference — The portion of a conference in a scheduled meeting, regarding a student with special needs, between Medically Qualified Staff and interested parties, to develop, review, or revise components of School-Based Health Services provided to a Medicaid-eligible student for the purpose of establishing or re-establishing a Medicaid covered service; or to develop, review, or revise components of SBHS currently provided to a Medicaid-eligible student for continuation of those covered services pursuant to an IEP/IFSP.

(b) Consultation — Technical assistance to or conferring with EI/ECSE or special education providers and families to assist them in providing covered Health Services to Medicaid-eligible students related to specific Health Services, and Health Service goals and objectives in the IEP/IFSP plan.

(c) Physician coordinated care — Meeting or communication with a physician in reference to oversight of care for a Medicaid-eligible student.

(18) Cost Determination — The process of establishing an annual discipline fee (rate), based on the prior-year actual audited costs, used by an EA for the purpose of billing for covered school-based health services (see 410-133-0245 in these rules).

(19) Current Procedural Terminology (CPT) — The American Medical Association's Current Procedural Terminology is a listing of descriptive terms and identifying codes for reporting medical services and procedures performed by physicians and other health care providers. See General Rules (OAR 410-120-0000 Definitions).

(20) Delegated Health Care Aide — A non-licensed person trained and supervised by a licensed Registered Nurse (RN) or Nurse Practitioner (NP) to perform selected tasks of nursing care specific to the student identified in the Nursing Plan of Care pursuant to the IEP/IFSP.

(21) Delegation of Nursing Task — A selected nursing task that is performed by an unlicensed person, trained and monitored by a licensed Registered Nurse (RN). Delegation and supervision of selected nursing tasks must comply with Oregon Administrative Rules, Board of Nursing, chapter 851 division 45 and 47. A School Medical Provider must maintain documentation of the actual delegation, training, supervision and provision of the nursing service billed to Medicaid.

(22) Direct Services — Face-to-face delivery of Health Services between the Medically Qualified Staff who is the service provider and a Medicaid-eligible student.

(23) Early Intervention/Early Childhood Special Education (EI/ECSE) — A program designed to address the unique needs of a child age 0-3 years (EI) and preschool children ages 3-5 years (ECSE) with a disability.

(24) EDI Submitter — is a person or entity authorized to conduct an Electronic Transaction between a Provider that is a Trading partner and DHS, as those terms are used in the DHS EDI rules. OAR 410-001-0100 to 410-001-0200.

(25) Educational Agency (EA) — For purposes of these rules, any public school, school district, Education Service District (ESD), state institution, or youth care center providing educational services to students, birth to age 21 through grade 12, that receives federal or state funds either directly or by contract or subcontract with the ODE.

(26) Education Records — Those records, files, documents and other materials which contain information directly related to a student and maintained by an EA or by a person acting for such EA as set forth in OAR 581-021-0220. (A SBHS provider is required to keep and maintain supporting documentation for Medicaid reimbursed Health Services; this documentation is part of the student's education record but may be filed and kept separately by school health professionals in accordance with the EA's education records policies.) See 410-133-0320 Documentation and Recordkeeping Requirements in these rules.

(27) Education Service District (ESD) — An education agency established to offer a resource pool of cost-effective, education-related, physical or mental health-related, state-mandated services to multiple local school districts within a geographic area described in ORS 334.

(28) Eligibility for Special Education Services — A determination by a designated EA, through a team, that a child meets the eligibility criteria for early intervention, early childhood special education or special education as defined in ORS 343 and OAR chapter 581, division 15.

(29) Evaluation — Evaluations are procedures performed by Medically Qualified Staff to determine whether a Medicaid-eligible student is disabled and the nature and extent of the health services the student needs under IDEA and in accordance with OAR 581-015-0071 and -0072. DHS can only reimburse SBHS covered Health Service evaluations when a Medicaid-eligible student is found eligible under IDEA and will receive a SBHS covered service pursuant to IEP/IFSP.

## ADMINISTRATIVE RULES

(30) Federal Medical Assistance Percentage (FMAP) — The percentage of Federal matching dollars for qualified State Medical Assistance Program expenditures.

(31) Healthcare Common Procedure Coding System (HCPCS) — A method for reporting health care professional services, procedures and supplies. See General Rules (OAR 410-120-0000 Definitions).

(32) Health Assessment Plan (nursing) — Systematic collection of data for the purpose of assessing a Medicaid-eligible student's health or illness status and actual or potential health care needs in the educational setting. Includes taking a nursing history, and an appraisal of the student's health status through interview, information from the family and information from the student's past health or medical record, and may include a physical examination. A SBHS provider is required to keep and maintain the Health Assessment Plan and supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's IEP or IFSP for a period of seven (7) years, as part of the student's Education Record, which may be filed and kept separately by school health professionals. (See 410-133-0320 Documentation and Recordkeeping Requirements.)

(33) Health Care Practitioner — A person licensed pursuant to state law to engage in the provision of health care services within the scope of the health care practitioner's license and/or certification standards established by their health licensing agency. Medical Provider and Health Care Practitioner are interchangeable terms.

(34) Health Services — Medical evaluation services provided by a physician for diagnostic and evaluation purposes for a Medicaid-eligible student that is found eligible under IDEA and leads to an established IEP or IFSP, and physical or mental health evaluation, testing or treatment required to achieve the goals set forth in a Medicaid-eligible student's IEP or IFSP. A SBHS covered Health service is one that is covered by the Medical Assistance program and is provided to enable the Medicaid-eligible to benefit from a special education program (age 3-21) or to achieve developmental milestones in an early intervention program (age 0-31). "Health Services" are synonymous with "medical services" in these rules. To determine whether a Health Service specified on an IEP or IFSP is a covered SBHS, See 410-133-0080 Coverage and 410-133-0200 Not Covered Services.

(35) Health Services Commission (HSC)- An eleven member commission that is charged with reporting to the Governor the ranking of health benefits from most to least important, and representing the comparable benefits of each service to the entire population to be serviced.

(36) ID Number — A number issued by DHS used to identify Medicaid-eligible students. This number may also be referred to as Recipient Identification Number; Prime Number; Client Medical ID Number or Medical Assistance Program ID Number.

(37) Individuals with Disabilities Education Act (IDEA) — The federal law ensuring the rights of children with disabilities to a "free and appropriate education" (FAPE).

(38) Individualized Education Plan (IEP) — A written statement of an educational program for a child with a disability which is developed, reviewed, or revised in a meeting in accordance with OAR chapter 581, division 15. When an IEP is used as a prescription for Medicaid reimbursement for SBHS covered services, it must include: type of health service, discipline providing the service, amount, duration and frequency for the service provided, and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice.

(39) Individualized Family Service Plan (IFSP) — A written plan of early childhood special education services, early intervention services, and other services developed in accordance with criteria established by ODE for each child (age's birth to 5 years) eligible for IFSP services. The plan is developed to meet the needs of a child with disabilities in accordance with requirements and definitions in OAR Chapter 581, division 15. When an IFSP is used as a prescription for Medicaid reimbursement for SBHS covered services, it must include: type of health service, discipline providing the service, amount, duration and frequency for the service provided, and must be recommended by a physician or appropriate health care practitioner acting within the scope of practice.

(40) Individualized Education Plan/Individualized Family Service Plan (IEP/IFSP) Team — teachers, specialists, and parents responsible for determining eligibility, for developing, reviewing and revising an IEP or IFSP in compliance with OAR chapter 581, Division 15.

(41) Licensed Clinical Social Worker (LCSW) — A person licensed to practice clinical social work pursuant to State law.

(42) Licensed Physical Therapist Assistant (LPTA) — A person licensed to assist in the administration of physical therapy, solely under the supervision and direction of a physical therapist.

(43) Licensed Practical Nurse (LPN) — A person licensed to practice under the direction of a licensed professional within the scope of practice as defined by State law.

(44) Licensure — Documentation from state agencies demonstrating that licensed or certified individuals are qualified to perform specific duties and scope of services within a legal standard recognized by the licensing agency. In the context of Health Services, licensure refers to the standards applicable to health services providers by health licensing authorities. For Health Services provided in the State of Oregon, licensure refers to the standards established by the appropriate State of Oregon licensing agency.

(45) Medicaid-eligible student — The child or student who has been determined to be eligible for Medicaid Health Services by the Department of Human Services. For purposes of this rule, Medicaid-eligible student is synonymous with "Recipient" or "Oregon Health Plan Client". For convenience, the term student used in these rules applies to both students covered by an IEP and children covered by an IFSP. Also for purposes of this rule, students or children whose eligibility is based on the Children's Health Insurance Program (CHIP) shall be referred to as Medicaid-eligible students.

(46) Medical Assistance Program — A program for payment of Health Services provided to eligible Oregonians. Oregon's Medical Assistance Program includes Medicaid services including the OHP Medicaid Demonstration, and the Children's Health Insurance Program (CHIP). The Medical Assistance Program is administered by the Office of Medical Assistance Programs (OMAP), of the Department of Human Services.

(47) Medical Management Information System (MMIS). Data collection system for processing paper and electronic claims for payment of Health Services provided to Medicaid-eligible recipients.

(48) Medical provider — An individual licensed by the State to provide health services within their governing body's definitions and respective scope of practice. Medical provider and health care practitioner are interchangeable terms.

(49) Medical Services — The care and treatment provided by a licensed health care practitioner to prevent, diagnose, treat, correct or address a medical problem, whether physical, mental or emotional. For the purposes of these rules, this term shall be synonymous with Health Services or health-related services listed on an IEP or IFSP, as defined in OAR chapter 581, division 15. Not all health-related services listed on an IEP or IFSP are covered as SBHS. See 410-133-0080 Coverage and 410-133-0200 Not Covered Services.

(50) Medical Transportation — Specialized transportation in a vehicle adapted to meet the needs of passengers with disabilities transported to and from a SBHS covered service.

(51) Medically Qualified Staff:

(a) Staff employed by and/or through contract with an EA, and

(b) licensed by the State to provide Health Services in compliance with State law defining and governing the scope of practice, described further in OAR 410-133-0120.

(52) Medication Management — Performed only by Medically Qualified Staff, pursuant to a student's IEP/IFSP, and involves administering medications, observing for side effects, and monitoring signs and symptoms for medication administration.

(53) "Necessary and Appropriate Health Services" — Those Health Services described in a Medicaid-eligible student's IEP or IFSP that are:

(a) Consistent with the symptoms of a health condition or treatment of a health condition;

(b) Appropriate with regard to standards of good health practice and generally recognized by the relevant scientific community and professional standards of care as effective;

(c) Not solely for the convenience of the Medicaid-eligible student or provider of the service; and

(d) The most cost-effective of the alternative levels of Health Services, which can safely be provided to a Medicaid-eligible student.

(54) Nursing Diagnosis and Management Plan — A written plan that describes a Medicaid-eligible student's actual and anticipated health conditions that are amenable to resolution by nursing intervention.

(55) Nursing Plan of Care — Written guidelines made a part of and attached to the IEP or IFSP that identify specific health conditions of the Medicaid-eligible student, and the nursing regimen that is "Necessary and Appropriate" for the student. Development and maintenance of this plan includes establishing student and nursing goals, and identifying nursing

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interventions (including location, frequency, duration and delegation of care) to meet the medical care objective identified in their IEP or IFSP. See Oregon State Board of Nursing Practice Act, Division 47. The SBHS Provider is responsible for developing the Nursing Plan of Care and is required to keep and maintain a copy of the Nursing Plan of Care as supporting documentation for Medicaid reimbursed health services. (See definition #25 Education records.)

(56) Nurse Practitioner — A person licensed as a registered nurse and certified by the Board of Nursing to practice as a nurse practitioner pursuant to State law.

(57) Nursing Services — Services provided by a nurse practitioner (NP), registered professional nurse (RN), a licensed practical nurse (LPN) or Delegated Health Care Aide, within the scope of practice as defined by State law. Nursing services include preparation and maintenance of the Health Assessment Plan, Nursing Diagnosis and Management Plan, Nursing Plan of Care, consultation, and coordination and integration of Health Service activities, as well as direct patient care and supervision.

(58) Observation — Surveillance or visual monitoring performed by a Medically Qualified Staff to better understand the child's medical needs and progress in their natural environment.

(59) Occupational Therapist (OT) — A person licensed by the State Board of Examiners for Occupational Therapy.

(60) Occupational Therapy — Assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, improving ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function; and obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services.

(61) Office of Medical Assistance Programs (OMAP) — An office of the Oregon Department of Human Services. OMAP is responsible for coordinating the Medical Assistance Program within the State of Oregon.

(62) Oregon Department of Education (ODE) — The state agency that provides oversight to public Educational Agencies for ensuring compliance with Federal and State laws relating to the provision of services required by the IDEA.

(63) Orientation and Mobility Training — Services provided to blind or visually impaired students by qualified personnel to enable those students to attain systematic orientation to and safe movement within their environments in school, home, and community. These services are not covered under the SBHS program.

(64) Performing Provider — A person, agent, business, corporation, clinic, group, institution, or other entity that is the provider of a service or item with the authority to delegate fiduciary responsibilities to a Billing Provider to obligate or act on the behalf of the Performing Provider regarding claim submissions, receivables, and/or payments relative to the Medical Assistance Program. For the purposes of these SBHS rules, the School Medical Provider is the Performing Provider.

(65) Physical Therapist — A person licensed by the relevant State licensing authority to practice physical therapy (See OAR chapter 848 division10).

(66) Physical Therapy — Assessing, preventing or alleviating movement dysfunction and related functional problems; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving treatments.

(67) Prime Number — See definition of ID Number.

(68) Prioritized List of Health Services — is the listing of condition and treatment pairs developed by the Health Services (HSC) for the purpose of implementing the Oregon Health Plan Demonstration Project. See OAR 410-141-0520 Prioritized List of Health Services, for the listing of condition and treatment pairs.

(69) Procedure Code — See definition of HCPC Healthcare Common Procedure Code.

(70) Provider — An individual, facility, institution, corporate entity, or other organization which supplies health care services or items or bills on behalf of a provider of services. The term "provider" refers to both Performing Providers and Billing Providers unless otherwise specified. Payment can only be made to OMAP-enrolled providers, who have, by signature on the provider enrollment form, agreed to provide services and to bill in accordance with the General Rules 410-120-1260 and the SBHS program rules 410-133-0140. If a Provider submits claims electronically, the Provider must become a Trading Partner with the Department of Human Services and comply with the requirements of the EDI rules pursuant to OAR 410-001-0100 et seq.

(71) Psychiatrist — A person licensed to practice medicine and surgery in the State of Oregon and possesses a valid license from the Oregon Licensing Board for the Healing Arts.

(72) Psychologist — A person with a doctoral degree in psychology and licensed by the State Board of Psychologist Examiners See 858-010-0015.

(73) Psychologist Associate — A person who does not possess a doctoral degree that is licensed by the Board of Psychologists Examiners, to perform certain functions within the practice of psychology under the supervision of a Psychologist. See 858-050-0100 through 858-050-0150.

(74) Recordkeeping Requirements — A SBHS provider is required to keep and maintain the supporting documentation for Medicaid reimbursed Health Services described in a Medicaid-eligible student's IEP or IFSP for a period of seven (7) years, as part of the student's Education Record, which may be filed and kept separately by school health professionals (See 410-133-0320).

(75) Re-evaluation — Procedure used to measure a Medicaid-eligible student's health status compared to an initial or previous evaluation, or to determine whether the student continues to be eligible for Medicaid covered Health Services under the IDEA.

(76) Regional Program — Regional Program Services are provided on a multi-county basis, under contract from the Department of Education to eligible children (birth to 21) visually impaired, hearing impaired, deaf-blind, autistic, and/or severely orthopedically impaired. A Regional program may be reimbursed for covered Health Services it provides to Medicaid-eligible students through the School Medical Provider (e.g., school district or ESD) that administers the program.

(77) Registered Nurse (RN) — A person licensed and certified by the Board of Nursing to practice as a registered nurse pursuant to State law.

(78) Rehabilitative Services — For purposes of the SBHS program, any Health Service that is covered by the Medical Assistance Program and that is a medical, psychological or remedial Health Service recommended by a physician or other licensed health care practitioner within the scope of practice under State law, and provided to a Medicaid-eligible student pursuant to an IEP/IFSP under IDEA, for reduction, correction, stabilization or functioning improvement of physical or mental disability of a Medicaid-eligible student (See 410-133-0060).

(79) Related Services — For purposes of this rule, Related Services as listed on an IEP or IFSP may include: transportation and such developmental, corrective and other supportive services (e.g., speech language, audiology services, psychological services, physical therapy, occupational therapy, social work services in schools, school health services) as are required to assist a child or student with a disability to benefit from special education, and includes early identification and assessment of disabling conditions in children.

**NOTE:** Not all "Related Services" are covered for payment by Medicaid. To determine whether a particular Related Service is a covered Health Service for a Medicaid-eligible student (see OAR 410-133-0080, Coverage and 410-133-0200, Not Covered Services).

(80) School-Based Health Services (SBHS) — Health Services provided in the educational setting, meeting the requirements of these rules, and applicable federal and state laws and rules.

(81) School Medical Provider — An enrolled provider type established by OMAP to designate the provider of School-Based Health Services eligible to receive reimbursement from OMAP. See OAR 410-133-0140 (School Medical Provider Enrollment Provisions).

(82) Screening — A limited examination to determine a Medicaid-eligible student's need for diagnostic medical evaluation. See OAR 410-133-0200 (Not Covered Services).

(83) Special education services — Specially designed instruction to meet the unique needs of a child with a disability, including regular classroom instruction, instruction in physical education, home instruction, and instruction in hospitals, institutions, special schools, and other settings.

(84) Speech Language Pathology Assistant (SLPA) — A person who provides speech-language pathology services under the direction and supervision of a speech-language pathologist licensed under ORS 681.250.

(85) Speech-Language Pathologist — A person licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or hold a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA).

(86) Speech-Language Pathology Services — Assessment of children with speech and/or language disorders; diagnosis and appraisal of specific speech and/or language disorders; referral for medical and other professional attention, necessary for the rehabilitation of speech and/or language disorders; provision of speech or language services for the prevention of communicative disorders; and obtaining and interpreting information; and



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coordinating care and integrating services relative to the student receiving services.

(87) State Education Agency (SEA) — See “Oregon Department of Education (ODE)”.

(88) State-Operated Schools — The Oregon School for the Blind or the Oregon School for the Deaf. See “Educational Agency.”

(89) Student Health/Medical/Nursing Records — Education Records that document, for Medical Assistance Program purposes, the Medicaid-eligible student’s diagnosis or the results of tests, screens or treatments; treatment plan; the IEP or IFSP; and the record of treatments or Health Services provided to the child or student.

(90) Teachers’ Standards and Practices Commission (TSPC) — The Commission that governs licensing of teachers, personnel service specialists, and administrators as set forth in OAR Chapter 584.

(91) Testing — See “Assessment”.

(92) Testing Technician — A person/technician adequately trained to administer and score specific tests, as delegated under the direction and supervision of a licensee, and maintain standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See ORS 675.010(4), OAR 858-010-0001, and 858-010-0002.

(93) Third Party Billing — The process of sending a bill to a public or private insurance company for a medical or health service given to someone who is insured.

(94) Transportation Aide — An individual trained for health and safety issues to accompany a Medicaid-eligible student transported to and from a SBHS covered Health Service as specified in the IEP/IFSP. The School Medical Provider must maintain documentation of the training, supervision and provision of the services billed to Medicaid. For the purposes of these rules, individual transportation aides are included in the cost calculation for transportation costs and will not be billed separately. This computation will not include delegated health care aides for whom costs are direct costs.

(95) Transportation as a Related Service — Transportation of a Medicaid-eligible student to and from a SBHS covered Health Service must be necessary and appropriate, and described in the IEP/IFSP as outlined in OAR 410-133-0080 (Coverage).

(96) Transportation Vehicle Trip Log — A record-keeping log kept specifically for tracking each trip a Medicaid-eligible student receives Transportation to or from an SBHS covered Health Service. See OAR 410-136-0280 (Medical Transportation rules — Required Documentation and SBHS Rules Cost Determination and Payment 410-133-0245).

(97) Treatment Plan — A written plan of care services, including treatment, with proposed location, frequency and duration of treatment as required by the health care practitioner’s health licensing agency.

(98) Unit — A service measurement of time for billing and reimbursement efficiency. One (1) unit equals 15 minutes unless otherwise stated.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 29-1993, f. & cert. ef. 10-1-93; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0060

### Health Services

(1) School-based Health Service is a Health Service for a Medicaid-eligible student that meets the coverage requirements in OAR 410-133-0080 and that:

(a) Addresses physical or mental disabilities of the child or student; and

(b) Is identified in a student’s Individual Education Program/Plan (IEP), or the Individualized Family Service Plan (IFSP); and

(c) Is recommended by a physician or other licensed health care practitioner within the scope of practice under State law.

(2) School-based Health Services that meet the requirements of subsection (1) of this rule may include:

(a) Physical Therapy Evaluations and Treatments: Assessing, preventing or alleviating movement dysfunction and related functional problems; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving treatments such as:

(A) Neuromotor or neurodevelopmental assessment;

(B) Assessing and treating problems related to musculo-skeletal status;

(C) Gait, balance, and coordination skills;

(D) Oral motor assessment;

(E) Adaptive equipment assessment;

(F) Gross and fine motor development;

(G) Observation of orthotic devices; and Prosthetic training.

(b) Occupational Therapy Evaluations and Treatments: Assessing, improving, developing, or restoring functions impaired or lost through illness, injury or deprivation, improving ability to perform tasks for independent functioning when functions are lost or impaired, preventing through early intervention, initial or further impairment or loss of function; and obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services such as:

(A) Neuromuscular and musculo-skeletal status (muscle strength and tone, reflex, joint range of motion, postural control, endurance);

(B) Gross and fine motor development;

(C) Feeding or oral motor function;

(D) Adaptive equipment assessment;

(E) Prosthetic or orthotic training;

(F) Neuromotor or neurodevelopmental assessment;

(G) Gait, balance and coordination skills.

(c) Speech Evaluation and Therapy Treatments: Assessment of children with speech and/or language disorders; diagnosis and appraisal of specific speech and/or language disorders; referral for medical and other professional attention, necessary for the rehabilitation of speech and/or language disorders; provision of speech or language services for the prevention of communicative disorders; and obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services such as:

(A) Expressive language;

(B) Receptive language;

(C) Auditory processing, discrimination, perception and memory;

(D) Vocal quality;

(E) Resonance patterns;

(F) Phonological;

(G) Pragmatic language;

(H) Rhythm or fluency;

(I) Feeding and swallowing assessment.

(d) Audiological Evaluation and Services: Assessment of children with hearing loss; determination of the range, nature and degree of hearing loss, including the referral for medical or other professional attention for restoration or rehabilitation due to hearing disorders; provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conversation, and determination of the child’s need for individual amplification; obtaining and interpreting information; and coordinating care and integrating services relative to the student receiving services such as:

(A) Auditory acuity (including pure tone air and bone conduction), speech detection, and speech reception threshold;

(B) Auditory discrimination in quiet and noise;

(C) Impedance audiometry, including tympanometry and acoustic reflex;

(D) Central auditory function;

(E) Testing to determine the child’s need for individual amplification;

(F) Auditory training;

(G) Training for the use of augmentative communication devices.

(e) Nurse Evaluation and Treatment Services: Assessments, treatment services, and supervision of delegated health care services provided to prevent disease, disability, other health conditions or their progression; prolong life; and promote physical and mental health and efficiency. This includes any medical or remedial services recommended by a physician or other licensed health care practitioner, within the scope of practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level. The RN is responsible for periodic supervision for services provided to coordinating care and integrating nursing tasks and services that can be performed in the educational setting such as:

(A) Monitoring patient’s seizure activity for breathing patterns, onset/duration of seizure, triggers/auras, level of consciousness, support after seizure, administering medication as ordered;

(B) Monitoring/providing treatment for high and low blood sugar, checking urine ketones, blood glucose testing, carbohydrate calculations, assisting with insulin administration;

(C) Ventilator Care suctioning, equipment management;

(D) Tracheotomy Care changing dressings, emergency trach replacement, suctioning, changing “nose”, provide humidification as necessary;

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(E) Catheterization assisting with or performing procedure for catheterization, monitor urinary tract infections, performing skin integrity checks;

(F) Gastrostomy Tube feeding administering tube feedings per physician order, monitoring skin status around the tube, emergency treatment for button dislodgement;

(G) Medication pumps, e.g., insulin pump, calculate carbohydrate amounts in food/snacks, provide insulin bolus per physician order, emergency disconnect procedure, monitoring blood sugar;

(H) Medication management, e.g., monitoring signs and symptoms for medication administration, administering medications, observing for side effects.

(f) Mental Health Evaluation and Treatment Services Assessment and treatment services provided by or under the supervision and direction of a Psychiatrist, Psychologist, a Mental Health Nurse Practitioner, or by a Social Worker qualified and licensed to deliver the service, may provide care coordination and integration for services relative to the student for out patient mental health services received in the educational setting to prevent disease, disability, other health conditions or their progression; prolong life; and promote physical and mental health and efficiency. This includes any medical or remedial services recommended by a physician or other licensed health care practitioner, within the scope of practice under state law, for maximum reduction of physical or mental disability and restoration of a recipient to his or her best possible functional level such as:

(A) Mental health assessment;

(B) Psychological testing (non-educational cognitive and adaptive testing);

(C) Assessment of motor language, social, adaptive, and/or cognitive functioning by standardized developmental instruments;

(D) Behavioral health counseling and therapy;

(E) Psychotherapy (group/individual).

(3) Services for physical therapy, occupational therapy, speech therapy, hearing services, nursing services, and mental health services must be recommended as set out, and provided by medically qualified individuals as defined in OAR 410-133-0120.

(4) Medicaid covered services and treatments are provided in accordance with Oregon's Medicaid program's Prioritized List of Health Services to recipients receiving services pursuant to an IEP/IFSP eligible under IDEA in the educational setting. The above-listed therapy services and treatments are examples of services that may be provided to eligible recipients in an educational setting under Oregon's Medicaid program. The current Prioritized List of services can be found on the Health Services Commission web site.

Stat. Auth.: ORS 409  
Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

### 410-133-0080

#### Coverage

The Department of Human Services may reimburse School Medical Providers for the SBHS covered Health Services that meet all of the following criteria:

(1) The Health Services must be "Necessary and Appropriate" and covered under the Oregon Health Plan as a service that is above the funding line of the Prioritized List of Health Services; and the Health Services must not be excluded under OAR 410-133-0200 (Not Covered Services).

(2) The Health Services must be required by a Medicaid-eligible student's physical or mental conditions as specified on the IEP or IFSP and further described in the treatment plan and the evaluation of the student.

(a) The Health Service, individual or group, may include corrective Health Services treatments and Medicaid-covered Related Services as described in a student's IEP or IFSP.

(A) The payment rate for Health Services includes the case management and necessary supplies for these services; additional reimbursement for those services are not paid separately from the Health Service.

(B) These services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120 and comply with the respective medical provider's governing definitions, scope of practice, documentation requirements, and licensure or certification.

(3) Evaluation and Assessment for SBHS are reimbursed for the part of the Evaluation or Assessment that is necessary to determine a Medicaid-eligible student's "Necessary and Appropriate" SBHS needs and leads to an established IEP or IFSP under IDEA.

(a) Evaluation services are procedures used to determine a SBHS covered health-related need, diagnosis, or eligibility under IDEA.

(b) Re-evaluation services are procedures used to determine whether or not a student will continue to receive a SBHS covered service pursuant to the IEP or IFSP under IDEA.

(4) Assistive Technology Services that directly assist a Medicaid-eligible student with a disability, found eligible under IDEA to receive a covered SBHS, with assistive technology services specified on the IEP or IFSP, in the selection, acquisition, or use of an assistive technology device, including:

(a) The Assistive technology assessment with one-to-one student contact time, by Medically Qualified Staff within the scope of practice performing the assessment of the need, suitability, and benefits of the use of an assistive technology device or adaptive equipment that will help restore, augment, or compensate for existing functional ability in the Medicaid-eligible student or that will optimize functional tasks and/or maximize the Medicaid-eligible students environmental accessibility. This requires and includes the preparation of a written report;

(b) Care Coordination with the Medicaid-eligible student's physician, parent/guardian, and the Office of Medical Assistance Programs for the parent/guardian's acquisition of a personal assistive technology device for their Medicaid-eligible student through the student's Medicaid plan for the benefit of the Medicaid-eligible student to maximize his/her functional ability and environmental accessibility; and

(c) Training or technical assistance provided to or demonstrated with the Medicaid-eligible student by Medically Qualified staff, instructing the use of an assistive technology device or adaptive equipment in the educational setting with professionals (including individuals providing education and rehabilitation services) or where appropriate the family members, guardians, advocates, or authorized representative of the Medicaid-eligible student.

(5) DHS may reimburse Physical Therapy Services provided by:

(a) A physical therapist authorized to administer physical therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student's individual education plan or individual family service plan (see Division 30 Practice Without Referral through OAR 848-030-0000, 848-030-0100 Scope of Practice);

(b) A physical therapist assistant providing treatment under the supervision of a physical therapist who is available and readily accessible for consultation with the assistant, at all times, either in person or by means of telecommunications (See Scope of practice and supervision requirements for physical therapy assistant OAR 848-015-0010 through 848-015-0030). Physical therapy services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(a).

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports.

(B) Obtaining and interpreting medical information for the part of an evaluation or assessment performed by the Physical Therapist to establish or re-establish whether Necessary and Appropriate physical therapy services will be specified on the Medicaid-Eligible student's IEP or IFSP under IDEA (cannot be delegated).

(C) Care coordination and integrating services, within the scope of practice, for providing physical therapy services relative to the Medicaid-eligible student.

(D) Direct treatment and supervision of services provided to a Medicaid-eligible student by the Physical Therapist and defined in the individual plan; when

(E) Documentation by the supervising Physical Therapist supporting the appropriate supervision of the assistant is maintained and kept by the School Medical Provider for a period of seven years (See OAR 848-020-030 Supervision; Delegation of Supervision; Professional Responsibility of Supervisors and Supervisees).

(F) Individual or group physical therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a Licensed Physical Therapist pursuant to the Medicaid-eligible student's IEP or IFSP; when the documentation describing physical therapy services provided are signed and initialed, by the Physical Therapy Assistant, for review, validation and co-signature, by the supervising Physical Therapist, certifying the services were performed by or under the supervision and direction of the Supervising Physical Therapist; and the documentation supporting services provided is maintained and kept by the School Medical

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Provider for seven (7) years (See Minimum Standards for Physical Therapy Practice and Records OAR 848-040-100 through 848-040-0170).

(G) Other covered physical therapy services within the scope of practice and subsections (1) and (2) of this rule.

(6) DHS may reimburse Occupational Therapy Services provided by:

(a) A Licensed Occupational Therapist authorized to administer occupational therapy to an individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student's individual education plan or individual family service plan; and

(b) A licensed occupational therapy assistant assisting in the practice of occupational therapy under the general supervision of a licensed Occupational Therapist. (General supervision requires the supervisor to have at least monthly direct contact in person with the supervisee at the work site with supervision available as needed by other methods); and

(c) Before an occupational therapy assistant assists in the practice of occupational therapy, he/she must file with the Board a signed, current statement of supervision of the licensed occupational therapist that will supervise the occupational therapy assistant. The signature of the supervising Occupational Therapist must be notarized (See OAR 339-010-0035 Statement of Supervision for Occupational Therapy Assistants). Occupational therapy services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(b).

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports.

(B) Obtaining and interpreting medical information for the part of the evaluation or assessment performed by the Occupational Therapist (OT) to establish or re-establish whether Necessary and Appropriate occupational therapy services will be specified on the Medicaid Eligible student's IEP or IFSP under IDEA (cannot be delegated).

(C) Development of the initial occupational therapy treatment plan by the OT (cannot be delegated).

(D) Coordinating care and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving occupational therapy services as specified on the IEP or IFSP.

(E) Individual or group occupational therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a Licensed Occupational Therapist as specified on Medicaid-eligible student's IEP or IFSP.

(F) Direct treatment and supervision of services provided to a Medicaid-eligible student by the Occupational Therapist and defined in the individual plan; when documentation supporting the appropriate supervision of the assistant is kept and maintained by the School Medical Provider for a period of seven years;

(G) The occupational therapy services provided are consistent with OAR 339-010-0050 Occupational Therapy Services in an Educational Setting for Children with Handicap; and

(H) Documentation describing treatment provided are signed and initialed by the Occupational Therapy Assistant for review and co-signature by the supervising Occupational Therapist.

(I) Other covered occupational therapy services within the scope of practice and subsections (1) and (2) of this rule.

(7) DHS May Reimburse Speech Therapy Services Provided By:

(a) A Licensed Speech Pathologist licensed by the Oregon Board of Examiners for Speech Pathology and Audiology or holds a Certificate of Clinical Competency (CCC) from the American Speech and Hearing Association (ASHA), authorized to administer speech therapy to an Individual, when the individual is a Medicaid-eligible student eligible for special education, as defined by state or federal law, and is being seen pursuant to the Medicaid-eligible student's individual education plan or individual family service plan; or

(b) A graduate speech pathologist in their Clinical Fellowship Year (CFY) practicing under the supervision of an ASHA licensed speech pathologist with CCC who meet the standards of licensing or certification for the Health Service provided as described in OAR 410-133-0120(2)(c); and when

(A) A standardized system for reviewing the clinical work of the clinical fellow is performed at regularly scheduled intervals, using the Skills Inventory Rating (CFSI) form addressing the fellow's attainment of skills for independent practice;

(B) The clinical fellow supervisor maintains and documents the supervision of the clinical fellow to be kept by the School Medical Provider.

(C) Documentation describing the treatment provided are signed and initialed by the Clinical Fellow for review and co-signature by the supervising Clinical Fellow.

(c) Speech-language pathology assistants (SLPA), licensed by the Oregon State Board of Examiners for Speech Pathology and Audiology, under the supervision of a supervising speech-language pathologist and who meet the standards of licensing or certification for the Health Service provided as described in OAR 410-133-0120(2)(c)(A) when the following conditions are met:

(A) The supervising speech-language pathologist must have at least two years of full-time professional speech-language pathology experience (see OAR 335-095-0050 Supervision Guidelines for the Speech-Language Pathology Assistant);

(B) The supervising speech therapist does not supervise more than two full-time or three part-time speech-language pathology assistants;

(C) The supervising speech-language pathologist maintains documentation supporting the appropriate supervision of the assistant(s) to be kept by the School Medical Provider for a period of seven (7) years;

(D) The caseload of the supervising clinician allows for administration, including assistant supervision, evaluation of students and meeting times. (All students assigned to an assistant are considered part of the caseload of the supervising clinician);

(E) The supervising speech-language pathologist must be able to be reached at all times (A temporary supervisor may be designated as necessary);

(F) The services provided by the assistants are consistent with the Scope of Duties for the Speech-Language Pathology Assistant (SLPA) pursuant to OAR 335-095-0060

(G) Documentation describing the treatment provided are signed and initialed by the SLPA for review and co-signature by the supervising speech-language pathologist.

(d) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the Speech Pathologist to establish speech therapy services or re-establish whether speech services will be continued on the Medicaid-Eligible student's IEP or IFSP under IDEA (cannot be delegated).

(B) Development of the initial speech therapy treatment plan by the Speech Pathologist (cannot be delegated).

(C) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving speech therapy services as specified on the IEP or IFSP;

(D) Direct individual or group speech therapy services provided to a Medicaid-eligible student by or under the supervision and direction of a Speech Pathologist pursuant to the Medicaid-eligible student's IEP or IFSP; and

(E) Direct training and supervision of services provided to a Medicaid-eligible student by the Supervising Speech Pathologist.

(F) Other covered speech therapy services within the scope of practice and subsections (1) and (2) of this rule.

(8) DHS May Reimburse Audiology Services Provided By:

(a) A Licensed Audiologist or, where applicable, a Licensed Speech Pathologist within the scope of practice as defined by state or federal law who meet the standards of licensing or certification for the Health Service provided as described in OAR 410-133-0120(2)(d)

(b) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment reports, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the Audiologist or a Speech Pathologist within the scope of practice, to establish or re-establish whether a Medicaid-eligible student's Necessary and Appropriate hearing impairment services or speech therapy communication services will be specified on the Medicaid-Eligible student's IEP or IFSP under IDEA.

(B) Periodic hearing evaluations and assessments of a Medicaid-eligible student with hearing loss found eligible under IDEA pursuant to services as specified on the IEP or IFSP, for determination of the range, nature and degree of hearing loss.

(C) Care coordination and integration of services for medical or other professional attention relative to Medicaid-eligible student receiving services for restoration or rehabilitation due to hearing and communication disorders as specified on the IEP or IFSP.

(D) Provision of rehabilitative activities, such as language restoration or rehabilitation, auditory training, hearing evaluation and speech conver-



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sation, and determination of the Medicaid-eligible student's need for individual amplification in accordance with the student's IEP or IFSP.

(9) DHS May Reimburse Nurse Services Provided By:

(a) A Nurse Practitioner (NP), Registered Nurse (RN), Licensed Practical Nurse (LPN) or Delegated Health Care Aid under the supervision of an RN or NP who meet the standards of licensing or certification for the Health Service provided as described in OAR 410-133-0120(2)(e) and 410-133-0120(2)(e)(A).

(b) Nursing services under this program are not intended to reimburse nursing activities of a Private Duty RN or LPN that is otherwise billing Medicaid directly for those services.

(c) Reimbursement time may include:

(A) Preparation of the written initial evaluation or initial assessment report to establish nursing services including obtaining and interpreting medical information for the part of the evaluation or assessment performed to establish or re-establish whether Necessary and Appropriate nursing services will be continued on the Medicaid-Eligible student's IEP or IFSP under IDEA.

(B) Coordinated care, for other specified care management for an acute medical condition separate from the medical condition addressed on the IEP or IFSP that requires the development of a new nursing plan of care and results in an increase in supervision, monitoring and training DHC staff to provide new nursing tasks related to the change in condition for example: a child with seizure disorder that develops diabetes.

(C) Care coordination and integration of nursing services relative to the Medicaid-eligible student's "Necessary and Appropriate" covered Health Services specified on the IEP or IFSP.

(D) Nurse-student interactive services that are covered healthcare services.

(E) Oversight of delegated health care aides performing delegated nursing services directly with the student as specified on the IEP or IFSP.

(F) Student observation by Medically Qualified Staff for medical reasons.

(G) Other covered nursing care services within the scope of practice and subsections (1) and (2) of this rule.

(10) DHS May Reimburse Mental Health Services Provided By:

(a) A Psychiatrist who meets the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(A), or a Psychologist who meets the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(B), or a Mental Health Nurse Practitioner who meets the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(e)(A); or

(b) A Psychologist Associate with authority to function without immediate supervision, performing functions that may include but are not restricted to administering tests of mental abilities, conducting personality assessments and counseling (see OAR 858-050-0150 Application for Functioning Without Immediate Supervision) These services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(C); or

(c) A Psychologist Associate under the supervision of a Psychologist as specified by the Board of Psychologists Examiners, chapter 858 division 50, Psychologist Associates OAR 858-050-0100 through 858-050-0145. These services must be provided by Medically Qualified Staff who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(2)(f)(D)(i)(ii)(iii)(iv); or

(d) A testing technician under the supervision of a Psychologist as specified by the Board of Psychologists Examiners, chapter 858, division 10, OAR 858-010-0002 Guidelines for Supervising Technicians and who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120(f)(E); or

(e) A Licensed (LCSW) qualified and licensed to deliver the service, or a Clinical Social Work Associate (CSWA) under the supervision of an LCSW specified by the Board of Clinical Social Workers, chapter 877 division 20, OAR 877-020-000 through 877-020-0050 and who meet the standards of licensing or certification for the Health Service being provided as described in OAR 410-133-0120 (f)(F).

(f) Reimbursable time may include:

(A) Preparation of the written initial evaluation or initial assessment reports for a suspected disability per the referral process for determining IDEA eligibility, including obtaining and interpreting medical information for the part of the evaluation or assessment performed by the mental health care practitioner within the scope of practice, to establish or re-establish whether a Medicaid-eligible student's Necessary and Appropriate mental

health services will be specified on the Medicaid-Eligible student's IEP or IFSP under IDEA.

(B) Care coordination and integrating services, within the scope of practice, relative to the Medicaid-eligible student receiving mental health services as specified on the IEP or IFSP;

(C) Direct individual therapy services provided within the scope of practice under state law and covered under subsections (1) and (2) of this rule to a Medicaid-eligible student by or under the supervision and direction of a Psychologist, a Psychiatrist, or Mental Health Nurse Practitioner, or a Licensed Clinical Social Worker qualified and licensed to deliver the service pursuant to the Medicaid-eligible student's IEP or IFSP.

(11) Medicaid Reimbursed Transportation

(a) Transportation to SBHS covered Health Services as documented in the child's IEP/IFSP and defined in these rules (see 410-133-0245 Cost Determination and Payment).

(b) Ongoing transportation specified, as a related service, on the Medicaid-eligible student's IEP or IFSP may be claimed as a Medicaid service on the days a Medicaid-eligible student receives a SBHS covered service that is also specified on the IEP or IFSP.

(c) DHS may only reimburse for transportation services to and from a Medicaid-covered service for a Medicaid eligible student when the student receives a Medicaid covered Health Service other than transportation on that day when either of the following situations exist:

(A) Student requires specialized transportation in a vehicle adapted to serve the needs of the disabled student, documentation supports specialized transportation is "Necessary and Appropriate", and transportation is listed as a related service on the student's IEP or IFSP; or

(B) Student has a medical need for transportation that is documented in the IEP or IFSP, and resides in an area that does not have regular school bus transportation such as those areas in close proximity to a school.

(d) If a child is able to ride on a regular school bus, but requires the assistance of a delegated health care aide, trained by an RN, to provide delegated nursing tasks specific to a student that cannot be transported safely without the delegated health care aide, the delegated healthcare aide service is reimbursed under the delegated healthcare code, under the standards for delegation of a Nursing Care Task as outlined in the Nurse Practice Act, Division 47, OAR 851-047-000 and the transportation is also billable. However, a bus aide who is not a delegated healthcare aide cannot be billed as a separate cost because the cost of the bus aide is included in the cost of the transportation.

(e) Transportation is not reimbursable by OMAP when provided by the parent or relative of the child.

(f) Transportation to an Evaluation service is covered as long as:

(A) The Evaluation is to establish or to re-establish a SBHS covered IDEA eligibility;

(B) The Evaluation is a SBHS covered Health Service;

(C) The medical provider conducting the Evaluation, if not employed or contracted by the School Medical Provider, is an enrolled provider with OMAP and meets applicable medical licensing standards necessary to conduct the Evaluation.

(12) Medicaid may reimburse for Contracted Consultation Health Services for furnishing consultations regarding a Medicaid-eligible student's SBHS covered Health Services specified on the IEP or IFSP for the purpose of an Evaluation or Assessment to establish or re-establish a SBHS covered Health Service on an IEP or IFSP. Contracted consultation services must be provided by a licensed medical professional other than School Medical Provider staff.

(a) This service may be on a contracted basis for a number of students;

(b) Allowable services must be furnished through a personal service contract between the School Medical Provider and the licensed health care practitioner;

(c) This service would only be a SBHS covered Health Service by the School Medical Provider when the licensed health care practitioner did not bill Medicaid directly under other programs for the same services.

(13) Reimbursed Coordinated care, as a SBHS covered related service, performed by Medically Qualified Staff as described in OAR 410-133-0120, be directly related to Health Services required by a Medicaid-eligible student's physical and/or mental conditions as described in the IEP or IFSP; and must be one of the following:

(a) Coordinated care by Medically Qualified Staff of Health Services, managing integration of those Health Services in the education setting;

(b) The portion of a Conference, regarding a Medicaid-eligible student with special health care needs, between interested parties and Medically Qualified Staff for developing or revising a Medicaid covered

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service, or therapy treatment plan, for services provided pursuant to the student's IEP or IFSP, or reviewing SBHS provided for eligibility purposes;

(c) The portion of a Consultation including technical assistance from Medically Qualified Staff conferring with EI/ECSE or special education providers or families to assist them in providing SBHS covered Health Services to Medicaid-eligible students in the educational setting related to specific goals and objectives in the student's IEP or IFSP. Consultation services must be completed by a licensed health care practitioner within the scope of practice under their licensure;

(d) The coordination of care between Medically Qualified Staff of Health Services and a physician providing oversight of care for the Medicaid-eligible student.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0090

### Provider Payment

(1) Payment will be made to the enrolled Educational Agency as the School Medical Provider for those covered Health Services provided by the employed Medically Qualified Staff working within the scope of their practice. While the Educational Agency shall hold primary responsibility for providing these services with its own qualified staff, it may also contract, on a supplemental basis only, for covered Health Services with individuals or organizations that meet qualifications for Medically Qualified Staff as outlined in OAR 410-133-0120.

(2) Signing the School Medical Provider Enrollment Agreement sets forth the relationship between the State of Oregon, DHS, and the School Medical Provider and constitutes agreement by the School Medical Provider to comply with all applicable rules of DHS, the Medical Assistance Program, federal and state laws or regulations.

(3) The public School Medical Provider will bill for Health Services provided to Medicaid-eligible students according to these SBHS rules. Payments will be made through the Medical Management Information System (MMIS).

(4) SBHS for public School Medical Providers is a cost-sharing (Federal Financial Participation) program. In addition to the requirements set forth in subsections (1) – (3) of this rule, and pursuant to 42 CFR 433.10, DHS may monthly, but will no less than quarterly, invoice the public School Medical Provider for their non-federal matching share based on the current Federal Medical Assistance Percentage (FMAP) rate. The public School Medical Provider shall pay the amount stated in the invoice within 30 days of the date of the invoice.

(a) The public School Medical Provider's share means the public funds share of the Medicaid payment amount. Pursuant to 42 CFR 433.51, public funds may be considered as the State's share in claiming federal financial participation if the public funds meet the following conditions: The public funds are transferred to DHS from public agencies; and, the public funds are not federal funds or are federal funds authorized by federal law to be used to match other federal funds.

(b) The public School Medical Provider's non-federal matching share shall be based on the current Federal Medical Assistance Percentage (FMAP) rate for Oregon provided annually by the Centers for Medicare and Medicaid Services. This percentage can vary each federal fiscal year. The DHS invoice shall be based on the FMAP in effect at the time of the State's expenditure to the public School Medical Provider.

(c) The public School Medical Provider shall submit to DHS an original signed document certifying that the public funds transferred to DHS (for the non-federal matching share) by the public School Medical Provider under this rule are not federal funds, or are federal funds authorized by federal law to be used to match other federal funds.

(5) Failure to remit the non-federal share described in subsection (4) of this rule within the time stated on the DHS invoice will constitute an overpayment, and will make the School Medical Provider subject to overpayment recoupment or other remedy pursuant to OMAP General Rules, OAR 410-120-1400 through 410-120-1685.

(6) DHS shall not be financially responsible for payment of any claim that CMS disallows under the Medicaid program. If DHS has previously paid the School Medical Provider for any claim which CMS disallows, the School Medical Provider shall reimburse DHS the amount of the claim that DHS has paid to the School Medical Provider, less any amount previously paid by the School Medical Provider to DHS for purposes of reimbursing DHS for the non-federal match portion of that claim.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 41-1992, f. 12-31-92, cert. ef. 1-1-93; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 88-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 4-2004, f. 1-23-04, cert. ef. 2-1-04; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0100

### School Medical Provider Requirements

The School Medical Provider is responsible to:

(1) Enroll with OMAP to provide Health Services, and comply with all the requirements in OAR 410-120-1260 (Provider Enrollment) applicable to enrollment as a provider (see 410-133-0140 in these rules).

(2) Provide Health Services pursuant to the Medicaid-eligible student's IEP or IFSP for special education under OAR chapter 581, division 15;

(3) Provide Health Services using Medically Qualified Staff;

(4) Provide appropriate medical supervision by licensed Medically Qualified Staff consistent with their licensing board requirements;

(5) Document Health Services in writing as required in OAR 410-133-0320;

(6) Maintain adequate medical and financial records as part of the Medicaid-eligible student's Education Record;

(7) Make the records required by these rules and specifically OAR 410-133-0320 available for a period of seven years;

(8) Document costs and establish a schedule of rates per discipline in accordance with OAR 410-133-0245;

(9) Provide access for on-site review of Medicaid-eligible students' medical records that are part of the Education Record;

(10) Document any changes in the IEP/IFSP related to SBHS covered Health Services;

(11) Assure that services billed reflect covered Health Services and do not reimburse for non-covered education services or administrative activities;

(12) Utilize procedures to confirm that all individuals providing Health Services to Medicaid-eligible students, whether as employees or under contract with the School Medical Provider, are eligible to provide Medicaid services and are not excluded from providing Medicaid services; and

(13) Comply with all applicable provisions of the OMAP General Rules, including rules related to the use of billing providers, and, if the School Medical Provider seeks to submit claims to DHS electronically, comply with the applicable provisions of the DHS Electronic Data Interchange rules, OAR 410-001-0000 et seq. See 410-133-0090.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0120

### Medically Qualified Staff

(1) The School Medical Provider shall furnish covered Health Services through the medically qualified staff who provide Health Services within the scope of their licensure. The School Medical Provider shall document the credentials and qualifications, updated periodically, of all Medically Qualified Staff. The School Medical Provider credential file shall document the manner in which the provider checked, and periodically re-checked, the Medicaid provider exclusion list to confirm that the Medically Qualified Staff are eligible to provide Health Services to Medicaid-eligible students. Special education teachers are not recognized as medically qualified staff for these services.

(2) School-based services, are delivered by providers who meet the federal requirements listed below and who operate within the scope of their health care practitioner's license and/or certification pursuant to state law as follows:

(a) Evaluation and physical therapy treatments shall be provided by licensed physical therapists, that meet the federal requirements of 42 CFR 440.110(b), and are licensed by the State Physical Therapist Licensing Board. Licensed physical therapists assistants who's function is to assist the physical therapist in patient-related activities and to perform delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed physical therapist within the scope of the health care practitioner's license and accreditation pursuant to State law.

(b) Occupational therapy evaluation and treatments shall be provided by licensed occupational therapists, that meet the federal requirements of 42 CFR 440.110(b), and are licensed by the State Occupational Therapist Licensing Board. Licensed occupational therapist assistants who's function is to assist the occupational therapist in patient-related activities and to per-

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form delegated procedures that are commensurate with the licensed therapist assistant's education and training may provide therapy treatments under the supervision and direction of a State licensed occupational therapist within the scope of the health care practitioner's license and accreditation pursuant to State law.

(c) Speech therapy evaluation and treatments shall be provided by Speech Pathologists that meet the federal requirements at 42 CFR 440.110(c), and are licensed by the State Board of Examiners for Speech Pathology and Audiology or hold a Certificate of Clinical Competency from the American Speech and Hearing Association.

(A) Speech therapy services may be provided by a graduate speech pathologist being supervised in the Clinical Fellowship Year (CFY) under the supervision of an ASHA licensed speech-language pathologists; or

(B) A Certified Speech-language Pathology Assistant (SLPA) performing within the scope of practice may provide therapy under the supervision of a State licensed speech-language pathologist within the scope of the health care practitioner's license and accreditation pursuant to State law.

(d) Audiology evaluation and services shall be provided by Audiologists that meet the federal requirements at 42 CFR 440.110(c), and are licensed by the State Board of Examiners for Speech Pathology and Audiology or hold a Certificate of Clinical Competency from the American Speech and Hearing Association.

(e) Nurse evaluation and treatments shall be provided by Registered Nurses (RN) and Licensed Practical Nurses (LPN) licensed to practice in Oregon by the Oregon State Board of Nursing. A Licensed Practical Nurse (LPN) may participate in the implementation of the plan of care for providing care to clients under the supervision of a licensed Registered Nurse, Nurse Practitioner, or Physician pursuant to the Oregon State Board of Nursing Practice Act Divisions 45 and 47. Treatment may also be provided by a delegated health care aide that is a non-licensed person trained and supervised by a licensed Registered Nurse (RN) or Nurse Practitioner (NP) to perform selected tasks of nursing care pursuant to The Oregon State Board of Nursing Division 47 of the Nurse Practice Act.

(A) Nurse Practitioners that meet the federal requirements at 42 CFR 440.166, and are licensed by the Oregon State Board of Nursing to practice in Oregon as a Nurse Practitioner. See Oregon State Board of Nursing Nurse Practice Act, Division 50, Nurse Practitioners OAR 851-050-000 through 851-050-0170.

(f) Psychological/mental health evaluations, testing, psychological services and treatments shall be provided by individuals who meet the relevant requirements of their respective professional state licensure as follows:

(A) Psychiatrists must be licensed to practice medicine and surgery in the State of Oregon; and possess a valid license from the Oregon Licensing Board for the Healing Arts.

(B) Psychologists must have one of the following: a doctoral degree in psychology obtained from an approved doctoral program in psychology accredited by the American Psychological Association (APA) or a doctoral program in psychology accredited individually or as part of an institutional accreditation by another private or governmental accrediting agency, when the association's or agency's standards and procedures have been approved by the State Board of Psychologist Examiners by rule; and have two years of supervised employment under the direction of a psychologist licensed in Oregon or under the direction of a person considered by the board to have equivalent supervisory competence.

(C) Psychologists Associates meeting the requirements to function without immediate supervision pursuant to Oregon Board of Psychologist Examiners Division 50, OAR 858-050-0150 may apply to the Board for authority to function without immediate and direct supervision. Until the psychologist associate successfully completes the oral examination for independent practice, the associate must not practice without immediate supervision, but must at all times be under the direct supervision of a licensed psychologist who shall continue to be responsible for the practice of the associate.

(D) Psychologists Associates who do not possess a doctoral degree, and are deemed competent to perform certain functions within the practice of psychology under the periodic direct supervision of a psychologist licensed by the board:

(i) Has complied with all the applicable provisions of ORS 675.010 to 675.150;

(ii) Has received a master's degree in psychology from a psychology program approved by the board by rule;

(iii) Has completed an internship in an approved educational institution or one year of other training experience acceptable to the board, such as supervised professional experience under the direction of a psychologist

licensed in Oregon, or under the direction of a person considered by the board to have equivalent supervisory competence; and

(iv) Furnishes proof acceptable to the board of at least 36 months, exclusive of internship, of full-time experience satisfactory to the board under the direct supervision of a licensed psychologist in Oregon, or under the direct supervision of a person considered by the board to have equivalent supervisory competence. [1973 c.777 §5; 1987 c.158 §137; 1991 c.490 §3; 1993 c.585 §5; 1999 c.443 §2]

(E) Testing Technicians under the supervision of Psychologist. A licensee may delegate administration and scoring of tests to technicians as provided in ORS 675.010(4) and OAR 858-010-0001, if the licensee ensures the technicians are adequately trained to administer and score the specific test being used; and ensures that the technicians maintain standards for the testing environment and testing administration as set forth in the American Psychological Association Standards for Educational and Psychological Tests (1999) and Ethical Principles for Psychologists (2002). See OAR 858-010-0002 Guidelines for Supervising Technicians.

(F) Services provided by Clinical Social Work Associate (CSWA) or Licensed Clinical Social Worker (LCSW): must possess a master's degree from an accredited college or university accredited by the Council on Social Work Education and have completed the equivalent of two years of full-time experience in the field of clinical social work in accordance with rules of the Oregon State Board of Clinical Social Workers for a LCSW or whose plan of practice and supervision has been approved by the board, for a CSWA working toward LCSW licensure under the supervision of a LCSW for two years of post masters clinical experience and is licensed by the State Board of Clinical Social Workers to practice in Oregon. See Board of Clinical Social Workers, chapter 877 division 20, OAR 877-020-000 through 877-020-0050.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 49-1991(Temp), f. & cert. ef. 10-24-91; HR 3-1992, f. & cert. ef. 1-2-92; HR 29-1993, f. & cert. ef. 10-1-93; HR 19-1994, f. & cert. ef. 4-1-94; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 31-2003, f. & cert. ef. 4-1-03 ; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

### 410-133-0140

#### School Medical Provider Enrollment Provisions

(1) This rule applies only to providers seeking reimbursement from OMAP, except as otherwise provided in OAR 410-120-1295.

(2) Providers of SBHS will be enrolled with OMAP as School Medical Providers and registered with the Oregon Department of Education as qualified public educational entities.

(3) The provider enrollment process will consist of:

(a) Documentation of registration with ODE as a qualified special education provider; and

(b) Completion of the School Medical Provider enrollment application with the Office of Medical Assistance Programs.

(4) An approved enrollment application is a contractual agreement that binds the provider to comply with OMAP General Rules and DHS SBHS rules.

(5) Signing the provider application constitutes agreement by performing, and billing providers to comply with all applicable rules of the Medical Assistance Program and federal and state laws and regulations.

(6) A Performing Provider or Billing Provider may utilize an EDI Submitter for the purpose of submitting the Performing Provider's claims to DHS electronically. A School Medical Provider that intends to use an EDI Submitter shall register with DHS as a Trading Partner and shall comply with the Trading Partner requirements of identifying the authority of the EDI Submitter to submit claims on its behalf. The EDI Submitter must sign the EDI Certification and meet other DHS EDI submission requirements pursuant to the EDI rules, before DHS may accept an electronic submission from the EDI Submitter on behalf of the Performing Provider. Information about the EDI transaction requirements is available on the DHS web site.

(7) An individual or organization must meet applicable licensing and/or regulatory requirements set forth by Federal and State statutes, regulations, and rules to be enrolled and to bill as a provider. In addition, all providers of services within the State of Oregon must have a valid Oregon business license if such a license is a requirement of the state, federal, county or city government to operate a business or to provide services.

(8) An individual or organization that is currently subject to sanction(s) by the Medical Assistance Program or Federal government is not eligible for enrollment (see Provider Sanctions).

(9) A performing provider number will be issued to an individual or organization providing covered health care services or items upon:



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(a) Completion of the application and submission of the required documents;

(b) The signing of the provider application by the provider or a person authorized by the provider to bind the organization or individual to compliance with these rules;

(c) Verification of licensure or certification. Loss of the appropriate licensure or certification will result in immediate dis-enrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification;

(d) Approval of the application by OMAP or the Division responsible for enrolling the provider.

(10) Performing providers may be enrolled retroactive to the date services were provided to a Medical Assistance client if:

(a) The provider was appropriately licensed, certified and/or otherwise met all Medical Assistance Program requirements for providers at the time services were provided; and

(b) Services were provided less than 12 months prior to the date of application for Medical Assistance provider status.

(11) Issuance of a provider number establishes enrollment of an individual or organization as a provider for limited category(ies) of services for the Medical Assistance Program.

(12) If a provider changes address, business affiliation, licensure, ownership, certification, billing agents or Federal Tax Identification Number (TIN), the Office of Medical Assistance Programs must be notified in writing within 30 days of the change. Failure to notify OMAP of a change of Federal Tax Identification Number may result in the imposing of a \$50 fine. Changes in business affiliation, ownership, and Federal Tax Identification Number may require the submission of a new application. Payments made to providers who have not furnished such notification may be recovered.

(13) Enrollment of Billing Providers:

(a) A person or business entity who/that submits claims to the Medical Assistance Program and/or receives payments from the Medical Assistance Program on the behalf of a professional provider (e.g., physician, physical therapist, and speech therapist). The person/business entity must be enrolled with OMAP and meet all applicable federal regulations;

(b) A billing provider number will be issued only to billing providers billing on behalf of providers who have signed the provider enrollment form, who have met the licensure or other standards for enrollment as a provider and who have been delegated the authority to act on behalf of the performing provider and to bill on behalf of the provider of service;

(c) A billing provider must maintain, and make available to the Medical Assistance Program, upon request, records indicating the billing provider's relationship with the provider of service;

(d) The Billing Provider must obtain signed confirmation from the performing provider that the Billing Provider has been authorized by the Performing Provider to submit claims. This authorization must be maintained in the Billing Provider's files for at least five years, following the submission of claims to OMAP;

(e) The billing provider fee must not be based on a percentage of the amount collected or whether or not they collect the subject's payment (42 CFR 447 subpart A).

(14) Provider termination:

(a) The provider may terminate enrollment at any time. The request must be in writing, via certified mail, return receipt requested. The notice shall specify the provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect;

(b) OMAP provider terminations or suspensions may be for, but are not limited to the following reasons:

(A) Breaches of provider agreement;

(B) Failure to comply with the statutes, regulations and policies of the Department of Human Services, Federal or State regulations that are applicable to the provider.

(C) When no claims have been submitted in an 18-month period. The provider must reapply for enrollment.

(15) When one or more of the requirements governing a provider's participation in the Medical Assistance program are no longer met, the provider's Medical Assistance Program provider number may be immediately suspended. The provider is entitled to a contested case hearing as outlined in 410-120-1600 through 410-120-1840 to determine whether the provider's Medical Assistance Program number will be revoked.

Stat. Auth.: ORS 184

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-1998, f. & cert. ef. 9-1-98; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0160

### Licensed Practitioner Recommendation

Requests for payment of Health Services required by a Medicaid-eligible student's IEP or IFSP must be supported by written recommendation from a physician or a licensed health care practitioner acting within the scope of their practice. The recommendation must be updated annually.

Stat. Auth.: ORS 409.010

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0180

### Duplication of Service

(1) The School Medical Provider that utilizes a contractor to provide Health Services may only bill DHS or OMAP for Health Services when the School Medical provider and the contracted provider have previously agreed that the contractor will not also bill for the same service.

(2) Duplicate billings are not allowed and payments will be recovered. Billings for Health Services to Medicaid-eligible students will be considered as duplicate if the same services are billed by more than one Educational Agency to address the same need; i.e., an Education Service District and a local school district cannot both bill the same services provided to the student.

(3) A unit of service can only be billed once; under one procedure code, under one provider number.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0200

### Not Covered Services

(1) Education-based costs normally incurred to operate a school and provide an education are not covered for payment by DHS.

(2) Medical care not documented on the Medicaid-eligible student's IEP or IFSP is not covered for payment by DHS under the School-Based Health Services rules.

(3) Coordinated care services (410-133-0000, Definitions and 410-133-0080, Coverage) do not include the following:

(a) Reviewing records (exception: reviewing records as part of an evaluation to establish or re-establish a SBHS covered service for covered IDEA eligibility);

(b) Meeting preparation;

(c) Health Services preparation including materials preparation;

(d) Report writing (exception: evaluation for establishing or re-establishing SBHS covered services for covered IDEA eligibility); and

(e) Correspondence.

(4) Medication management not specific to mental health related services listed in the IEP/IFSP.

(5) Purchase of an Assistive Technology device is not covered through SBHS.

(6) Also not covered:

(a) Activities related to researching student names, determining Medical Assistance Program eligibility status, administrative activities such as data entry of billing claim forms, and travel time by service providers;

(b) Family therapy where the focus of treatment is the family;

(c) Routine health nursing services provided to all students by school nurses; nursing intervention for acute medical issues in the school setting, e.g. students who become ill or are injured, or short duration acute services not listed on the IEP;

(d) Educational workshops, training classes, and parent training workshops;

(e) Regular transportation services to and from school;

(f) Vocational services;

(g) Screening services;

(h) Evaluation services that are not performed by Medically Qualified Staff within the scope of practice and do not lead to an established or re-established SBHS covered service for a covered IDEA eligibility;

(i) Service provided to non-Medicaid student, group, class, or school free of charge. If only Medicaid-eligible students are charged for the service, the care is free and Medicaid will not reimburse for the service. The free care limitation does not apply to Health Services provided as a result of an Educational Agency's obligation to provide FAPE services and the Health Service is identified on the child's student's IEP/IFSP. This means that School Medical Providers may bill for covered Health Services pro-

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vided to Medicaid-eligible students under IDEA even though they may be provided to non-Medicaid-eligible students for free as a part of FAPE.

(j) Any non-medical unit of time spent on Evaluations that does not establish a SBHS covered Health Service on an IEP or IFSP under IDEA.

(k) Recreational services;

(l) Early and Periodic Screening, Diagnostic and Treatment (EPSDT) comprehensive examinations described in OAR 410-130-0245 are not authorized to be provided by School Medical Providers.

(m) Services provided by an entity that employs an excluded provider. It is the obligation of the education agency to utilize the excluded provider web site to check for providers who have been excluded from receiving any monies affiliated with Medicaid and Medicare service reimbursements.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0220

### Billing and Payment

(1) The School Medical Provider must bill DHS at a rate no greater than the education agency's rate for the applicable discipline approved by DHS based on the cost determination process described in OAR 410-133-0245.

(2) Services must be billed on a CMS-1500 or by electronic media claims (EMC) submission using only those procedure codes specified for the School-Based Health Services program. If the School Medical Provider submits their claims electronically, the provider must become a Trading Partner with the Department of Human Services and comply with the requirements for Electronic Data Interchange pursuant to OAR 410-001-0000 et seq.

(3) DHS will accept a claim up to 12 months from the date of service. See General Rules OAR 410-120-1300, Timely Submission of Claims.

(4) Third party liability. In general, the Medicaid program is the payor of last resort and a provider is required to bill other resources before submitting the claim to Medicaid. This requirement means that other payment source, including other federal or state funding sources, must be used first before DHS can be billed for covered Health Services. However, the following exceptions apply to the requirement to pursue third party resources:

(a) For Health Services provided under the IDEA, Medicaid pays before ODE or the Educational Agency, to the extent the Health Service is a covered service provided to a Medicaid-eligible student documented as required under these rules, and subject to the applicable reimbursement rate;

(b) If School-Based Health Services are provided under Title V of the Social Security Act (Maternal and Child Health Services Block Grant), Medicaid-covered Health Services provided by a Title V grantee are paid by Medicaid before the Title V funds;

(c) Oregon has obtained an exemption from CMS that does not require School Based Providers to pursue possible third party resources from private insurance companies.

Stat. Auth.: ORS 184.750 & 184.770

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0245

### Cost Determination and Payment

(1) DHS will make rate determinations for the purposes of payment under OAR 410-133-0220 based on annual cost determinations submitted by local education agencies (EA's).

(2) Cost determinations will:

(a) Be based on the EA's prior year's audited costs;

(b) Establish an hourly and 15-minute increment rate for the current school year;

(c) Use the ODE-approved indirect rate for the EA;

(d) An EA shall not bill for more than its annual audited cost amount. There will be no required annual cost settlement for each EA, although DHS may conduct reviews or audits of cost reports.

(3) Data for cost determinations shall be submitted in a format prescribed by DHS and approved by the Centers for Medicare and Medicaid Services (CMS).

(4) Cost determinations shall be completed for each service discipline eligible for Medicaid billing. If no approved cost determination is made for an individual discipline, the EA may not submit payment requests for those services. Service disciplines for billing include: Nursing; Occupational

Therapy; Physical Therapy; Speech Language Pathology; Audiology; Psychiatry; Psychology; Delegated Health Care; and Clinical Social Work.

(5) An EA may not submit billings for service for a current school year until the Cost Determination worksheet is completed, submitted and approved by DHS.

(6) Transportation costs for Medicaid eligible children will be reimbursed when the IEP/IFSP for the Medicaid eligible child documents the need for medically necessary transportation. Transportation cost reimbursement rates are based on the EAs prior year's audited costs for special education transportation and will be submitted in a format prescribed by DHS and approved by the Centers for Medicare and Medicaid Services (CMS).

Stat. Auth.: ORS 184.750 & 184.770

Stats. Implemented: ORS 414.065

Hist.: OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0280

### Rebilling

In order to correct a claim that does not include all Health Services provided to a Medicaid-eligible student during the same time period, the School Medical Provider must request an adjustment. The paid claim must be corrected on the Individual Adjustment Request Form (OMAP 1036) to allow revision of the original claim. Rebilling additional units of service on a CMS-1500 for the same timeframe would be denied as duplicate services.

Stat. Auth.: ORS 184.750 & 184.770

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0300

### Procedure Codes

(1) The provider must use the procedure code from the School-Based Health Services table which best describes the specific service or item provided. Refer to 410-133-0080 Coverage for service requirements and limitations.

(2) Unit values equal 15 minutes of service unless otherwise stated. These time units must be documented in the child's records under the services billed and accounted for under one code only.

Stat. Auth.: ORS 409

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 29-1993, f. & cert. ef. 10-1-93; HR 21-1995, f. & cert. ef. 12-1-95; OMAP 1-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 38-1999, f. & cert. ef. 10-1-99; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0320

### Documentation and Record keeping Requirements

(1) Record keeping must conform and adhere to Federal, state, and local laws and regulations.

(2) Records must record: history taken; procedures performed, tests administered; results obtained; conclusions and recommendations made. Documentation may be in the form of a "SOAP" (subjective Objective Assessment Plan) note, or equivalent.

(3) Providers will retain information to document the specific services provided, the extent of service provided, the dates and the individual who provided the service to the Medicaid-eligible student and billed to DHS for seven (7) years. This documentation must meet the requirements of and must be made available pursuant to the requirements in the General Rules, OAR 410-120-1360 (Requirements of Financial, Clinical and Other Records). These requirements may be met if the information is included in the IEP or IFSP and the School Medical Provider maintains adequate supporting documentation at the time the service is rendered, consistent with the requirements of OAR 410-120-1360.

(a) Supporting documentation should:

(A) be accurate, complete and legible;

(B) be typed or recorded using ink;

(C) be signed by the individual performing the service including their credentials or position;

(D) be initialed for each clinical entry by the individual performing the service;

(E) be authenticated by the supervising therapist co initialing each clinical entry and co signing each document for assistants they supervise.

(b) Corrections to entries must be recorded by:

(A) Crossing out the entry with a single line which does not obliterate the original entry, or amending the electronic record in a way that preserves the original entry; and

(B) Dating and initialing the correction.

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(c) Late entries or additions to entries shall be documented when the omission is discovered with the following written at the beginning of the entry: "late entry for (date)" or "addendum for (date)".

(2) Supporting documentation for Medicaid reimbursed health services described in a Medicaid-eligible student's IEP or IFSP must be kept for a period of seven (7) years, as part of the student's Education Record, which may be filed and kept separately by school health professionals must include:

(a) A copy of the student's IEP or IFSP as well as any addendum to the plan;

(b) A notation of the diagnosis and/or condition being treated or evaluated, using specific medical or mental health diagnostic codes;

(c) Results of analysis of any mental health or medical analysis, testing, evaluations, and/or assessments for which reimbursement is requested;

(d) Documentation of the location, duration, and extent of each Health Service provided, by the date of service, signed and initialed by provider (electronic records can be printed);

(e) The record of who performed the service and their credentials or position;

(f) The medical recommendation to support the service;

(g) Periodic evaluation of therapeutic value and progress of the student to whom a medical service is being provided;

(h) Record of medical need for transportation to a medical service, specific date transported, consistent with the record-keeping requirements in the Transportation rules, OAR 410-136-0280 (Required Documentation); and

(i) Date specific attendance records for Medicaid-eligible students for all dates of service billed.

(j) In supervisory situations, the licensed health care practitioner who supervises and monitors the assessment, care, or treatment rendered by licensed or certified therapy assistants, shall meet the minimum standards required by their licensure board and shall co-sign for those services with their name and professional titles (documentation may not be delegated except in emergency situations).

(k) On-site review and evaluations include the date, findings of the review and evaluation, names of participants.

Stat. Auth.: ORS 409.010

Stats. Implemented: ORS 414.065

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; HR 22-1995, f. & cert. ef. 12-1-95; OMAP 31-2003, f. & cert. ef. 4-1-03; OMAP 53-2003, f. 8-13-03 cert. ef. 9-1-03; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

## 410-133-0340

### Client Rights and Record Confidentiality

(1) School Medical Providers are required to provide DHS, the Office of Medical Assistance Programs (OMAP), the Department of Justice Medicaid Fraud Unit, Oregon Secretary of State, or the Department of Health and Human Services, or their authorized representatives, access to Medicaid-eligible student medical records when requested as a condition of accepting Medicaid reimbursement from DHS.

(2) Medicaid client rights of confidentiality must be respected in accordance with the provisions of 42 CFR Part 431, Subpart F and ORS 411.320.

(3) School Medical Providers are also subject to the confidentiality laws applicable to student records, including student medical records maintained as part of the Education Record.

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

Stat. Auth.: ORS 184.750 & 184.770

Stats. Implemented: ORS 411.320

Hist.: HR 39-1991, f. & cert. ef. 9-16-91; OMAP 15-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 24-2005(Temp), f. & cert. ef. 4-5-05 thru 10-1-05

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**Subject:** These rules establish the rate of tax and provide for the administration of the tax on hospitals as required by HB 2747, passed during the 2003 legislative session.

**Rules Coordinator:** Pat Bougher—(503) 945-5844

## 410-050-0700

### Definitions

The following definitions apply to this section of the Oregon Administrative Rules:

(1) "Bad debt" means the current period charge for actual or expected uncollectible accounts resulting from the extension of credit on inpatient and outpatient hospital services. Bad debt charges would be offset by any recoveries received on accounts receivable during that current period, subject to final tax reporting and reconciliation processes required in these rules.

(2) "Charges for Inpatient Care" means gross inpatient charges generated from room, board, general nursing, and ancillary services provided to patients, who are expected to remain in the Hospital at least overnight, and occupy a bed (as distinguished from categories of health care items or services identified in 42 CFR §433.56(a)(2)-(19) that are not charges for inpatient hospital services). Charges for inpatient care include all payors, and are not limited to Medicaid patients.

(3) "Charges for Outpatient Care" means gross outpatient charges, generated from services provided by the Hospital to a patient who is not confined overnight. These services include all ancillary and clinic facility charges (as distinguished from categories of health care items or services identified in 42 CFR §433.56(a)(1) and (3)-(19) that are not charges for outpatient hospital services). Charges of Outpatient Care include all payors and are not limited to Medicaid charges.

(4) "Charity Care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services. Charity Care results from a Hospital's policy as reflected in its official financial statements to provide inpatient or outpatient hospital care services free of charge or at a reduced charge to individuals who meet financial criteria; except that Charity Care does not include any amounts above the payments by the Department that constitute payment in full under ORS 414.065(3), or above the payment rate established by contract with a prepaid managed care health services organization or health insurance entity for inpatient or outpatient care provided pursuant to such contract, or above the payment rate established under ORS 414.743 for inpatient or outpatient care reimbursed under that statute.

(5) "Contractual Adjustments" means the difference between the amounts charged based on the Hospital's full established charges and the amount received or due from the payor.

(6) "Declared Fiscal Year" means the Fiscal Year declared to the IRS.

(7) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported and paid by the Hospital. If, after the original Deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional Deficiency arises.

(8) "Delinquency" means the hospital failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(9) "Department" means the Oregon Department of Human Services or its successor organization.

(10) "Director" means the Director of the Oregon Department of Human Services or the Director's designee or agent.

(11) "Hospital" means a hospital with an organized medical staff, with permanent facilities that include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, or to provide treatment for the mentally ill. 'Hospital', as it is used in this section, does not include special inpatient care facilities, as that term is defined in ORS 442.015(33). For purposes of these rules, the Hospital shall be identified by using the federal taxpayer identification number for the Hospital.

(12) "Net Revenue":

(a) Means the total amount of Charges for Inpatient or Outpatient Care provided by the Hospital to patients, less Charity Care, Bad Debts and Contractual Adjustments;

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long term care assessment under the Long Term Facility Tax.

(13) "Waivered Hospital" means a Type A or Type B hospital, as described in ORS 442.470, or a hospital that provides only psychiatric care.

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

Stat. Auth.: ORS 409



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Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0710

### General Administration

(1) The purpose of these rules is to implement the tax imposed on Hospitals in the State of Oregon.

(2) The Department will administer, enforce and collect the hospital tax. The Department may assign employees, auditors and such other agents as the Director may designate to assist in the administration, enforcement and collection of the taxes.

(3) The Department may make such rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce and collect the taxes.

(4) The Department may adopt such forms and reporting requirements, and change the forms and reporting requirements, as necessary to administer, enforce and collect the taxes.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0720

### Disclosure of Information

(1) Except as otherwise specifically provided by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. "Particulars" includes but is not limited to, social security numbers, employer number or other Hospital identification number, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amounts of any assessments, delinquencies, deficiencies, penalties or interest payable or paid, or otherwise administer, enforce or collect a health care assessment to the extent that such information would be exempt from disclosure under ORS 192.501(5) or other basis for exemption under the Oregon Public Records Law.

(2) The Department may:

(a) Furnish any Hospital, or representative authorized to represent the Hospital, upon request of the Hospital or representative, with a copy of the Hospital's report filed with the Department for any quarter, or with a copy of any report filed by the Hospital in connection with the report, or with a copy of any other information the Department considers necessary.

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and such other employees of the State or Federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement or collection of the taxes.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0730

### Entities Subject to the Hospital Tax

Each Hospital in the State of Oregon is subject to the hospital tax except:

(1) Hospitals operated by the United States Department of Veterans Affairs;

(2) Pediatric specialty hospitals providing care to children at no charge; and

(3) Waivered Hospitals, as that term is defined in OAR 410-050-0700(13).

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0740

### The Hospital Tax: Calculation, Report, Due Date

(1) The amount of the tax equals the tax rate multiplied by the Net Revenue of the Hospital, consistent with OAR 410-050-0750 and 410-050-

0860. The tax will be imposed on Net Revenues earned by the Hospital on or after January 1, 2004, based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth calendar quarter begins on October 1.

(2) The rate of the assessment will be determined in accordance with OAR 410-050-0860.

(3) The Hospital must pay the quarterly tax and file the quarterly report on a form approved by the Department on or before the 75th day following the end of the calendar quarter for which a tax is due. The Hospital must provide all information required on the report.

(4) The tax becomes operative on July 1, 2004. The first due date for a quarterly tax and report will be 75 days from September 30, which is December 13, 2004.

(5) The final report and final tax payment, including reconciliation report, shall be due and shall be submitted to the Department not later than the final day of the sixth calendar month after the Hospital's Declared Fiscal Year end. Failure to file and pay when due shall be a Delinquency.

(6) Any report, statement or other document required to be filed under any provision of these rules shall be certified by the Chief Financial Officer of the hospital or an individual with delegated authority to sign for the Hospital's Chief Financial Officer. The certification must attest, based on best knowledge, information and belief, to the accuracy, completeness and truthfulness of the document.

(7) Payments may be made electronically or by paper check. If the Hospital pays electronically, the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form. If the Hospital pays by paper check, the accompanying report must be mailed with the check to address provided on the report form.

(8) The Department may charge the Hospital a fee of \$100 if, for any reason, the check, draft, order or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0750

### Reporting Total Net Revenue, Use of Estimated Revenue for Quarterly Reports

(1) A Hospital must submit quarterly reports and quarterly payments for the calendar quarters for which a tax is due consistent with subsection (2) of this rule, and must submit a final report that includes a reconciliation report, audited financial statement, and the final tax payment based on the Hospital's Declared Fiscal Year end consistent with subsection (3) of this rule.

(2) The quarterly reports and quarterly tax payments shall be based on estimated Net Revenue, which shall be referred to as estimated tax. Estimated tax is the amount of tax the Hospital expects to owe for the current taxable calendar quarter. The Hospital shall calculate the estimated tax based on Net Revenues using the Hospital's interim financial results for the quarter for which the tax is due. An estimated tax report and payment is due for each calendar quarter for which a tax is due, based on the rate of tax applicable to that quarter.

(3) The final report and final tax payment shall be based on the amount of tax the Hospital actually owes based on annual Net Revenue for all calendar quarters for which an estimated tax payment is due during the Hospital's Declared Fiscal Year. The Hospital shall calculate the annual Net Revenue for the Hospital's Declared Fiscal Year. The final tax payment due to the Department will be the calculated tax (using the tax rate applicable to the appropriate quarter, described in subsection (c) below for final tax calculation purposes) on the annual Net Revenue reduced by the estimated tax payments made for each taxable quarter of the Hospital's Declared Fiscal Year.

(a) When the final tax and final report are submitted, they must be accompanied by the Hospital's Declared Fiscal Year end audited financial statement for the Declared Fiscal Year on which the final report and final tax payments are based.

(b) The final report shall include a reconciliation report describing the relationship between the audited financial statement and annual Net Revenues subject to the tax. The reconciliation report may be descriptive in form and should be consistent with the accounting principles used in the audited financial statement.

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(c) The tax rate applicable to the final tax shall be calculated as follows:

(A) If all taxable quarters were subject to the same tax rate established in OAR 410-050-0160, then the tax rate applicable to the final reconciliation is the tax rate applicable to all such quarters. For example, if the Hospital's Declared Fiscal Year is July 1, 2004 to June 30, 2005, then the tax rate is .93 percent of annual Net Revenue.

(B) If different tax rates apply to calendar quarters in the Hospital's Declared Fiscal Year, the Hospital shall apply a blended rate to the total annual Net Revenue to determine the final tax due. A blended rate is the average of the rates applicable to all taxable quarters. The Department will notify the Hospital of the amount of the applicable blended rate. For example, if the Hospital's Declared Fiscal Year overlaps two quarters taxed at a rate of .93 percent and two quarters taxed at .50 percent, then the blended rate for purposes of the annual reconciliation is .715. For purposes of the final tax due, the Hospital shall multiply the annual Net Revenue by the blended rate.

(d) If the total estimated tax payments already paid by the Hospital for the Declared Fiscal Year exceeds the amount of the final tax actually due, the final report should identify such difference and the Hospital should adjust the final tax due amount accordingly in the final report for that tax year.

(e) The final report, audited financial statement, and final tax payment, including reconciliation report, shall be due and shall be submitted to the Department not later than the final day of the sixth calendar month after the Hospital's Declared Fiscal Year end. Failure to file and pay when due shall be a Delinquency.

(f) If the Declared Fiscal Year end audited financial statement for the Hospital is not available within the time required in subsection (e), a final tax payment and final report are still required to be submitted within the time period specified under subsection (e). The Hospital may use interim financial statements to determine that amount of the final tax due and may submit a justification statement with the final report due not later than the date specified in subsection (e) signed by the Chief Financial Officer of the Hospital informing the Department when the audited financial statement is due and certifying that an amended final report, including the reconciliation report, shall be provided to the Department within 30 days of the Hospital's receipt of the audited financial statement. Reports and payments made after the time period required in subsection (e) must be submitted in compliance with OAR 410-050-0760, Filing an Amended Report.

(g) In the event the Hospital does not receive audited financial statements, internal financial statements signed by the Hospital's Chief Financial Officer must be submitted where these rules otherwise require audited financial statements.

(h) If the effective date of the tax is not at the start of the Hospital's Declared Fiscal Year, then the annual Net Revenue for the first final tax return will be calculated based on the number of quarters subject to the tax versus the total number of quarters in the Hospital's Declared Fiscal Year. For example, if the tax is effective on July 1, 2004, for a Hospital with a Declared Fiscal Year ending December 31, 2004, the annual Net Revenues would be calculated as follows: Total Net Revenues for the Declared Fiscal Year divided by two (two of four quarters subject to the tax).

(4) The Department will not find a payment Deficiency for estimated quarterly taxes as long as the Hospital paid the estimated taxes and submitted the quarterly report not later than the quarterly due date and such estimated tax amount was not less than the equivalent of the tax payment that would have been determined based on the Hospital's annual Net Revenue for its most recent prior Declared Fiscal Year divided by four (4) and multiplied times the tax rate for the quarter in which the actual estimated tax is due. Annual Net Revenue for purposes of subsection (4) of this rule means the twelve (12) month period in which the Hospital's most recent prior Declared Fiscal Year occurred, regardless of whether the prior quarters were subject to a tax. For example, if the annual Net Revenue for the most recent prior Declared Fiscal Year was \$4 million; divide that total by 4 (\$1 million) and multiply the product times the current tax rate for the taxable quarter (0.93 percent). In this example, the estimated quarterly tax payment may not be less than \$9,300 in order to receive the benefit of subsection (4) of this rule.

(a) If the Hospital seeks to use the process in subsection (4) of this rule, not later than the date on which the first quarterly estimated tax and report is due (for example, December 13, 2004, for the first taxable quarter), the Hospital must provide the Department with a copy of the Hospital's audited financial statement for the Hospital's most recent prior Declared Fiscal Year and identify the Hospital's annual Net Revenue amount for that

Declared Fiscal Year, regardless of whether any taxes were due for that year.

(b) In the event that the Hospital does not receive audited financial statements, internal financial statements from the Hospital's most recent prior Declared Fiscal Year signed by the Chief Financial Officer may be used for this purpose.

(5) There will be a Delinquency for each quarter the Hospital fails to pay the estimated tax when due. There will be a Delinquency if the Hospital fails to pay the final tax when due.

(6) A Hospital must declare the date of the Hospital's Declared Fiscal Year end for purposes of establishing final tax reporting requirements under this rule. The declaration must be filed with the Department not later than December 13, 2004, or the first date that an estimated quarterly report and tax is due. The Hospital must notify the Department within 30 days of a change to the Hospital's Declared Fiscal Year end. Such a change in Declared Fiscal Year end shall be applied to the Hospital's next future Declared Fiscal Year for purposes of calculating the final tax and filing the final report.

Stat. Auth.: ORS 409

Stats. Implemented: OL 2003, Ch. 736

Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

### 410-050-0760

#### Filing an Amended Report

(1) A Hospital that submits a Final Report without an audited financial statement in accordance with OAR 410-050-0750(3)(f) must submit within 180 days after the due date of the Final report OAR 410-050-0750(e) an Amended Final report, an audited financial statement, and payment for taxes and deficiencies.

(1) Claim for Refund:

(a) If the amount of the tax imposed by these rules in the Amended Final Report is less than the amount paid by the Hospital, such overpayment may be refunded by the Department to the Hospital. In no event will a refund exceed the tax amount actually paid by the Hospital.

(b) The Hospital must provide all information required on the report. No refunds will be made prior to the Department receiving the Hospital audited financial statement for the Declared Fiscal Year. The Department may audit the Hospital, request additional information or request an informal conference prior to granting a refund or as part of its review.

(c) If there is an amount due from the Hospital to the Department for any past due taxes or penalties, any refund otherwise allowable will first be applied to the unpaid taxes and penalties, and the Hospital so notified.

(d) A Hospital may not deduct from current, prospective or future tax payments an amount to which it claims to be entitled as a refund for a prior period. The claim for refund must be made to the Department consistent with this rule.

(3) Payment of Delinquency:

(a) If the amount of the annual tax imposed by these rules is more than the amount paid by the Hospital, the Hospital must file an Amended Final Report and pay the tax and Deficiency. The penalty under OAR 410-050-0800 will stop accruing after the Department receives the Amended Final Report, the annual audited financial statement, and payment of the total Deficiency for year; except to the extent provided in OAR 410-050-0750(4)(a).

(b) No refunds will be made prior to the Department receiving the Hospital audited financial statement for the Declared Fiscal Year. The Department may audit the Hospital, request additional information, or request an informal conference prior to granting a refund or as part of its review.

(c) If there is an error in the determination of the tax due, the Hospital may describe the circumstances of the late additional payment with the filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of the error; Hospital explanation of the circumstances related to the error; evidence of prior errors; and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the Hospital has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers or identifies information in the administration of these tax rules that it determines could give rise to the issuance of a Notice of Proposed Action, DHS will notify the Hospital of the information that could give rise to the issuance of a Notice of Proposed

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Action. The Hospital will have 30 calendar days from the date of the Department's notice to respond. It is the Hospital's responsibility to determine what response, if any, it will make. The Hospital may request a refund pursuant to subsection (2) of this rule or file an Amended Final Report pursuant to subsection (3) of this rule. Nothing in this subsection (4) prevents or limits DHS from issuing a Notice of Proposed Action pursuant to OAR 410-050-0810.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0770

### Determining the Date Filed

(1) For the purposes of these rules, any reports, requests, appeals, payments or other response by the Hospital must be received by the Department either:

- (a) Before the close of business on the date due, or,
- (b) If mailed, postmarked before midnight of the due date.
- (c) When the due date falls on a Saturday, Sunday or a legal holiday, the return is due on the next business day following such Saturday, Sunday or legal holiday.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0780

### Departmental Authority to Audit Records

(1) The Hospital must maintain financial records necessary and adequate to determine the Net Revenue for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the Hospital's records at any time for a period of five years following the date the tax is due to verify or determine the Hospital's Net Revenue.

(3) The Department may issue a Notice of Deficiency or issue a refund based upon its findings during the audit.

(4) Any audit, finding or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the Hospital or by the Hospital and a representative of the Department.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0790

### Assessing Tax on Failure to File

(1) The law places an affirmative duty on the Hospital to file a timely and correct report.

(2) In the case of a failure by the Hospital to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the Hospital according to the best of its information and belief. "Best of its information and belief" means that the Department will use evidence available to the Department at the time of the determination on which a reasonable person would rely in determining the tax. The Department's determination of tax liability will be the basis for the assessment due in any Notice of Proposed Action.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0800

### Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A Hospital that fails to file a report or pay a tax when due will be subject to a penalty of \$500 per day of Delinquency. The penalty accrues from the date of Delinquency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalty is being imposed.

(3) Penalties imposed under this section will be collected by the Department of Human Services and deposited in the Department of Human Services Account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Hospital's tax liability.

(5) If the Department determines that a Hospital is subject to a penalty under this section, it will issue a Notice of Proposed Action as described in OAR 410-050-0810.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0810

### Notice of Proposed Action

(1) Prior to issuing a Notice of Proposed Action, the Department will notify the Hospital of the potential Deficiency or failure to report that could give rise to the imposition of a penalty and provide the Hospital with not less than 30 calendar days from the date of the notice to respond to the notification. The Department may consider the response, if any, and any Amended Final Report under OAR 410-050-0760 in its Notice of Proposed Action.

(2) The Department will notify the Hospital if it determines that the Hospital is subject to the imposition of a penalty.

(3) Contents of the Notice of Proposed Action must include:

- (a) The applicable reporting period;
- (b) The basis for determining the corrected amount of tax;
- (c) The corrected tax due as determined by the Department;
- (d) The amount of tax paid by the Hospital;
- (e) The resulting Deficiency, which is the difference between the amount received by the Department and the corrected amount due as determined by the Department;
- (f) Statutory basis for the penalty;
- (g) Amount of penalty per day of Delinquency;
- (h) Date upon which the penalty began to accrue;
- (i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;
- (j) The total penalty accrued up to the date of the notice; and
- (k) Instructions for responding to the notice, and a statement of the Hospital's right to a hearing.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0820

### Required Notice

(1) Any notice required to be sent under these rules will be sent to the Hospital's main address, to the attention of the hospital administrator, as listed by the Department's Health Care Licensure and Certification Unit's "Acute Care Provider List."

(2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the Hospital.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0830

### Hearing Process

(1) Any Hospital that receives a Notice of Proposed Action may request a contested case hearing under ORS 183.310 to 183.550.

(2) The Hospital may request a hearing by submitting a written request within 20 days of the date of the Notice of Proposed Action.

(3) Prior to the hearing, the Department and Hospital will meet for an informal conference.

(4) Except as provided in subsection (5) of this rule, if the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the Notice of Proposed Action. The Department will issue a Final Order.

(5) Nothing in this section will preclude the Department and the Hospital from agreeing to informal disposition of the contested case at any time, consistent with ORS 183.415(5).

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0840

### Final Order of Payment

A Final Order of Payment is a final DHS action, expressed in writing, based on a Notice of Proposed Action where a payment amount is due to



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the Department. The Department will issue a Final Order of Payment for Deficiencies and/or penalties when:

- (1) The Hospital did not make a timely request for a hearing;
  - (2) Any part of the Deficiency and/or penalty was upheld after a hearing; or
  - (3) Upon the agreement of the Hospital and the Department.
- Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0850

### Remedies Available after Final Order of Payment

Any amounts due and owing under the Final Order of Payment and any interest thereon may be recovered by the State of Oregon as a debt to the State, using any available legal and equitable remedies.

These remedies include, but are not limited to:

- (1) Collection activities including but not limited to deducting the amount of the final Deficiency and/or Penalty from any sum then or later owed to the Hospital by the Department; and
- (2) Every payment obligation owed by the Hospital to the Department under a Final Order of Payment shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the Final Order of Payment and continuing until the payment obligation, including interest has been discharged.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0860

### Director Determines Rate of Tax

- (1) The tax rate is determined by the Director.
- (2) The tax rate for the period beginning January 1, 2004 through June 30, 2004 is 0 percent. The tax rate for the period beginning July 1, 2004 is 0.93 percent.
- (3) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director will notify the Hospitals as to the effective date of the rate reduction.
- (4) A Hospital is not guaranteed that any additional moneys paid to the Hospital in the form of payments for services will equal or exceed the amount of the assessment paid by the Hospital.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 91-2004(Temp), f. & cert. ef. 12-3-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

## 410-050-0870

### Sunset Provisions

The hospital tax applies to Net Revenue received by Hospitals on or after January 1, 2004 and before January 1, 2008.

Stat. Auth.: ORS 409  
Stats. Implemented: OL 2003, Ch. 736  
Hist.: OMAP 86-2004(Temp), f. & cert. ef. 11-9-04 thru 5-7-05; OMAP 25-2005, f. 4-15-05, cert. ef. 5-7-05

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

**Adm. Order No.:** MHD 2-2005

**Filed with Sec. of State:** 3-29-2005

**Certified to be Effective:** 3-29-05

**Notice Publication Date:** 3-1-05

**Rules Repealed:** 309-018-0000, 309-018-0010, 309-018-0020, 309-018-0030, 309-018-0040, 309-018-0050, 309-018-0060

**Subject:** 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.

**Rules Coordinator:** Pat Bougher—(503) 945-5844

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**Adm. Order No.:** MHD 3-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 1-1-05

**Rules Adopted:** 309-040-0370, 309-040-0375, 309-040-0380, 309-040-0385

**Rules Ren. & Amended:** 309-040-0000 to 309-040-0300, 309-040-0012 to 309-040-0325, 309-040-0030 to 309-040-0335, 309-040-0050 to 309-040-0365, 309-040-0060 to 309-040-0400, 309-040-0090 to 309-040-0420, 309-040-0097 to 309-040-0440, 309-040-0005 to 309-040-0305, 309-040-0015 to 309-040-0315, 309-040-0035 to 309-040-0350, 309-040-0052 to 309-040-0390, 309-040-0065 to 309-040-0410, 309-040-0092 to 309-040-0425, 309-040-0098 to 309-040-0445, 309-040-0010 to 309-040-0310, 309-040-0020 to 309-040-0340, 309-040-0040 to 309-040-0355, 309-040-0055 to 309-040-0395, 309-040-0070 to 309-040-0405, 309-040-0093 to 309-040-0430, 309-040-0099 to 309-040-0455, 309-040-0011 to 309-040-0320, 309-040-0025 to 309-040-0345, 309-040-0045 to 309-040-0360, 309-040-0057 to 309-040-0450, 309-040-0075 to 309-040-0415, 309-040-0095 to 309-040-0435, 309-040-0100 to 309-040-0330

**Subject:** The adopted and amended rules clarify, simplify and update the rules for Adult Foster Homes serving five or fewer adult residents licensed by the Office of Mental Health and Addiction Services (OMHAS).

In addition:

1. OMHAS and the Office of Developmental Disabilities no longer share the same rules. All references to the Office of Developmental Disabilities have been removed from these rules.

2. OMHAS added definitions to clarify text of the rule and statutory requirements.

3. OMHAS conformed the rule language to be consistent to HIPAA confidentiality requirements.

4. OMHAS conformed the rule requirements to meet the standards set forth by the International Building and Universal Fire Code changes adopted on October 1, 2004.

5. OMHAS conformed the rule language to be consistent to current Children and Families statutes (ORS 418.005 through 418.640) regarding the composition and capacity of an adult foster home.

6. OMHAS conformed the rule language and references to be consistent with OAR 410-009-0050 through 410-009-0160 Abuse Reporting and Protective Services in Community Programs and Community Facilities.

7. OMHAS conformed the rule language and references to be consistent to OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

8. OMHAS conformed the rule language to be consistent to the Secretary of State's Administrative Rule language and process.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-040-0300

### Purpose and Scope

(1) Purpose. These rules prescribe the standards and procedures for the provision of care and services to residents with mental illness in the Department of Human Services (DHS), Health Services (HS), Office of Mental Health and Addiction Services (OMHAS) adult foster homes as a condition for licensure and payment. The care and services are designed to promote the resident's right to independence, choice and decision making while providing a safe, secure, homelike environment. The resident's needs will be addressed in a manner, which enables the resident to function at the highest level of independence possible.

(2) Scope. These rules apply to adult foster homes for five or fewer residents.

Stat. Auth.: ORS 409.010, 409.050  
Stats. Implemented: ORS 443.705 - 443.825  
Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0000, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0305

### Definitions

As used in these rules the following definitions apply:

(1) "Abuse of an Adult" as defined in OAR 410-009-0050 to 410-009-0160 includes but is not limited to:

(a) Any death caused by other than accidental or natural means or occurring in unusual circumstances;

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(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury;

(d) Sexual harassment or exploitation including, but not limited to, any sexual contact between an employee of a community facility or community program, or provider, or other caregiver and the adult. For situations other than those involving an employee, provider, or other caregiver and an adult, sexual harassment or exploitation means unwelcome verbal or physical sexual contact including requests for sexual favors and other verbal or physical conduct directed toward the adult;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Abuse does not include spiritual treatments by a duly accredited practitioner of a recognized church or religious denomination when voluntarily consented to by the adult.

(g) Abuse may also include:

(A) Failure to act/neglect that leads to or is in imminent danger of causing physical injury, through negligent omission, treatment, or maltreatment of an adult, including but not limited to failure by a provider or staff to provide an adult with adequate food, clothing, shelter, medical care, supervision, or through condoning or permitting abuse of an adult by any other person. However, no person will be deemed neglected or abused for the sole reason that he or she voluntarily relies on treatment through prayer alone in lieu of medical treatment;

(B) Verbal mistreatment by subjecting an adult to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion or intimidation and threatening injury or withholding of services or supports, including implied or direct threat of termination of services;

(C) Placement of restrictions on a resident's freedom of movement by seclusion in a locked room and/or physical restraint. Restriction to an area of the residence or restricting access to ordinarily accessible areas of the residence is not allowed, unless arranged for and agreed to on the Personal Care Plan;

(D) Financial exploitation by a caregiver including, but not limited to, unauthorized rate increases, borrowing from or loaning money to residents, witnessing wills in which a caregiver is beneficiary, adding caregiver's name to resident's bank accounts or other personal property without approval of the resident or his/her guardian or conservator and the PCP team; and

(E) Inappropriate expenditure of a resident's personal funds, theft of a resident's personal funds, use of a resident's personal funds for caregivers own benefit, commingling of a resident's funds with caregiver or other resident's funds, or a caregiver becoming guardian or conservator.

(2) "Abuse Investigation and Protective Services" means an investigation and any subsequent services or supports necessary to prevent further abuse as required by ORS 430.745 to 430.765 and, OAR 410-009-0050 through 410-009-0160, or any other rules established by the Department applicable to allegations of abuse of residents of an Adult Foster Home licensed by OMHAS.

(3) "Activities of Daily Living (ADL)" are those individual skills necessary for a resident's Continued well being including eating/nutrition, dressing, personal hygiene, mobility, and toileting.

(4) "Administration of Medication" means administration of medicine or a medical treatment to a resident as prescribed by a Licensed Medical Practitioner.

(5) "Adult Foster Home (AFH)" means any home licensed by the Department of Human Services (DHS), Office of Mental Health and Addiction Services (OMHAS) in which residential care is provided to five or fewer adults who are not related to the provider by blood or marriage as described in ORS 443.705 through 443.825. For the purpose of these rules, if an adult family member receives care, he/she must be included as one of the residents within the total license capacity of the home. A home or person that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults, is deemed to be an Adult Foster Home. For the purpose of these rules, an Adult Foster Home does not include facilities referenced in ORS 443.715(1)(2)(3)(4).

(6) "Applicant" means any person or entity that makes an application for a license that is also the owner of the business.

(7) "Assessment" means an evaluation of a resident and the resident's level of function completed by a case manager and provides the basis for the development of the resident's Personal Care Plan.

(8) "Authorized Department Representative" means an employee of the Department of Human Services (DHS), Office of Mental Health and

Addiction Services (OMHAS) or the designee of the local Community Mental Health Program.

(9) "Behavioral Interventions" means those interventions that will modify the resident's behavior or the resident's environment.

(10) "Bill of Rights" means civil, legal or human rights afforded to Adult Foster Home residents, which are in accord with those rights afforded to all other U.S. citizens, including but not limited to those rights delineated in the Adult Foster Home Bill of Rights as described in OAR 309-040-0390(7).

(11) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation and assignments to Unlicensed Persons according to the statutes and rule of the Oregon State Board of Nursing, chapter 851, division 47, ORS 678.010 to 678.445.

(12) "Care" means the provision of but is not limited to services of room, board, services and assistance with activities of daily living, such as assistance with bathing, dressing, grooming, eating, money management, recreational activities, and medication management. Care also means services that promote maximum resident independence and enhance quality of life.

(13) "Case Management" means identified services provided by qualified persons to residents by local, regional or state allied agencies or other service providers. Case management includes advocating for the resident's treatment needs, providing assistance in obtaining entitlements based on mental or emotional disability, accessing housing or residential programs, coordinating services including mental health treatment, educational or vocational activities, and arranging alternatives to inpatient hospital services.

(14) "Case Manager" means a person employed by a local, regional, or state allied agency approved by OMHAS to provide case management services. In accordance with OAR 309-032-0545(2)(g-j), Standards for Adult Mental Health Services, when a resident resides in a Adult Foster Home, the case manager will assist in development of the Personal Care Plan. Additionally, the case manager must evaluate the appropriateness of services in relation to the consumer's assessed need and review the Personal Care Plan every 180 days.

(15) "Community Mental Health Program (CMHP)" means the organization of all services for persons with mental or emotional disturbances, drug abuse problems, mental retardation or other developmental disabilities, and alcoholism and alcohol abuse problems, operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Department of Human Services, Office of Mental Health and Addiction Services (OMHAS).

(16) "Compensation" means payments made by or on behalf of a resident to a provider in exchange for room and board, care and services, including services described in the resident's Personal Care Plan.

(17) "Complaint Investigation" means an investigation of any allegation that a provider has taken action, which is perceived as contrary to law, rule, or policy but does not meet the criteria for an abuse investigation.

(18) "Condition" means a provision attached to a new or existing license, which limits or restricts the scope of the license or imposes additional requirements on the licensee.

(19) "Contested Case Hearing" means an arbitrated hearing resulting in a directed or recommended action. The hearing is held at the request of the provider or OMHAS in response to an action, sanction, or notice of finding issued by OMHAS that would result in the loss of license of the provider or other sanctions that would adversely affect the license of the provider. The hearing group is composed of:

(a) The provider and if the provider chooses, the provider's attorney;

(b) The Office of Mental Health and Addiction Services as represented by the Attorney General's Office; and

(c) The Office of Administration Hearings Administrative Law Judge.

(20) "Contract" means a written agreement between a provider and the Department to provide room and board, care and services for compensation for residents of a licensed Adult Foster Home.

(21) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(22) "Criminal History Check (CHC)" means the Oregon Criminal History Check and when required, a National Criminal History check and/or a State-Specific Criminal History check, and the processes and procedures required by the rules OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

(23) "Day Care" means care and services in an Adult Foster Home for a person who is not a resident of the Adult Foster Home. Children under the

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age of five living in the Adult Foster Home are included in the licensed capacity of the home.

(24) "Declaration for Mental Health Treatment" means a document that states the consumer's preferences or instructions regarding mental health treatment as defined by ORS 127.700 through 127.737.

(25) "Department" means the State of Oregon, Department of Human Services.

(26) "Director" means the Director of the Department of Human Services or that person's designee.

(27) "Discharge Summary" means a document that describes the conclusion of the planned course of services described in the resident's individualized personal care plan, regardless of outcome or attainment of goals described in the resident's individualized personal care plan. In addition, the discharge summary addresses resident's monies, financial assets and monies, medication and personal belongings at time of discharge.

(28) "Exempt Area" means a county agency that provides similar programs for licensing and inspection of Adult Foster Homes which the Director finds equal to or superior to the requirements of ORS 443.705 to 443.825 and which has entered into an agreement with the Department to license, inspect, and collect fees according to the provisions of ORS 443.705 to 443.825.

(29) "Family Member" for the purposes of these rules, means a husband or wife, natural parent, child, sibling, adopted child, domestic partner, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(30) "Home" means the Adult Foster Home.

(31) "Homelike Environment" means an Adult Foster Home setting, which promotes the dignity, safety, independence, security, health and comfort of residents through the provision of personalized care and services to encourage independence, choice, and decision making of the residents.

(32) "House Rules" means those written standards governing house activities developed by the provider and approved by the Department or designee. These standards must not conflict with the Adult Foster Home Bill of Rights.

(33) "Incident Report" means a written description and account of any occurrence including but not limited to, any injury, accident, acts of physical aggression, use of physical restraints, medication error, any unusual incident involving a resident or the home and/or providers.

(34) "Informed Consent for Services" means that the services to be provided by the Adult Foster Home provider to the person have been explained to the person and guardian, if applicable, and explained in a manner that they may comprehend.

(35) "Initial Personal Care Plan (IPCP)" means a written document developed for a resident within 24 hours of admission to the home. The document must address the care and services to be provided for the resident during the first 30 days or less until the Personal Care Plan can be developed. At a minimum the IPCP must contain goals that address the following: Immediate health care support needs, medication management issues, safety and supervision needs, Activities of Daily Living that the resident needs assistance with completing as well as any pertinent information as required by the case manager or their designee at the time of the admission. The provider must develop an Initial Personal Care Plan (IPCP) within 24 hours of admission to the Adult Foster Home.

(36) "Level One Adult Foster Home" means an Adult Foster Home licensed by the Office of Mental Health and Addiction Services to provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(37) "License" means a document issued by the Department to applicants who are determined by the Department or designee to be in substantial compliance with these rules.

(38) "Licensed Medical Practitioner (LMP)" means any person who meets the following minimum qualifications as documented by the CMHP or designee and holds at least one of the following educational degrees and a valid license:

- (a) Physician licensed to practice in the State of Oregon or
- (b) Nurse practitioner licensed to practice in the State of Oregon.

(39) "Licensee" means the person or entity to whom a license is issued and whose name(s) is on the license.

(40) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a community mental health program, or in the case of a Native American reservation, the tribal council, or if the county declines to operate or contract for all or part of a community mental health program,

the board of directors of a public or private corporation which directly contracts with the Department to operate a CMHP for that county.

(41) "Mandatory Reporter" means any public or private official who, while acting in an official capacity, comes in contact with and has reasonable cause to believe that the adult has suffered abuse, or that any person with whom the official contact while acting in an official capacity, has abused the adult. Pursuant to ORS 430.765(2) psychiatrists, psychologists, clergy, and attorneys are not mandatory reporters with regard to information received through communications that are privileged under ORS 40.225 to 40.295.

(42) "Medication" means any drug, chemical, compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(43) "Mental or Emotional Disturbances (MED)" means a disorder of emotional reactions, thought processes, or behavior that results in substantial subjective distress or impaired perceptions of reality or impaired ability to control or appreciate the consequences of the person's behavior and constitutes a substantial impairment of the person's social, educational, or economic functioning. Medical diagnosis and classification must be consistent with the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (DSM-IV). As used in these rules, this term is functionally equivalent to "serious and persistent mental illness."

(44) "National Criminal History Check" means obtaining and reviewing criminal history outside Oregon's borders. This information may be obtained from the Federal Bureau of Investigation through the use of fingerprint cards and from other criminal information resources in accordance with OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

(45) "Neglect" means an action or inaction that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services.

(46) "Nurse Practitioner" means a registered nurse who has been certified by the board as qualified to practice in an expanded specialty role within the practice of nursing.

(47) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of nursing care that are delegated under specified conditions by a registered nurse to persons other than licensed nursing personnel, which is governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(48) "Nursing Delegation" means that a registered nurse authorizes an unlicensed person to perform special tasks of client/nursing care in selected situations and indicates that authorization in writing. The delegation process includes nursing assessment of a client in a specific situation, evaluation of the ability of the unlicensed person, teaching the task and ensuring supervision.

(49) "Personal Care Plan (PCP)" means a written plan outlining the care and services to be provided to a resident. The PCP is based upon the review of current assessment, referral, observations, resident preference, and input from members of the Personal Care Plan Team. The plan identifies the care, services, activities, and opportunities to be provided by the caregiver to promote the resident's recovery and independence.

(50) "Personal Care Plan Team (PCP Team)" means a group composed of the resident, the case manager or other designated representative CMHP representative, the provider and or resident manager, and others needed including the resident's legal guardian, representatives of all current service providers, advocates or others determined appropriate by the resident receiving services. If the resident is unable or does not express a preference, other appropriate team membership must be determined by the PCP team members.

(51) "Personal Care Services" means services prescribed by a physician or other designated person in accordance with the individual's plan of treatment. The services are provided by a caregiver that is qualified to provide the service and is not a member of the individual's immediate family. For those Adult Foster Home individuals who are Medicaid eligible, Personal Care services are funded under Medicaid.

(52) "Practice of Registered Nursing" means the application of knowledge drawn from broad in-depth education in the social and physical sciences in assessing, planning, ordering, giving, delegating, teaching and supervising care which promotes the person's optimum health and independence.



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(53) "Provider" means the person or entity licensed to operate and is responsible for the daily operation of the Adult Foster Home. "Provider" does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor is also the operator of the Adult Foster Home.

(54) "Psychiatric Security Review Board (PSRB)" means the Board consisting of five members appointed by the Governor and subject to confirmation by the Senate under Section Four, Article 111 of the Oregon Constitution and described in ORS 161.295 through 161.400 and OAR 309-032-0450 through 309-032-0515.

(55) "Registered Nurse" means an individual licensed and registered to practice nursing by the State of Oregon Board of Nursing in accordance with ORS Chapter 678 and 851.

(56) "Related" means spouse, domestic partner, natural parent, child sibling, adopted child, adopted parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(57) "Relative" means any person identified as family members.

(58) "Resident" means any person age 18 or older who receives room, board, care, and services in an Adult Foster Home.

(59) "Resident Manager" means an employee of the provider who is approved by the Department to live in the Adult Foster Home and is responsible for the care and services of residents on a day-to-day basis.

(60) "Residential Care" means the provision of room, board, and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation. Residential care includes 24 hour supervision; being aware of the residents' general whereabouts; monitoring the activities of the resident while on the premises of the Adult Foster Home to ensure their health, safety, and welfare; providing social and recreational activities; and assistance with money management as requested.

(61) "Residents' Bill of Rights" means residents of the Adult Foster Home have the following rights as defined in ORS 443.739. Each resident has a right to:

- (a) Be treated as an adult, with respect and dignity.
  - (b) Be informed of all resident rights and all house rules.
  - (c) Be encouraged and assisted to exercise legal rights, including the right to vote.
  - (d) Be informed of the resident's medical condition and the right to consent to or refuse treatment.
  - (e) Receive appropriate care and services, and prompt medical care as needed.
  - (f) A safe and secure environment.
  - (g) Be free from mental and physical abuse.
  - (h) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner.
  - (i) Complete privacy when receiving treatment or personal care.
  - (j) Associate and communicate privately with any person the resident chooses.
  - (k) Send and receive personal mail unopened.
  - (l) Participate in activities of social, religious and community groups.
  - (m) Have medical and personal information kept confidential.
  - (n) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.
  - (o) Manage the resident's own money and financial affairs unless legally restricted.
  - (p) Be free from financial exploitation. The provider must not charge or ask for application fees or nonrefundable deposits and must not solicit, accept or receive money or property from a resident other than the amount agreed to for services.
  - (q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home.
  - (r) Not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738(1)(a), or for the welfare of the resident or other residents, or for nonpayment.
  - (s) Be free of discrimination in regard to race, color, national origin, sexual orientation, disability, sex or religion.
  - (t) Make suggestions and complaints without fear of retaliation.
- (62) "Respite Care" means the provision of room, board, care, and services in an Adult Foster Home for a period of up to 14 days. Respite care

residents will be counted in the total licensed capacity of the home. Respite care is not crisis respite care.

(63) "Restraints" means any physical hold, device, or chemical substance, which restricts, or is meant to restrict, the movement or normal functioning of a resident.

(64) "Room and Board" means the provision of meals, a place to sleep, laundry and housekeeping.

(65) "Seclusion" means the involuntary confinement of an individual to a room or area where the person is physically prevented from leaving.

(66) "Self-Administration of Medication" means the act of a resident placing a medication in or on their own body. The resident identifies the medication and the times and manners of administration, and placed the medication internally or externally on their own body without assistance.

(67) "Self Preservation" in relation to fire and life safety means the ability of residents to respond to an alarm without additional cues and be able to reach a point of safety without assistance.

(68) "Services" means those activities which are intended to help the residents develop appropriate skills to increase or maintain their level of functioning and independence. Services include coordination and consultation with other service providers or entities to assure residents access to necessary medical care, treatment, and/or services identified in the resident's personal care plan.

(69) "Substitute Caregiver" means any person meeting the qualifications of a caregiver who provides care and services in an Adult Foster Home under the jurisdiction of the Department in the absence of the provider or resident manager. A resident may not be a substitute caregiver.

(70) "Unusual Incident" means those incidents involving acts of physical aggression, serious illnesses or accidents, any injury or illness of a resident requiring a non-routine visit to a health care practitioner, suicide attempts, death of a resident, a fire requiring the services of a fire Department, or any incident requiring an abuse investigation.

(71) "Variance" means an exception from a regulation or provision of these rules, granted in writing by the Department, upon written application from the provider.

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

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0005, MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0310

#### License Required

(1) License Required. In accordance with ORS 443.725 every provider of Adult Foster Care will be licensed with the Department of Human Services before opening or operating an Adult Foster Care Home for adult residents.

(a) A provider will live in the home that is to be licensed or hire a resident manager to live in the home.

(b) There will be a provider, resident manager or substitute caregiver on duty 24 hours per day in an Adult Foster Home under the jurisdiction of the Department of Services.

(2) Placement. No Adult Foster Home will accept placement of a person without first being licensed by the Department.

(3) Unlicensed Adult Foster Home. No individual will be placed in an Adult Foster Home that is not licensed.

(4) Criminal History Check Requirements. Providers, resident managers, substitute caregivers, volunteers and occupants over the age of 16, excluding residents, will have documentation of an approved criminal history/background check in accordance with ORS 181.537, 443.735 and OAR 410-007-0200 through 410-007-0380.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0010, MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0315

#### License Application and Fees

(1) Application. A completed, written application will be submitted by the applicant on forms supplied by the Office of Mental Health and Addiction Services (OMHAS). The application is not complete until all information requested by the Department and on the forms supplied by OMHAS is submitted to the Department. Incomplete applications are void 60 days after initial receipt of by Office of Mental Health and Addiction Services (OMHAS).

(2) Additional Homes. A separate application is required for each location operated as an Adult Foster Home.

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(3) Contents of Application. The application will include:

(a) The maximum resident capacity requested and will include family members needing care, persons who receive respite care, persons who receive day care and/or persons who receive room and board;

(b) A written statement from a Licensed Medical Practitioner regarding the mental and physical ability of the applicant to provide care to residents and to operate the Adult Foster Home. If the applicant will employ a resident manager, the applicant will provide a written statement from a physician or a Licensed Medical Practitioner regarding the mental and physical ability of the resident manager to operate the Adult Foster Home and to provide care to residents;

(c) A completed financial information form provided by OMHAS. The applicant will demonstrate to OMHAS their financial ability and the resources necessary to operate the Adult Foster Home. Financial ability will include but is not limited to, providing OMHAS with a list of unsatisfied judgments, pending litigation and unpaid taxes and notifying OMHAS regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required, OMHAS may require the applicant to furnish a financial guarantee as a condition of initial licensure in accordance with ORS 443.735(e) and 443.745;

(d) A completed Facility Provider Enrollment Application;

(e) A signed letter of support from the Local Mental Health Authority or designee for the applicant to be licensed to operate the Adult Foster Home;

(f) A copy of the documentation of Criminal History Check approval in accordance with OAR 410-007-0200 through 410-007-0380 for the provider(s), the resident manager, caregiver(s), volunteers and other occupants over the age of 16, excluding residents, and other persons as defined in ORS 443.735(5)(a)(b), (6)(a)(b)(c);

(g) A floor plan of the Adult Foster Home showing the location and size of rooms, exits, secondary emergency egress, smoke detectors and fire extinguishers and evidence of compliance with facility safety requirements as described in OAR 309-040-0370(1) through (13);

(h) A completed Adult Foster Home Self-Inspection Guide; and

(i) Each application will be accompanied by a fee of \$20 per bed requested for license. This fee is waived for county-operated facilities.

(4) Review of Application. OMHAS will determine compliance with these rules based on receipt of the completed application material and fees, a review of information submitted, an investigation of information submitted, an inspection of the Adult Foster Home and interviews with the provider determined by OMHAS and other persons as identified by OMHAS.

(5) Withdrawal of Application. The applicant may withdraw the application at any time during the application process by notifying the Department in writing.

(6) Revocation, Surrender, Non-Renewal, or Denial of Application. An applicant whose license has been revoked or voluntarily surrendered, following a receipt of Notice of Intent to Revoke or Notice of Intent of Non-Renewal from the Department, or whose application has been denied by the Department for reasons relating to but not limited to, criminal convictions, civil proceedings against the applicant, or substantiated allegations of abuse by the applicant will not be permitted to submit an application for one year from the date that the revocation, surrender or denial is made final. A longer period may be specified in the order revoking or denying the license.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0015, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0320

### Classification of Adult Foster Homes

The Office of Mental Health and Addiction Services (OMHAS) licenses Level 1 Adult Foster Homes. Level 1 Adult Foster Homes provide care and services to individuals with severe and persistent mental illness, who may also have limited medical conditions.

(1) Level One. A Level 1 Adult Foster Home license may be issued by the Department based upon a determination that a facility is in substantial compliance with these rules and a review of the qualifications of the provider and the resident manager, if there is one, and compliance with the following requirements.

(2) Requirement for Issuance of License. A Level 1 Adult Foster Home license will be issued by the Office of Mental Health and Addiction Services (OMHAS) if the applicant or resident manager completes the training requirements outlined in OAR 309-040-0335, and the home and

provider are in compliance with OAR 309-040-0300 through 309-040-0455.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0011, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0325

### Capacity

(1) Number of Residents. The number of residents permitted to reside in an Adult Foster Home will be determined by the ability of the caregiver to meet the care needs of the residents, the fire safety standards, and compliance with the physical structure standards of these rules. Determination of maximum licensed capacity will include consideration of total household composition including children.

(a) Sleeping arrangements for children in care will be safe and appropriate, based on the child's age, gender, special needs, behavior, and history of abuse and neglect.

(b) Each child in care will have a safe and adequate bed in which to sleep.

(2) Limiting Capacity. The following limits apply:

(a) The number of residents will be limited to five;

(b) Respite care persons are included in the licensed capacity of five;

(c) Day care persons are included in the licensed capacity of five;

(d) Adult family members of the provider or resident manager who need care are included in the licensed capacity of five; and,

(e) Child family members of the provider or resident manager who need care may be included in the licensed capacity of five.

(3) Ability to Provide Care. If the number of persons who receive care exceeds the ability of the provider to meet the care, health, life, and safety needs of the residents, OMHAS may reduce the licensed capacity of the adult foster home.

(4) Conditions on Capacity. OMHAS may place conditions, restrictions, or limitations on the AFH license as necessary to maintain the health, life, and safety of the residents.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0012, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0330

### Zoning for Adult Foster Homes

An Adult Foster Home is a residential use of property for zoning purposes. Under ORS 197.665, an Adult Foster Home is a permitted use in any residential zone, including a residential zone, which allows a single family dwelling, and in any commercial zone which allows a single family dwelling. No city or county may impose any zoning requirement on the establishment and maintenance of an Adult Foster Home in these zones that is more restrictive than that imposed on a single-family dwelling in the same zone.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0100, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0335

### Training Requirements for Providers, Resident Managers, and Substitute Caregivers

(1) Training Requirements and Compliance. All providers, resident managers, and substitute caregivers will satisfactorily meet all educational requirements established by the Department of Human Services. No person may provide care to any resident prior to acquiring education or supervised training designed to impart the basic knowledge and skills necessary to maintain the health, safety and welfare of the resident. Required course work and necessary skills may include, but are not limited to: physical caregiving; screening for care and service needs; appropriate behavior towards residents with physical, cognitive and emotional disabilities; emergency procedures; medication management; personal care products; food preparation; home environment and safety procedures; residents' rights; issues related to architectural accessibility; and, mandatory abuse reporting.

(2) Ability to Communicate. The provider, resident manager, and substitute caregivers will be able to understand and communicate in oral and written English in accordance with ORS 443.730.

(3) Testing Requirements. Training for all providers, resident managers and substitute caregivers will be in compliance with ORS 443.738. The provider will satisfactorily pass any testing requirements established by the Department before being licensed or becoming a resident manager or substitute caregiver. The test will be completed by the caregiver without

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the help of any other person. The provider, resident manager and substitute caregiver will have the ability to, but will not be limited to, understanding and responding appropriately to emergency situations, changes in medical conditions, physicians' orders and professional instructions, nutritional needs, residents' preferences and conflicts.

(4) Exceptions to Training Requirements. The Department may make exceptions to the training requirements for persons who are appropriately licensed medical care professional in Oregon or who possess sufficient education, training, or experience to warrant an exception. The Department will not make any exceptions to the testing requirements.

(5) Unexpected and Urgent Staffing Need. In accordance with ORS 443.738, the Department may permit a person who has not completed the training or passed the required test to act as a resident manager until the training and testing are completed, or for 60 days, whichever is shorter, if the Department determines that an unexpected and urgent staffing need exists. The licensed provider will notify the Office of Mental Health and Addiction Services of the situation and demonstrate that the provider is unable to find a qualified resident manager, that the person has met the requirements for a substitute caregiver for the Adult Foster Home, and that the provider will provide adequate supervision.

(6) Documentation of Current Training and Testing. The provider or resident manager will maintain current documentation of the training and testing of substitute caregivers including but not limited to:

(a) Documentation of criminal history check in compliance with OAR 410-007-0200 through 410-007-0380.

(b) Documentation that substitute caregiver has successfully completed the training required by the Office of Mental Health and Addiction Services.

(c) Documentation that provider has trained the caregiver to meet the routine and emergency needs of the residents.

(d) Documentation that provider has oriented the caregiver to the residents in the Adult Foster Home, their care needs and skills training, personal care plan, and the physical characteristics of the Adult Foster Home.

(7) Annual Training Hours. The Department will require a minimum of twelve hours of training annually directly related to the care and services for persons with mental illness. The training for the provider, resident manager, and substitute caregiver of an Adult Foster Home will be documented in the provider, resident manager, and substitute caregiver's training records. Such training will be in addition to any orientation, which is attended by applicants prior to licensing and will include, but is not limited to:

(a) Understanding and Recognizing Severe and Persistent Mental Illness

(b) Mandatory Abuse Reporting

(c) Medication Management, Dispensing, and Documentation

(d) Incident Report Writing

(e) Resident Rights

(f) Adult Foster Home Emergency Planning

(g) Fire Safety

(h) Complaints and Grievances

(i) Cardiopulmonary Resuscitation (CPR) and First Aid

(8) Additional Training Requirements. The Department may require the provider, resident manager or substitute caregiver to obtain additional training, whether or not the twelve hour annual training requirement has already been met as specified by the Department.

(9) Training for Delegated and/or Assigned Nursing Care Services. Providers, resident managers or substitute caregivers who perform delegated and/or assigned nursing care services as part of the Personal Care Plan will receive training and appropriate monitoring from a registered nurse on performance and delivery of those services.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0030, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0340

### Issuance of a License

(1) Issuance of a License. Applicants will be in substantial compliance with these Administrative Rules and Oregon Revised Statutes (ORS) 443.705 through 443.825 before a license is issued. If cited deficiencies are not corrected within time frames specified by the Department, the application will be denied. The Department will issue a license to an applicant that is found to be in substantial compliance with these rules. The license will state, but is not limited to, the name of the applicant, name of the Adult Foster Home, address of premises to which license applies, the maximum number of residents, resident manager (if applicable), conditions (if appli-

cable), license number, payment received, effective date and expiration date, and the signature of the Assistant Administrator of the Office of Mental Health and Addiction Services (OMHAS). The license will be visibly posted in the Adult Foster Home and available for inspection at all times.

(2) Conditions on a License. The Department may attach conditions to the license, which limit, restrict, or specify other criteria for operation of the Adult Foster Home. Conditions to a license may include, but are not limited to, care of a specifically identified individual. The conditions will be posted with the license in the Adult Foster Home and be available for inspection at all times.

(3) Reporting Changes. Each licensee will report promptly to OMHAS any significant changes to information supplied in the application or subsequent correspondence. Such changes include, but are not limited to, changes in the Adult Foster Home name, owner entity, resident manager, telephone number, and/or mailing address. Such changes include, but are not limited to, changes in staffing when such changes are significant or impact the health, safety, or well being of residents.

(4) Change of Ownership of an Adult Foster Home. When an Adult Foster Home is sold, the prospective new owner will apply for a license in accordance with OAR 309-040-0315 License Application and Fees if the new owner intends to operate an Adult Foster Home to be licensed by OMHAS.

(5) Transfer of License. An Adult Foster Home license is not transferable or applicable to any location or persons other than those specified on the license.

(6) Effective Date of a License. A license is valid for one year from the effective date on the license unless sooner revoked or suspended.

(7) Substantial Compliance Requirements. Applicants will be in substantial compliance with these Administrative Rules before a license is issued. If cited deficiencies are not corrected within the time frames specified by the Department, the license will be denied.

(8) Issuing a License in Compliance. The Department will not issue an initial license unless:

(a) The applicant and the Adult Foster Home are in compliance with ORS 443.705 to 443.825 and the rules of the Department;

(b) The Department has completed an inspection of the Adult Foster Home. If cited deficiencies are not corrected within the time frames specified by the Department, the application will be denied;

(c) The Department has received an approved criminal history records check on the applicant, resident manager, substitute caregiver, and any occupant (other than a resident), 16 years of age or older or is identified in ORS 443.735(5)(a)(b), (6)(a)(b)(c) and who will be residing in or employed by the Adult Foster Home, as identified in OAR 410-007-0200 through 410-007-0380, and any other rules established by the Department.

(9) Financial Ability and Resources. The applicant will demonstrate to the Department the financial ability and resources necessary to operate the Adult Foster Home. The demonstration of financial ability will include, but need not be limited to, providing the Department with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the Department regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the Department may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(10) Resident Manager Changes. If a resident manager changes during the period of the license, the provider will notify OMHAS immediately and identify a plan for providing care to the residents. The provider will submit a completed resident manager application on forms supplied by OMHAS that include, a copy of the documentation of criminal history background check and approval in accordance with OAR 410-007-0200 through 410-007-0380, a physicians statement and payment of a \$10.00 fee. If the resident manager is to change during the license renewal process the \$10.00 is not applicable.

(11) Revised License. Upon receipt of the completed resident manager application and approval by OMHAS a revised license will be issued by OMHAS in accordance with ORS 443.738(1) through (4).

(12) 60-Day Provisional License. Notwithstanding any other provision of ORS 443.735 or 443.725 or 443.738, the Department may issue a 60-day provisional license to a qualified person if the Department determines that an emergency situation exists after being notified that the licensed provider of an Adult Foster Home is no longer overseeing operation of the Adult Foster Home.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0020, MHD 3-2005, f. & cert. ef. 4-1-05



# ADMINISTRATIVE RULES

## 309-040-0345

### Renewal

(1) Renewal Application and Fee. The provider will submit a completed OMHAS renewal application and the required fee at least 165 days prior to the expiration date of the license. If the renewal application is not received from OMHAS within the time period described, the provider must request the application from OMHAS or the County Mental Health partner. If the completed renewal application and fee are not submitted prior to the expiration date, the Adult Foster Home will be treated as an unlicensed facility, subject to civil penalties.

(2) Exceptions for Renewal Application. The renewal application will include the same information and fee as required for a new application, except that a physician's statement and financial information form are not required if OMHAS can reasonably assume this information has not changed.

(3) Additional Requirements for Renewal Application. OMHAS will require the applicant to submit a current (within six months) physician's statement and a current (within six months) criminal history check if investigation by OMHAS for license renewal indicates that it is necessary.

(4) Information Investigation and Site Inspection. OMHAS will investigate any information in the renewal application and will conduct an inspection of the Adult Foster Home.

(5) Inspection Report. The provider will be given a formal written report from the inspection citing any deficiencies and a time frame for correction that does not exceed 30 days from the date of the inspection report unless otherwise noted in the inspection report.

(6) Correction of Deficiencies. OMHAS will require the Adult Foster Home provider to correct deficiencies prior to issuing a renewed license. If cited deficiencies are not corrected within the time frame specified by OMHAS, the renewal application will be denied and administrative sanctions will be imposed.

(7) Requirements for License Renewal. OMHAS will not renew a license unless:

(a) The applicant and the Adult Foster Home are in compliance with ORS 443.705 to 443.825 and the rules of OMHAS;

(b) OMHAS has completed an inspection of the Adult Foster Home;

(c) OMHAS has completed a criminal records check as required by ORS 181.536 through 181.537, 443.735 and OAR 410-0070-0200 through 410-007-0380 on the applicant and any occupant, other than a resident, 16 years of age or older or is identified in ORS 443.735(5)(a)(b), (6)(a)(b)(c) and who will be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver or volunteer for the Adult Foster Home provider.

(8) National Criminal Record Check. The provider, resident manager, substitute caregiver or volunteer or person residing in the Adult Foster Home may continue to work or reside in the home pending the national criminal records check provided that the Oregon criminal record check was clear and no convictions were self disclosed in accordance with OAR 410-007-0200 through 410-007-0380.

(9) Criminal Record Check. A criminal records check will be completed for the applicant and any occupant, other than a resident, 16 years of age or older who will be residing in or employed by or otherwise acting as a provider, resident manager, substitute caregiver or volunteer for the Adult Foster Home provider if OMHAS believes there is reason to justify a new criminal history check in accordance with OAR 410-007-0220(2)(a-d) Criminal History Check Required.

(10) Burden of Proof — Less than 24 Months. An Adult Foster Home provider seeking initial licensing or in operation for less than 24 months, carries the burden of proof to establish compliance with ORS 443.705 to 443.825 and OMHAS rules.

(11) Burden of Proof — More than 24 Months. The burden of proof will be upon OMHAS to establish compliance with ORS 443.705 to 443.825 and OMHAS rules if an Adult Foster Home provider is seeking renewal of a license and has been in continuous operation for more than 24 months.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0025, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0350

### Variance

(1) Variance Request. A provider or applicant may apply to the Department for a variance from a provision of these rules. The provider must justify to the Department that such a variance does not jeopardize the

health, life, or safety of the residents, and the variance would not violate or compromise applicable ORS.

(2) Restrictions of a Variance. No variance will be granted from a regulation or provision of these rules pertaining to the license capacity of the Adult Foster Home, inspections of the Adult Foster Home, civil, legal and human rights, and inspection of the public files. No variance related to fire and life safety will be granted by the Department without prior consultation with the local fire Department or its designee.

(3) Granting a Variance. Variances will be granted in writing and reviewed at each renewal period. A variance granted to one Adult Foster Home provider does not constitute a precedent for any other Adult Foster Home or provider.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0035, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0355

### Contracts

(1) Public Assistance Individuals. Providers who care for public assistance individuals must enter into a contract with the Department and follow Department rules governing reimbursement for services and refunds.

(2) Private Pay Individuals. Providers who care for private paying residents must enter into a signed contract with the resident or person paying for care. This contract will include, but is not limited to, a Personal Care Plan (PCP), a schedule of rates, conditions under which the rates can be changed, and the Adult Foster Home's policy on refunds at the time of hospitalization, death, discharge, or voluntary move.

(3) Notification of Increases, Additions, and Other Modifications of Rates. Thirty days prior written notification of increases, additions, and other modifications of the rates to be charged will be given by the provider to private residents or persons paying for care unless the change is due to a medical emergency resulting in a greater level of care, in which case the notice will be given within ten days of the change.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0040, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0360

### Qualifications for Adult Foster Home Providers, Resident Managers and Other Caregivers

(1) Qualifications for a Provider. An Adult Foster Home provider must meet the following qualifications:

(a) Be at least 21 years of age;

(b) Live in the Adult Foster Home to be licensed, unless an approved resident manager lives in the Adult Foster Home;

(c) Provide evidence satisfactory to the Department regarding experience, training, knowledge, interest, and concern in providing care to persons with severe and persistent mental illness. Such evidence may include, but is not limited to:

(A) Certified nurse's aide training;

(B) Nursing home, hospital or institutional work experience;

(C) Licensed practical nurse or registered nurse training and experience;

(D) Training approved by the Department;

(E) Experience in caring for persons with severe and persistent mental illness at home; and

(F) Home management skills.

(d) Possess the physical health and mental health determined necessary by the Department to provide 24-hour care for adults who are mentally ill. Applicants must have a statement from a physician, on a form provided by the Department, that they are physically and mentally capable of providing care;

(e) Undergo a criminal history check in accordance with OAR 410-007-0200 through 410-007-0380 and be deemed eligible for licensure by the Department. The Department will evaluate and verify information regarding criminal history;

(f) Provide evidence of sufficient financial resources to operate an Adult Foster Home for at least two months, unless the application is for renewal of an Adult Foster Home that is already in operation. A credit reference check may be required;

(g) Be literate and capable of understanding written and oral orders and communicating with residents, physician, case manager, and appropriate others; and be able to respond appropriately to emergency situations at all times;

## ADMINISTRATIVE RULES

(h) If transporting residents by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(2) Qualifications for a Resident Manager. The resident manager will meet the provider qualifications listed in subsection (1)(a) through (h) of this rule. A resident manager applicant may work in the home pending outcome of the national criminal history check, if the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization.

(3) Qualifications for a Substitute Caregiver. Substitute caregivers left in charge of residents for any period of time will have access to resident records and meet the following qualifications:

(a) Be at least 18 years of age;

(b) Be subject to a Criminal History Check. A substitute caregiver may work in the home pending outcome of the national criminal history check providing the Oregon criminal history check was clear and no convictions were self-disclosed on the criminal record authorization;

(c) Be able to communicate orally and in writing with residents, physicians, case managers, and appropriate others;

(d) Know fire safety and emergency procedures;

(e) Have a clear understanding of job responsibilities, have knowledge of Personal Care Plans and be able to provide the care specified for each resident's needs;

(f) Be able to meet the requirements of a resident manager when left in charge of an Adult Foster Home for 30 days or longer;

(g) Not be a resident; and

(h) If transporting residents by motorized conveyance, must have a current driver's license in compliance with Department of Motor Vehicles laws and vehicle insurance as required by the State of Oregon.

(4) Providers Responsibility for Standards. Providers will not hire or continue to employ a resident manager or substitute caregiver that does not meet the standards stated in this rule.

(5) Providers Responsibility for Supervision and Training. A provider is responsible for the supervision and training of resident managers and substitute caregivers and their general conduct when acting within the scope of their employment and/or duties.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0045, MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0365

#### Facility Standards

In order to qualify for or maintain a license, an Adult Foster Home will meet the following provisions.

(1) Compliance with Building and Fire Code. Demonstrate compliance with **Oregon Structural Specialty Code (OSSC)** and **Oregon Fire Code**; and

(a) Each Adult Foster Home will maintain up-to-date documentation verifying they meet applicable local business license, zoning, and building and housing codes, and state and local fire and safety regulations. It is the duty of the provider to check with local government to be sure all applicable local codes have been met;

(b) Each Adult Foster Home established on or after October 1, 2004 will meet all applicable State building, mechanical, and housing codes for fire and life safety. The Adult Foster Home will be inspected for fire safety by an inspector designated by the Department using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. Refer to Appendix I of the Oregon Fire Code, the Oregon Residential Specialty Code, and the Oregon Structural Specialty Code. When deemed necessary by the Department, a request for fire inspection will be made to the State Fire Marshal.

(c) The building and furnishings will be clean and in good repair and grounds will be maintained. Walls, ceilings, and floors will be of such character to permit frequent washing, cleaning, or painting. There will be no accumulation of garbage, debris, rubbish or offensive odors;

(d) Stairways will be provided with handrails. A functioning light will be provided in each room, stairway, and exit way; incandescent light bulbs will be protected with appropriate covers. Yard and exterior steps will be accessible to residents;

(e) The heating system will be in working order. Areas of the Adult Foster Home used by residents will be maintained at no less than 68 degrees Fahrenheit during the day and 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider will make a reasonable effort to make the residents comfortable using available ventilation or fans;

(f) There will be at least 150 square feet of common space, and sufficient comfortable furniture in the Adult Foster Home to accommodate the recreational and socialization needs of the occupants at one time. Common space will not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space will be required if wheelchairs are to be accommodated;

(g) Pools and hot tubs will be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(2) Accessibility for Persons with Disabilities. Any accessibility improvements made to accommodate an identified resident will be in accordance with the specific needs of the resident and will comply with Chapter 11 of the building code.

(3) Outdoor Areas. An accessible outdoor area is required and will be made available to residents. A portion of the outdoor area will be covered and have an all weather surface, such as a patio or deck.

(4) Storage Areas. Storage for a reasonable amount of resident personal belongings beyond that of the resident sleeping room will be made available.

(a) All yard maintenance equipment will be maintained in a locked storage if such equipment poses a safety threat.

(b) A locked storage area for resident medications separate from food, laundry and toxic or hazardous materials will be made accessible to all caregivers. For residents who are self-medicating a secured locked box will be made available to assure the safety of all occupants of the home.

(c) A locked storage area separate from food and medications will be designated when there are toxic or hazardous materials on the premises.

(5) Bathrooms. All equipment will be clean and in good repair and will provide individual privacy and have: a finished interior; a mirror; an operable window or other means of ventilation; and a window covering.

(a) Will have tubs or showers, toilets and sinks, and hot and cold water. A sink will be located near each toilet. A toilet and sink will be provided on each floor where rooms of non-ambulatory residents or residents with limited mobility are located. There will be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and family;

(b) Will have hot and cold water in sufficient supply to meet the needs of residents for personal hygiene. Hot water temperature sources for bathing areas will not exceed 120 degrees Fahrenheit;

(c) Will have shower enclosures with nonporous surfaces; glass shower doors will be tempered safety glass. Shower curtains will be clean and in good condition. Non-slip floor surfaces will be provided in tubs and showers;

(d) Will have grab bars for toilets, tubs, and/or showers for resident's safety as required by resident's disabilities;

(e) No person will walk through another person's bedroom to get to a bathroom and will have barrier-free access to toilet and bathing facilities with appropriate fixtures.

(f) If there are non-ambulatory residents; alternative arrangements for non-ambulatory residents must be appropriate to resident needs for maintaining good personal hygiene.

(g) Residents will have appropriate racks or hooks for drying bath linens.

(6) Bedrooms. All furniture and furnishings will be clean and in good repair. Bedrooms for all household occupants will have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction which go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one operable window which meets fire egress regulations. (See Section R310 Emergency Escape and Rescue Openings in the **Oregon Residential Specialty Code**.) All resident sleeping rooms will include a minimum of 70 square feet of usable floor space for each resident or 120 square feet for two residents and have no more than two persons per room and allow for a minimum of three feet between beds;

(a) Providers, resident managers or family members will not sleep in areas designated as living areas, nor share bedrooms with residents;

(b) In determining maximum capacity, consideration will be given to whether children over the age of five have a bedroom separate from their parents.

(c) Bedrooms will be on ground level for residents who are non-ambulatory or have impaired mobility;

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(d) Resident bedrooms will be in close enough proximity to alert provider to night time needs or emergencies, or be equipped with a call bell or intercom.

(7) Housing Codes. Each Adult Foster Home established on or after October 1, 2004 will meet all applicable State building, residential, fire, mechanical, and housing codes for fire and life safety. The Adult Foster Home will be inspected for fire safety by an inspector designated by the Department using the recommended standards established by the State Fire Marshal for facilities housing one to five persons. Refer to Appendix I of the **Oregon Fire Code**, the **Oregon Residential Specialty Code**, and the **Oregon Structural Specialty Code**. When deemed necessary by the Department, a request for fire inspection will be made to the State Fire Marshal.

(8) Special hazards.

(a) Flammable and combustible liquids and hazardous materials will be safely and properly stored in original, properly labeled containers, or safety containers, and secured to prevent tampering by residents and vandals. Firearms on the premises of an AFH must be stored in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to clients and all ammunition must be stored in a separate, locked location;

(b) Smoking regulations will be adopted to allow smoking only in designated areas. Smoking will be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design will be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons and insecticides will be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

(9) Common Use Rooms. All furniture and furnishings will be clean and in good repair. There will be at least 150 square feet of common space, and sufficient comfortable furniture in the Adult Foster Home to accommodate the recreational and socialization needs of the occupants at one time. Common space will not be located in the basement or garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space will be required if wheelchairs are to be accommodated;

(10) Laundry and Related Space. All equipment will be clean and in good repair. Laundry facilities will be separate from food preparation and other resident use areas.

(a) Locked storage area for chemicals that pose a safety threat to residents or family members;

(b) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry;

(c) Outlets, venting and water hookups according to State Building Code requirements; and

(d) Washers will have a minimum rinse temperature of 140 degrees Fahrenheit.

(11) Kitchen. All equipment will be clean and in good repair. Dry storage, not subject to freezing, in cabinets or a separate pantry for a minimum of one week's supply of staple foods.

(a) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space for a minimum of two days supply of perishable foods;

(b) A dishwasher with a minimum final rinse of 140 degrees Fahrenheit;

(c) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(d) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(e) Stove and oven equipment for cooking and baking needs;

(f) Storage for a mop and other cleaning tools and supplies used for food preparation, dining and adjacent areas. Such cleaning tools will be maintained separately from those used to clean other parts of the home; and

(g) Dining Space where meals are served will be provided to seat all residents at the same seating.

(12) Details and Finishes:

(a) The building and furnishings will be clean and in good repair and grounds will be maintained. Walls, ceilings, and floors will be of such character to permit frequent washing, cleaning, or painting

(b) Doors. If locks are used on doors to resident sleeping rooms, they will be in good repair with an interactive lock to release with operation of the inside door handle and be master keyed from the corridor side. Exit doors will not include locks, which prevent evacuation except as permitted by Section 1008.1.8 of the building code. An exterior door alarm or other

acceptable system may be provided for security purposes and alert the provider when resident(s) or others enter or exit the home.

(c) Handrails. Handrails will be secured on all stairways.

(13) Heating and Ventilation. The heating system will be in working order:

(a) Temperature Control. Areas of the Adult Foster Home used by residents will be maintained at no less than 68 degrees Fahrenheit during day-time hours and no less than 60 degrees Fahrenheit during sleeping hours. During times of extreme summer heat, the provider will make reasonable effort to make the residents comfortable using available ventilation or fans;

(b) Exhaust Systems. All toilets and shower rooms will be ventilated by a mechanical exhaust system or operable window.

(c) Fireplaces, Furnaces, Wood Stoves. Design and installation will meet standards of the Oregon Mechanical and Residential Specialty Code and will have annual inspections to assure no safety hazard exists.

(d) Water Temperature in resident areas, hot water temperatures will be maintained within a range of 110° to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers will be at least 140 degrees Fahrenheit.

(14) Electrical. All electrical systems will meet the standards of the Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices will be properly wired and in good repair:

(a) When not fully grounded, GFI-type receptacles or circuit breakers as an acceptable alternative may protect circuits in resident areas.

(b) Circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes will be used to protect all electrical circuits.

(c) A sufficient supply of electrical outlets will be provided to meet resident and staff needs without the use of extension cords or outlet expander devices.

(d) A functioning light will be provided in each room, stairway, and exit way. Lighting Fixtures will be provided in each resident bedroom and bathroom, with a light switch near the entry door, and in other areas as required to meet task illumination needs.

(e) Incandescent light bulbs will be protected with appropriate covers.

(15) Plumbing. All plumbing will meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures will be properly installed and in good repair.

(16) Pool, Hot Tubs and Ponds. Pools, hot tubs, and ponds will be equipped with sufficient safety barriers or devices to prevent accidental injury in accordance with Section R116 of the Oregon Residential Specialty Code.

(17) Telephones:

(a) A telephone will be available and accessible for residents' use for incoming and outgoing calls in the Adult Foster Home;

(b) Emergency telephone numbers for the local CMHP, Police, Fire, Medical, Poison Control, Provider and other emergencies will be posted by the residents telephone. The posting will include the name, address and telephone number of the Adult Foster Home, telephone numbers for making complaints or a report of alleged abuse to the local CMHP, OMHAS, the Office of Investigations and Training, and the Oregon Advocacy Center.

(c) Limitations on the use of the telephone by residents are to be specified in the written house rules. Individual restrictions must be specified in the individual residents PCP. In all cases, a telephone will be accessible to residents for outgoing calls (emergencies) 24 hours a day;

(d) AFH telephone numbers must be listed in the local telephone directory.

(e) The home may establish reasonable rules governing telephone use to ensure equal access by all residents. Each resident or guardian (as applicable) will be responsible for payment of long distance phone bills where calls were initiated by the resident, unless otherwise mutually agreed arrangements have been made.

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

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Sections (8)-(10) renumbered to 309-030-0052; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0050, MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0370

#### Safety

(1) Training on Safety Procedures. All staff will be trained in staff safety procedures prior to beginning their first regular shift. All residents will be trained in resident safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedure.



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(a) An emergency evacuation procedure will be developed, posted, and rehearsed with occupants. A record will be maintained of evacuation drills. Drills will be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes.

(A) Drills will be held at least once every 30 days.

(B) One drill practice will be held at least once every 90 days during resident's nighttime sleeping hours. Fire drill records will be maintained for three years and will include date, time for full evacuation, safety equipment checked (to include fire extinguishers, smoke detectors, secondary egress points, flashlights, and furnace filters), comments on the drill results, and names of residents requiring assistance for evacuation;

(b) The Personal Care Plan must document that, within 24 hours of arrival, each new resident has received an orientation to basic safety and has been shown how to respond to a fire alarm, and how to exit from the Adult Foster Home in an emergency;

(c) The provider will demonstrate the ability to evacuate all residents from the Adult Foster Home within three minutes. If there are problems in demonstrating this evacuation time, the licensing authority may apply conditions to the license which include, but may not be limited to, reduction of residents under care, additional staffing, increased fire protection, or revocation of the license;

(d) The provider will provide to OMHAS, maintain as current, and post a floor plan on each floor containing room sizes, location of each resident's bed, fire exits, resident manager or provider's sleeping room, smoke detectors, fire extinguishers and escape routes. A copy of this drawing will be submitted with the application and updated to reflect any change;

(e) There will be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including basement.

(3) Disaster Plan. A written disaster plan will be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes and floods. The plan will be posted by the phone and immediately available to the employees. The plan will specify temporary and long-range habitable shelter where staff and residents will go if the home becomes uninhabitable.

(4) Poisonous and Other Toxic Materials. Non-toxic cleaning supplies will be used whenever available. Poisonous and other toxic materials will be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation Capability. Evacuation capability categories are based upon the ability of the residents and staff as a group to evacuate the home or relocate from a point of occupancy to a point of safety.

(a) Documentation of a resident's ability to safely evacuate from the Adult Foster Home will be maintained in the individual resident's personal care plan.

(b) Persons experiencing difficulty with evacuating in a timely manner will be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the Adult Foster Home will consider increasing staff levels, changing staff assignments, offering to change the resident's room assignment, arranging for special equipment, and taking other actions that may assist the resident.

(c) Residents who still cannot evacuate the home safely in the allowable period of time (3 minutes) will be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability.

(d) Written evacuation records will be retained for at least three years. Records will include documentation, made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(6) Unobstructed Egress. All stairways, halls, doorways, passageways, and exits from rooms and from the home will be unobstructed.

(7) Portable Firefighting Equipment. At least one 2A-10BC rated fire extinguisher will be in a visible and readily accessible location on each floor, including basements, and will be inspected at least once a year by a qualified worker that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing will be completed by a qualified agency properly trained and equipped for this purpose;

(8) Smoke Alarms. Approved smoke detector systems or smoke alarms will be installed according to Oregon Residential Specialty Code and Oregon Fire Code requirements. These alarms will be tested during each evacuation drill. The Adult Foster Home will provide approved signal devices for persons with disabilities who do not respond to the standard

auditory alarms. All of these devices will be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction. Ceiling placement of smoke alarms or detectors is recommended. Alarms will be equipped with a device that warns of low battery when battery operated. All smoke detectors and alarms are to be maintained in functional condition;

(9) Special hazards:

(a) Flammable and combustible liquids and hazardous materials will be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by residents and vandals. Firearms on the premises of an Adult Foster Home must be stored in a locked cabinet. The firearms cabinet must be located in an area of the home that is not readily accessible to clients and all ammunition must be stored in a separate, locked location;

(b) Smoking regulations will be adopted to allow smoking only in designated areas. Smoking will be prohibited in sleeping rooms and upon upholstered crevasse furniture. Ashtrays of noncombustible material and safe design will be provided in areas where smoking is permitted;

(c) Cleaning supplies, poisons and insecticides will be properly stored in original, properly labeled containers in a safe area away from food, preparation and storage, dining areas, and medications.

(10) Sprinkler Systems. Sprinkler systems, if used, will be installed in compliance with the Oregon Structural Specialty Code and Oregon Fire Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First Aid Supplies. First aid supplies will be readily accessible to staff. All supplies will be properly labeled.

(12) Portable Heaters. Portable heaters are a recognized safety hazard and will not be used, except as approved by the State Fire Marshal, or authorized representative.

(13) Safety Program. A safety plan will be developed and implemented to identify and prevent the occurrence of hazards. Hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0375

#### Sanitation

(1) Water Supply. The water supply in the home will meet the requirements of the current rules of the Department governing domestic water supplies.

(a) A municipal water supply will be utilized if available.

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(94), Department rules for public water systems, then the home will comply with the OAR Chapter 333 rules of the Department pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to the Department. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, that public notice be given whenever a violation of the water quality standards occurs, and that records of water testing be retained according to the Department requirements.

(2) Surfaces. All floors, walls, ceilings, windows, furniture, and equipment will be kept in good repair, clean, neat, and orderly.

(3) Plumbing Fixtures. Each bathtub, shower, lavatory, and toilet will be kept clean, in good repair and regularly sanitized.

(4) Disposal of Cleaning Waste Water. No kitchen sink will be used for the disposal of cleaning wastewater.

(5) Soiled Laundry. Soiled linens and clothing will be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) Pest Control. All necessary measures will be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action will be taken to eliminate them.

(7) Grounds Maintenance. The grounds of the home will be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage Storage and Removal. Garbage and refuse receptacles will be clean, durable, watertight, insect and rodent proof, and will be kept covered with tight-fitting lids. All garbage and solid waste will be disposed

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of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) Sewage Disposal. All sewage and liquid wastes will be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes will be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines, and septic tanks or other non-municipal sewage disposal systems where applicable, will be maintained in good working order.

(10) Biohazard Waste. Biohazard waste will be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) Infection Control. Precautions will be taken to prevent the spread of infectious and/or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards.

(a) In accordance with OAR 437, Division 2, Subdivision Z, Section 1910.1030 of the Oregon Occupational Safety and Health Code, staff will employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV and other blood borne pathogens.

(b) Bathroom facilities will be equipped with an adequate supply of toilet paper, soap, and towels.

(12) Infection Control for Pets and Other Household Animals. If pets or other household animals exist at the home, sanitation practices will be implemented to prevent health hazards.

(a) Such animals will be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations will be maintained on the premises.

(b) Animals not confined in enclosures will be under control and maintained in a manner that does not adversely impact residents or others.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0380

#### Resident Furnishings

(1) Bedrooms:

(a) Bedrooms for all household occupants will have been constructed as a bedroom when the home was built or remodeled under permit; be finished, with walls or partitions of standard construction which go from floor to ceiling, and a door which opens directly to a hallway or common use room without passage through another bedroom or common bathroom; be adequately ventilated, heated and lighted with at least one operable window which meets the requirements of Section R310 of the Oregon Residential Specialty Code; have at least 70 square feet of usable floor space for each resident or 120 square feet for two residents and have no more than two persons per room;

(b) Providers, resident managers, or family members will not sleep in areas designated as living areas, nor share bedrooms with residents;

(c) There will be an individual bed for each resident consisting of a mattress in good condition and springs at least 36 inches wide. Cots, roll-away, bunks, trundles, couches, and folding beds may not be used for residents. Each bed will have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Sheets and pillowcases will be laundered at least weekly, and more often if necessary. Waterproof mattress covers will be used for incontinent residents. Day care persons may not use resident beds;

(d) Each bedroom will have sufficient separate, private dresser and closet space for each resident's clothing and personal effects, including hygiene and grooming supplies. Residents will be allowed to keep and use reasonable amounts of personal belongings, and to have private, secure storage space. Drapes or shades for windows will be in good condition and allow privacy for residents;

(e) Bedrooms will be on ground level for residents who are non-ambulatory or have impaired mobility;

(f) Resident bedrooms will be in close enough proximity to provider to alert provider to night time needs or emergencies, or be equipped with a call bell or intercom.

(2) Personal Hygiene Items. Each resident will be assisted in obtaining personal hygiene items in accordance with individual needs. These will be stored in a clean and sanitary manner, and may be purchased with the resident's personal allowance. Personal hygiene items include, but are not limited to, a comb and/or hairbrush, a toothbrush, toothpaste, menstrual supplies (if needed), towels and washcloths.

(3) Supplies Provided by Adult Foster Home. Sufficient supplies of soap, shampoo and toilet paper for all residents will be provided.

(4) Common Area Furniture. An adequate supply of furniture for resident use in living room, dining room, and other common areas will be maintained in good condition.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0385

#### Food Services

(1) Well-balanced Diet. Three nutritious meals will be served daily at times consistent with those in the community. Meals will be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid or as directed by a prescriber. Consideration will be given to cultural and ethnic backgrounds of residents in food preparation.

(2) Modified or Special Diets. An order from a Licensed Medical Professional will be obtained for each resident who, for health reasons, is on a modified or special diet. Such diets will be planned in consultation with the resident.

(3) Menus. Menus will be prepared at least one week in advance and will provide a sufficient variety of foods served in adequate amounts for each resident at each meal and adjusted for seasonal changes. Records of menus, as served, will be filed and maintained in the Adult Foster Home for three years. Resident preferences and requests will be considered in menu planning. Religious and vegetarian preferences will be reasonably accommodated.

(4) Meal Preparation. Meals will be prepared and served in the Adult Foster Home where residents live. Payment for meals eaten away from the Adult Foster Home for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual. Food preparation areas will be clean, free of obnoxious odors and in good repair.

(5) Supply of Food. Adequate supplies of staple foods, for a minimum of one week, and perishable foods, for a minimum of two days, will be maintained on the premises.

(6) Adequate Storage. Food will be stored, prepared, and served in accordance with the Department Food Sanitation Rules.

(a) All working refrigerators and freezers will have a thermometer in working order.

(b) Food storage areas and equipment must be such that food is protected from dirt and contamination and maintained at proper temperatures to prevent spoilage.

(7) Food Service Equipment. Equipment will be maintained in a safe and sanitary manner. Utensils, dishes and glassware will be maintained in a sufficient number to accommodate the licensed capacity of the Adult Foster Homes. Utensils, dishes, and glassware will be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with santicycle is recommended.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0390

#### Standards and Practices for Care and Services

(1) Caregiver Requirements. There must be a provider, resident manager or substitute caregiver on duty 24 hours per day in an Adult Foster Home in accordance with ORS 443.725(3).

(2) Medications and Prescriber's Orders:

(a) There must be a copy of a medication, treatment, or therapy order signed by a physician, nurse practitioner or other licensed prescriber in the resident's file for the use of any medications, including over the counter medications, treatments, and other therapies.

(b) A provider, resident manager or substitute caregiver will dispense medications, treatments, and therapies as prescribed by a physician, nurse practitioner or other licensed prescriber. Changes to orders for the dispensing and administration of medication or treatment will not be made without a written order from a physician, nurse practitioner or other licensed prescriber. A copy of the medication, treatment, or therapy order will be maintained in the resident's record. The provider, resident manager or substitute caregiver will promptly notify the resident's case manager of any request for a change in resident's orders for medications, treatments, or therapies.

(c) Each resident's medication will be clearly labeled with the pharmacist's label or the manufacturer's originally labeled container and kept in a locked location. The provider and/or provider's family medication will be stored in a separate locked location. All medication for pets or other animals will be stored in a separate locked location. Unused, outdated, or

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recalled medications will not be kept in the Adult Foster Home and will be disposed in a manner to prevent diversion into the possession of people other than for whom it was prescribed. The provider will document disposal of all unused, outdated and or recalled medication on residents' individual drug disposal forms.

(d) Medications will not be mixed together in another container prior to administration except as packaged by the pharmacy or by physician order;

(e) A written medication administration record (MAR) for each resident will be kept of all medications administered by the caregiver to that resident, including over the counter medications. The MAR will indicate name of medication, dosage and frequency of administration, route or method, dates and times given, and will be immediately initialed by the person dispensing using only blue or black indelible ink. Treatments, therapies and special diets must be immediately documented on the medication administration record including times given, type of treatment or therapy, and initials of the person giving it using only blue or black indelible ink. The medication administration record will have a legible signature for each set of initials using only blue or black indelible ink;

(f) The MAR will include documentation of any known allergy or adverse reactions to a medication, and documentation and an explanation of why a PRN medication was administered and the results of such administration;

(g) Self-administration of medication. For any resident who is self-administering medication the resident's individual record must include the following:

(A) Documentation that the resident has been trained for self administering of prescribed medication or treatment or that the prescriber has provided documentation that training for the resident is unnecessary;

(B) Documentation that the resident is able to manage his or her own medication regimen and will keep medications stored in an area that is inaccessible to others and locked;

(C) Documentation of retraining when there is a change in dosage, medication and time of delivery;

(D) Documentation of review of self-administration of medication as part of the Personal Care Plan process; and

(E) Documentation of a current prescriber order for self-administration of medication.

(h) Injections may be self-administered by the resident, or administered by a relative of the resident, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or providers who have been trained and are monitored by a physician or delegated by a registered nurse in accordance with administrative rules of the Board of Nursing chapter 851, division 047. Documentation regarding the training or delegation will be maintained in the resident's record;

(3) Initial Personal Care Plan. The Initial Personal Care Plan will be developed within 24 hours of admission to the Adult Foster Home.

(4) Personal Care Plan. In accordance with Standards for Adult Mental Health Services, OAR 309-032-0535 Definitions (3) Case management (22) Personal Care Plan and OAR 309-032-0545 Adult Mental Health Services (1)(2) the Provider will develop the PCP in collaboration with the resident and other individuals as appropriate, including the resident's case manager, and guardian as applicable. The Personal Care Plan for an individual resident will be reviewed and updated by the personal care plan team every 180 days or more frequently as necessary in accordance with OAR 309-032-0545 Adult Mental Health Services (2)(g);

(a) The individual's case manager or other designated person will review and update the individual's personal care services prescription and status as needed;

(b) If the team agrees that interim changes in the Personal Care Plan are required, the case manager will make the changes.

(5) Delegation of Nursing Care Tasks. Nursing tasks may be delegated by a registered nurse to providers and other caregivers only in accordance with administrative rules of the Board of Nursing chapter 851, division 47. This includes but is not limited to the following conditions:

(a) The registered nurse has assessed the individual's condition to determine there is not a significant risk to the individual if the provider or other caregiver performs the task;

(b) The registered nurse has determined the provider or other caregiver is capable of performing the task;

(c) The registered nurse has taught the provider or caregiver how to do the task;

(d) The provider or caregiver has satisfactorily demonstrated to the registered nurse the ability to perform the task safely and accurately;

(e) The registered nurse provides written instructions for the provider or caregiver to use as a reference;

(f) The provider or caregiver has been instructed that the task is delegated for this specific person only and is not transferable to other individuals or taught to other care providers;

(g) The registered nurse has determined the frequency for monitoring the provider or caregiver's delivery of the delegated task; and

(h) The registered nurse has documented a Personal Care Plan for the individual including delegated procedures, frequency of registered nurse follow-up visits, and signature and license number of the registered nurse doing the delegating.

(6) Resident Records. An individual record will be developed, kept current, and available on the premises for each resident admitted to the Adult Foster Home:

(a) General Information:

(A) The provider will maintain a record for each individual in the home. The record must include:

(i) The resident's name, previous address, date of entry into Adult Foster Home, date of birth, sex, marital status, religious preference, preferred hospital, Medicaid and/or Medicare numbers where applicable, guardianship status, and;

(ii) The name, address, and telephone number of:

(I) The Resident's legal representative, family, advocate or other significant person;

(II) The resident's preferred primary health provider designated back up health care provider and/or clinic;

(III) The resident's preferred dentist;

(IV) The resident's day program or employer, if any;

(V) The residents case manager; and

(VI) Other agency representatives providing services to the resident.

(B) Resident records will be available to representatives of the Department conducting inspections or investigations, as well as to residents, their authorized representative or other legally authorized persons;

(C) Record Retention. Original resident records will be kept for a period of three years after discharge when a resident no longer resides in the Adult Foster Home.

(D) In all other matters pertaining to confidential records and release of information, providers will comply with ORS 179.505.

(b) Medical Information:

(A) History of physical, emotional and medical problems, accidents, illnesses or mental status that may be pertinent to current care;

(B) Current orders for medications, treatments, therapies, use of restraints, special diets and any known food or medication allergies;

(C) Completed medication administration records from the license review period;

(D) Name and claim number of medical insurance, and any pertinent medical information such as hospitalizations, accidents, immunization records including Hepatitis B status and previous TB tests, incidents or injuries affecting the health, safety or emotional well-being of any resident.

(c) Resident Account Record:

(A) Resident's Income Sources.

(B) Refer to resident's personal care plan with supporting documentation from the income sources to be maintained in the resident's individual record.

(C) Resident's room and board and service costs. Resident or designated guardian will agree to specific costs for room and board and services within the pre-set limits of the state contract. A copy will be given to the resident, resident's guardian, and the original in the resident's individual record.

(D) Resident's record of discretionary funds.

(d) If a resident maintains custody and control of their discretionary funds then no accounting record is required.

(e) If a designee of the Adult Foster Home maintains custody and control of a resident's discretionary fund, a signed and dated account and balance sheet must be maintained with supporting documentation for expenditures \$10 and greater. The Adult Foster Home designee must have specific written permission to manage an individual resident's discretionary fund.

(f) Personal Care Plan. The resident's PCP is prepared by the PCP Team. The PCP Team addresses each resident's support needs, each service provider's program plan and prepares PCP for the resident. The PCP will be developed at the time of admission, reviewed every 180 days and updated at least annually or when indicated by changing resident needs. The PCP will describe the resident's needs and capabilities including when and how often care and services will be provided and by whom. The PCP will include the provision of at least six hours of activities each week that are of



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interest to the resident, not including television or movies made available to the resident by the provider.

(A) Description of residents strengths and abilities;

(B) The activities of daily living where the resident requires full assistance;

(C) The activities of daily living where the resident requires partial assistance with encouragement and training;

(D) Other areas or concerns;

(E) Any mental and/or physical disabilities or impairments relevant to the service needs of the resident;

(F) The ability of the resident to exit from the Adult Foster Home in an emergency and the time required to exit;

(G) Instruction and documentation of tasks delegated to the provider by the registered nurse, with the name and license number of the delegating registered nurse; and

(H) Dates of review and signature of person preparing the PCP.

(g) House Rules: Develop written house rules regarding hours, visitors, use of tobacco and alcohol, meal times, use of telephones and kitchen, monthly charges and services to be provided and policies on refunds in case of departure, hospitalization or death. House rules will be discussed with residents and their families at the time of arrival and be posted in a conspicuous place in the AFH. House rules are subject to review and approval by the Department or designee and may not violate resident's rights as stated in ORS 430.210. A copy of the written house rules with documentation that the rules have been discussed with the resident.

(h) Unusual Incidents: A written incident report of all unusual incidents relating to the Adult Foster Home including but not limited to resident care. The incident report will include how and when the incident occurred, who was involved, what action was taken by staff, and the outcome to the resident. In compliance with HIPAA rules, only one resident's name will be used on each incident report. Separate reports will be written for each resident involved in an incident. A copy of the incident report will be submitted to the CMHP within five working days of the incident. The original will be placed in the residents record.

(i) General Information: Any other information or correspondence pertaining to the resident;

(j) Progress Notes. Progress notes will be maintained within each resident's record and document significant information relating to all aspects of the resident's functioning and progress toward desired outcomes as identified in the resident's individual personal care plan. A progress note will be entered in the resident's record at least once each month.

(7) Residents' Bill of Rights.

(a) The Provider will guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider will post them in a location that is accessible to residents and parents, guardians, and advocates. A copy of the Residents' Bill of Rights will be given to each resident, parent, guardian, and advocate along with a description of how to exercise these rights.

(b) The provider will explain and document in the resident's file that a copy of the Residents' Bill of Rights is given to each resident at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints.

(8) Physical Restraints. Physical Restraints are not allowed. Providers, resident managers, or substitute caregivers will not employ physical restraints for individuals receiving personal care services authorized or funded through the Office of Mental Health and Addiction Services.

(9) General Practices. The provider will:

(a) Conspicuously post the State license and Abuse and Complaint poster where it can be seen by residents;

(b) Cooperate with Department personnel or designee in complaint investigation procedures, abuse investigations and protective services, planning for resident care, application procedures and other necessary activities, and allow access of Department personnel to the AFH, its residents, and all records;

(c) Give care and services, as appropriate to the age and condition of the resident(s), and as identified on the PCP. The provider will be responsible for ensuring that physicians' orders and those of other medical professionals are followed, and that the resident's physicians and other medical professionals are informed of changes in health status and/or if the resident refuses care;

(d) In the provider's absence, the provider will have a resident manager or substitute caregiver on the premises to provide care and services to the residents. For absences greater than 72 consecutive hours, the CMHP must be notified of the name(s) of the substitute caregiver(s) for the provider or resident manager.

(e) A provider, resident manager, or substitute caregiver will be present in the home at all times.

(f) Allow and encourage residents to exercise all civil and human rights accorded to other citizens;

(g) Not allow or tolerate physical, sexual, or emotional abuse or punishment, or exploitation, or neglect of residents;

(h) Provide care and services as agreed to in the PCP;

(i) Keep information related to resident(s) confidential as required under ORS 179.050;

(j) Assure that the number of residents requiring nursing care does not exceed the provider's capability as determined by the CMHP and/or OMHAS;

(k) Not admit individuals who are clients of the Department Seniors and People with Disabilities without the express permission of the Department or their designee;

(l) Notify the Department prior to a closure and give residents, families, and CMHP staff 30 days written notice of the planned change except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or caregivers. If a provider has more than one AFH, residents cannot be shifted from one AFH to another without the same period of notice unless prior approval is given and agreement obtained from residents, family members and CMHP;

(m) Exercise reasonable precautions against any conditions which could threaten the health, safety or welfare of residents;

(n) Immediately notify the appropriate PCP Team members (in particular the CMHP representative and family/guardian) if: the resident has a significant change in their medical status; the resident has an unexplained or unanticipated absence from the Adult Foster Home; the provider becomes aware of alleged or actual abuse of the resident; the resident has a major behavioral incident, accident, illness, hospitalization; the resident contacts, or is contacted by, the police; or the resident dies and follow-up with an incident report.

(10) Incident Reports. The provider will write an incident report for any unusual incident and forward a copy of the incident report to the CMHP within five working days of the incident. Any incident that is the result of or suspect of abuse will be reported to the Office of Investigations and Training within 24 hours of occurrence.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0050(8)-(10); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0052, MHD 3-2005, f. & cert. ef. 4-1-05

### 309-040-0395

#### Standards for Admission, Transfers, Respite, Discharges, and Closures

(1) Admission. A provider will only accept a resident into their Adult Foster Home with a referral from, or the prior written approval of, staff of the CMHP or Department. At the time of the referral, a provider will be given complete information about the case history of a resident as it relates to behavior, skill level, medical status, or other relevant information. The provider will retain the right to deny admission of any person if they feel the person cannot be managed effectively in the Adult Foster Home, or for any other reason not specifically prohibited by this rule. Adult Foster Homes will not be used as a site for foster care for children, adults from other agencies, or any type of shelter or day care without the written approval of the CMHP or the Department.

(2) Transfers:

(a) A resident may not be transferred by a provider to another Adult Foster Home or moved out of the Adult Foster Home without 30 days advance written notice to the resident, the resident's legal representative, guardian or conservator, and the CMHP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the resident's right to a hearing as provided in ORS 443.738(11)(b) and 411-088-0080, except where undue delay might jeopardize the health, safety or well-being of the resident or others, for a medical emergency, or to protect the welfare of the resident or other residents. Residents may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the resident or others;

(B) Failure to make payment for care;

(C) The Adult Foster Home has had its license revoked, not renewed, or voluntarily surrendered; or

(D) The resident's care needs exceed the ability of the provider.

(b) Residents who object to the transfer will be given the opportunity for hearing as provided in ORS 443.738(11)(b) and OAR 411-088-0080.

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Participants may include the resident, and at the resident's request, the provider, a family member and CMHP staff member.

(3) Respite. Providers will not exceed the licensed capacity of their Adult Foster Home. However, respite care of no longer than two weeks duration may be provided a person if the addition of the respite person does not cause the total number of residents to exceed five. Thus, a provider may exceed the licensed number of residents by one respite resident, for two weeks or less, if approved by the CMHP or Department, and if the total number of residents does not exceed five.

(4) Discharge:

(a) A provider may only discharge a resident for valid reasons equivalent to those for transfers stated in paragraphs (2)(a)(A) through (D) of this rule. The provider will give at least 30 days written notice to a resident and the Department before termination of residency, except where undue delay might jeopardize the health, safety or well-being of the resident or others;

(b) The provider will promptly notify staff of the CMHP or Department if a resident gives notice or plans to leave the Adult Foster Home or if a resident abruptly leaves.

(5) Closing. Providers will notify the Department prior to a voluntary closure of an Adult Foster Home, and give residents, families, and the CMHP, 30 days written notice, except in circumstances where undue delay might jeopardize the health, safety or well-being of residents, providers or caregivers. If a provider has more than one Adult Foster Home, residents cannot be shifted from one house to another house without the same period of notice unless prior approval is given and agreement obtained from residents, family members, and the CMHP.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Former sections (3)(a)-(c) renumbered to 309-040-0057; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0055, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0400

### Inspections

(1) Department or Designee Inspections. The Department or designee will conduct an inspection of an Adult Foster Home:

(a) Prior to issuance of a license;

(b) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

(c) Anytime the Department has probable cause to believe that an Adult Foster Home has violated a regulation or provision of these rules or is operating without a license.

(2) Department Inspections. The Department may conduct inspections of an Adult Foster Home:

(a) Anytime such inspections are authorized by these rules and any other time the CMHP or Department considers it necessary to determine if an Adult Foster Home is in compliance with these rules or with conditions placed upon the license;

(b) To determine if cited deficiencies have been corrected; and

(c) For the purpose of monitoring of the residents' care.

(3) State or Local Fire Inspectors. State or local fire inspectors will be permitted access to enter and inspect the Adult Foster Home regarding fire safety upon request of the CMHP or Department.

(4) Full Access by Department and/or CMHP. The Department and/or CMHP staff will have full access and authority to examine, among other things, facility and resident records and accounts, and the physical premises, including the buildings, grounds, equipment, and any vehicles.

(5) Interviews. The Department or CMHP staff will have authority to interview the provider, resident manager, caregiver, and residents. Interviews will be confidential and conducted in private, and will be confidential except as considered public record under ORS 430.763.

(6) Authorized Entrance to Adult Foster Home. Providers must authorize resident managers and substitute caregivers to permit entrance by the Department or CMHP staff for the purpose of inspection and investigation.

(7) Authority to Conduct Inspections With or Without Advance Notice. The Department and/or CMHP staff has authority to conduct inspections with or without advance notice to the provider, staff, or a resident of the Adult Foster Home. The Department and/or CMHP will not give advance notice of any inspection if they believe that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) Search Warrant. If the Department and/or CMHP staff is not permitted access or inspection, a search warrant may be obtained.

(9) Respect Private Possessions. The inspector will respect the private possessions and living area of residents, providers, and caregiver while conducting an inspection.

(10) Confidential Information. Completed reports on inspections, except for confidential information, will be available to the public, upon written request to the Department and/or CMHP, during business hours.

(11) Investigate Allegations of Abuse. For individuals receiving services authorized and/or funded by the Office of Mental Health and Addiction Services, the Department or its designee will investigate allegations of abuse as defined in ORS 430.735 to 430.765.

(12) Alleged Abuse. When abuse is alleged or death of an individual has occurred and a law enforcement agency, or the Department and/or its designee, has determined to initiate an investigation, the provider will not conduct an internal investigation without prior authorization from the Department. For the purposes of this section, an internal investigation is defined as conducting interviews of the alleged victim, witness, the alleged perpetrator or any other persons who may have knowledge of the facts of the abuse allegation or related circumstances; reviewing evidence relevant to the abuse allegation, other than the initial report; or any other actions beyond the initial actions of determining:

(a) If there is reasonable cause to believe that abuse has occurred; or

(b) If the alleged victim is in danger or in need of immediate protective services; or

(c) If there is reason to believe that a crime has been committed; or

(d) What, if any, immediate personnel actions will be taken.

(13) Completion of Abuse Investigation. The Department or its designee will complete an Abuse Investigation and Protective Services Report according to OAR 410-009-0120(1)(2)(3)(4). The report will include the findings based upon the abuse investigation as defined in OAR 410-009-0060 (11) Inconclusive, (14) Not Substantiated, (16) Substantiated.

(14) Provider Notified of Completion of Investigation. When the provider has been notified of the completion of the abuse investigation, a provider may conduct an investigation without further Department approval to determine if any other personnel actions are necessary.

(15) Abuse Investigation and Protective Services Report. Upon completion of the investigation report according to OAR 410-009-0130, the sections of the report which are public records and not exempt from disclosure under the public records law will be provided to the appropriate provider. The provider will implement the actions necessary within the deadlines listed to prevent further abuse as stated in the report.

(16) Prohibition of Retaliation. A provider will not retaliate against any person who reports in good faith suspected abuse, or against the resident with respect to the report.

(17) Retaliatory Liability. In accordance with ORS 430.755 any provider who retaliates against any person because of a report of suspected abuse or neglect may be liable according to ORS 430.755, in a private action to that person for actual damages and, in addition, a penalty in accordance with ORS 443.775(10) not withstanding any other remedy provided by law. The authority of the Director to impose civil penalties and the factors to be considered will be in accordance with ORS 443.790.

(18) Adverse Action Creates a Presumption of Retaliation. In accordance with OAR 410-009-0140(3) Adverse Action, any adverse action creates a presumption of retaliation if taken within 90 days of a report of abuse. For purposes of this subsection, "adverse action" means any action taken by a community facility, community program or person involved in a report against the person making the report or against the adult because of the report and includes but is not limited to:

(a) Discharge or transfer from the Adult Foster Home, except for clinical reasons;

(b) Discharge from or termination of employment;

(c) Demotion or reduction in remuneration for services; or

(d) Restriction or prohibition of access to the community facility or its residents.

(19) Adverse Action Limits. Adverse action may also be evidence of retaliation after 90 days even though the presumption no longer applies.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0060, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0405

### Procedures for Correction of Violations

(1) Conference Request. At any time after receipt of a notice of violations or an inspection report, the licensee or OMHAS may request a conference, in writing. The conference will be scheduled within ten days of a

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request by either party. The purpose of the conference is to discuss the violations stated in the notice of violation and to provide information to the licensee to assist the licensee in complying with the requirements of the rules. The written request by a licensee or OMHAS for a conference will not extend any previously established time limit for correction.

(2) Notification of Correction. The licensee will notify OMHAS of correction of violations, in writing, no later than the date specified in the notice of violation.

(3) No Report of Compliance. If, after inspection of the Adult Foster Home, the violations have not been corrected by the date specified in the notice of violation or if OMHAS has not received a report of compliance, OMHAS may institute one or more of the following actions:

(a) Imposition of an administrative sanction that may include revocation, suspension, placement of conditions on the license or non-renewal of a license as deemed appropriate by OMHAS.

(b) Filing of a criminal complaint.

(4) Serious and Immediate Danger. If residents are in serious and immediate danger, the license may be immediately suspended or revoked and arrangements made to move the residents.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0070, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0410

### Residents' Rights, Complaints, and Grievances

(1) Residents' Bill of Rights.

(a) The Provider will guarantee the Residents' Bill of Rights as described in ORS 443.739. The provider will post them in a location that is accessible to residents, parents/guardian/advocates. A copy of the Residents' Bill of Rights will be given to each resident and parent/guardian/advocate along with a description of how to exercise these rights.

(b) The provider will explain and document in the resident's file that a copy of the Resident's Bill of Rights is given to each resident at admission, and is posted in a conspicuous place including the name and phone number of the office to call in order to report complaints. The Bill of Rights states each resident has the right to:

(A) Be treated as an adult, with respect and dignity;

(B) Be encouraged and assisted to exercise constitutional and legal rights as a citizen including the right to vote and be informed of all house rules;

(C) Receive appropriate care and services and prompt medical care as needed. Be informed of the resident's medical condition and the right to consent to or refuse treatment;

(D) Adequate personal privacy and privacy to associate and communicate privately with any person of choice, such as family members, friends, advocates, and legal, social service and medical professionals, send and receive personal mail unopened, and engage in telephone conversations as explained in 309-040-0050(6); have medical and personal information kept confidential;

(E) Have access to and participate in activities of social, religious, and community groups;

(F) Be able to keep and use a reasonable amount of personal clothing and belongings and to have a reasonable amount of private, secure storage space.

(G) Be free of discrimination in regard to race, color, national origin, sex, religion, sexual orientation, or disability;

(H) Manage his/her financial affairs unless legally restricted. Be free from financial exploitation. The provider will not charge or ask for application fees or nonrefundable deposits and will not solicit, accept or receive money or property from a resident other than the amount agreed to for services;

(I) A safe and secure environment;

(J) Written notices prior to rate increases and evictions;

(K) A written agreement regarding services to be provided and agreed upon rates;

(L) Voice suggestions, complaints, or grievances without fear of retaliation;

(M) Freedom from training, treatment, chemical or physical restraints except as agreed to, in writing, in a resident's PCP. Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner;

(N) Be allowed and encouraged to learn new skills, to act on their own behalf to their maximum ability, and to relate to residents in an age appropriate manner;

(O) An opportunity to exercise choices including such areas as food selection, personal spending, friends, personal schedule, leisure activities, and place of residence;

(P) Freedom from punishment. Behavior intervention programs must be approved in writing on the resident's PCP;

(Q) Freedom from abuse and neglect;

(R) The opportunity to contribute to the maintenance and normal activities of the household; and

(S) Access and opportunity to interact with persons with/without disabilities.

(T) The right not to be transferred or moved out of the adult foster home without 30 days' advance written notice and an opportunity for a hearing as described in ORS 443.738(11)(b) and OAR 411-088-0080. A provider may transfer or discharge a resident only for medical reasons including a medical emergency described in ORS 443.738(11)(a), or for the welfare of the resident or other residents, or for nonpayment.

(2) Complaints and Grievances. Any person who believes these rules have been violated may file a complaint with the Department and/or CMHP. OMHAS and/or CMHP will investigate any complaint or grievance regarding the AFH.

(3) Complaint and Grievance Notice. The OMHAS and/or CMHP will furnish each Adult Foster Home with a Complaint and Grievance Notice, which must be posted in a conspicuous place stating the telephone number of OMHAS and the CMHP and the procedure for making complaints or grievances.

(4) Complaint and Grievance Actions. A copy of all Adult Foster Home complaints or grievances will be maintained by OMHAS. All complaints or grievances and actions taken on the complaint or grievance, indexed by the name of the provider, will:

(a) Be placed into the public file at OMHAS. Information regarding the investigation of the complaint or grievance will not be filed in the public file until the investigation has been completed;

(b) Protect the privacy of the complainant or grievant and the resident; and

(c) Treat the names of the witnesses as confidential information.

(5) Substantiated Complaints or Grievances. Providers who acquire substantiated complaints or grievances pertaining to the health, safety or welfare of residents may have their licenses suspended, revoked or not renewed, or may have conditions placed on the license.

(6) Retaliation Against a Resident. The Adult Foster Home provider, resident manager, or caregiver will not retaliate in any way against any resident after a complaint or grievance has been filed with the Department. Retaliation may include, but is not limited to:

(a) Increasing charges or threatening to increase charges;

(b) Decreasing or threatening to decrease services, rights or privileges;

(c) Threatening to increase charges or decrease services, rights or privileges;

(d) Taking or threatening to take any action to coerce or compel the resident to leave the Adult Foster Home; or

(e) Abusing, harassing, or threatening to abuse or harass a resident in any manner.

(7) Retaliation Against Others. A complainant, grievant, witness or caregiver of an Adult Foster Home will not be subject to retaliation by a provider, or resident manager, or substitute caregiver for making a report or being interviewed about a complaint or being a witness. Retaliation may include, but is not limited to, caregiver dismissal or harassment, or restriction of access to either the Adult Foster Home or a resident.

(8) Immunity. The complainant will have immunity from any civil or criminal liability with respect to the making or content of a complaint or grievance made in good faith.

(9) Public Complaint Files. Any person has the right to inspect and receive a photocopy of the public complaint files, including protective services files, maintained by the Department upon written request subject to the Department's procedures, ORS 192.410 through 192.505, and photocopy charges for public record requests.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0065, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0415

### Administrative Sanctions and Conditions

(1) Administrative Sanctions. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:



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- (a) Attachment of conditions to a license;
- (b) Civil penalties;
- (c) Denial, suspension, revocation, or non-renewal of license.

(2) Notice of Intent. If OMHAS imposes an administrative sanction, it will serve a Notice of Intent of the administrative sanction upon the licensee personally or by certified mail.

(3) Notice of Administrative Sanction. The notice of administrative sanction will state:

- (a) Each sanction imposed;
- (b) A short and plain statement of each condition or act that constitutes a violation;
- (c) Each statute or rule allegedly violated;
- (d) A statement of the licensee's right to a contested case hearing;
- (e) A statement of the authority and jurisdiction under which the hearing is to be held;

(f) A statement that OMHAS files on the subject of the contested case automatically become part of the contested case record upon default for the purpose of proving a prima facie case; and

(g) A statement that the notice becomes a final order upon default if the licensee fails to request a hearing within the specified time.

(4) Hearing. If an administrative sanction is imposed for reason other than abuse, neglect, or exploitation, a hearing will precede it if the licensee requests the hearing in writing within 60 days after receipt of the notice per ORS Chapter 183.

(5) Failure to Request a Hearing. If a licensee fails to request in writing a hearing within 60 days, the Notice of Administrative Sanction will become a Final Order of OMHAS by default.

(6) Immediate Action. OMHAS may immediately suspend, revoke, or not renew a license for a substantiated finding of abuse, neglect, or exploitation of a resident. The licensee may submit a request, in writing, for a contested case hearing within 60 days of the notice of intent of suspension, revocation or non-renewal.

(7) Resident Removal. When a license is denied, suspended, revoked, or not renewed, OMHAS will work with the CMHP to arrange for residents to move for their protection.

(8) Conditions on License. Conditions may be attached to a license upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health and safety of residents, pending further action by OMHAS or OMHAS designee;

(b) There exists a threat to the health, safety, and welfare of a resident, pending further action by OMHAS or OMHAS designee;

(c) There is reliable evidence of abuse of an adult, pending further action by OMHAS or OMHAS designee;

(d) The Adult Foster Home is not being operated in compliance with these rules, pending further action by OMHAS or OMHAS designee; or

(e) The provider is licensed to care for a specific person only and further placements may not be made to the Adult Foster Home.

(9) Conditions on Licensee. Conditions which may be imposed on a licensee include but are not limited to:

(a) Restricting the maximum capacity of the Adult Foster Home;

(b) Restricting the number and impairment level of residents allowed based upon the capacity of the caregivers to meet the health and safety needs of all residents;

(c) Requiring an additional caregiver or caregiver qualifications;

(d) Requiring additional training of caregivers;

(e) Requiring additional documentation as deemed necessary by OMHAS;

(f) Restricting a provider from opening an addition Adult Foster Home; and/or

(g) Suspending admissions to the Adult Foster Home.

(10) Notification of Conditions. The provider must be notified, in writing, of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.

(11) Review by OMHAS. In addition to, or in lieu of, a contested case hearing, a provider may request, in writing, a review by the OMHAS administrator or designee of conditions imposed by the CMHP or OMHAS. The review does not diminish the provider's right to a hearing.

(12) Length of Conditions. Conditions may be imposed for the extent of the license period (one year), extended to the next license period, or limited to some other shorter period of time as deemed necessary by OMHAS. If the conditions correspond to the licensing period, the reasons for the conditions will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions will be indicated on the attachment to the license.

(13) Hearing Rights. Hearing rights are in accordance with ORS 183.310 to 183.550.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0075, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0420

### Denial, Suspension, Revocation or Non-renewal of License

(1) Causative Action. OMHAS will deny, suspend, revoke, or refuse to renew a license where it finds:

(a) There has been substantial failure to comply with these rules or where there is substantial non-compliance with local codes and ordinances, or any other state or federal law or rule applicable to the health and safety of residents in an Adult Foster Home; or

(b) The applicant or provider has been convicted of one or more crimes described in the Criminal Record Check;

(A) The applicant or provider has had a certificate or license to operate a foster home or residential care facility denied, suspended, revoked or refused to be renewed in this or any other state/county within three years preceding the present action if the denial, suspension, revocation or refusal to renew was due in any part to abuse of an adult, creating a threat to the residents or failure to possess physical health, mental health or good personal character;

(B) If the denial, suspension, revocation or refusal to renew occurred more than three years from the present action, the applicant or provider is required to establish to OMHAS by clear and convincing evidence his/her ability and fitness to operate an Adult Foster Home. If the applicant or provider does not meet this burden, then OMHAS will deny, suspend, revoke or refuse to renew the license;

(C) The applicant or provider is associated with a person whose license for a foster home or residential care facility was denied, suspended, revoked or refused to be renewed due to abuse of an adult, or failure to possess physical health, mental health or good personal character within three years preceding the present action, unless the applicant or provider can demonstrate to OMHAS by clear and convincing evidence that the person does not pose a threat to the residents;

(D) For purposes of this subsection, an applicant or provider is "associated with" a person as described above, if the applicant or provider:

(i) Resides with the person;

(ii) Employs the person in the Adult Foster Home;

(iii) Receives financial backing from the person for the benefit of the Adult Foster Home;

(iv) Receives managerial assistance from the person for the benefit of the Adult Foster Home; or

(v) Allows the person to have access to the Adult Foster Home.

(E) For purposes of this section only, "present action" means the date of the notice of denial, suspension, revocation or refusal to renew.

(2) Causative Action by Provider. The Department may deny, suspend, revoke, or refuse to renew an Adult Foster Home license if the applicant or provider:

(a) Submits fraudulent or untrue information to OMHAS;

(b) Has a history of, or demonstrates financial insolvency, such as filing for bankruptcy, foreclosure, eviction due to failure to pay rent, or termination of utility services due to failure to pay bill(s);

(c) Has a prior denial, suspension, revocation or refusal to renew a certificate or license to operate a foster home or residential care facility in this or any other state/county;

(d) Has threatened the health, safety, or welfare of any resident;

(e) Has a substantiated finding of abuse of an adult;

(f) Has a medical or psychiatric problem, which interferes with the ability to provide care;

(g) Refuses to allow access and inspection;

(h) Fails to comply with a final order of OMHAS to correct a violation of the rules for which an administrative sanction has been imposed; or

(i) Fails to comply with a final order of OMHAS imposing an administrative sanction.

(j) Fails to report knowledge of the illegal actions of or disclose the known criminal history of a provider, resident manager, substitute caregiver, or volunteer of the Adult Foster Home.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0090, MHD 3-2005, f. & cert. ef. 4-1-05

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## 309-040-0425

### Removal of Residents

(1) Order to Move. OMHAS may order the removal of residents from an Adult Foster Home to an alternative placement on the following grounds:

- (a) When a violation of these rules is not corrected after time limit specified in notice;
- (b) There is a violation of a resident's rights;
- (c) The number of residents currently in the Adult Foster Home exceeds the maximum licensed capacity of the Adult Foster Home;
- (d) The Adult Foster Home is operating without a license; or
- (e) There is evidence of abuse of an adult that presents a serious and immediate danger to residents.

(2) Resident Assistance. The resident will be given assistance in locating and visiting alternative placements by the CMHP, if needed, and will have the right to contest the move as provided in ORS 443.738(1)(b) and OAR 411-088-0080.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0085; MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; MHD 7-2001(Temp) f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 4-2002, f. 2-26-02, cert. ef. 2-27-02; Renumbered from 309-040-0092, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0430

### Conditions

(1) Attachment to License. Conditions will be attached to a license upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health and safety of residents;
- (b) There exists a threat to the health, safety, and welfare of a resident;
- (c) There is reliable evidence of abuse of an adult;
- (d) The Adult Foster Home is not being operated in compliance with these rules; or
- (e) The provider is licensed to care for a specific person(s) only and further placements may not be made to the Adult Foster Home.

(2) Notification of Conditions. The provider must be notified, in writing, of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS Chapter 183.

(3) Hearing Rights. In addition to, or in lieu of, a contested case hearing, a provider may request in writing a review by the OMHAS administrator or designee of conditions imposed by the CMHP or OMHAS. The review does not diminish the provider's right to a hearing.

(4) Length of Conditions. Conditions will be imposed for the extent of the license period (one year), extended to the next license period or limited to some other shorter period of time as deemed necessary by OMHAS. If the conditions correspond to the licensing period, the reasons for the conditions will be considered at the time of renewal to determine if the conditions are still appropriate. The effective date and expiration date of the conditions will be indicated on the attachment to the license.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0093, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0435

### Criminal Penalties

(1) Unlicensed. Operating an Adult Foster Home without a license is punishable as a Class C misdemeanor.

(2) Refusal to Comply. Refusing to allow any of the following is punishable as a Class B misdemeanor:

- (a) Department access to the Adult Foster Home for inspection or investigation;
- (b) Department access to residents in order to interview residents privately or to review records; or
- (c) State and local fire inspector access to the Adult Foster Home regarding fire safety.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0095, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0440

### Civil Penalties

(1) Penalties for Other than Abuse. Civil penalties, for other than substantiated allegations of abuse, will not exceed \$100 per violation with a maximum of \$250 may be assessed for violation of these rules, with the exception of substantiated abuse findings.

(2) Penalties for Abuse. Civil penalties of a maximum of \$1000 per occurrence may be assessed for each substantiated abuse finding.

(3) Other Penalties. In addition to any other liability or penalty, OMHAS may impose a penalty for any of the following:

- (a) Operating an Adult Foster Home without a license;
- (b) Exceeding the number of residents identified on the license;
- (c) The Provider fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance;
- (d) The Adult Foster Home is unable to provide an adequate level of care to residents;
- (e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the Adult Foster Home;
- (f) The provider fails to cooperate with OMHAS, physician, registered nurse, or other health care professional in carrying out a resident's care plan; or
- (g) Other violations are found on two consecutive inspections of an Adult Foster Home after a reasonable amount of time has been allowed for the elimination of the violations.

(4) Penalty Due. Any civil penalty imposed under this section will become due and payable when the provider incurring the penalty receives a notice in writing from OMHAS. The notice will be sent by registered or certified mail and will include:

- (a) A reference to the particular sections of the statute, rule, standard, or order involved;
  - (b) A short and plain statement of the matter asserted or charged;
  - (c) A statement of the amount of the penalty or penalties imposed; and
  - (d) A statement of the right to request a hearing.
- (5) Application for Hearing. The provider to whom the notice is addressed will have 60 days from the date of the notice of intent in which to make written application for a hearing.

(6) Hearings. All hearings will be conducted according to the applicable provisions of ORS Chapter 183.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0097, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0445

### Public Information

(1) Current Information. The Department will maintain current information on all licensed Adult Foster Homes and will make that information available to prospective residents, their families, and other interested members of the public.

(2) Current Information Content. The information will include:

- (a) The location of the Adult Foster Home;
- (b) A brief description of the physical characteristics of the home;
- (c) The name and mailing address of the provider;
- (d) The license classification of the home and the date the provider was first licensed to operate that home;
- (e) The date of the last inspection, the name and telephone number of the office that performed the inspection and a summary of the findings;
- (f) Copies of all complaint investigations involving the home, together with the findings of and actions taken by the Department;
- (g) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other actions taken by the department involving the home; and
- (h) Whether care is provided primarily by the licensed provider, a resident manager, or other arrangement.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0098, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0450

### Adjustment, Suspension or Termination of Payment

(1) Causative Actions. The CMHP or Department may adjust, suspend, or terminate payment(s) to a provider when any of the following conditions occur:

- (a) The provider's Adult Foster Home license is revoked, suspended, or terminated;
- (b) Upon a finding that the provider is failing to deliver any service as agreed to in the PCP; or
- (c) When funding, laws, regulations, or the CMHP or Department priorities change such that funding is no longer available, redirected to other purposes, or reduced;

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- (d) The individual's service needs change;
- (e) The individual is absent without providing notice to the provider for five or more consecutive days;
- (f) The individual is determined to be ineligible for services;
- (g) The individual moves, with or without notice, from the Adult Foster Home; the provider will be paid only through the last day of the individual's occupancy.

(2) Department Obligation. The CMHP or Department is under no obligation to maintain the Adult Foster Home at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 19-1985(Temp), f. & ef. 12-27-85; MHD 6-1986, f. & ef. 7-2-86; MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0055(3)(a)-(c); MHD 6-1999, f. 8-24-99, cert. ef. 8-26-99; Renumbered from 309-040-0057, MHD 3-2005, f. & cert. ef. 4-1-05

## 309-040-0455

### Enjoinment of Adult Foster Home (AFH) Operation

The Department may commence an action to enjoin (ban) the operation of an Adult Foster Home pursuant to ORS 443.775(5):

(1) Unlicensed. When an Adult Foster Home is operated without a valid license; or

(2) Unresolved Placement. After notice of revocation, non-renewal, or suspension has been given, a reasonable time for placement of residents in other facilities has been allowed, and such placement has not been accomplished.

Stat. Auth.: ORS 409.010, 409.050

Stats. Implemented: ORS 443.705 - 443.825

Hist.: MHD 1-1992, f. & cert. ef. 1-7-92 (and corrected 1-31-92); Renumbered from 309-040-0099, MHD 3-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.:** MHD 4-2005

**Filed with Sec. of State:** 4-1-2005

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**Rules Amended:** 309-035-0100, 309-035-0105, 309-035-0110, 309-035-0113, 309-035-0115, 309-035-0117, 309-035-0120, 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0145, 309-035-0150, 309-035-0155, 309-035-0157, 309-035-0159, 309-035-0165, 309-035-0167, 309-035-0170, 309-035-0175, 309-035-0185, 309-035-0190

**Subject:** The adopted and amended rules clarify, simplify, and update the rules for Residential Treatment Facilities serving adult residents licensed by the Office of Mental Health and Addiction Services (OMHAS).

In addition:

1. OMHAS conformed the rule requirements to meet the standards set forth by the International Building and Universal Fire Code changes adopted on October 1, 2004.

2. OMHAS conformed the rule language and references to be consistent with proposed OAR 410-009-0050 through 410-009-0160 Abuse Reporting and Protective Services in Community Programs and Community Facilities.

3. OMHAS conformed the rule language and references to be consistent to OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

4. OMHAS conformed the rule language to be consistent to the Secretary of State's Administrative Rule language and process.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-035-0100

### Purpose and Scope

(1) Purpose. These rules prescribe standards by which the Office of Mental Health and Addiction Services (OMHAS) approves residential treatment facilities for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment facilities for six to 15 residents and to residential treatment facilities serving 16 or more res-

idents. Where standards differ based on the number of residents in a facility, the rules prescribe different requirements.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0105

### Definitions

As used in these rules:

(1) "Abuse" means any intentional act or absence of action that is inconsistent with prescribed resident care and treatment including but not limited to:

(a) Any death by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury, including, but not limited to, hitting, kicking, scratching, pinching or pushing;

(d) Sexual harassment or exploitation including, but not limited to, requests for sexual favors, other situations where the resident experiences unwelcome verbal or physical sexual contact, and any sexual contact between an owner, employee or other agent of a facility and the resident whether consensual or not;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Denying meals, clothing or aids to physical functioning;

(g) Use of derogatory names or phrases, profanity, ridicule, harassment, coercion, threats, cursing or intimidation;

(h) Placing unreasonable restrictions on a resident's freedom of movement; and

(i) Financial exploitation which may include, but is not limited to unauthorized rate increases, borrowing money from residents, witnessing wills in which the program is beneficiary, adding program's name to the resident's personal property, inappropriately expending a resident's personal funds, commingling a resident's funds with program or other residents' funds, or the program becoming a resident's guardian or conservator.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the facility.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity who owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Building Code" means the Oregon Structural Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(8) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(9) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, and developmental disabilities operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Office of Mental Health and Addiction Services (OMHAS).

(10) "Contract" means a formal written agreement between the community mental health program, Oregon Health Plan contractor or Office of Mental Health and Addiction Services (OMHAS) and a Residential Treatment Facility owner.

(11) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTF residents.

(12) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)," published by the American Psychiatric Association.

(13) "Department" means the Office of Mental Health and Addiction Services (OMHAS) of the Oregon Department of Human Services.

(14) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(15) "Emergency Admission" means an admission to an RTF made on an urgent basis due to the pressing service needs of the individual.



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(16) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined in the Oregon Structural Specialty Code. The category of evacuation capability is determined by documented evacuation drill times or scores on NFPA 101A worksheets. There are three categories of evacuation capability:

(a) Impractical (SR-2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR-1): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes.

(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. OMHAS is authorized to determine evacuation capability for RTFs in accordance with the National Fire Protection Association (NFPA) 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(17) "Facility" means one or more buildings and adjacent grounds on contiguous properties that are used in the operation of a Residential Treatment Facility.

(18) "Fire Code" means the Oregon Fire Code as adopted by the State of Oregon Fire Marshal.

(19) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

(A) Physician licensed to practice in the State of Oregon;

(B) Nurse Practitioner licensed to practice in the State of Oregon; or

(C) Physician's Assistant licensed to practice in the State of Oregon; and

(b) Whose training, experience and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(20) "Licensee" means the person(s) or entity legally responsible for the operation of the facility to which the Department has issued a license.

(21) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with OMHAS to operate a CMHP or MHO for that county.

(22) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(23) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder, that limits an individual's ability to perform activities of daily living.

(24) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(25) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(26) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated to a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(27) "Office of Mental Health and Addiction Services (OMHAS)" means the Department of Human Services (DHS) agency responsible for the administration of state mental health and addiction services in accordance with federal and state laws, rules and regulations. OMHAS may delegate a portion of this responsibility to the CMHPs and to MHOs.

(28) "Owner" means the person(s) or entity legally responsible for the operation of the facility.

(29) "P.r.n. (pro re nata) Medications and Treatments" means those medications and treatments which have been ordered to be given as needed.

(30) "Program" means the residential treatment facility and may refer to the owner, staff and/or services as applicable to the context.

(31) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing progress made relevant to the objectives outlined in the residential service plan.

(32) "Protection" means the necessary actions taken by the program to prevent abuse or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property and funds.

(33) "Resident" means any adult residing in a facility who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(34) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the facility based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall plan for mental health treatment when the RTF is operated by a mental health service agency that provides other services to the resident.

(35) "Residential Treatment Facility (RTF)" means a facility that is operated to provide services on a 24-hour basis for six or more residents.

(36) "Restrictions" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(37) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(38) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures. Such locking devices will be installed in accordance with Building Code requirements.

(39) "Services" means the care and treatment provided to residents as part of the Residential Treatment Facility program.

(40) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(41) "Termination of Residency" means the time at which the resident ceases to live in the RTF, and includes the transfer of the resident to another facility, but does not include absences from the facility for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(42) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0110

#### Licensing

(1) License Required. The Department will license any facility that meets the definition of a residential treatment facility and serves adults with a mental or emotional disorder. In the case of a facility serving another category of residents in addition to adults with a mental or emotional disorder, the Department responsible for licensure will be determined by the Director of the Department of Human Services. No person or governmental unit acting individually or jointly with any other person or governmental unit will establish, maintain, manage, or operate a residential treatment facility without a license issued by the Department.

(2) Initial Application. An application for a license will be accompanied by the required fee and submitted to the Department using the forms or format required by the Department. The following information will be required in the application:

(a) Full and complete information as to the identity and financial interest of each person, including stockholders, having a direct or indirect ownership interest of five percent or more in the facility and all officers and directors in the case of facilities operated or owned by a corporation.

(b) Name and resume of the administrator of the facility;

(c) Location (street address) of the facility and mailing address;

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(d) Maximum number of residents to be served at any one time, their age range and evacuation capability;

(e) Proposed annual budget identifying sources of revenue and expenses;

(f) Signed criminal record authorizations for all persons involved in the operation of the RTF who will have contact with the residents;

(g) A complete set of policies and procedures;

(h) Facility plans and specifications; and

(i) Such other information as the Department may reasonably require.

(3) Plans and Design Approval. A complete set of plans and specifications will be submitted to the Department at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans will meet the following criteria:

(a) Plans will be prepared in accordance with the Building Code and requirements of OAR 309-035-0125;

(b) Plans will be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans will bear the stamp of an Oregon licensed architect or engineer when required by the Building Code.

(4) Necessary Approvals. Prior to approval of a license for a new or renovated facility, the applicant will submit the following to the Department:

(a) One copy of written approval to occupy the facility issued by the city or county building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the facility complies with the Fire Code;

(c) When the facility is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has approved the water supply in accordance with OAR Chapter 333, Health Services rules to public water systems.

(d) When the facility is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(5) Required Fees. The fee for each residential treatment facility license application is \$60. No fee is required in the case of a governmentally operated residential treatment facility.

(6) Renewal Application. A license is renewable upon submission of a renewal application in the form or format required by the Department and a non-refundable fee of \$60, except that no fee will be required of a governmentally operated facility.

(a) Filing of an application for renewal before the date of expiration extends the effective date of the current license until the Department takes action upon the renewal application.

(b) The Department will refuse to renew a license if the facility is not in substantial compliance with these rules, or if the State Fire Marshal or authorized representative has given notice of noncompliance.

(7) Review Process. Upon receipt of an application and fee, the Department will conduct an application review. Initial action by the Department on the application will begin within 30 days of receipt of all application materials. The review will:

(a) Include a complete review of application materials;

(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:

(A) Demonstrates an understanding and acceptance of these rules;

(B) Is mentally and physically capable of providing services for residents;

(C) Employs or utilizes only individuals whose presence does not jeopardize the health, safety, or welfare of residents; and

(D) Provides evidence satisfactory to the Department of financial ability to comply with these rules.

(c) Include a site inspection; and

(d) Conclude with a report stating findings and a decision on licensing of the facility.

(8) Findings of Noncompliance. The Department will require an owner to submit and complete a plan of correction for each finding of noncompliance with these rules.

(a) If the finding(s) of noncompliance substantially impact the welfare, health and/or safety of residents, the plan of correction will be submitted and completed prior to issuance of a license. In the case of a currently operating RTF, such findings may result in suspension or revocation of a license.

(b) If it is determined that the finding(s) of noncompliance do not threaten the welfare, health or safety of residents and the facility meets

other requirements of licensing, a license may be issued or renewed, and the plan of correction will be submitted and completed as a condition of licensing.

(c) The Department will specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the finding(s).

(d) The Department will review and approve each plan of correction. If the plan of correction does not adequately remedy the finding of noncompliance, the Department will require a revised plan of correction, and/or take action to apply civil penalties or deny, revoke or suspend the license.

(e) The RTF owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Administrator of the Department. The Administrator of the Department or designee will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Administrator of the Department will be final.

(9) Variance. The Department may grant a variance to these rules based upon a demonstration by the applicant that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health or safety of residents.

(a) Variance Application. The RTF owner requesting a variance will submit, in writing, an application to the Department which identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance.

(b) Office of Mental Health and Addiction Services Review. The Assistant Administrator for the Department's Office of Mental Health and Addiction Services (OMHAS), or designee, will review and approve or deny the request for a variance.

(c) Notification of Decision. The Department will notify the RTF owner of the decision in writing within 30 days after receipt of the application. A variance may be implemented only after receipt of written approval from the Department.

(d) Appeal of Decision. The RTF owner may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Administrator of the Department. The Administrator of the Department will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Administrator of the Department will be final.

(e) Duration of the Variance. A variance will be reviewed by the Department at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health or safety of the RTF residents.

(10) Issuance of License. Upon finding that the applicant is in substantial compliance with these rules, the Department will issue a license.

(a) The license issued will state the name of the owner of the facility, the name of the administrator, the address of the facility to which the license applies, the maximum number of residents to be served at any one time and their evacuation capability, the type of facility, and such other information as the Department deems necessary.

(b) A residential treatment facility license will be effective for two years from the date issued unless sooner revoked or suspended.

(c) The residential treatment facility license is not transferable or applicable to any location, facility, or management other than that indicated on the application and license.

(11) Conditions of License. The license will be valid under the following conditions:

(a) The residential treatment facility will not be operated or maintained in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each residential treatment facility will have sleeping, dining and living areas for use only by its own residents, employees and invited guests.

(b) The license will be retained in the facility and available for inspection at all times.

(c) Each license will be considered void immediately upon suspension or revocation of the license by the Department, or if the operation is discontinued by voluntary action of the licensee, or if there is a change of ownership.

(12) Site Inspections. Department staff will visit and inspect every residential treatment facility at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules. The RTF owner/applicant will allow Department staff

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entry and access to the facility and residents for the purpose of conducting the inspections.

(a) Department staff will review methods of resident care and treatment, records, the condition of the facility and equipment, and other areas of operation.

(b) All records, unless specifically excluded by law, will be available to the Department for review.

(c) The State Fire Marshal or authorized representative(s) will, upon request, be permitted access to the facility, fire safety equipment within the facility, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of facility occupants.

(13) Investigation of Complaints and Alleged Abuse. Incidents of alleged abuse covered by ORS 430.735 through 430.765 will be reported and investigated in accordance with OAR 410-009-0050 through 410-009-0160. Department staff will investigate complaints and other alleged abuse made regarding residential treatment facilities, will cause a report to be filed, and will take appropriate action under these rules. The Department may delegate the investigation to a CMHP or other appropriate entity.

(14) Denial, Suspension or Revocation of License. The Department will deny, suspend or revoke a license where it finds there has been substantial failure to comply with these rules; or where the State Fire Marshal or authorized representative certifies that there is failure to comply with the Fire Code.

(a) In cases where there exists an imminent danger to the health or safety of residents, a license may be suspended immediately.

(b) Such revocation, suspension, or denial will be done in accordance with rules of the Department under ORS Chapter 183.

(15) Reporting Changes. Each licensee will report promptly to the Department any significant changes to information supplied in the application or subsequent correspondence. Such changes include, but are not limited to, changes in the facility name, owner entity, administrator, telephone number and mailing address. Such changes also include, but are not limited to, changes in the facility's physical plant, policies and procedures or staffing pattern when such changes are significant or impact the health, safety or well-being of residents.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0113

### Contracts and Rates

(1) Contracts. Residential Treatment Facility operators providing services funded with state service payments will enter into a contract with the local community mental health program, the Department or other Department-approved party. The contract does not guarantee that any number of persons eligible for Department funded services will be referred to or maintained in the facility.

(2) Rates. Rates for all services and the procedures for collecting payments from residents and/or payees will be specified in a fee policy and procedures. The fee policy and procedures will describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency.

(a) For residents whose services are funded by the Department, reimbursement for services will be made according to the rate schedule outlined in the contract. Room and board payments for residents receiving Social Security benefits or public assistance will be in accordance with rates determined by the Department.

(b) For private paying residents, the program will enter into a signed agreement with the resident, and/or if applicable, resident's guardian, payee or conservator. This agreement will include but not be limited to a description of the services to be provided; the schedule of rates; conditions under which the rates may be changed; and policy on refunds at the time of termination of residency.

(c) Before increasing rates or modifying payment procedures, the program will provide 30 days advance notice of the change to all residents, payees, guardians or conservators, as applicable.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0115

### Administrative Management

(1) Licensee. The licensee will be responsible for insuring that the facility is operated in compliance with these rules and all other applicable federal, state and local laws and regulations.

(2) Administrator. The licensee will employ an administrator who:

(a) Has background including special training, experience, and other demonstrated ability in providing care and treatment appropriate to the residents served in the facility;

(b) Has a documented criminal record clearance and no history of abusive behavior;

(c) Will insure that the RTF operates in accordance with the standards outlined in these rules;

(d) Will oversee the daily operation and maintenance of the RTF and will be available to perform administrative duties at the facility at least 20 hours per week;

(e) Will develop and administer written policies and procedures to direct the operation of the RTF and the provision of services to residents;

(f) Will insure that qualified staff are available, in accordance with the staffing requirements specified in these rules;

(g) Will supervise or provide for the supervision of staff and others involved in the operation of the program;

(h) Will maintain facility, personnel and resident records;

(i) Will report regularly to the licensee on the operation of the RTF; and

(j) Will delegate authority and responsibility for the operation and maintenance of the facility to a responsible staff person whenever the Administrator is absent from the RTF. This authority and responsibility will not be delegated to a resident.

(3) Policies and Procedures. Policies and procedures will be developed, updated as necessary, maintained in a location easily accessible for staff reference, and made available to others upon reasonable request. They will be consistent with requirements of these rules, and address, but not be limited to:

(a) Personnel practices and staff training;

(b) Resident selection, admission and termination;

(c) Fire drills, emergency procedures, resident safety and abuse reporting;

(d) Health and sanitation;

(e) Records;

(f) Residential service plan, services and activities;

(g) Behavior management, including the use of seclusion or restraints;

(h) Food Service;

(i) Medication administration and storage;

(j) Resident belongings, storage and funds;

(k) Resident rights and advance directives;

(l) Complaints and grievances;

(m) Facility maintenance;

(n) Evacuation capability determination; and

(o) Fees and money management.

(4) House Rules. The RTF will develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, nighttime quiet hours, guest policies and smoking. The house rules will be consistent with resident rights as delineated in OAR 309-035-0155. House rules will be posted in an area readily accessible to residents. House rules will be reviewed and updated, as necessary. Residents will be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984 (Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; ; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0117

### Records

(1) General Requirements. Records will be maintained to document the legal operation of the program, personnel practices and resident services. All records will be properly obtained, accurately prepared, safely stored and readily available within the facility. All entries in records required by these rules will be in ink, indelible pencil, or approved electronic equivalent prepared at the time, or immediately following, the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Program Records. Records documenting the legal operation of the RTF will include, but not be limited to:

(a) Written approval for occupancy of the building by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports or other documentation pertaining to the safe and sanitary operation of the facility issued during the development or operation of the facility;



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(b) Application for license, related correspondence and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, employee schedules and time sheets;

(e) Materials Safety and Data Sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel Records. Records documenting personnel actions will include:

(a) Job descriptions for all positions; and

(b) Individual employee records including, but not limited to, written documentation of employee identifying information and qualifications, criminal record clearance, T.B. test results, Hepatitis B status, performance appraisals, and documentation of pre-service orientation and other training.

(4) Resident Records. An individual resident record will be maintained for each resident and include:

(a) An easily accessible summary sheet which includes, but is not limited to the resident's name, previous address, date of admission to the facility, sex, date of birth, marital status, legal status, religious preference, Social Security number, health provider information, evacuation capability, diagnosis(es), major health concerns, medication allergies, information indicating whether advance mental health and health directives and/or burial plan have been executed, and the name of person(s) to contact in case of emergency;

(b) The names, addresses and telephone numbers of the resident's legal guardian or conservator, parent(s), next of kin, or other significant person(s); physician(s) or other medical practitioner(s); dentist; CMHP case manager or therapist; day program, school or employer; and any governmental or other agency representative(s) providing services to the resident;

(c) A mental health assessment and background information identifying the resident's residential service needs;

(d) Advance mental health and health directives, burial plans or location of these (as available);

(e) Residential Service Plan and copy(ies) of plan(s) from other service provider(s).

(f) Documentation of the resident's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the resident; and

(g) Health-related information and up-to-date information on medications in accordance with OAR 309-035-0175.

(5) Records for Crisis-respite Residents. For residents receiving crisis-respite services, an attempt will be made to obtain and maintain records as outlined in OAR 309-035-0117(4). Because it may not be possible to assemble complete records during the crisis-respite resident's short stay, the program will, at a minimum, maintain records in accordance with requirements outlined in OAR 309-035-0145, 309-035-0150, 309-035-0159, and 309-035-0175.

(6) Storage. All resident records will be stored in a weatherproof and secure location. Access to records will be limited to the Administrator and direct care staff unless otherwise allowed in these rules.

(7) Confidentiality. All resident records will be kept confidential. A signed release of information will be obtained for any disclosure from resident records in accordance with all applicable laws and rules.

(8) Resident Access to His/Her Record. A resident, or guardian (as applicable), will be allowed to review and obtain a copy of his/her resident record as allowed in ORS 179.505(9).

(9) Transfer of Records. Pertinent information from records of residents who are being transferred to another facility will be transferred with the resident. A signed release of information will be obtained in accordance with applicable laws and rules.

(10) Maintenance of Records. The facility will keep all records, except those transferred with a resident, for a period of three years.

(11) Administrative Changes. If an RTF changes ownership or Administrator, all resident and personnel records will remain in the facility. Prior to the dissolution of any RTF, the Administrator will notify the Department in writing as to the location and storage of resident records or those records will be transferred with the residents.

(12) Resident Contributions to Record. If a resident or guardian (as applicable) disagrees with the content of the resident record, or otherwise desires to provide documentation for the record, the resident or guardian (as

applicable) may provide material in writing that then will become part of the resident record.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0120

### Staffing

(1) Staff Qualifications. A job description will be available for each staff position and specify qualifications and job duties.

(a) Any staff person hired to provide direct care to residents will be at least 18 years of age, be capable of implementing the facility's emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description.

(b) All staff who will have contact with residents will provide evidence of a criminal record clearance, in accordance with OAR 410-007-0200 through 410-007-0380.

(c) In accordance with OAR 333-071-0057 and 437, Division 2, Subdivision Z, 4f (1)(2), all RTF staff who have contact with residents will be tested for tuberculosis and Hepatitis B within two weeks of first employment, additional testing will take place as deemed necessary; and the employment of staff who test positive for tuberculosis will be restricted if necessary.

(d) All staff will meet other qualifications when required by a contract or financing arrangement approved by the Department.

(2) Personnel Policies. Personnel policies will be made available to all staff and will describe hiring, leave, promotion and disciplinary practices.

(3) Staff Training. The administrator will provide or arrange a minimum of 16 hours pre-service orientation and 8 hours in-service training annually for each employee.

(a) Pre-service training for direct care staff will include, but not be limited to, a comprehensive tour of the facility; a review of emergency procedures developed in accordance with OAR 309-035-0130; a review of facility house rules, policies and procedures; background on mental and emotional disorders; an overview of resident rights; medication management procedures; food service arrangements; a summary of each resident's assessment and residential service plan; and other information relevant to the job description and scheduled shift(s).

(b) In-service training will be provided on topics relevant to improving the care and treatment of residents in the facility and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, resident rights, identifying health care needs, and psychotropic medications.

(4) General Staffing Requirements. The licensee and administrator are responsible for assuring that an adequate number of staff are available at all times to meet the treatment, health and safety needs of residents. Regardless of the minimum staffing requirements outlined below, staff will be scheduled to insure safety and to correspond to the changing needs of residents. Minimum staffing requirements are as follows:

(a) In facilities serving 6 to 20 residents, there will be at least one direct care staff person on duty at all times.

(b) In facilities serving 21 to 35 residents, there will be at least two direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least one direct care staff person on duty from 9:00 p.m. to 7:00 a.m.

(c) In facilities serving 36 to 50 residents, there will be at least three direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least two direct care staff on duty from 9:00 p.m. to 7:00 a.m.

(d) In facilities serving 51 to 65 residents, there will be at least four direct care staff on duty from 7:00 a.m. to 9:00 p.m. and at least two direct care staff on duty from 9:00 p.m. to 7:00 a.m.

(e) In the case of a specialized RTF, staffing requirements outlined in the contractual agreement for specialized services will be implemented.

(f) Direct care staff on night duty will be awake and dressed at all times. In facilities where residents are housed in two or more detached buildings, direct care staff will monitor each building at least once an hour during the night shift. An approved method for alerting staff to problems will be in place. This method must be accessible to and usable by the residents.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

# ADMINISTRATIVE RULES

## 309-035-0125

### Facility Requirements

(1) Compliance with Building and Fire Codes. Each residential treatment facility will meet the requirements for approved Group SR or I occupancies in the Building Code and the Fire Code in effect at the time of original licensure. When a change in facility use results in a new building occupancy classification, the facility will meet the requirements for approved Group SR or I occupancies in the Building Code in effect at the time of such change. If occupants are capable of evacuation within 3 minutes refer to Group R occupancies.

(2) Accessibility for Persons with Disabilities. Facilities will be accessible as follows:

(a) Those facilities, or portions of facilities, that are licensed, constructed or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations, will meet the physical accessibility requirements in Chapter 11 of the Oregon Structural Specialty Codes. These codes specify requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act, as amended in 1988.

(b) In order to insure program accessibility under Title II of the Americans with Disabilities Act, the Department may require additional accessibility improvements.

(c) Any accessibility improvements made to accommodate an identified resident will be in accordance with the specific needs of the resident.

(3) Outdoor Areas. An accessible outdoor area is required and will be made available to all residents. For facilities, or portions thereof, licensed on or after June 1, 1998, a portion of the accessible outdoor area will be covered and have an all weather surface, such as a patio or deck.

(4) General Storage. The facility will include sufficient and safe storage areas. These will include but not be limited to:

(a) Storage for a reasonable amount of resident belongings beyond that available in resident sleeping rooms will be provided appropriate to the size of the facility;

(b) All maintenance equipment, including yard maintenance tools, will be maintained in adequate storage space. Equipment and tools which pose a danger to facility residents will be kept in locked storage;

(c) Storage areas necessary to insure a functional, safe and sanitary environment consistent with OAR 309-035-0125, 309-035-0130, 309-035-0135, 309-035-0140, 309-035-0170, and 309-035-0175.

(5) Hallways. For facilities initially licensed on or after June 1, 1998, all resident use areas and resident units will be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches except that a minimum width of 48 inches will be provided along the route to accessible bedrooms and bathrooms and between common areas and required exits.

(6) Administrative Areas. Sufficient space will be provided for confidential storage of both resident and business records, for staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators will be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) Resident Sleeping Rooms. Resident sleeping quarters will be provided in rooms separated from other areas of the facility by an operable door with an approved latching device.

(a) For facilities licensed prior to June 1, 1998, resident sleeping rooms will include a minimum of 60 square feet per resident and allow for a minimum of three feet between beds.

(b) For facilities, or portions thereof, initially licensed on or after June 1, 1998, each resident sleeping room will be limited to one or two residents. At least ten percent, but no less than one, of the resident sleeping rooms will be accessible for persons with mobility disabilities. All resident sleeping rooms will include a minimum of 70 square feet per resident exclusive of closets, vestibules and bathroom facilities and allow a minimum of three feet between beds.

(c) A clothes closet, with adequate clothes hanging rods will be accessible within each sleeping room for storage of each resident's clothing and personal belongings. For facilities initially licensed on or after June 1, 1998, built-in closet space will be provided totaling a minimum of 64 cubic feet for each resident. In accessible sleeping rooms, the clothes hanging rod height will be adjustable or no more than 54 inches in height to insure accessibility for persons in wheelchairs.

(d) Each resident sleeping room will have exterior window(s) with a combined area at least one-tenth of the floor area of the room. Sleeping room windows will be equipped with curtains or blinds for privacy and control of light. For facilities, or portions of facilities, initially licensed on

or after June 1, 1998, an escape window will be provided consistent with Building Code requirements.

(8) Bathrooms. Bathing and toilet facilities will be conveniently located for resident use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for residents, provide a securely affixed mirror at eye level, be adequately ventilated, and include sufficient facilities specially equipped for use by persons with a physical disability in buildings serving such persons.

(a) In facilities licensed prior to June 1, 1998, a minimum of one toilet and one lavatory will be available for each eight residents, and one bathtub or shower will be available for each ten residents.

(b) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, a minimum of one toilet and one lavatory will be available for each six residents, and a minimum of one bathtub or shower will be available for each ten residents, where these fixtures are not available in individual resident rooms. At least one centralized bathroom along an accessible route will be designed for disabled access in accordance with Chapter 11 of the Oregon Structural Specialty Code. For facilities licensed for more than 16 residents, there will be at least one separate toilet and lavatory provided for staff and visitor use.

(9) Common Use Rooms. The facility will include lounge and activity area(s) for social and recreational use, exclusively by residents, staff and invited guests, totaling 15 square feet per resident.

(10) Laundry and Related Space. Laundry facilities will be separate from food preparation and other resident use areas. When residential laundry equipment is installed, the laundry facilities may be located to allow for both resident and staff use. In facilities initially licensed on or after June 1, 1998, separate residential laundry facilities will be provided when the primary laundry facilities are located in another building, are of commercial type, or are otherwise not suitable for resident use. The following will be included in the primary laundry facilities:

(a) Countertops or spaces for folding table(s) sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

(c) Outlets, venting and water hook-ups according to state building code requirements. Washers will have a minimum rinse temperature of 155 degrees Fahrenheit (160 degrees Fahrenheit recommended) unless a chemical disinfectant will be used; and

(d) Sufficient storage and handling space to insure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen. Kitchen facilities and equipment in facilities licensed for 16 or fewer residents may be of residential type except as required by the state building code and Fire Code or local agencies having jurisdiction. Facilities serving 17 or more residents will have facilities and equipment meeting Food Sanitation Rules of Health Services under OAR Chapter 333 as applicable. For all kitchens, the following will be included:

(a) Dry storage space, not subject to freezing, in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space for a minimum of two days' supply of perishable foods;

(c) In facilities licensed to serve 16 or fewer residents, a dishwasher will be provided (may be approved residential type) with a minimum final rinse temperature of 155 degrees Fahrenheit (160 degrees recommended), unless chemical disinfectant is used. In facilities licensed to serve 17 or more residents, a commercial dishwasher is required as specified in Health Services Food Sanitation Rules;

(d) In facilities licensed to serve 16 or fewer residents, a separate food preparation sink and hand washing sink will be provided. In facilities licensed to serve 17 or more residents, a triple pot wash sink will be provided unless pots are sanitized in the dishwasher, in addition to a food preparation sink and separate hand washing sink;

(e) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(f) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(g) Stove and oven equipment for cooking and baking needs; and

(h) Storage for a mop and other cleaning tools and supplies used for food preparation, dining and adjacent areas. Such cleaning tools will be maintained separately from those used to clean other parts of the facility. In facilities initially licensed on or after June 1, 1998, and licensed to serve 17 or more residents, a separate janitor closet or alcove will be provided with a floor or service sink and storage for cleaning tools and supplies.

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(12) Dining Area. A separate dining room or area where meals are served will be provided for the exclusive use of residents, employees, and invited guests.

(a) In facilities licensed prior to June 1, 1998, the dining area will seat at least half of the residents at one time with a minimum area of 15 square feet per resident.

(b) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, dining space will be provided to seat all residents with a minimum area of 15 square feet per resident, exclusive of serving facilities and required exit pathways.

(13) Details and Finishes. All details and finishes will meet the finish requirements of applicable sections of the Building Code and the Fire Code.

(a) Surfaces. Surfaces of all walls, ceilings, windows and equipment will be readily cleanable. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, the walls and ceilings in the kitchen, laundry and bathing areas will be smooth, nonabsorbent, and readily cleanable, and kitchen walls in facilities licensed to serve 17 or more residents will comply with Health Services Food Sanitation Rules, OAR chapter 333, division 150 through 160.

(b) Flooring. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, flooring, thresholds and floor junctures will be designed and installed to prevent a tripping hazard and to minimize resistance for passage of wheelchairs and other ambulation aids. In addition, hard surface floors and base will be free from cracks and breaks, and bathing areas will have non-slip surfaces.

(c) Doors. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, all doors to resident sleeping rooms, bathrooms and common use areas will provide a minimum clear opening of 32 inches. Lever type door hardware will be provided on all doors used by residents. If locks are used on doors to resident sleeping rooms, they will be interactive to release with operation of the inside door handle and be master-keyed from the corridor side. Exit doors will not include locks which prevent evacuation except in accordance with Building Code and Fire Code requirements and with written approval of the Department. An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when resident(s) or others enter or exit the facility.

(d) Handrails. Handrails will be provided on all stairways as specified in the Building Code.

(14) Heating and Ventilating. All areas of the facility will be adequately ventilated and temperature controlled in accordance with the Mechanical and Building Code requirements.

(a) Temperature Control. All facilities will include heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three inches above the floor. During times of extreme summer heat, fans will be made available when air conditioning is not provided.

(b) Exhaust Systems. All toilet and shower rooms will be adequately ventilated. In facilities initially licensed on or after June 1, 1998, toilet and shower rooms will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside.

(c) Fireplaces, Furnaces, Wood Stoves and Boilers. Where used, design and installation will meet standards of the Oregon Mechanical Specialty Code and the Boiler Specialty Code, as applicable.

(d) Water Temperature. In resident areas, hot water temperatures will be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures in laundry and kitchen areas will be at least 155 degrees Fahrenheit.

(15) Electrical. All wiring systems will meet the standards of Oregon Electrical Specialty Code in effect on the date of installation, and all electrical devices will be properly wired and in good repair.

(a) When not fully grounded, circuits in resident areas will be protected by GFCI type receptacles or circuit breakers as an acceptable alternative.

(b) All electrical circuits will be protected by circuit breakers or non-interchangeable plug-type fuses in fuse boxes. Electrical loads on distribution panels and circuits will be limited in accordance with the Oregon Electrical Specialty Code.

(c) A sufficient supply of electrical outlets will be provided to meet resident and staff needs. (The use of extension cords will be in accordance with the rules of the Office of State Fire Marshal and the Department of Health Services.)

(d) Lighting fixtures will be provided in each resident bedroom and bathroom, switchable near the entry door, and in other areas as required to meet task illumination.

(e) In facilities, or portions of facilities, initially licensed on or after June 1, 1998, lighting fixtures that illuminate evacuation pathways will be

operable within 10 seconds during a failure of the normal power supply and provide illumination for a period of at least two hours.

(16) Plumbing. All plumbing will meet the Oregon Plumbing Specialty Code in effect on the date of installation, and all plumbing fixtures will be properly installed and in good repair.

(17) Telephones. The facility will provide adequate access to telephones for private use by residents. In facilities initially licensed on or after June 1, 1998, a phone for resident use will be provided in addition to the phone used by staff. The facility may establish reasonable house rules governing phone use to insure equal access by all residents. Each resident or guardian (as applicable) will be responsible for payment of long distance phone bills where the calls were initiated by the resident, unless other mutually agreed arrangements have been made.

(18) Smoking. Smoking is not allowed in sleeping areas. If there is a designated smoking area, it will be separated from other common areas. Indoor smoking areas will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside. Furniture used in designated smoking areas will be non-flammable and without crevasses. In facilities, or portions of facilities, initially licensed on or after June 1, 1998, indoor smoking areas will be separated from other parts of the facility by a self-closing door and contain sprinkler protection or heat detectors.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef.; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0130

#### Safety

(1) Training on Safety Procedures. All staff will be trained in staff safety procedures prior to beginning their first regular shift. All residents will be trained in resident safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedure and Disaster Plan. A written procedure and disaster plan will be approved by the State Fire Marshal or authorized representative. The plan will cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes and floods. The plan will be posted by the phone and immediately available to the administrator and employees. The plan will include diagrams of evacuation routes, and these will be posted. The plan will specify where staff and residents will go if the facility becomes uninhabitable. The plan will be kept up to date and will include:

(a) Emergency instructions for employees;

(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of residents and employees.

(3) Combustible and Hazardous Materials. Noncombustible and non-hazardous materials will be used whenever possible. When necessary to the operation of the facility, flammable and combustible liquids and other hazardous materials will be safely and properly stored in clearly labeled, original containers in areas inaccessible to residents in accordance with the Fire Code. Any quantities of combustible and hazardous materials maintained will be the minimum necessary.

(4) Poisonous and Other Toxic Materials. Non-toxic cleaning supplies will be used whenever available. Poisonous and other toxic materials will be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation Capability. Evacuation capability categories are based upon the ability of the residents and staff as a group to evacuate the building or relocate from a point of occupancy to a point of safety. Buildings will be constructed and equipped according to a designated evacuation capability for occupants. Categories of evacuation capability include "Impractical" (SR- 2) or "Slow" (SR- 1). The evacuation capability designated for the facility will be documented and maintained in accordance with NFPA 101A.

(a) Only persons assessed to be capable of evacuating in accordance with the designated facility evacuation capability will be admitted to the facility.

(b) Persons experiencing difficulty with evacuating in a timely manner will be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the facility will consider increasing staff levels, changing staff assignments, offering to change the resident's room assignment, arranging for special equipment, and taking other actions that may assist the resident. Residents who still cannot evacuate the building safely in the allowable period of time will be assisted with transferring to another facility with an evacuation capability



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designation consistent with the individual's documented evacuation capability.

(6) Evacuation Drills. Every resident will participate in an unannounced evacuation drill each month. (See Section 408.12.5 of the fire code.)

(a) At least once every three months, the drill will be conducted during resident sleeping hours.

(b) Drills will be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes.

(c) Any resident failing to evacuate within the established time limits will be provided with special assistance and a notation made in the resident record.

(d) Written evacuation records will be maintained for at least three years. They will include documentation, made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(7) Unobstructed Egress. All stairways, halls, doorways, passageways, and exits from rooms and from the building will be unobstructed.

(8) Fire Extinguishers. The provider will provide and maintain one or more 2A10BC fire extinguishers on each floor in accordance with the Fire Code.

(9) Fire Alarms and Smoke Detectors. Approved fire alarms and smoke detectors will be installed according to Building Code and Fire Code requirements. These alarms will be set off during each evacuation drill. The facility will provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All of these devices will be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction.

(10) Sprinkler Systems. Sprinkler systems will be installed in compliance with the Building Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First Aid Supplies. First aid supplies will be readily accessible to staff. All supplies will be properly labeled.

(12) Portable Heaters. Portable heaters are a recognized safety hazard and will not be used.

(13) Safety Program. A safety program will be developed and implemented to identify and prevent the occurrence of hazards at the facility. Such hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984 (Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0135

#### Sanitation

(1) Water Supply. The water supply in the facility will meet the requirements of the current rules of Health Services governing domestic water supplies.

(a) A municipal water supply will be utilized if available.

(b) When the facility is not served by an approved municipal water system, and the facility qualifies as a public water system according to OAR 333-061-0020(127), Oregon Health Services rules for public water systems, then the facility will comply with the OAR Chapter 333 rules of the Oregon Health Services pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to Health Services. For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, that public notice be given whenever a violation of the water quality standards occurs, and that records of water testing be retained according to the Oregon Health Services requirements.

(2) Surfaces. All floors, walls, ceilings, windows, furniture, and equipment will be kept in good repair, clean, neat and orderly.

(3) Plumbing Fixtures. Each bathtub, shower, lavatory, and toilet will be kept clean, in good repair and regularly sanitized.

(4) Disposal of Cleaning Waste Water. No kitchen sink, lavatory, bathtub, or shower will be used for the disposal of cleaning waste water.

(5) Soiled Laundry. Soiled linens and clothing will be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) Pest Control. All necessary measures will be taken to prevent rodents and insects from entering the facility. Should pests be found in the facility, appropriate action will be taken to eliminate them.

(7) Grounds Maintenance. The grounds of the facility will be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage Storage and Removal. Garbage and refuse receptacles will be clean, durable, watertight, insect and rodent proof, and will be kept covered with tight-fitting lids. All garbage and solid waste will be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) Sewage Disposal. All sewage and liquid wastes will be disposed of in a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes will be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines, and septic tanks or other non-municipal sewage disposal systems where applicable, will be maintained in good working order.

(10) Biohazardous Waste. Biohazardous waste will be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) Infection Control. Precautions will be taken to prevent the spread of infectious and/or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards. In accordance with OAR 437, Division 2, Subdivision Z, Section 1910.1030 of the Oregon Occupational Safety and Health Code, staff will employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV and other blood borne pathogens.

(12) Infection Control for Pets and Other Household Animals. If pets or other household animals exist at a facility, sanitation practices will be implemented to prevent health hazards.

(a) Such animals will be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations will be maintained on the premises.

(b) Animals not confined in enclosures will be under control and maintained in a manner that does not adversely impact residents or others.

(c) No live animal will be kept or allowed in any portion of the premises where food is stored or prepared, except that aquariums and aviaries will be allowed if enclosed so as not to create a public health problem.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984 (Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0140

#### Resident Furnishings

(1) Bedroom Furniture. Residents will be allowed to use their own furniture within space limitations of the resident sleeping room. Otherwise, furniture will be provided or arranged for each resident, maintained in good repair and include:

(a) A bed, including a frame and a clean mattress and pillow;

(b) A private dresser or similar storage area for personal belongings which is readily accessible to the resident; and

(c) Locked storage for the resident's small, personal belongings. In facilities initially licensed before June 1, 1998, this locked storage may be provided in a place other than the resident's bedroom. The resident will be provided with a key or other method to gain access to his/her locked storage space.

(2) Linens. Linens will be provided for each resident and will include:

(a) Sheets, pillowcase, other bedding appropriate to the season and individual resident's comfort;

(b) Availability of a waterproof mattress or waterproof mattress cover; and

(c) Towels and washcloths.

(3) Personal Hygiene Items. Each resident will be assisted in obtaining personal hygiene items in accordance with individual needs. These will be stored in a clean and sanitary manner, and may be purchased with the resident's personal allowance. Personal hygiene items include, but are not limited to, a comb and/or hairbrush, a toothbrush, toothpaste, and menstrual supplies (if needed).

(4) Supplies Provided by Facility. Sufficient supplies of soap, shampoo and toilet paper for all residents will be provided.

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(5) Common Area Furniture. An adequate supply of furniture for resident use in living room, dining room and other common areas will be maintained in good condition.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0145

#### Admission to Facility

(1) Responsibility for Admission Process. Each facility's admission policy and procedures will specify who is responsible for each component of the admission information-gathering and decision-making process. Responsibilities will be organized and assigned to promote effective processing of referrals and admissions.

(2) Referrals. Unless limited by contractual agreement with the Department or other Department-approved party, referrals may be accepted from a variety of sources. Residents whose services will be funded by the Department must be approved for placement by the CMHP or other local entity given responsibility for this function by contract with the Department, and/or the Department.

(3) Release of Information. In accordance with ORS 179.505 and the 45 Code of Federal Registry, Part 164, an authorization for the release of information will be obtained for any confidential information concerning a prospective resident.

(4) Nondiscrimination. Persons will be considered for admission without regard to race, color, sex or sexual orientation (except as may be limited by room arrangement), religion, creed, national origin, age (except under 18 years), familial status, marital status, source of income, or disability in addition to the mental or emotional disorder.

(5) Screening. Prior to accepting a resident for admission to the facility, the administrator or his/her designee will determine that the resident meets admission criteria. The prospective resident will receive an explanation of the program, be given a copy of materials explaining conditions of residency, and be offered the opportunity to visit the facility. Sufficient information will be obtained from the prospective resident, a relative and/or agencies providing services to determine eligibility for admission and service needs. In the case of individuals referred for emergency or crisis-respite admission, the information obtained may be less extensive than for regular admissions but must be sufficient to determine that the resident meets admission criteria and that the facility is appropriate considering the individual's needs. Screening information will include, but not be limited to, the following:

(a) Written documentation that the prospective resident has, or is suspected of having, a mental or emotional disorder;

(b) Background information including a mental health assessment and describing previous living arrangements, service history, behavioral issues and service needs;

(c) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(d) Copies of documents, or other documentation, relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions (as applicable);

(e) A copy of the prospective resident's most recent mental health treatment plan, or in the case of an emergency or crisis-respite admission, a summary of current mental health treatment involvement; and

(f) Documentation of the prospective resident's ability to evacuate the building consistent with the facility's designated evacuation capability and other concerns about potential safety risks.

(6) Admission Criteria. Persons considered for admission will:

(a) Be assessed to have a mental or emotional disorder, or a suspected mental or emotional disorder;

(b) Be in need of care, treatment and supervision;

(c) Be at least 18 years of age;

(d) Not require continuous nursing care, unless a reasonable plan to provide such care exists, the need for residential treatment supersedes the need for nursing care, and the Department approves the placement;

(e) Have an evacuation capability consistent with the facility's SR Occupancy classification; and

(f) Meet additional criteria required or approved by the Department through contractual agreement or condition of licensing.

(7) Admission Decisions. An admission decision will be made based upon the existence of an opening within the facility, a review of screening

materials at a pre-admission meeting and a determination that the resident meets the admission criteria. A pre-admission meeting will be scheduled to include the facility administrator or designee, the potential resident and his/her legal guardian (as applicable). With the prospective resident's consent, the pre-admission meeting may also include family member(s) or other representative(s) as appropriate, representative(s) of relevant service providing agencies, and others with an interest in the resident's admission. Potential residents, their legal guardian (as applicable) and authorized representative will be informed of admission decisions within 72 hours. When admission is denied, the prospective applicant, their legal guardian (as applicable) and authorized representative will be informed in writing of the basis for the decision and their right to appeal the decision in accordance with OAR 309-035-0157.

(8) Informed Consent for Services. Each resident, or his/her guardian (as applicable), will provide informed consent for services upon admission to the facility, unless the resident's ability to do so is legally restricted.

(9) Orientation. Upon admission, the administrator or his/her designee will provide an orientation to each new resident that includes, but is not limited to, a complete tour of the facility, introductions to other residents and staff, discussion of house rules, explanation of the laundry and food service schedule and policies, review of resident rights and grievance procedures, explanation of the fee policy, discussion of the conditions under which residency would be terminated, and a general description of available services and activities. During the orientation, advance directives will be explained. If the resident does not already have any advance directive(s), she/he will be given an opportunity to complete them. Orientation will also include a description of the facility's emergency procedures in accordance with OAR 309-035-0130(2).

(10) Record Preparation. A resident record will be established concurrent with the resident's admission. Prior to admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the facility will determine with whom communication needs to occur and will attempt to obtain the needed authorizations for release of information. The record established upon admission will include the materials reviewed in screening the resident, the summary sheet and any other available information. Every effort will be made to complete the resident record consistent with OAR 309-035-0117(4) in a timely manner. The assessment and residential service plan will be completed in accordance with OAR 309-035-0159. Records on prescribed medications and health needs will be completed as specified in OAR 309-035-0170.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98;

### 309-035-0150

#### Termination of Residency

(1) Responsibility for Termination Process. Each facility's termination policy and procedures will specify who is responsible for each step of the process for terminating residency. Responsibilities will be organized and assigned to promote a fair and efficient termination process. Unless otherwise designated as a condition of licensing or in contract language approved by the Department, the Administrator will be responsible for initiating and coordinating termination proceedings. An effort will be made to prevent unnecessary terminations by making reasonable accommodations within the facility.

(2) Voluntary Termination of Residency. A resident or guardian (as applicable) may terminate residency in a facility upon providing at least 30 days notice. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided.

(3) Emergency Termination of Residency. If a resident's behavior poses a serious and immediate threat to the health or safety of others in or near the facility, the administrator, after providing 24 hours written notice specifying the causes to the resident or guardian (as applicable), may immediately terminate the residency. The notice will specify the resident's right to appeal the emergency termination decision in accordance with OAR 309-035-0157.

(4) Other Terminations of Residency. When other circumstances arise providing grounds for termination of residency, the Administrator will discuss these grounds with the resident, the resident's guardian (as applicable), and with the resident's permission, other persons with an interest in the resident's circumstances. If a decision is made to terminate residency, the Administrator will provide at least 30 days written notice specifying the causes to the resident or guardian (as applicable). This notice will also specify the resident's right to appeal the termination decision in accordance with OAR 309-035-0157. Upon mutual agreement between the administrator

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and the resident or guardian (as applicable), less than 30 days notice may be provided. An effort will be made to establish a reasonable termination date in consideration of both facility needs and the needs of the terminated resident to find alternative living arrangements. Criteria establishing grounds for termination include:

(a) Resident no longer needs or desires services provided at the facility and/or expresses a desire to move to an alternative setting;

(b) Resident is assessed by a Licensed Medical Professional or other qualified health professional to require services, such as continuous nursing care or extended hospitalization, that are not available, or can not be reasonably arranged, at the facility;

(c) Resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others and these behavioral concerns cannot be adequately addressed with services available at the facility or services that can be arranged outside of the facility;

(d) Resident cannot safely evacuate the facility in accordance with the facility's SR Occupancy Classification after efforts described in OAR 309-035-0130(5)(b) have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) Resident continuously and knowingly violates house rules resulting in significant disturbance to others.

(5) Pre-termination Meeting. Except in the case of emergency terminations or crisis-respite residents, a pre-termination meeting will be held with the resident, guardian (as applicable), and with the resident's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting will be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason will be documented in the resident's record.

(6) Documentation. Documentation of discussions and meetings held concerning termination of residency and copies of notices will be maintained in the resident's record.

(7) Disposition of Personal Property. At the time of termination of residency, the resident will be given a statement of account, any balance of funds held by the facility and all property held in trust or custody by the facility.

(a) In the event of pending charges (such as long distance phone charges or damage assessments), the program may hold back the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the resident will be provided a final financial statement along with any funds due to the resident.

(b) In the case of resident belongings left at the facility for longer than seven days after termination of residency, the RTF will make a reasonable attempt to contact the resident, guardian (as applicable) and/or other representative of the resident. The RTF must allow the resident, guardian (as applicable) or other representative at least 15 days to make arrangements concerning the property. If it is determined that the resident has abandoned the property, the RTF may then dispose of the property. If the property is sold, proceeds of the sale, minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the resident, will be forwarded to the resident or guardian (as applicable).

(8) Crisis-respite Services. Because crisis-respite services are time-limited, the planned end of services will not be considered a termination of residency and subject to requirements in OAR 309-035-0150(2), (4) and (5). Upon admission to crisis-respite services, the resident or guardian (as applicable) will be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the administrator and the resident or guardian (as applicable). RTFs providing crisis-respite services will implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(9) Absences without Notice. If a resident moves out of the facility without providing notice, or is absent without notice for more than seven consecutive days, the administrator may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the resident's absence. An attempt will be made to contact the resident, guardian (as applicable) and/or other person interested in the resident's circumstances to confirm the resident's intent to discontinue residency.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0155

#### Resident Rights

(1) Statutory and Constitutional Rights. Each resident will be assured the same civil and human rights accorded to other citizens. These rights will be assured unless expressly limited by a court in the case of a resident who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to, and do not limit, all other statutory and constitutional rights which are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) Rights of Service Recipients. In accordance with ORS 430.210, residents will have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection, and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence;

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs;

(c) Ongoing participation in planning services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations;

(d) Not receive services without informed consent except in a medical emergency or as otherwise permitted by law;

(e) Not participate in experimentation without informed voluntary written consent;

(f) Receive medication only for the person's individual clinical needs;

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure;

(h) A humane service environment that affords reasonable protection from harm and affords reasonable privacy;

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation;

(j) Religious freedom;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Visit with family members, friends, advocates and legal and medical professionals;

(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedure for reporting abuse, and to have these rights and procedures prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person;

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure;

(p) Have access to and communicate privately with any public or private rights protection program or rights advocate; and

(q) Exercise all rights described in this section without any form of reprisal or punishment.

(3) Additional Rights in Residential Treatment Facilities. Residents will also have a right to:

(a) Adequate food, shelter and clothing, consistent with OAR 309-035-0159;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication, including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(f) Be free from seclusion and restraint, except as outlined in OAR 309-035-0167.

(g) To review the Residential Treatment Facility's policies and procedures; and



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(h) Not participate in research without informed voluntary written consent.

(4) Program Requirements. The program will have and implement written policies and procedures which protect residents' rights, and encourage and assist residents to understand and exercise their rights. The program will post a listing of resident rights under these rules in a place readily accessible to all residents and visitors.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0157

#### Grievances and Appeals

(1) Procedures. The facility will have a written policy and procedures concerning the resident grievance and appeal process. A copy of the grievance and appeal process will be posted in a place readily accessible to residents. A copy of the grievance and appeal process will be provided to each resident and guardian (as applicable) at the time of admission to the facility.

(2) Grievances. A facility's process for grievances must, at a minimum, include the following:

(a) Residents will be encouraged to informally resolve complaints through discussion with RTF staff.

(b) If the resident is not satisfied with the informal process or does not wish to use it, the resident may proceed as follows:

(A) The resident may submit a complaint in writing to the RTF Administrator. The resident may receive assistance in submitting the complaint from any person whom the resident chooses. If requested by the resident, RTF staff will be available to assist the resident.

(B) The written complaint will go directly to the RTF Administrator without being read by other staff, unless the resident requests or permits other staff to read the complaint.

(C) The complaint will include the reasons for the grievance and the proposed resolutions. No complaint will be disregarded because it is incomplete.

(D) Within five days of receipt of the complaint, the RTF Administrator will meet with the resident to discuss the complaint. The resident may have an advocate or other person of his/her choosing present for this discussion.

(E) Within five days of meeting with the resident, the RTF Administrator will provide a written response to the resident. As part of the written response, the Administrator will provide information about the appeal process.

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the resident before the grievance procedures outlined in OAR 309-035-0157(2)(b)(D) and (E) are completed, the resident may request an expedited review. The RTF Administrator will review and respond in writing to the grievance within 48 hours. The written response will include information about the appeal process.

(3) Appeals. Residents, their legal guardians (as applicable) and prospective residents (as applicable) will have the right to appeal admission, termination and grievance decisions as follows:

(a) If the resident is not satisfied with the decision, the resident may file an appeal in writing within ten days of the date of the RTF Administrator's response to the complaint or notification of admission denial or termination (as applicable). The appeal will be submitted to the CMHP Director or designee in the county where the RTF is located.

(b) The resident may receive assistance in submitting the appeal. If requested by the resident, RTF staff will be available to assist the resident.

(c) The CMHP Director or designee will provide a written response within ten days of receiving the appeal.

(d) If the resident is not satisfied with the CMHP Director's decision, the resident may file a second appeal in writing within ten days of the date of the CMHP Director's written response to the Administrator of the Department or designee. The decision of the Administrator of the Department will be final.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0159

#### Resident Assessment and Residential Service Plan

(1) Assessment. An assessment will be completed for each resident within 30 days after admission to the facility, unless admitted to the facility for crisis-respite services.

(a) The assessment will be based upon an interview with the resident to identify strengths, preferences and service needs; observation of the resident's capabilities within the residential setting; a review of information in the resident record; and contact with representatives of other involved agencies, family members and others, as appropriate. All contacts with others will be made with proper authorization for the release of information.

(b) Assessment findings will be summarized in writing and included in the resident's record. Assessment findings will include, but not be limited to, diagnostic and demographic data; identification of the resident's medical, physical, emotional, behavioral and social strengths, preferences and needs related to independent living and community functioning; and recommendations for residential service plan goals.

(2) Residential Service Plan. An individualized plan, identifying the goals to be accomplished through the services provided, will be prepared for each resident, unless admitted to the facility for crisis-respite services, within 30 days after admission.

(a) The residential service plan will be based upon the findings of the resident assessment, be developed with participation of the resident and his/her guardian (as applicable), and be developed through collaboration with the resident's primary mental health treatment provider. With consent of the resident or guardian (as applicable), family members, representatives from involved agencies, and others with an interest in the resident's circumstances will be invited to participate. All contacts with others will be made with proper, prior authorization from the resident.

(b) The residential service plan will identify service needs, desired outcomes and service strategies to address, but not be limited to, the following areas: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation.

(c) The residential service plan will be signed by the resident, the administrator or other designated facility staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan.

(3) Crisis-respite Requirements. For residents admitted to facilities for 30 days or less, an assessment and residential service plan must be developed within 48 hours of admission which identifies service needs, desired outcomes and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short term service arrangement.

(4) Progress Notes. Progress notes will be maintained within each resident's record and document significant information relating to all aspects of the resident's functioning and progress toward desired outcomes identified in the residential service plan. A progress note will be entered in the resident's record at least once each month.

(5) Re-assessments and Revisions to the Residential Service Plan. The assessment and residential service plan will be reviewed and updated at least annually. On an ongoing basis, the residential service plan will be updated, as necessary, based upon changing circumstances or upon the resident's request for reconsideration.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

### 309-035-0165

#### Resident Services and Activities

(1) General Requirements. The services and activities available at the facility will include care and treatment consistent with ORS 443.400 and those services individually specified for the resident in the residential service plan developed as outlined in OAR 309-035-0159. Residents will be encouraged to care for their own needs to the extent possible. All services and activities will be provided in a manner that respects residents' rights, promotes recovery and affords personal dignity.

(2) Services and Activities to Be Available. Services and activities to be available will include but not be limited to:

(a) Provision of adequate shelter consistent with OAR 309-035-0125 through 309-035-0140;

(b) At least three meals per day, seven days per week, provided in accordance with OAR 309-035-0170;

(c) Assistance and support, as necessary, to enable residents to meet personal hygiene and clothing needs;

(d) Laundry services, which may include access to washer(s) and dryer(s) so residents can do their own personal laundry;

(e) Housekeeping essential to the health and comfort of residents;

(f) Activities and opportunities for socialization and recreation both within the facility and in the larger community;

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(g) Health-related services provided in accordance with OAR 309-035-0175;

(h) Assistance with community navigation and transportation arrangements;

(i) Assistance with money management, where requested by a resident, to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the resident;

(j) Assistance with acquiring skills to live as independently as possible;

(k) Assistance with accessing other additional services, as needed; and

(l) Any additional services required under contract the Department.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0167

### Use of Seclusion or Restraints

(1) General Prohibition. The use of seclusion or restraints is prohibited, except in Secure Residential Treatment Facilities with the Department's approval.

(2) Approval of Use in Secure Residential Treatment Facilities. A Secure Residential Treatment Facility provider or applicant may submit an application to the Department for approval to use seclusion or restraints pursuant to OAR 309-033-0700 through 309-033-0740. Approval by the Department will be based upon the following:

(a) A determination that the residents served, or proposed to be served, have a history of behavioral concerns involving threats to the safety and well-being of themselves or others;

(b) The applicant demonstrates that the availability of seclusion or restraints is necessary to safely accommodate persons who would otherwise be unable to experience a community residential program; and

(c) The applicant demonstrates an ability to comply with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. These rules include special requirements for staffing, training, reporting, policies and procedures, and the facility's physical environment.

(3) Conditions of Use. Seclusion or restraints will only be used in approved Secure Residential Treatment Facilities when an emergency occurs in accordance with OAR 309-033-0700 through 309-033-0740 and 309-033-0500 through 309-033-0560. In such emergency situations, seclusion and restraint will be used as a last resort behavior management option after less restrictive behavior management interventions have failed, or in the case of an unanticipated behavioral outburst, to insure safety within the facility. Approved Secure Residential Treatment Facilities will implement policies and procedures approved by the Department outlining the circumstances under which seclusion or restraints would be used and the preventive measures to be taken before such use. All incidents involving the use of seclusion or restraints will be reported to the Department. In order to use seclusion or restraints with a resident who is not in state custody under civil commitment proceedings, the resident must be placed on a hold.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0170

### Food Services

(1) Well-balanced Diet. Meals will be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.

(2) Modified or Special Diets. An order from a Licensed Medical Professional will be obtained for each resident who, for health reasons, is on a modified or special diet. Such diets will be planned in consultation with the resident.

(3) Menus. Menus will be prepared at least one week in advance and will provide a sufficient variety of foods served in adequate amounts for each resident at each meal and adjusted for seasonal changes. Records of menus, as served, will be filed and maintained in the facility for at least 30 days. Resident preferences and requests will be considered in menu planning. Religious and vegetarian preferences will be reasonably accommodated.

(4) Supply of Food. Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days will be maintained on the premises.

(5) Sanitation. Food will be stored, prepared and served in accordance with Health Services Food Sanitation Rules.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0175

### Health Services

(1) General. The administrator will be responsible for assuring that all residents are offered medical attention when needed. Arrangements for health services will be made with the informed consent of the resident and/or guardian (as applicable). The RTF will arrange for physicians or other qualified health care professionals to be available in the event the resident's regular physician or other health care professional is unavailable. A hospital emergency room will be identified and may be used in case of emergency.

(2) Initial Health Screening. Each resident admitted to the facility will be screened by a Licensed Medical Professional or other qualified health care professional to identify health problems and to screen for communicable disease. Documentation of the initial health screening will be placed in the resident record.

(a) The health screening will include a brief history of health conditions, current physical condition and a written record of current or recommended medications, treatments, dietary specifications and aids to physical functioning.

(b) For regular admissions, the health screening will be obtained prior to the resident's admission and include the results of testing for tuberculosis and Hepatitis B.

(c) For emergency admissions, including crisis-respite admissions, the health screening will be obtained as follows:

(A) For individuals experiencing psychiatric or medical distress, a health screening will be completed by a Licensed Medical Professional or other qualified health care professional prior to the resident's admission or within 24 hours of the emergency placement. The health screening will confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite resident who continues in the facility for more than seven consecutive days, a complete health examination will be arranged if any symptoms of a health concern exist.

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening will be obtained within 72 hours after the resident's admission.

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP or other qualified health care professional if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other residents in the facility. Such a waiver must be provided in writing and be signed and dated by the attending health care professional within 24 hours of the resident's admission.

(3) Regular Health Examinations. Except for crisis-respite residents, the program will insure that each resident has a primary physician or other qualified health care professional who is responsible for monitoring his/her health care. Regular health examinations will be done in accordance with the recommendations of this primary health care professional, but not less than once every three years. New residents will have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination will be placed in the resident's record.

(4) Written Orders for Special Needs. A written order, signed by a physician or other qualified health care professional, is required for any medical treatment, special diet for health reasons, aid to physical functioning or limitation of activity.

(5) Medications. A written order signed by a physician or other qualified health care professional is required for all medications administered or supervised by RTF staff. This written order is required before any medication is provided to a resident. Medication will not be used for the convenience of staff or as a substitute for programming. Medications will not be withheld or used as reinforcement or punishment, or in quantities that are excessive in relation to the amount needed to attain the client's best possible functioning.

(a) Medications will be self-administered by the resident if the resident demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan will document that medications will be self-administered. The self-administration of medications may be supervised by facility staff who may prompt the resident to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, staff will enter information in the resident's record consistent with section (5)(h) below.

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(b) Staff who assist with administration of medication will be trained by a Licensed Medical Professional on the use and effects of commonly used medications.

(c) Medications prescribed for one resident will not be administered to, or self-administered by, another resident.

(d) Stock supplies of prescription medications will not be maintained. The facility may maintain a stock supply of non-prescription medications.

(e) The facility will provide and implement a policy and procedure which assures that all orders for prescription drugs are reviewed by a qualified health care professional, as specified by a physician or other qualified health care professional but not less often than every six months. Where this review identifies a contra-indication or other concern, the resident's primary physician, LMP or other primary health care professional will be immediately notified. Each client receiving psychotropic medications will be evaluated at least every three months by the LMP prescribing the medication, who will note, for the resident's record, the results of the evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects (including any signs of tardive dyskinesia, contraindications or possible allergic reactions), and what to do in case of a missed dose or other dosing error.

(f) All unused, discontinued, outdated or recalled medications, and any medication containers with worn, illegible or missing labels will be disposed. The method of disposal will be safe, consistent with any applicable federal statutes, and designed to prevent diversion of these substances to persons for whom they were not prescribed. A written record of all disposals will be maintained and specify the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the staff person disposing the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal must be witnessed by a second staff person who documents their observation by signing the disposal record.

(g) All medications will be properly and securely stored in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy. Medications for all residents will be labeled. Medications requiring refrigeration must be stored in an enclosed locked container within the refrigerator. The facility will assure that residents have access to a locked, secure storage space for their self-administered medications. The facility will note in its written policy and procedures which persons have access to this locked storage and under what conditions.

(h) For all residents taking prescribed medication, staff will record in the medical record each type, date, time and dose of medication provided. All effects, adverse reactions and medications errors will be documented in the resident's record. All errors, adverse reactions or refusals of medication will be reported to the prescribing professional within 48 hours.

(i) P.r.n. medications and treatments will only be administered in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

(6) Delegation of Nursing Tasks. Nursing tasks may be delegated by a Registered Nurse to direct care staff within the limitations of their classification and only in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0185

### Civil Penalties

(1) Applicability of Long Term Care Statute. For purposes of imposing civil penalties, residential treatment facilities licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Sections of Rule Subject to Civil Penalties. Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

- (a) 309-035-0110 Licensing;
- (b) 309-035-0113 Contracts and Rates;
- (c) 309-035-0115 Administrative Management;
- (d) 309-035-0117 Records;
- (e) 309-035-0120 Staffing;
- (f) 309-035-0125 Facility Requirements;
- (g) 309-035-0130 Safety;
- (h) 309-035-0135 Sanitation;

(i) 309-035-0140 Resident Furnishings;

(j) 309-035-0145 Admission to Facility;

(k) 309-035-0150 Termination of Residency;

(l) 309-035-0155 Resident Rights;

(m) 309-035-0157 Grievances and Appeals;

(n) 309-035-0159 Resident Assessment and Residential Service Plan;

(o) 309-035-0165 Resident Services and Activities;

(p) 309-035-0167 Use of Seclusion or Restraints;

(q) 309-035-0170 Food Services; and

(r) 309-035-0175 Health Services.

(3) Assessment of Civil Penalties. Civil penalties will be assessed in accordance with the following guidelines:

(a) Civil penalties, not to exceed \$250 per violation to a maximum of \$1,000, may be assessed for general violations of these rules. Such penalties will be assessed after the procedures outlined in OAR 309-035-0110(8) have been implemented;

(b) A mandatory penalty up to \$500 will be assessed for falsifying resident or facility records or causing another to do so;

(c) A mandatory penalty of \$250 per occurrence will be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to \$1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Department may impose a penalty for any of the following:

(A) Operating the RTF without a license;

(B) Operating with more residents than the licensed capacity; and

(C) Retaliating or discriminating against a resident, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors will be taken into consideration:

(A) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules or orders pertaining to the facility;

(C) The economic and financial conditions of the person incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatens the health, safety or welfare of one or more residents; and

(E) The degree of harm caused to residents.

(4) Notification. Any civil penalty imposed under this section will become due and payable ten days after notice is received, unless a request for a hearing is filed. The notice will be delivered in person, or sent by registered or certified mail and will include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) Request for Hearing. The person to whom the notice is addressed will have ten days from the date of receipt of the notice to request a hearing. This request must be in writing and submitted to the Administrator of the Department. If the written request for a hearing is not received on time, the Department will issue a final order by default.

(6) Hearings. All hearings will be conducted pursuant to the applicable provisions of ORS 183.310 and 183.400 to 183.502, Administrative Procedure and Rules for Civil Penalties.

(7) Judgment. Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Department may also take action to revoke the license upon failure to comply with a final order.

(8) Judicial Review. Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(9) Disposition of Funds. All penalties recovered under ORS 443.790 to 443.815 will be paid into the State Treasury and credited to the General Fund.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

## 309-035-0190

### Criminal Penalties

(1) Specification of Criminal Penalty. Violation of any provision of ORS 443.400 through 443.455 is a Class B misdemeanor.

(2) Grounds for Law Suit. In addition, the Department may commence an action to enjoin operation of a residential treatment facility:



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(a) When a residential treatment facility is operated without a valid license; or

(b) When a residential treatment facility continues to operate after notice of revocation has been given and a reasonable time has been allowed for placement of residents in other facilities.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 9-1984(Temp), f. & ef. 12-10-84; MHD 9-1985, f. & ef. 6-7-85; MHD 4-1998, f. 5-21-98, cert. ef. 6-1-98; MHD 4-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.:** MHD 5-2005

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**Rules Amended:** 309-035-0250, 309-035-0260, 309-035-0270, 309-035-0280, 309-035-0290, 309-035-0300, 309-035-0310, 309-035-0320, 309-035-0330, 309-035-0340, 309-035-0350, 309-035-0360, 309-035-0370, 309-035-0380, 309-035-0390, 309-035-0400, 309-035-0410, 309-035-0420, 309-035-0430, 309-035-0440, 309-035-0450, 309-035-0460

**Subject:** The adopted and amended rules clarify, simplify, and update the rules for Residential Treatment Homes serving adult residents licensed by the Office of Mental Health and Addiction Services (OMHAS).

In addition:

1. OMHAS conformed the rule requirements to meet the standards set forth by the International Building and Universal Fire Code changes adopted on October 1, 2004.

2. OMHAS conformed the rule language and references to be consistent with proposed OAR 410-009-0050 through 410-009-0160 Abuse Reporting and Protective Services in Community Programs and Community Facilities.

3. OMHAS conformed the rule language and references to be consistent to OAR 410-007-0200 through 410-007-0380 Criminal History Check Rules.

4. OMHAS conformed the rule language to be consistent to the Secretary of State's Administrative Rule language and process.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 309-035-0250

### Purpose, Scope and Statutory Authority

(1) Purpose. These rules prescribe standards by which the Office of Mental Health and Addiction Services (OMHAS) approves residential treatment homes for adults with mental or emotional disorders. The standards promote the well-being, health and recovery of adults with mental or emotional disorders through the availability of a wide range of residential service options. They prescribe how services will be provided in safe, secure and homelike environments that recognize the dignity, individuality and right to self-determination of each resident.

(2) Scope. These rules apply to residential treatment homes for five or fewer residents.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0260

### Definitions

As used in these rules:

(1) "Abuse" means any intentional act or absence of action that is inconsistent with prescribed resident care and treatment including but not limited to:

(a) Any death by other than accidental or natural means or occurring in unusual circumstances;

(b) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury;

(c) Willful infliction of physical pain or injury, including, but not limited to, hitting, kicking, scratching, pinching or pushing;

(d) Sexual harassment or exploitation including, but not limited to, requests for sexual favors, other situations where the resident experiences unwelcome verbal or physical sexual contact, and any sexual contact between an owner, employee or other agent of the RTH and the resident whether consensual or not;

(e) Neglect that leads to physical harm or significant mental injury through withholding of services necessary to maintain health and well being;

(f) Denying meals, clothing or aids to physical functioning;

(g) Use of derogatory names or phrases, profanity, ridicule, harassment, coercion, threats, cursing or intimidation;

(h) Placing unreasonable restrictions on a resident's freedom of movement; and

(i) Financial exploitation which may include, but is not limited to unauthorized rate increases, borrowing money from residents, witnessing wills in which the program is beneficiary, adding program's name to the resident's personal property, inappropriately expending a resident's personal funds, commingling a resident's funds with program or other residents' funds, or the program becoming a resident's guardian or conservator.

(2) "Administrator" means the person designated by the licensee as responsible for the daily operation and maintenance of the RTH.

(3) "Adult" means an individual 18 years of age or older.

(4) "Aid to Physical Functioning" means any special equipment ordered for a resident by a Licensed Medical Professional or other qualified health care professional which maintains or enhances the resident's physical functioning.

(5) "Applicant" means the person(s) or entity that owns the business and is applying for the license.

(6) "Approved" means authorized or allowed by the Department.

(7) "Building Code" means the state building code as defined in ORS 455.010 and includes the Oregon Structural Specialty Code, One and Two Family Dwelling Code and other specialty codes adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(8) "Care" means services such as supervision; protection; assistance with activities of daily living such as bathing, dressing, grooming, or eating; management of money; transportation; recreation; and the providing of room and board.

(9) "Community Mental Health Program (CMHP)" means the organization of all or a portion of services for persons with mental or emotional disorders, and developmental disabilities operated by, or contractually affiliated with, a local mental health authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Office of Mental Health and Addiction Services Department.

(10) "Contract" means a formal written agreement between the community mental health program, Mental Health Organization or the Office of Mental Health and Addiction Services Department and a residential treatment home owner.

(11) "Crisis-Respite Services" means the provision of services to individuals for up to 30 days. Individuals receiving crisis-respite services are RTH residents.

(12) "DSM" means the "Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)" published by the American Psychiatric Association.

(13) "Department" means the Office of Mental Health and Addiction Services (OMHAS) of the Oregon Department of Human Services.

(14) "Direct Care Staff Person" means an employee responsible for providing services to residents.

(15) "Electrical Code" means the Uniform Building and Fire Codes adopted on October 1, 2004 by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(16) "Emergency Admission" means an admission to an RTH made on an urgent basis due to the pressing service needs of the individual.

(17) "Evacuation Capability" means the ability of occupants, including residents and staff as a group, to either evacuate the building or relocate from a point of occupancy to a point of safety as defined for SR Occupancies in the Uniform Building and Fire Codes adopted on October 1, 2004. The category of evacuation capability is determined by documented evacuation drill times or scores on the worksheet for rating residents in Group SR Occupancies in NFPA 101A. There are three categories of evacuation capability:

(a) Impractical (SR- 2): A group, even with staff assistance, that cannot reliably move to a point of safety in a timely manner, determined by an evacuation capability score of five or greater or with evacuation drill times in excess of 13 minutes.

(b) Slow (SR- 1) for more than 16 residents) and (SR-4 for 6 to 16 residents): A group that can move to a point of safety in a timely manner, determined by an evacuation capability score greater than 1.5 and less than five or with evacuation drill times over three minutes but not in excess of 13 minutes. SR-3 occupancies are those homes with five or fewer occupants having evacuation capabilities of impractical or slow with assistance.

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(c) Prompt: A group with an evacuation capability score of 1.5 or less or equivalent to that of the general population or with evacuation drill times of three minutes or less. OMHAS is authorized to determine evacuation capability for RTFs in accordance with the National Fire Protection Association (NFPA) 101A 2000 edition. Facilities that are determined to be "Prompt" may be used in Group R occupancies classified by the building official, in accordance with the building code.

(18) "Fire Code" means the Oregon Fire Code as adopted by the Office of State Fire Marshal and as amended by local jurisdictions.

(19) "Home" means the building and grounds where the residential treatment home program is operated.

(20) "Licensed Medical Professional (LMP)" means a person who meets the following minimum qualifications as documented by the Local Mental Health Authority (LMHA) or designee:

(a) Holds at least one of the following educational degrees and valid licensures:

- (A) Physician licensed to practice in the State of Oregon;
- (B) Nurse Practitioner licensed to practice in the State of Oregon; or
- (C) Physician's Assistant licensed to practice in the State of Oregon;

and

(b) Whose training, experience, and competence demonstrates the ability to conduct a Comprehensive Mental Health Assessment and provide medication management.

(21) "Licensee" means the person(s) or entity legally responsible for the operation of the RTH to which the Department has issued a license.

(22) "Local Mental Health Authority (LMHA)" means the county court or board of county commissioners of one or more counties who choose to operate a CMHP or MHO; or, if the county declines to operate or contract for all or part of a CMHP or MHO, the board of directors of a public or private corporation which contracts with OMHAS to operate a CMHP or MHO for that county.

(23) "Mechanical Code" means the Oregon Mechanical Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(24) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance either internally or externally by any person.

(25) "Mental or Emotional Disorder" means a primary Axis I or Axis II DSM diagnosis, other than mental retardation or a substance abuse disorder, that limits an individual's ability to perform activities of daily living.

(26) "Mental Health Assessment" means a determination by a Qualified Mental Health Professional of the client's need for mental health services. It involves collection and assessment of data pertinent to the client's mental health history and current mental health status obtained through interview, observation, testing, and review of previous treatment records. It concludes with determination of a DSM diagnosis or other justification of priority for mental health services, or a written statement that the person is not in need of community mental health services.

(27) "Mental Health Organization (MHO)" means an approved organization that provides most mental health services through a capitated payment mechanism under the Oregon Health Plan. MHOs can be fully capitated health plans, community mental health programs, private mental health organizations or combinations thereof.

(28) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions that are delegated by a registered nurse to a person other than a licensed nurse, which are governed by ORS Chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR Chapter 851.

(29) "Office of Mental Health and Addiction Services (OMHAS)" means the Department of Human Services (DHS) agency responsible for the administration of state mental health and addiction services in accordance with federal and state laws, rules and regulations. OMHAS may delegate a portion of this responsibility to the CMHPs and MHOs.

(30) "Owner" means the person(s) or entity legally responsible for the operation of the facility.

(31) "Plumbing Code" means the Oregon Plumbing Specialty Code adopted by the Building Codes Division of the Oregon Department of Consumer and Business Services.

(32) "P.r.n. (pro re nata) Medications and Treatments" means those medications and treatments that have been ordered to be given as needed.

(33) "Program" means the residential treatment home and may refer to the owner, staff, and/or services as applicable to the context.

(34) "Progress Notes" means the notations in the resident record documenting significant information concerning the resident and summarizing

progress made relevant to the objectives outlined in the residential service plan.

(35) "Protection" means the necessary actions taken by the program to prevent abuse or exploitation of the residents, to prevent self-destructive acts, and to safeguard residents, property, and funds.

(36) "Qualified Health Care Professional" means a health care professional licensed to practice in the state of Oregon who is approved to perform certain health care tasks referenced in the relevant section of these rules consistent with the scope of practice specified by the licensing board for the profession. In accordance with the referenced health care task, the qualified health care professional may include a physician, a physician's assistant, a nurse practitioner, a registered nurse, or a pharmacist.

(37) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other person meeting the following minimum qualifications as documented by the LMHA or designee:

- (a) Graduate degree in psychology;
- (b) Bachelor's degree in nursing and licensed by the State of Oregon;
- (c) Graduate degree in social work;
- (d) Graduate degree in behavioral science field;
- (e) Graduate degree in recreational, art, or music therapy; or
- (f) Bachelor's degree in occupational therapy and licensed by the State of Oregon; and

(g) Whose education and experience demonstrates the competencies to identify precipitating events; gather histories of mental and physical disabilities, alcohol and drug use, past mental health services and criminal justice contacts; assess family, social and work relationships; conduct a mental status examination; document a multiaxial DSM diagnosis; write and supervise a Treatment Plan; conduct a Comprehensive Mental Health Assessment; and provide individual, family, and/or group therapy within the scope of his or her practice.

(38) "Resident" means any adult residing in the RTH who receives services on a 24-hour basis, except as excluded under ORS 443.400(3).

(39) "Residential Service Plan" means an individualized, written plan outlining the care and treatment to be provided to a resident in or through the RTH based upon an individual assessment of care and treatment needs. The residential service plan may be a section or subcomponent of the individual's overall plan for mental health treatment when the RTH is operated by a mental health service agency that provides other services to the resident.

(40) "Residential Treatment Home (RTH)" means a home that is operated to provide services on a 24-hour basis for five or fewer residents.

(41) "Restraints" means any chemical or physical methods or devices that are intended to restrict or inhibit the movement, functioning, or behavior of a resident.

(42) "Seclusion" means placing an individual in a locked room. A locked room includes a room with any type of door locking device, such as a key lock, spring lock, bolt lock, foot pressure lock, or physically holding the door shut.

(43) "Secure Residential Treatment Facility" means any residential treatment facility, or portion thereof, that restricts a resident's exit from the facility or its grounds through the use of approved locking devices on resident exit doors, gates or other closures.

(44) "Services" means the care and treatment provided to residents as part of the RTH program.

(45) "Supervision" means the daily observation, and monitoring of residents by direct care staff or oversight of staff by the administrator or administrator's designee, as applicable to the context.

(46) "Termination of Residency" means the time at which the resident ceases to live in the RTH and includes the transfer of the resident to another facility, but does not include absences from the RTH for the purpose of taking a planned vacation, visiting family or friends, or receiving time-limited medical or psychiatric treatment.

(47) "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities consistent with ORS 443.400(12).

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0270

#### Licensing

(1) License Required. The Department will license any home that meets the definition of a residential treatment home and serves adults with a mental or emotional disorder. In the case of a home serving another category of residents in addition to adults with a mental or emotional disorder, the Department responsible for licensure will be determined by the Director

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of the Department of Human Services. No person or governmental unit acting individually or jointly with any other person or governmental unit will establish, maintain, manage, or operate a residential treatment home without a license issued by the Department.

(2) Initial Application. An application for a license will be accompanied by the required fee and submitted to the Department using the forms or format required by the Department. The following information will be required in the application:

(a) Full and complete information as to the identity and financial interest of each person, including stockholders, having a direct or indirect ownership interest of five percent or more in the RTH and all officers and directors in the case of RTHs operated or owned by a corporation.

(b) Location (street address) of the home and mailing address;

(c) Maximum number of residents to be served at any one time, their age range and evacuation capability;

(d) Proposed annual budget identifying sources of revenue and expenses;

(e) Signed criminal record authorizations for all persons involved in the operation of the RTH who will have contact with the residents;

(f) A complete set of policies and procedures;

(g) Facility plans and specifications; and

(h) Such other information as the Department may reasonably require.

(3) Plans and Design Approval. A complete set of plans and specifications will be submitted to the Department at the time of initial application, whenever a new structure or addition to an existing structure is proposed, or when significant alterations to an existing facility are proposed. Plans will meet the following criteria:

(a) Plans will be prepared in accordance with the Building Code and requirements of OAR 309-035-0320;

(b) Plans will be to scale and sufficiently complete to allow full review for compliance with these rules; and

(c) Plans will be to scale and carry the stamp of an Oregon licensed architect or engineer when required by the Building Code and ORS Chapters 671 and 672 (laws relating to the practice of architecture and engineering).

(4) Necessary Approvals. Prior to approval of a license for a new or renovated home, the applicant will submit the following to the Department:

(a) One copy of written approval to occupy the home issued by the city, county or state building codes authority having jurisdiction;

(b) One copy of the fire inspection report from the State Fire Marshal or local jurisdiction indicating that the home complies with the Fire Code;

(c) When the home is not served by an approved municipal water system, one copy of the documentation indicating that the state or county health agency having jurisdiction has approved the water supply in accordance with OAR Chapter 333, Health Services rules for public water systems.

(d) When the home is not connected to an approved municipal sewer system, one copy of the sewer or septic system approval from the Department of Environmental Quality or local jurisdiction.

(5) Required Fees. The fee for each residential treatment home license application is \$30. No fee is required in the case of a governmentally operated residential treatment home.

(6) Renewal Application. A license is renewable upon submission of a renewal application in the form or format required by the Department and a non-refundable fee of \$30, except that no fee will be required of a governmentally operated RTH. Filing of an application for renewal before the date of expiration extends the effective date of the current license until the Department takes action upon the renewal application.

(7) Review Process. Upon receipt of an application and fee, the Department will conduct an application review. Initial action by the Department on the application will begin within 30 days of receipt of all application materials. The review will:

(a) Include a complete review of application materials;

(b) Determine whether the applicant meets the qualifications outlined in ORS 443.420 including:

(A) Demonstrates an understanding and acceptance of these rules;

(B) Is mentally and physically capable of providing services for residents;

(C) Employs or utilizes only individuals whose presence does not jeopardize the health, safety, or welfare of residents; and

(D) Provides evidence satisfactory to the Department of financial ability to comply with these rules.

(c) Include a site inspection; and

(d) Conclude with a report stating findings and a decision on licensing of the RTH.

(8) Findings of Noncompliance. The Department will require an owner to submit and complete a plan of correction for each finding of noncompliance with these rules.

(a) If the finding(s) of noncompliance substantially impacts the welfare, health and/or safety of residents, the plan of correction will be submitted and completed prior to issuance of a license. In the case of a currently operating RTH, such findings may result in suspension or revocation of a license.

(b) If it is determined that the finding(s) of noncompliance do not threaten the welfare, health or safety of residents and the facility meets other requirements of licensing, a license may be issued or renewed, and the plan of correction will be submitted and completed as a condition of licensing.

(c) The Department will specify required documentation and set the time lines for the submission and completion of plans of correction in accordance with the severity of the finding(s).

(d) The Department will review and approve each plan of correction. If the plan of correction does not adequately remedy the finding of noncompliance, the Department may require a revised plan of correction.

(e) The RTH owner may appeal the finding of noncompliance or the disapproval of a plan of correction by submitting a request for reconsideration in writing to the Administrator of the Department. The Administrator of the Department or designee will make a decision on the appeal within 30 days of receipt of the appeal.

(9) Variance. The Department may grant a variance to these rules based upon a demonstration by the applicant that an alternative method or different approach provides equal or greater program effectiveness and does not adversely impact the welfare, health or safety of residents.

(a) Variance Application. The RTH owner requesting a variance will submit, in writing, an application to the Department which identifies the section of the rules from which the variance is sought, the reason for the proposed variance, the proposed alternative method or different approach, and signed documentation from the CMHP indicating approval of the proposed variance.

(b) Office of Mental Health and Addiction Services Review. The Assistant Administrator for the Department's Office of Mental Health and Addiction Services, or designee, will review and approve or deny the request for a variance.

(c) Notification of Decision. The Department will notify the RTH owner of the decision in writing within 30 days after receipt of the application. A variance may be implemented only after receipt of written approval from the Department.

(d) Appeal of Decision. The RTH owner may appeal the denial of a variance request by submitting a request for reconsideration in writing to the Administrator of the Department. The Administrator of the Department will make a decision on the appeal within 30 days of receipt of the appeal. The decision of the Administrator of the Department will be final.

(e) Duration of the Variance. A variance will be reviewed by the Department at least every two years and may be revoked or suspended based upon a finding that the variance adversely impacts the welfare, health or safety of the RTH residents.

(10) Issuance of License. Upon finding that the applicant is in substantial compliance with these rules, the Department will issue a license.

(a) The license issued will state the name of the owner of the RTH, the name of the administrator, the address of the home to which the license applies, the maximum number of residents to be served at any one time and their evacuation capability, the type of home, and such other information as the Department deems necessary.

(b) A residential treatment home license will be effective for two years from the date issued unless sooner revoked or suspended.

(c) The residential treatment home license is not transferable or applicable to any location, facility, or management other than that indicated on the application and license.

(11) Conditions of License. The license will be valid under the following conditions:

(a) The residential treatment home will not be operated or maintained in combination with a nursing facility, hospital, retirement facility, or other occupancy unless licensed, maintained, and operated as a separate and distinct part. Each residential treatment home will have sleeping, dining and living areas for use only by its own residents, employees and invited guests.

(b) The license will be retained in the home and available for inspection at all times.

(c) Each license will be considered void immediately upon suspension or revocation of the license by the Department, or if the operation is



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discontinued by voluntary action of the licensee, or if there is a change of ownership.

(12) Site Inspections. Department staff will visit and inspect every residential treatment home at least, but not limited to, once every two years to determine whether it is maintained and operated in accordance with these rules. The RTH owner/applicant will allow Department staff entry and access to the home and residents for the purpose of conducting the inspections.

(a) Department staff will review methods of resident care and treatment, records, the condition of the facility and equipment, and other areas of operation.

(b) All records, unless specifically excluded by law, will be available to the Department for review.

(c) The State Fire Marshal or authorized representative(s) will, upon request, be permitted access to the home, fire safety equipment within the home, safety policies and procedures, maintenance records of fire protection equipment and systems, and records demonstrating the evacuation capability of RTH occupants.

(13) Investigation of Complaints and Alleged Abuse. Incidents of alleged abuse covered by ORS 430.735 through 430.765 will be reported and investigated in accordance with OAR 410-009-0050 through 410-009-0160. Department staff will investigate complaints and other alleged abuse made regarding residential treatment homes, will cause a report to be filed, and will take appropriate action under these rules. The Department may delegate the investigation to a CMHP or other appropriate entity.

(14) Denial, Suspension or Revocation of License. The Department will deny, suspend or revoke a license when it finds there has been substantial failure to comply with these rules; or when the State Fire Marshal or authorized representative certifies that there is a failure to comply with the Fire Code or Building Code.

(a) The Department may immediately suspend a license where there exists an imminent danger to the health or safety of residents.

(A) The Department will provide written notice of the suspension to the licensee citing the violation and stating the corrective action necessary in order for the license to be re-instated.

(B) The licensee may request a review of the decision to immediately suspend a license by submitting a request, in writing, within 10 days of the suspension notice. Within 10 days of receipt of the licensee's request for a review, the Department administrator or designee will review all material relating to the suspension and determine whether to sustain the decision. If the administrator does not sustain the decision, the suspension will be rescinded immediately. The decision of the administrator can be appealed within 90 days as a contested case under ORS 183.310 and 183.400 to 183.502.

(b) The Department will take action to deny or revoke a license in accordance with the following procedures:

(A) The Department will provide written notice of the denial or revocation citing the violation(s), and specifying the effective date (in the case of a currently operating RTH).

(B) The licensee will be entitled to a contested case hearing under ORS 183.310 and 183.400 to 183.502 prior to the effective date of revocation or denial if the licensee requests a hearing in writing, within 21 days after receipt of the written notice. If no such request is received, the decision will be sustained.

(C) A license subject to revocation or denial based upon review of a renewal application, will remain valid during an administrative hearings process, unless suspended, even if the hearing and final order are not issued until after the expiration date of the license.

(D) If an initial license is denied, the applicant will be entitled to a contested case hearing under ORS 183.310 and 183.400 to 183.502 if the applicant requests a hearing in writing within 60 days of receipt of the denial notice. If no such request is received, the decision to deny the license application will be sustained.

(i) In cases where there exists an imminent danger to the health or safety of residents, a license may be suspended immediately.

(ii) Such revocation, suspension, or denial will be done in accordance with rules of the Department under ORS Chapter 183.

(15) Reporting Changes. Each licensee will report promptly to the Department any significant changes to information supplied in the application or subsequent correspondence. Such changes include, but are not limited to, changes in the RTH name, owner entity, administrator, telephone number and mailing address. Such changes also include, but are not limited to, changes in the RTHs physical plant, policies and procedures or staffing pattern when such changes are significant or impact the health, safety or well-being of residents.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0280

### Contracts and Rates

(1) Contracts. Residential treatment home operators providing services funded by the Department will enter into a contract with the local community mental health program, the Department or other Department-approved entity. The contract does not guarantee that any number of persons eligible for Department funded services will be referred to or maintained in the home.

(2) Rates. Rates for all services and the procedures for collecting payments from residents and/or payees will be specified in a fee policy and procedures. The fee policy and procedures will describe the schedule of rates, conditions under which rates may be changed, acceptable methods of payment, and the policy on refunds at the time of termination of residency.

(a) For residents whose services are funded by the Department, reimbursement for services will be made according to the rate schedule outlined in the contract. Room and board payments for residents receiving Social Security benefits or public assistance will be in accordance with and not more than rates determined by the Department.

(b) For private paying residents, the program will enter into a signed agreement with the resident, and/or if applicable, resident's guardian, payee or conservator. This agreement will include but not be limited to a description of the services to be provided; the schedule of rates; conditions under which the rates may be changed; and policy on refunds at the time of termination of residency.

(c) Before an RTH increases rates or modifies payment procedures, the program will provide 30 days advance notice of the change to all residents, and their payees, guardians or conservators, as applicable.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0290

### Administrative Management

(1) Licensee. The licensee will be responsible for insuring that the RTH is operated in compliance with these rules and all other applicable federal, state and local laws and regulations.

(2) Administrator. The licensee will employ an administrator who:

(a) Has background including special training, experience, and other demonstrated ability in providing care and treatment appropriate to the residents served in the facility;

(b) Has a documented criminal record clearance and no history of abusive behavior;

(c) Will ensure that the RTH operates in accordance with the standards outlined in these rules;

(d) Will oversee the daily operation and maintenance of the RTH and will be available to perform administrative duties at the RTH at least 20 hours per week at the RTH or provide an administrative plan which documents an equivalent level of available supervision.

(e) Will develop and administer written policies and procedures to direct the operation of the RTH and the provision of services to residents;

(f) Will ensure that qualified staff are available, in accordance with the staffing requirements specified in these rules;

(g) Will supervise or provide for the supervision of staff and others involved in the operation of the program;

(h) Will maintain program, personnel and resident records;

(i) Will report regularly to the licensee on the operation of the RTH; and

(j) Will delegate authority and responsibility for the operation and maintenance of the facility to a responsible staff person whenever the Administrator is absent from the RTH. This authority and responsibility will not be delegated to a resident.

(3) Policies and Procedures. Policies and procedures will be developed, updated as necessary, maintained in a location easily accessible for staff reference, and made available to others upon reasonable request. They will be consistent with requirements of these rules, and address, but not be limited to:

(a) Personnel practices and staff training;

(b) Resident selection, admission and termination;

(c) Fire drills, emergency procedures, resident safety and abuse reporting;

(d) Health and sanitation;

(e) Records;

(f) Residential service plan, services and activities;

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- (g) Behavior management, including prohibition of the use of seclusion or restraints;
- (h) Food Service;
- (i) Medication administration and storage;
- (j) Resident belongings, storage and funds;
- (k) Resident rights and advance directives;
- (l) Complaints and grievances;
- (m) Facility maintenance;
- (n) Evacuation capability determination; and
- (o) Fees and money management.

(4) House Rules. The RTH will develop reasonable house rules outlining operating protocols concerning, but not limited to, meal times, nighttime quiet hours, guest policies, smoking and phone use. The house rules will be consistent with resident rights as delineated in OAR 309-035-0380 and are subject to approval by the Department. House rules will be posted in an area readily accessible to residents. House rules will be reviewed and updated, as necessary. Residents will be provided an opportunity to review and provide input into any proposed changes to house rules before the revisions become effective.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0300

### Records

(1) General Requirements. Records will be maintained to document the legal operation of the program, personnel practices and resident services. All records will be properly obtained, accurately prepared, safely stored and readily available within the RTH. All entries in records required by these rules will be in ink, indelible pencil, or approved electronic equivalent and prepared at the time, or immediately following, the occurrence of the event being recorded; be legible; and be dated and signed by the person making the entry. In the case of electronic records, signatures may be replaced by an approved, uniquely identifiable electronic equivalent.

(2) Program Records. Records documenting the legal operation of the RTH will include, but not be limited to:

(a) Written approval for occupancy of the building by the county or city having jurisdiction, any building inspection reports, zoning verifications, fire inspection reports or other documentation pertaining to the safe and sanitary operation of the RTH;

(b) Application for license, related correspondence and site inspection reports;

(c) Program operating budget and related financial records;

(d) Payroll records, employee schedules and time sheets;

(e) Materials Safety and Data Sheets;

(f) Fire drill documentation;

(g) Fire alarm and sprinkler system maintenance and testing records;

(h) Incident reports; and

(i) Policy and procedure manual.

(3) Personnel Records. Records documenting personnel actions will include:

(a) Job descriptions for all positions; and

(b) Individual employee records including, but not limited to, written documentation of employee identifying information and qualifications, criminal record clearance, tuberculosis test results, Hepatitis B vaccinations in accordance with the Oregon Occupational Safety and Health Code, performance appraisals, and documentation of pre-service orientation and other training.

(4) Resident Records. Except as indicated in OAR 309-035-0300(5), an individual resident record will be maintained for each resident and include:

(a) An easily accessible summary sheet which includes, but is not limited to the resident's name, previous address, date of admission to the facility, sex, date of birth, marital status, legal status, religious preference, Social Security number, health provider information, evacuation capability, diagnosis(es), major health concerns, medication allergies, information indicating whether advance mental health and health directives and/or burial plan have been executed, and the name of person(s) to contact in case of emergency;

(b) The names, addresses and telephone numbers of the resident's legal guardian or conservator, parent(s), next of kin, or other significant person(s); physician(s) or other medical practitioner(s); dentist; CMHP case manager or therapist; day program, school or employer; and any governmental or other agency representative(s) providing services to the resident;

(c) A mental health assessment and background information identifying the resident's residential service needs;

(d) Advance mental health and health directives, burial plans or location of these (as available);

(e) Residential service plan and copy(ies) of plan(s) from other relevant service provider(s).

(f) Documentation of the resident's progress and any other significant information including, but not limited to, progress notes, progress summaries, any use of seclusion or restraints, and correspondence concerning the resident;

(g) Health-related information and up-to-date information on medications in accordance with OAR 309-035-0440;

(h) Any authorizations obtained for the release of confidential information.

(5) Records for Crisis-respite Residents. For residents receiving crisis-respite services, an individual resident record will be maintained for each resident and include:

(a) A referral form or forms which include the resident's name; previous address; date of admission; sex; date of birth; marital status; social security number; health care provider names and phone numbers (including primary care physician, psychiatrist, prescriber (if different), and any other known health care providers); health insurance information; entitlements and/or eligibility; source and amount of income; diagnosis(es); major health concerns; current medications; medication or other allergies; name(s) of person(s) to contact in case of emergency; name, address and phone number of guardian or conservator (as applicable); and other information pertinent to the resident's crisis-respite stay;

(b) A mental health assessment and plan which include the reason for placement in crisis-respite care, the nature of crisis necessitating placement, an evaluation of risk for harm to self or others, the residential treatment plan for the crisis-respite stay, the expected duration of the crisis-respite placement, and the discharge plan;

(c) Current written orders by a qualified health care professional for all medications and a plan for obtaining any prescribed medications which are not in the resident's possession in original labeled containers;

(d) A signed resident agreement indicating informed consent for treatment; and

(e) Any authorizations obtained for the release of confidential information.

(6) Storage. All resident records will be stored in a weatherproof and secure location. Access to records will be limited to the Administrator and direct care staff unless otherwise allowed in these rules.

(7) Confidentiality. All resident records will be kept confidential. A signed release of information will be obtained for any disclosure from resident records in accordance with all applicable laws and rules.

(8) Resident Access to His/Her Record. A resident, or guardian (as applicable), will be allowed to review and obtain a copy of his/her resident record as allowed in ORS 179.505(9).

(9) Transfer of Records. Pertinent information from records of residents who are being transferred to another program will be transferred with the resident. A signed release of information will be obtained in accordance with applicable laws and rules.

(10) Maintenance of Records. The RTH will keep all records, except those transferred with a resident, for a period of three years.

(11) Administrative Changes. If an RTH changes ownership or Administrator, all resident and personnel records will remain in the home. Prior to the dissolution of any RTH, the Administrator will notify the Department in writing as to the location and storage of resident records or those records will be transferred with the residents.

(12) Resident Contributions to Record. If a resident or guardian (as applicable) disagrees with the content of the resident record, or otherwise desires to provide documentation for the record, the resident or guardian (as applicable) may provide material in writing that then will become part of the resident record.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0310

### Staffing

(1) Staff Qualifications. A job description will be available for each staff position and specify qualifications and job duties.

(a) Any staff person hired to provide direct care to residents will be at least 18 years of age, be capable of implementing the RTHs emergency procedures and disaster plan, and be capable of performing other duties of the job as described in the job description.

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(b) In accordance with OAR 410-007-0200 through 410-007-0380, all RTH staff who will have contact with residents will provide evidence of a criminal record clearance prior to starting employment.

(c) In accordance with OAR 333-071-0057 and 437, Division 2, Subdivision Z, 4f(1)(2), all RTH staff who will have contact with residents will be tested for tuberculosis and Hepatitis B within two weeks of first employment; additional testing will take place as deemed necessary; and the employment of staff who test positive for tuberculosis will be restricted if necessary.

(d) In accordance with the Oregon Occupational Safety and Health Code, chapter 437, division 2, Subdivision Z, Hepatitis B vaccinations will be offered within ten working days of initial employment to RTH staff who will have contact with residents. Training about bloodborne pathogens and related safety practices will be completed prior to offering the vaccination.

(e) All staff will meet other qualifications when required by a contract or financing arrangement approved by the Department.

(2) Personnel Policies. Personnel policies will be made available to all staff and will describe hiring, leave, promotion and disciplinary practices.

(3) Staff Training. The administrator will provide or arrange a minimum of 16 hours pre-service orientation and eight hours in-service training annually for each employee.

(a) Pre-service training for direct care staff will include, but not be limited to, a comprehensive tour of the home; a review of emergency procedures developed in accordance with OAR 309-035-0330; a review of RTH house rules, policies and procedures; background on mental and emotional disorders; an overview of resident rights; assessment of resident risk factors; medication management procedures; food service arrangements; a summary of each resident's assessment and residential service plan; and other information relevant to the job description and scheduled shift(s).

(b) In-service training will be provided on topics relevant to improving the care and treatment of residents in the RTH and meeting the requirements in these administrative rules. In-service training topics include, but are not limited to, implementing the residential service plan, behavior management, daily living skills development, nutrition, first aid, understanding mental illness, sanitary food handling, resident rights, identifying health care needs, and psychotropic medications.

(4) General Staffing Requirements. The licensee and administrator are responsible for assuring that an adequate number of staff are available at all times to meet the treatment, health and safety needs of residents. Regardless of the minimum staffing requirements, staff will be scheduled to ensure safety and to correspond to the changing needs of residents. At a minimum, there will be at least one direct care staff person on duty at all times.

(a) In the case of a specialized RTH, staffing requirements outlined in the contractual agreement for specialized services will be implemented.

(b) Direct care staff on night duty will be awake and dressed at all times. In homes where residents are housed in two or more detached buildings, direct care staff will monitor each building at least once an hour during the night shift. An approved method for alerting staff to problems will be in place. This method must be accessible to and usable by the residents.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0320

#### Physical Environment Requirements

(1) Compliance with Building and Fire Codes. Each residential treatment home established on or after December 1, 1999, will meet the requirements for approved Group SR occupancies in the Building Code and the Fire Code in effect at the time of licensure. RTHs licensed as adult foster homes by the Department before the effective date of these rules will demonstrate that the home was in compliance with the Building Code and Fire Code in effect at the time of the original Department licensure. When renovation or a change in the home's use results in a new building occupancy classification, the home will meet the requirements for approved Group SR occupancies in the Building Code in effect at the time of such change.

(2) Accessibility for Persons with Disabilities. RTHs will be accessible as follows:

(a) Those homes that are licensed, constructed or renovated after January 26, 1992, and that are covered multi-family dwellings or public accommodations, will meet the physical accessibility requirements in Chapter 11 of the Oregon Structural Specialty Code. This code specifies requirements for public accommodations as defined in the Americans with Disabilities Act under Title III and for buildings qualifying as multi-family dwellings as defined in the Fair Housing Act, as amended in 1988.

(b) In order to ensure program accessibility under Title II of the Americans with Disabilities Act, the Department may require additional accessibility improvements.

(c) Any accessibility improvements made to accommodate an identified resident will be in accordance with the specific needs of the resident and will comply with the Building Code.

(3) Outdoor Areas. An accessible outdoor area is required and will be made available to all residents. For RTHs licensed on or after December 1, 1999, a portion of the accessible outdoor area will be covered and have an all weather surface, such as a patio or deck.

(4) General Storage. The home will include sufficient and safe storage areas. These will include but not be limited to:

(a) Storage for a reasonable amount of resident belongings beyond that available in resident sleeping rooms will be provided. For homes licensed on or after December 1, 1999, this storage will include 24 cubic feet per resident.

(b) All maintenance equipment stored on site, including yard maintenance tools, will be maintained in adequate storage space. Equipment and tools which pose a danger to RTH residents will be kept in locked storage.

(c) Storage areas necessary to ensure a functional, safe and sanitary environment consistent with OAR 309-035-0320, 309-035-0330, 309-035-0340, 309-035-0350, 309-035-0430, and 309-035-0440.

(5) Hallways. For RTHs initially licensed on or after December 1, 1999, all resident use areas and resident units will be accessible through temperature controlled common areas or hallways with a minimum width of 36 inches.

(6) Administrative Areas. Sufficient space will be provided for confidential storage of both resident and business records, for staff use in completing record-keeping tasks, and for a telephone. Other equipment including fire alarm panels and other annunciators will be installed in an area readily accessible to staff in accordance with the Fire Code.

(7) Resident Sleeping Rooms. Resident sleeping quarters will be provided in rooms separated from other areas of the facility by an operable door with an approved latching device.

(a) For homes licensed prior to December 1, 1999, resident sleeping rooms will include a minimum of 60 square feet per resident and allow for a minimum of three feet between beds.

(b) For homes initially licensed on or after December 1, 1999, each resident sleeping room will be limited to one or two residents. At least ten per cent, but no less than one, of the resident sleeping rooms will be accessible for persons with mobility disabilities. All resident sleeping rooms will include a minimum of 70 square feet per resident exclusive of closets, vestibules and bathroom facilities and allow a minimum of three feet between beds.

(c) A clothes closet, with adequate clothes hanging rods will be accessible within each sleeping room for storage of each resident's clothing and personal belongings. For homes initially licensed on or after December 1, 1999, built-in closet space will be provided totaling a minimum of 64 cubic feet for each resident. In accessible sleeping rooms, the clothes hanging rod height will be adjustable or no more than 54 inches in height to ensure accessibility for persons in wheelchairs.

(d) Each resident sleeping room will have exterior window(s) with a combined area at least one-tenth of the floor area of the room. Sleeping room windows will be equipped with curtains or blinds for privacy and control of light. For homes initially licensed on or after December 1, 1999, an operable, opening window for emergency egress will be provided consistent with Building Code requirements.

(e) When locking devices are used on resident sleeping room doors, they will meet the requirements of the Building Code.

(8) Bathrooms.

(a) Bathing and toilet facilities will be conveniently located for resident use, provide permanently wired light fixtures that illuminate all parts of the room, provide individual privacy for residents, provide a securely affixed mirror at eye level, be adequately ventilated by a mechanical exhaust system or operable windows, and include sufficient facilities specially equipped for use by persons with a physical disability in buildings serving such persons.

(b) A minimum of one toilet, one lavatory and one bathtub or shower will be available for residents.

(9) Common Use Rooms. The home will include lounge and activity area(s), such as a living room or parlor, as required in the Building Code or totaling 25 square feet per resident, whichever is greater, for social and recreational use exclusively by residents, staff and invited guests.

(10) Laundry and Related Space. Laundry facilities will be separate from food preparation and other resident use areas. When residential laun-



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dry equipment is installed, the laundry facilities may be located to allow for both resident and staff use. The following will be included in the laundry facilities:

(a) Countertops or folding table(s) sufficient to handle laundry needs for the facility;

(b) Locked storage for chemicals and equipment;

(c) Outlets, venting and water hook-ups according to state building code requirements. Washers will have a minimum rinse temperature of 140 degrees Fahrenheit; and

(d) Sufficient, separate storage and handling space to ensure that clean laundry is not contaminated by soiled laundry.

(11) Kitchen. Kitchen facilities and equipment will be of residential type except as otherwise approved by the Department. For all kitchens, the following will be included:

(a) Dry storage space, not subject to freezing, in cabinets or a separate pantry for a minimum of one week's supply of staple foods;

(b) Sufficient refrigeration space maintained at 45 degrees Fahrenheit or less and freezer space for a minimum of two days' supply of perishable foods;

(c) A dishwasher (may be approved residential type) with a minimum final rinse temperature of 140 degrees Fahrenheit;

(d) Smooth, nonabsorbent and cleanable counters for food preparation and serving;

(e) Appropriate storage for dishes and cooking utensils designed to be free from potential contamination;

(f) Stove and oven equipment for cooking and baking needs; and

(g) Storage for a mop and other cleaning tools and supplies used for food preparation, dining and adjacent areas. Such cleaning tools will be maintained separately from those used to clean other parts of the facility.

(12) Dining Area.

(a) A separate dining room or area where meals are served will be provided for the exclusive use of residents, employees, and invited guests.

(b) Dining space will be provided to seat all residents with a minimum area of 20 square feet per resident, exclusive of serving facilities and required exit pathways.

(13) Details and Finishes. All details and finishes will meet the finish requirements of applicable sections of the Building Code and the Fire Code.

(a) Surfaces. Surfaces of all walls, ceilings, windows and equipment will be readily cleanable. The walls, floors and ceilings in the kitchen, laundry and bathing areas will be nonabsorbent, and readily cleanable.

(b) Flooring. In homes initially licensed on or after December 1, 1999, flooring, thresholds and floor junctures will be designed and installed to prevent a tripping hazard. In addition, hard surface floors and base will be free from cracks and breaks, and bathing areas will have non-slip surfaces.

(c) Doors. In homes initially licensed on or after December 1, 1999, all doors to accessible resident sleeping rooms, bathrooms and common use areas will provide a minimum clear opening of 32 inches. Lever type door hardware will be provided on all doors used by residents in accessible areas. If locks are used on doors to resident sleeping rooms, they will be interactive to release with operation of the inside door handle and be master-keyed from the corridor side. Exit doors will not include locks which prevent evacuation. An exterior door alarm or other acceptable system may be provided for security purposes and to alert staff when resident(s) or others enter or exit the home.

(d) Handrails. Handrails will be provided on all stairways as specified in the Building Code.

(14) Heating and Ventilating. All areas of the home will be adequately ventilated and temperature controlled consistent with Mechanical and Building Code requirements in effect at the time of installation.

(a) Temperature Control. All habitable rooms will include heating equipment capable of maintaining a minimum temperature of 68 degrees Fahrenheit at a point three feet above the floor. During times of extreme summer heat, fans will be made available when air conditioning is not provided.

(b) Exhaust Systems. All toilet and shower rooms will be ventilated by a mechanical exhaust system or operable windows.

(c) Fireplaces, Furnaces, Wood Stoves and Boilers. Where used, design and installation will meet standards of the Mechanical Code and the Boiler and Pressure Vessel Law in effect at the time of their installation, as applicable.

(d) Water Temperature. In resident areas, hot water temperatures will be maintained within a range of 110 to 120 degrees Fahrenheit. Hot water temperatures for washing machines and dishwashers will be at least 140 degrees Fahrenheit.

(15) Electrical. All electrical systems will meet the standards of the Electrical Code in effect on the date of installation, and all electrical devices will be properly wired and in good repair.

(a) When not fully grounded, circuits in resident areas may be protected by GFCI type receptacles or circuit breakers as an acceptable alternative.

(b) All electrical circuits will be protected by circuit breakers or non-interchangeable circuit-breaker-type fuses in fuse boxes.

(c) A sufficient supply of electrical outlets will be provided to meet resident and staff needs without the use of extension cords or outlet expander devices. (See Office of State Fire Marshal and Department of Health Services policy for extension cords.)

(d) Lighting fixtures will be provided in each resident bedroom and bathroom, switchable near the entry door, and in other areas as required to meet task illumination needs.

(16) Plumbing. All plumbing will meet the Plumbing Code in effect on the date of installation, and all plumbing fixtures will be properly installed and in good repair.

(17) Telephones. The home will provide adequate access to telephones for private use by residents. In homes initially licensed on or after December 1, 1999, a phone for resident use will be provided in addition to the phone used by staff. The RTH may establish reasonable house rules governing phone use to ensure equal access by all residents. Each resident or guardian (as applicable) will be responsible for payment of long distance phone bills where the calls were initiated by the resident, unless other mutually agreed arrangements have been made.

(18) Smoking. Smoking is not allowed in sleeping areas. If there is a designated smoking area, it will be separated from other common areas. Indoor smoking areas will be equipped with a mechanical exhaust fan or central exhaust system which discharges to the outside. Furniture used in designated smoking areas will be non-flammable and without crevasses. In homes initially licensed on or after December 1, 1999, indoor smoking areas will be separated from other parts of the home by a self-closing door, contain sprinkler protection or heat detectors, and contain only non-combustible furnishings and materials.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0330

#### Safety

(1) Training on Safety Procedures. All staff will be trained in staff safety procedures prior to beginning their first regular shift. All residents will be trained in resident safety procedures as soon as possible during their first 72 hours of residency.

(2) Emergency Procedure and Disaster Plan. A written procedure and disaster plan will be developed to cover such emergencies and disasters as fires, explosions, missing persons, accidents, earthquakes and floods. The plan will be posted by the phone and immediately available to the administrator and employees. The plan will specify where staff and residents will go if the home becomes uninhabitable. The plan will be kept up to date and will include:

(a) Emergency instructions for employees;

(b) The telephone numbers of the local fire department, police department, the poison control center, the administrator, the administrator's designee, and other persons to be contacted in emergencies; and

(c) Instructions for the evacuation of residents and employees.

(3) Combustible and Hazardous Materials. Noncombustible and non-hazardous materials will be used whenever possible. When necessary to the operation of the home, flammable and combustible liquids and other hazardous materials will be safely and properly stored in clearly labeled, original containers in areas inaccessible to residents in accordance with the Fire Code. Any quantities of combustible and hazardous materials maintained will be the minimum necessary.

(4) Poisonous and Other Toxic Materials. Non-toxic cleaning supplies will be used whenever available. Poisonous and other toxic materials will be properly labeled and stored in locked areas distinct and apart from all food and medications.

(5) Evacuation Capability. Evacuation capability categories are based upon the ability of the residents and staff as a group to evacuate the home or relocate from a point of occupancy to a point of safety. Homes will be constructed and equipped according to the Building Code occupancy classification for the designated evacuation capability for occupants. Occupancy classification categories of evacuation capability include "Impractical" and "Slow" (SR-3). "Prompt" homes are regulated by the building and fire codes as R-3 occupancies. The evacuation capability des-

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igned for the facility will be documented and maintained in accordance with requirements for Group SR Occupancies in the Building Code.

(a) Only persons assessed to be capable of evacuating in accordance with the designated facility evacuation capability will be admitted to the RTH.

(b) Persons experiencing difficulty with evacuating in a timely manner will be provided assistance from staff and offered environmental and other accommodations, as practical. Under such circumstances, the RTH will consider increasing staff levels, changing staff assignments, offering to change the resident's room assignment, arranging for special equipment, and taking other actions that may assist the resident. Residents who still cannot evacuate the home safely in the allowable period of time will be assisted with transferring to another program with an evacuation capability designation consistent with the individual's documented evacuation capability.

(6) Evacuation Drills. Every resident will participate in an unannounced evacuation drill each month. (See Section 408.12.5 of the Fire Code.)

(a) At least once every three months, the drill will be conducted during resident sleeping hours.

(b) Drills will be scheduled at different times of the day and on different days of the week with different locations designated as the origin of the fire for drill purposes.

(c) Any resident failing to evacuate within the established time limits will be provided with special assistance and a notation made in the resident record.

(d) Written evacuation records will be retained for at least three years. They will include documentation, made at the time of the drill, specifying the date and time of the drill, the location designated as the origin of the fire for drill purposes, the names of all individuals and staff present, the amount of time required to evacuate, notes of any difficulties experienced, and the signature of the staff person conducting the drill.

(7) Unobstructed Egress. All stairways, halls, doorways, passageways, and exits from rooms and from the home will be unobstructed.

(8) Fire Extinguishers. The program will install and maintain one or more 2A:10B:C fire extinguishers on each floor in accordance with the Fire Code.

(9) Fire and Smoke Alarms and Detectors. Approved fire and smoke alarms and detectors will be installed according to Building Code and Fire Code requirements. These alarms will be tested during each evacuation drill. The RTH will provide appropriate signal devices for persons with disabilities who do not respond to the standard auditory alarms. All of these devices will be inspected and maintained in accordance with the requirements of the State Fire Marshal or local agency having jurisdiction.

(10) Sprinkler Systems. Sprinkler systems, if used, will be installed in compliance with the Building Code and maintained in accordance with rules adopted by the State Fire Marshal.

(11) First Aid Supplies. First aid supplies will be readily accessible to staff. All supplies will be properly labeled.

(12) Portable Heaters. Portable heaters are a recognized safety hazard and will not be used, except as approved by the State Fire Marshal or authorized representative.

(13) Safety Program. A safety program will be developed and implemented to identify and prevent the occurrence of hazards. Such hazards may include, but are not limited to, dangerous substances, sharp objects, unprotected electrical outlets, use of extension cords or other special plug-in adapters, slippery floors or stairs, exposed heating devices, broken glass, inadequate water temperatures, overstuffed furniture in smoking areas, unsafe ashtrays and ash disposal, and other potential fire hazards.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0340

### Sanitation

(1) Water Supply. The water supply in the home will meet the requirements of the current rules of the Health Division governing domestic water supplies.

(a) A municipal water supply will be utilized if available.

(b) When the home is not served by an approved municipal water system, and the home qualifies as a public water system according to OAR 333-061-0020(127), Oregon Health Services rules for public water systems, then the home will comply with the OAR Chapter 333 rules of the Oregon Health Services pertaining to public water systems. These include requirements that the drinking water be tested for total coliform bacteria at least quarterly, and nitrate at least annually, and reported to Health Services.

For adverse test results, these rules require that repeat samples and corrective action be taken to assure compliance with water quality standards, that public notice be given whenever a violation of the water quality standards occurs, and that records of water testing be retained according to the Oregon Health Services requirements.

(2) Surfaces. All floors, walls, ceilings, windows, furniture, and equipment will be kept in good repair, clean, neat and orderly.

(3) Plumbing Fixtures. Each bathtub, shower, lavatory, and toilet will be kept clean, in good repair and regularly sanitized.

(4) Disposal of Cleaning Waste Water. No kitchen sink, lavatory, bathtub, or shower will be used for the disposal of cleaning waste water.

(5) Soiled Laundry. Soiled linens and clothing will be stored in an area or container separate from kitchens, dining areas, clean linens, clothing, and food.

(6) Pest Control. All necessary measures will be taken to prevent rodents and insects from entering the home. Should pests be found in the home, appropriate action will be taken to eliminate them.

(7) Grounds Maintenance. The grounds of the home will be kept orderly and reasonably free of litter, unused articles, and refuse.

(8) Garbage Storage and Removal. Garbage and refuse receptacles will be clean, durable, watertight, insect and rodent proof, and will be kept covered with tight-fitting lids. All garbage and solid waste will be disposed of at least weekly and in compliance with the current rules of the Department of Environmental Quality.

(9) Sewage Disposal. All sewage and liquid wastes will be disposed of in accordance with the Plumbing Code to a municipal sewage system where such facilities are available. If a municipal sewage system is not available, sewage and liquid wastes will be collected, treated, and disposed of in compliance with the current rules of the Department of Environmental Quality. Sewage lines, and septic tanks or other non-municipal sewage disposal systems where applicable, will be maintained in good working order.

(10) Biohazardous Waste. Biohazardous waste will be disposed of in compliance with the rules of the Department of Environmental Quality.

(11) Infection Control. Precautions will be taken to prevent the spread of infectious and/or communicable diseases as defined by the Centers for Disease Control and to minimize or eliminate exposure to known health hazards.

(a) In accordance with OAR 437, division 2, subdivision Z, Section 1910.1030 of the Oregon Occupational Safety and Health Code, staff will employ universal precautions whereby all human blood and certain body fluids are treated as if known to be infectious for HIV, HBV and other blood borne pathogens.

(b) Bathroom facilities will be equipped with an adequate supply of toilet paper, soap and towels.

(12) Infection Control for Pets and Other Household Animals. If pets or other household animals exist at the home, sanitation practices will be implemented to prevent health hazards.

(a) Such animals will be vaccinated in accordance with the recommendations of a licensed veterinarian. Proof of such vaccinations will be maintained on the premises.

(b) Animals not confined in enclosures will be under control and maintained in a manner that does not adversely impact residents or others.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0350

### Resident Furnishings

(1) Bedroom Furniture. Residents will be allowed to use their own furniture within space limitations of the resident sleeping room. Otherwise, furniture will be provided or arranged for each resident, maintained in good repair and include:

(a) A bed, including a frame and a clean mattress and pillow;

(b) A private dresser or similar storage area for personal belongings which is readily accessible to the resident; and

(c) Locked storage for the resident's small, personal belongings. In homes initially licensed before December 1, 1999, this locked storage may be provided in a place other than the resident's bedroom. The resident will be provided with a key or other method to gain access to his/her locked storage space.

(2) Linens. Linens will be provided for each resident and will include:

(a) Sheets, pillowcase, other bedding appropriate to the season and individual resident's comfort;

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(b) Availability of a waterproof mattress or waterproof mattress cover; and

(c) Towels and wash cloths.

(3) Personal Hygiene Items. Each resident will be assisted in obtaining personal hygiene items in accordance with individual needs. These will be stored in a clean and sanitary manner, and may be purchased with the resident's personal allowance. Personal hygiene items include, but are not limited to, a comb and/or hairbrush, a toothbrush, toothpaste, and menstrual supplies (if needed).

(4) Supplies Provided by RTH. Sufficient supplies of soap, shampoo and toilet paper for all residents will be provided.

(5) Common Area Furniture. An adequate supply of furniture for resident use in living room, dining room and other common areas will be maintained in good condition.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0360

### Admission to Home

(1) Responsibility for Admission Process. Each RTH's admission policy and procedures will specify who is responsible for each component of the admission information-gathering and decision-making process. Responsibilities will be organized and assigned to promote effective processing of referrals and admissions.

(2) Referrals. Unless limited by contractual agreement with the Department or other Department-approved party, referrals may be accepted from a variety of sources. Residents whose services will be funded by the Department must be approved for placement by the CMHP or other local entity given responsibility for this function by contract with the Department.

(3) Release of Information. In accordance with ORS 179.505 and the 45 Code of Federal Registry, Part 164, an authorization for the release of information will be obtained for any confidential information concerning a prospective resident.

(4) Nondiscrimination. Persons will be considered for admission without regard to race, color, sex or sexual orientation (except as may be limited by room arrangement), religion, creed, national origin, age (except under 18 years), familial status, marital status, source of income, or disability in addition to the mental or emotional disorder.

(5) Screening. Prior to accepting a resident for admission to the RTH, the administrator or his/her designee will determine that the resident meets admission criteria. The prospective resident will receive an explanation of the program, be given a copy of materials explaining conditions of residency, and be offered the opportunity to visit the home. Sufficient information will be obtained from the prospective resident, a relative and/or agencies providing services to determine eligibility for admission and service needs. In the case of individuals referred for emergency or crisis-respite admission, the information obtained may be less extensive than for regular admissions but must be sufficient to determine that the resident meets admission criteria and that the RTH is appropriate considering the individual's needs. Screening information will include, but not be limited to, the following:

(a) Written documentation that the prospective resident has, or is suspected of having, a mental or emotional disorder;

(b) Background information including a mental health assessment and describing previous living arrangements, service history, behavioral issues and service needs;

(c) Medical information including a brief history of any health conditions, documentation from a Licensed Medical Professional or other qualified health care professional of the individual's current physical condition, and a written record of any current or recommended medications, treatments, dietary specifications, and aids to physical functioning;

(d) Copies of documents, or other documentation, relating to guardianship, conservatorship, commitment status, advance directives, or any other legal restrictions (as applicable);

(e) A copy of the prospective resident's most recent mental health treatment plan, or in the case of an emergency or crisis-respite admission, a summary of current mental health treatment involvement; and

(f) Documentation of the prospective resident's ability to evacuate the building consistent with the RTH's designated evacuation capability and other concerns about potential safety risks.

(6) Admission Criteria. Persons considered for admission will:

(a) Be assessed to have a mental or emotional disorder, or a suspected mental or emotional disorder;

(b) Be in need of care, treatment and supervision;

(c) Be at least 18 years of age;

(d) Not require continuous nursing care, unless a reasonable plan to provide such care exists, the need for residential treatment supersedes the need for nursing care, and the Department approves the placement;

(e) Have an evacuation capability consistent with the RTH's SR Occupancy classification; and

(f) Meet additional criteria required or approved by the Department through contractual agreement or condition of licensing.

(7) Admission Decisions. A decision to admit a resident to the RTH will be made as follows:

(a) For regular admissions, the decision will be made based upon a review of screening materials at a pre-admission meeting and a determination that the resident meets the admission criteria. A pre-admission meeting will be scheduled to include the RTH administrator or designee, the potential resident and his/her legal guardian (as applicable). With the prospective resident's consent, the pre-admission meeting may also include family member(s) or other representative(s) as appropriate, representative(s) of relevant service providing agency(ies), and others with an interest in the resident's admission. The potential resident, legal guardian (as applicable) and authorized representative will be informed of the admission decision within 72 hours. If a decision is deferred or postponed, the potential resident, legal guardian (as applicable) and authorized representative will be informed of the potential resident's application status within one week of the pre-admission meeting, and weekly thereafter (as necessary). When admission is denied, the prospective resident, their legal guardian (as applicable) and authorized representative will be informed in writing of the basis for the decision and their right to appeal the decision in accordance with OAR 309-035-0390.

(b) For crisis-respite admissions, the decision will be made based upon a review of the referral materials by the RTH administrator or designee and a determination that the resident meets the admission criteria. Due to the urgent nature of crisis-respite admissions, decisions will be made on an immediate basis. The prospective resident, their legal guardian (as applicable) and authorized representative will be directly informed of the decision and their right to appeal in accordance with OAR 309-035-0390.

(8) Informed Consent for Services. The RTH will obtain informed consent for services upon admission to the RTH from each resident, or his/her guardian (as applicable), unless the resident's ability to do so is legally restricted. If such consent is not obtained, the reason will be documented and further attempts to obtain informed consent will be made as appropriate.

(9) Orientation. Upon admission, the administrator or his/her designee will provide an orientation to each new resident that includes, but is not limited to, a complete tour of the home, introductions to other residents and staff, discussion of house rules, explanation of the laundry and food service schedule and policies, review of resident rights and grievance procedures, explanation of the fee policy, discussion of the conditions under which residency would be terminated, and a general description of available services and activities. During the orientation, advance directives will be explained. If the resident does not already have any advance directive(s), she/he will be given an opportunity to complete them. Orientation will also include a description of the RTH's emergency procedures in accordance with OAR 309-035-0330(2).

(10) Record Preparation. A resident record will be established concurrent with the resident's admission. Prior to a regular admission, within five days after an emergency admission, or within 24 hours of a crisis-respite admission, the program will determine with whom communication needs to occur and will attempt to obtain the needed authorizations for release of information. The record established upon admission will include the materials reviewed in screening the resident, the summary sheet and any other available information. Every effort will be made to complete the resident record consistent with OAR 309-035-0300(4) and (5) in a timely manner. The assessment and residential service plan will be completed in accordance with OAR 309-035-0440. Records on prescribed medications and health needs will be completed as specified in OAR 309-035-0440.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0370

### Termination of Residency

(1) Responsibility for Termination Process. Each RTH's termination policy and procedures will specify who is responsible for each step of the process for terminating residency. Responsibilities will be organized and assigned to promote a fair and efficient termination process. Unless other-



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wise designated as a condition of licensing or in contract language approved by the Department, the Administrator will be responsible for initiating and coordinating termination proceedings. An effort will be made to prevent unnecessary terminations by making reasonable accommodations within the RTH.

(2) **Crisis-respite Services.** Because crisis-respite services are time-limited, the planned end of services will not be considered a termination of residency and will not be subject to requirements in OAR 309-035-0370(3), (5), (6) and (9). Upon admission to crisis-respite services, the resident or guardian (as applicable) will be informed of the planned date for discontinuation of services. This date may be extended through mutual agreement between the administrator and the resident or guardian (as applicable). RTHs providing crisis-respite services will implement policies and procedures that specify reasonable time frames and the grounds for discontinuing crisis-respite services earlier than the date planned.

(3) **Voluntary Termination of Residency.** A resident or guardian (as applicable) may terminate residency in the RTH upon providing at least 30 days notice. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided.

(4) **Emergency Termination of Residency.** If a resident's behavior poses a serious and immediate threat to the health or safety of others in or near the RTH, the administrator, after providing 24 hours written notice specifying the causes to the resident or guardian (as applicable), may immediately terminate the residency. The notice will specify the resident's right to appeal the emergency termination decision in accordance with OAR 309-035-0390.

(5) **Other Terminations of Residency.** When other circumstances arise providing grounds for termination of residency, the administrator will discuss these grounds with the resident, the resident's guardian (as applicable), and with the resident's permission, other persons with an interest in the resident's circumstances. If a decision is made to terminate residency, the administrator will provide at least 30 days written notice specifying the causes to the resident or guardian (as applicable). This notice will also specify the resident's right to appeal the termination decision in accordance with OAR 309-035-0390. Upon mutual agreement between the administrator and the resident or guardian (as applicable), less than 30 days notice may be provided. An effort will be made to establish a reasonable termination date in consideration of both program needs and the needs of the terminated resident to find alternative living arrangements. Criteria establishing grounds for termination include:

(a) Resident no longer needs or desires services provided at the RTH and/or expresses a desire to move to an alternative setting;

(b) Resident is assessed by a Licensed Medical Professional or other qualified health professional to require services, such as continuous nursing care or extended hospitalization, that are not available, or can not be reasonably arranged, at the RTH;

(c) Resident's behavior is continuously and significantly disruptive or poses a threat to the health or safety of self or others and these behavioral concerns cannot be adequately addressed with services available at the RTH or services that can be arranged outside of the RTH;

(d) Resident cannot safely evacuate the home in accordance with the RTHs SR Occupancy Classification after efforts described in OAR 309-035-0330(5)(b) have been taken;

(e) Nonpayment of fees in accordance with program's fee policy; and

(f) Resident continuously and knowingly violates house rules resulting in significant disturbance to others.

(6) **Pre-termination Meeting.** Except in the case of emergency terminations or crisis-respite services, a pre-termination meeting will be held with the resident, guardian (as applicable), and with the resident's permission, others interested in the resident's circumstances. The purpose of the meeting is to plan any arrangements necessitated by the termination decision. The meeting will be scheduled to occur at least two weeks prior to the termination date. In the event a pre-termination meeting is not held, the reason will be documented in the resident's record.

(7) **Documentation.** Documentation of discussions and meetings held concerning termination of residency and copies of notices will be maintained in the resident's record.

(8) **Disposition of Personal Property.** At the time of termination of residency, the resident will be given a statement of account, any balance of funds held by the RTH and all property held in trust or custody by the RTH.

(a) In the event of pending charges (such as long distance phone charges or damage assessments), the program may hold back the amount of funds anticipated to cover the pending charges. Within 30 days after residency is terminated or as soon as pending charges are confirmed, the resi-

dent will be provided a final financial statement along with any funds due to the resident.

(b) In the case of resident belongings left at the RTH for longer than seven days after termination of residency, the RTH will make a reasonable attempt to contact the resident, guardian (as applicable) and/or other representative of the resident. The RTH must allow the resident, guardian (as applicable) or other representative at least 15 days to make arrangements concerning the property. If it is determined that the resident has abandoned the property, the RTH may then dispose of the property. If the property is sold, proceeds of the sale, minus the amount of any expenses incurred and any amounts owed the program by or on behalf of the resident, will be forwarded to the resident or guardian (as applicable).

(9) **Absences without Notice.** If a resident moves out of the RTH without providing notice, or is absent without notice for more than seven consecutive days, the administrator may terminate residency in the manner provided in ORS 105.105 to 105.168 after seven consecutive days of the resident's absence. An attempt will be made to contact the resident, guardian (as applicable) and/or other person interested in the resident's circumstances to confirm the resident's intent to discontinue residency.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0380

#### Resident Rights

(1) **Statutory and Constitutional Rights.** Each resident will be assured the same civil and human rights accorded to other citizens. These rights will be assured unless expressly limited by a court in the case of a resident who has been adjudicated incompetent and not restored to legal capacity. The rights described in paragraphs (2) and (3) of this section are in addition to, and do not limit, all other statutory and constitutional rights which are afforded to all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose property, enter into contracts and execute documents.

(2) **Rights of Service Recipients.** In accordance with ORS 430.210, residents will have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection, and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence;

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs;

(c) Ongoing participation in planning services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations;

(d) Not receive services without informed consent except in a medical emergency or as otherwise permitted by law;

(e) Not participate in experimentation without informed voluntary written consent;

(f) Receive medication only for the person's individual clinical needs;

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure;

(h) A humane service environment that affords reasonable protection from harm and affords reasonable privacy;

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation;

(j) Religious freedom;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Visit with family members, friends, advocates and legal and medical professionals;

(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedure for reporting abuse, and to have these rights and procedures prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person;

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure;

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(p) Have access to and communicate privately with any public or private rights protection program or rights advocate; and

(q) Exercise all rights described in this section without any form of reprisal or punishment.

(3) Additional Rights in RTHs. Residents will also have a right to:

(a) Adequate food, shelter and clothing, consistent with OAR 309-035-0410;

(b) A reasonable accommodation if, due to their disability, the housing and services are not sufficiently accessible;

(c) Confidential communication, including receiving and opening personal mail, private visits with family members and other guests, and access to a telephone with privacy for making and receiving telephone calls;

(d) Express sexuality in a socially appropriate and consensual manner;

(e) Access to community resources including recreation, religious services, agency services, employment and day programs, unless such access is legally restricted;

(f) Be free from seclusion and restraint;

(g) To review the RTHs policies and procedures; and

(h) Not participate in research without informed voluntary written consent.

(4) Program Requirements. The program will have and implement written policies and procedures which protect residents' rights, and encourage and assist residents to understand and exercise their rights. The program will post a listing of resident rights under these rules in a place readily accessible to all residents and visitors.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0390

#### Grievances and Appeals

(1) Procedures. The RTH will have a written policy and procedures concerning the resident grievance and appeal process. A copy of the grievance and appeal process will be posted in a place readily accessible to residents. A copy of the grievance and appeal process will be provided to each resident and guardian (as applicable) at the time of admission to the RTH.

(2) Grievances. A RTHs process for grievances must, at a minimum, include the following:

(a) Residents will be encouraged to informally resolve complaints through discussion with RTH staff.

(b) If the resident is not satisfied with the informal process or does not wish to use it, the resident may proceed as follows:

(A) The resident may submit a complaint in writing to the RTH administrator. The resident may receive assistance in submitting the complaint from any person whom the resident chooses. If requested by the resident, RTH staff will be available to assist the resident.

(B) The written complaint will go directly to the RTH administrator without being read by other staff, unless the resident requests or permits other staff to read the complaint.

(C) The complaint will include the reasons for the grievance and the proposed resolutions. No complaint will be disregarded because it is incomplete.

(D) Within five days of receipt of the complaint, the RTH administrator will meet with the resident to discuss the complaint. The resident may have an advocate or other person of his/her choosing present for this discussion.

(E) Within five days of meeting with the resident, the RTH administrator will provide a written response to the resident. As part of the written response, the Administrator will provide information about the appeal process.

(F) In circumstances where the matter of the complaint is likely to cause irreparable harm to a substantial right of the resident before the grievance procedures outlined in OAR 309-035-0390(2)(b)(D) and (E) are completed, the resident may request an expedited review. The RTH administrator will review and respond in writing to the grievance within 48 hours. The written response will include information about the appeal process.

(3) Appeals. Residents, their legal guardians (as applicable) and prospective residents (as applicable) will have the right to appeal admission, termination and grievance decisions as follows:

(a) If the resident is not satisfied with the decision, the resident may file an appeal in writing within ten days of the date of the RTH administrator's response to the complaint or notification of admission denial or termination (as applicable). The appeal will be submitted to the CMHP director or designee in the county where the RTH is located.

(b) The resident may receive assistance in submitting the appeal. If requested by the resident, RTH staff will be available to assist the resident.

(c) The CMHP director or designee will provide a written response within ten days of receiving the appeal.

(d) If the resident is not satisfied with the CMHP director's decision, the resident may file a second appeal in writing within ten days of the date of the CMHP director's written response to the Administrator of the Department or designee. The decision of the Administrator of the Department will be final.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0400

#### Resident Assessment and Residential Service Plan

(1) Assessment. An assessment will be completed for each resident within 30 days after admission to the RTH, unless admitted to the RTH for crisis-respite services.

(a) The assessment will be based upon an interview with the resident to identify strengths, preferences and service needs; observation of the resident's capabilities within the residential setting; a review of information in the resident record; and contact with representatives of other involved agencies, family members and others, as appropriate. All contacts with others will be made with proper authorization for the release of information.

(b) Assessment findings will be summarized in writing and included in the resident's record. Assessment findings will include, but not be limited to, diagnostic and demographic data; identification of the resident's medical, physical, emotional, behavioral and social strengths, preferences and needs related to independent living and community functioning; and recommendations for residential service plan goals.

(2) Residential Service Plan. An individualized plan, identifying the goals to be accomplished through the services provided, will be prepared for each resident, unless admitted to the RTH for crisis-respite services, within 30 days after admission.

(a) The residential service plan will be based upon the findings of the resident assessment, be developed with participation of the resident and his/her guardian (as applicable), and be developed through collaboration with the resident's primary mental health treatment provider. With consent of the resident or guardian (as applicable), family members, representatives from involved agencies, and others with an interest in the resident's circumstances will be invited to participate. All contacts with others will be made with proper, prior authorization from the resident.

(b) The residential service plan will identify service needs, desired outcomes and service strategies to address, but not be limited to, the following areas: physical and medical needs, medication regimen, self-care, social-emotional adjustment, behavioral concerns, independent living capability and community navigation.

(c) The residential service plan will be signed by the resident, the administrator or other designated RTH staff person, and others, as appropriate, to indicate mutual agreement with the course of services outlined in the plan.

(3) Crisis-respite Requirements. For residents admitted to RTHs for 30 days or less, an assessment and residential service plan must be developed within 48 hours of admission which identifies service needs, desired outcomes and the service strategies to be implemented to resolve the crisis or address other needs of the individual that resulted in the short term service arrangement.

(4) Progress Notes. Progress notes will be maintained within each resident's record and document significant information relating to all aspects of the resident's functioning and progress toward desired outcomes identified in the residential service plan. A progress note will be entered in the resident's record at least once each month for regular residents and at least daily for crisis-respite residents.

(5) Re-assessments and Revisions to the Residential Service Plan. The assessment and residential service plan will be reviewed and updated at least annually. On an ongoing basis, the residential service plan will be updated, as necessary, based upon changing circumstances or upon the resident's request for reconsideration.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0410

#### Resident Services and Activities

(1) General Requirements. The services and activities available at the RTH will include care and treatment consistent with ORS 443.400 and those services individually specified for the resident in the residential serv-

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ice plan developed as outlined in OAR 309-035-0400. Residents will be encouraged to care for their own needs to the extent possible. All services and activities will be provided in a manner that respects residents' rights, promotes recovery and affords personal dignity.

(2) Services and Activities to Be Available. Services and activities to be available will include but not be limited to:

(a) Provision of adequate shelter consistent with OAR 309-035-0320 through 309-035-0350;

(b) At least three meals per day, seven days per week, provided in accordance with OAR 309-035-0430;

(c) Assistance and support, as necessary, to enable residents to meet personal hygiene and clothing needs;

(d) Laundry services, which may include access to washer(s) and dryer(s) so residents can do their own personal laundry;

(e) Housekeeping essential to the health and comfort of residents;

(f) Activities and opportunities for socialization and recreation both within the facility and in the larger community;

(g) Health-related services provided in accordance with OAR 309-035-0440;

(h) Assistance with community navigation and transportation arrangements;

(i) Assistance with money management, where requested by a resident, to include accurate documentation of all funds deposited and withdrawn when funds are held in trust for the resident;

(j) Assistance with acquiring skills to live as independently as possible;

(k) Assistance with accessing other additional services, as needed; and

(l) Any additional services required under contract with the Department.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0420

#### Prohibition of Seclusion and Restraints

General Prohibition. The use of seclusion or restraints is prohibited in Residential Treatment Homes. Only Secure Residential Treatment Facilities approved by the Department in accordance with OAR 309-035-0100 through 309-035-0190 will be allowed to use seclusion and restraints.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0430

#### Food Services

(1) Well-balanced Diet. Meals will be planned and served in accordance with the recommended dietary allowances found in the United States Department of Agriculture Food Guide Pyramid.

(2) Modified or Special Diets. An order from a Licensed Medical Professional will be obtained for each resident who, for health reasons, is on a modified or special diet. Such diets will be planned in consultation with the resident.

(3) Menus. Menus will be prepared at least one week in advance and will provide a sufficient variety of foods served in adequate amounts for each resident at each meal and adjusted for seasonal changes. Records of menus, as served, will be filed and maintained in the RTH for at least 30 days. Resident preferences and requests will be considered in menu planning. Religious and vegetarian preferences will be reasonably accommodated.

(4) Supply of Food. Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days will be maintained on the premises.

(5) Sanitation. Food will be stored, prepared and served in accordance with the Oregon Health Services Food Sanitation Rules.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

### 309-035-0440

#### Health Services

(1) General. The administrator will be responsible for assuring that all residents are offered medical attention when needed. Arrangements for health services will be made with the informed consent of the resident and/or guardian (as applicable). The RTH will arrange for physicians or other qualified health care professionals to be available in the event the resident's regular physician or other health care professional is unavailable. A

hospital emergency room will be identified and may be used in case of emergency.

(2) Initial Health Screening. Each resident admitted to the RTH will be screened by a qualified health care professional to identify health problems and to screen for communicable disease. Documentation of the initial health screening will be placed in the resident record.

(a) The health screening will include a brief history of health conditions, current physical condition and a written record of current or recommended medications, treatments, dietary specifications, and aids to physical functioning.

(b) For regular admissions, the health screening will be obtained prior to the resident's admission and include the results of testing for tuberculosis and Hepatitis B.

(c) For emergency admissions, including crisis-respite admissions, the health screening will be obtained as follows:

(A) For individuals experiencing psychiatric or medical distress, a health screening will be completed by a qualified health care professional prior to the resident's admission or within 24 hours of the emergency placement. The health screening will confirm that the individual does not have health conditions requiring continuous nursing care, a hospital level of care, or immediate medical assistance. For each crisis-respite resident who continues in the RTH for more than seven consecutive days, a complete health examination will be arranged if any symptoms of a health concern exist.

(B) For other individuals who are admitted on an urgent basis due to a lack of alternative supportive housing, the health screening will be obtained within 72 hours after the resident's admission.

(C) The health screening criteria may be waived for individuals admitted for crisis-respite services who are under the active care of an LMP or other qualified health care professional if it is the opinion of the attending health care professional that the crisis-respite placement presents no health risk to the individual or other residents in the RTH. Such a waiver must be provided in writing and be signed and dated by the attending health care professional within 24 hours of the resident's admission.

(3) Regular Health Examinations. Except for crisis-respite residents, the program will ensure that each resident has a primary physician or other qualified health care professional who is responsible for monitoring his/her health care. Regular health examinations will be done in accordance with the recommendations of this primary health care professional, but not less than once every three years. New residents will have a health examination completed within one year prior to admission or within three months after admission. Documentation of findings from each examination will be placed in the resident's record.

(4) Written Orders for Special Needs. A written order, signed by a physician or other qualified health care professional, is required for any medical treatment, special diet for health reasons, aid to physical functioning or limitation of activity.

(5) Medications. A written order signed by a physician or other qualified health care professional is required for all medications administered or supervised by RTH staff. This written order is required before any medication is provided to a resident. All medication maintained in the RTH will be provided to residents in accordance with the applicable written orders.

(a) Medications will be self-administered by the resident if the resident demonstrates the ability to self-administer medications in a safe and reliable manner. In the case of self-administration, both the written orders of the prescriber and the residential service plan will document that medications will be self-administered. The self-administration of medications may be supervised by RTH staff who may prompt the resident to administer the medication and observe the fact of administration and dosage taken. When supervision occurs, staff will enter information in the resident's record consistent with section OAR 309-035-0440(5)(h) below.

(b) Staff who assist with administration of medication will be trained by a Licensed Medical Professional or other qualified health care professional on the use and effects of commonly used medications.

(c) Medications prescribed for one resident will not be administered to, or self-administered by, another resident. Medication will not be used for the convenience of staff or as a substitute for programming. Medications will not be withheld or used as reinforcement or punishment.

(d) Stock supplies of prescription medications will not be maintained. The RTH may maintain a stock supply of non-prescription medications.

(e) The RTH will provide and implement a policy and procedure which assures that all orders for prescription drugs are reviewed by a qualified health care professional, as specified by a physician or other qualified health care professional, but not less often than every six months. Where this review identifies a contra-indication or other concern, the resident's



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primary physician, LMP or other primary health care professional will be immediately notified.

(f) Each resident receiving psychotropic medications will be evaluated at least every three months by the LMP prescribing the medication. The RTH will obtain from the LMP the results of this evaluation and any changes in the type and dosage of medication, the condition for which it is prescribed, when and how the medication is to be administered, common side effects (including any signs of tardive dyskinesia, contra-indications or possible allergic reactions), and what to do in case of a missed dose or other dosing error.

(g) All unused, discontinued, outdated or recalled medications, and any medication containers with worn, illegible or missing labels will be disposed. The method of disposal will be safe, consistent with any applicable federal statutes, and designed to prevent diversion of these substances to persons for whom they were not prescribed. A written record of all disposals will be maintained and specify the date of disposal, a description of the medication, its dosage potency, amount disposed, the name of the individual for whom the medication was prescribed, the reason for disposal, the method of disposal, and the signature of the staff person disposing the medication. For any medication classified as a controlled substance in schedules 1 through 5 of the Federal Controlled Substance Act, the disposal must be witnessed by a second staff person who documents their observation by signing the disposal record.

(h) All medications will be properly and securely stored in a locked space for medications only in accordance with the instructions provided by the prescriber or pharmacy. Medications for all residents will be labeled. Medications requiring refrigeration must be stored in an enclosed locked container within the refrigerator. The RTH will assure that residents have access to a locked, secure storage space for their self-administered medications. The RTH will note in its written policy and procedures which persons have access to this locked storage and under what conditions.

(i) For all residents taking prescribed medication, staff will record in the medical record each type, date, time and dose of medication provided. All side effects, adverse reactions and medications errors will be documented in the resident's record. All serious adverse reactions or errors will be reported immediately to the prescribing health care professional. All other errors, adverse reactions or refusals of medication will be reported to the prescribing professional within 48 hours.

(j) P.r.n. medications and treatments will only be administered in accordance with the parameters specified by the prescribing health care professional, or in cases where a nurse assigns or delegates p.r.n. medication or treatment administration, in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

(6) Delegation of Nursing Tasks. Where a nurse is involved in the care of an RTH resident, nursing tasks may be assigned or delegated by a Registered Nurse to direct care staff in accordance with administrative rules of the Board of Nursing, chapter 851, division 47.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0450

### Civil Penalties

(1) Applicability of Long Term Care Statute. For purposes of imposing civil penalties, RTHs licensed under ORS 443.400 to 443.455 and subsection (2) of ORS 443.991 are considered to be long-term care facilities subject to ORS 441.705 to 441.745.

(2) Sections of Rule Subject to Civil Penalties. Violations of any requirement within any part of the following sections of the rule may result in a civil penalty:

- (a) 309-035-0270 Licensing;
- (b) 309-035-0280 Contracts and Rates;
- (c) 309-035-0290 Administrative Management;
- (d) 309-035-0300 Records;
- (e) 309-035-0310 Staffing;
- (f) 309-035-0320 Facility Requirements;
- (g) 309-035-0330 Safety;
- (h) 309-035-0340 Sanitation;
- (i) 309-035-0350 Resident Furnishings;
- (j) 309-035-0360 Admission to Facility;
- (k) 309-035-0370 Termination of Residency;
- (l) 309-035-0380 Resident Rights;
- (m) 309-035-0390 Grievances and Appeals;
- (n) 309-035-0400 Resident Assessment and Residential Service Plan;
- (o) 309-035-0410 Resident Services and Activities;

(p) 309-035-0420 Use of Seclusion or Restraints;

(q) 309-035-0430 Food Services; and

(r) 309-035-0440 Health Services.

(3) Assessment of Civil Penalties. Civil penalties will be assessed in accordance with the following guidelines:

(a) Civil penalties, not to exceed \$250 per violation to a maximum of \$1,000, may be assessed for general violations of these rules. Such penalties will be assessed after the procedures outlined in OAR 309-035-0270(8) have been implemented;

(b) A mandatory penalty up to \$500 will be assessed for falsifying resident or facility records or causing another to do so;

(c) A mandatory penalty of \$250 per occurrence will be imposed for failure to have direct care staff on duty 24 hours per day;

(d) Civil penalties up to \$1,000 per occurrence may be assessed for substantiated abuse;

(e) In addition to any other liability or penalty provided by the law, the Department may impose a penalty for any of the following:

(A) Operating the RTH without a license;

(B) Operating with more residents than the licensed capacity; and

(C) Retaliating or discriminating against a resident, family member, employee, or other person for making a complaint against the program.

(f) In imposing a civil penalty, the following factors will be taken into consideration:

(A) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(B) Any prior violations of statutes, rules or orders pertaining to the RTH;

(C) The economic and financial conditions of the person incurring the penalty;

(D) The immediacy and extent to which the violation threatens or threatened the health, safety or welfare of one or more residents; and

(E) The degree of harm caused to residents.

(4) Notification. Any civil penalty imposed under this section will become due and payable ten days after notice is received, unless a request for a hearing is filed. The notice will be delivered in person, or sent by registered or certified mail and will include a reference to the particular section of the statute or rule involved, a brief summary of the violation, the amount of the penalty or penalties imposed, and a statement of the right to request a hearing.

(5) Request for Hearing. The person to whom the notice is addressed will have ten days from the date of receipt of the notice to request a hearing. This request must be in writing and submitted to the Administrator of the Department. If the written request for a hearing is not received on time, the Department will issue a final order by default.

(6) Hearings. All hearings will be conducted pursuant to the applicable provisions of ORS 183.310 to 183.550, Administrative Procedure and Rules for Civil Penalties.

(7) Judgment. Unless the penalty is paid within ten days after the order becomes final, the order constitutes a judgment and may be recorded by the County Clerk which becomes a lien upon the title to any interest in real property owned by the person. The Department may also take action to revoke the license upon failure to comply with a final order.

(8) Judicial Review. Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

## 309-035-0460

### Criminal Penalties

(1) Specification of Criminal Penalty. Violation of any provision of ORS 443.400 through ORS 443.455 is a Class B misdemeanor.

(2) Grounds for Law Suit. In addition, the Department may commence an action to enjoin operation of a RTH:

(a) When a RTH is operated without a valid license; or

(b) When a RTH continues to operate after notice of revocation has been given and a reasonable time has been allowed for placement of residents in other programs.

Stat. Auth.: ORS 409.010 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991(2)

Hist.: MHD 7-1999, f. 11-15-99, cert. ef. 12-1-99; MHD 5-2005, f. & cert. ef. 4-1-05

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## Department of Human Services, Public Health Chapter 333

**Adm. Order No.:** PH 5-2005

**Filed with Sec. of State:** 4-11-2005

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**Rules Adopted:** 333-121-0001, 333-121-0010, 333-121-0020, 333-121-0030, 333-121-0040, 333-121-0050, 333-121-0060, 333-121-0100, 333-121-0110, 333-121-0120, 333-121-0130, 333-121-0140, 333-121-0150, 333-121-0160, 333-121-0170, 333-121-0180, 333-121-0190, 333-121-0200, 333-121-0300, 333-121-0310, 333-121-0320, 333-121-0330, 333-121-0340, 333-121-0350, 333-121-0360, 333-121-0370, 333-121-0380, 333-121-0390, 333-121-0500, 333-121-0510

**Rules Amended:** 333-101-0020, 333-106-0005, 333-106-0045, 333-106-0055, 333-106-0101, 333-106-0370, 333-106-0512, 333-106-0710, 333-106-0720, 333-106-0730, 333-116-0490, 333-116-0540, 333-116-0660, 333-116-0680, 333-116-0860, 333-116-0880

**Subject:** These revisions update dental, fluoroscopy and PET/CT rules to meet current trends and emerging technologies in these fields. Also, the revisions update and maintain compatibility with Nuclear Regulatory Commission regulations for radioactive materials, a requirement of our Agreement State status. Additional changes utilize guidance from the Suggested State Regulations for the Control of Radiation published by the Conference of Radiation Control Program Directors.

333-100 General Provisions: NO NEW DEFINITIONS WERE ADDED.

333-101-0020 Reduces the number of training hours required for radiation machine vendors from 20 hours to one day. Requires training to be provided by an Agency approved trainer. Adds sales or leasing and calibration to the list of services requiring a license.

333-106-0005 Adds new definitions applicable to x-ray operators and equipment.

333-106-0045 Amends best use guidance for procedures and equipment. Amends requirements for operation of fluoroscopic equipment. Modifies medical and dental exposure guides.

333-106-0055 Reduces training requirements for dental x-ray operators and amends training requirements for dental x-ray students.

333-106-0101 Amends current rule to require darkroom safe lights to be tested in accordance with the manufacturers recommendations. In addition only manufacturer approved replacement lights can be used in safelight fixtures.

333-106-0370 Adds training requirements for PET/CT operators.

333-106-0512 Modifies absorbed dose fractions for medical patient treatment.

333-106-0710, 333-106-0720 and 333-106-0730 Increases allowable average glandular dose and minor changes to mammography quality assurance requirements.

333-116-0490 Clarification of rule applicability.

333-116-0540 Corrects rule references.

333-116-0660 Increases training time required for non-board certified physician to meet compatibility requirements of the Nuclear Regulatory Commission.

333-116-0680 Adds an acceptable board certification for Therapeutic Use of Radiopharmaceuticals.

333-116-0860 and 333-116-0880 Amends training requirements for individuals at Positron Emission Tomography (PET) Facilities.

333-116 Use of Radionuclides in The Healing Arts: Changes training requirements for PET authorized users and nuclear pharmacists, adds training requirements for PET/CT operators, and implements

required NRC changes from 10 CFR 35 to maintain Agreement State compatibility.

333-121 New division for licensing and radiation safety requirements for large irradiators. Required by the Nuclear Regulatory Commission for Agreement State compatibility.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

### 333-101-0020

#### Application for License of Sales, Services, Consultation, and Servicing For Radiation Machines

(1) Each person who is engaged in the business of selling, leasing, transferring, lending, installing or offering to install radiation machines or tanning beds, or is engaged in the business of furnishing or offering to furnish radiation machines, radioactive material (unless such activities are authorized under a specific license), or tanning servicing or services in this state, shall apply for license of such services with the Agency within 30 days following the effective date of this rule or thereafter prior to furnishing or offering to furnish any such services.

(2) Application for a license shall be completed on forms furnished by the Agency and shall contain the following information or such other information as may be required:

(a) Name, address and telephone number of the following:

(A) The individual or the company to be licensed;

(B) The owner(s) of the company.

(b) The services that will be provided;

(c) The area of the state and other states to be covered;

(d) A list of the individuals qualified to provide these services;

(e) The date of application and signature of the individual responsible for the company, beneath a statement of the items specified in OAR 333-101-0020(3).

(3) Each person applying for license under this Division shall specify:

(a) That they have read and understand the requirements of these rules;

(b) The services for which they are applying for license;

(c) The training and experience that qualify them or their technical staff to discharge the services for which they are applying for license;

(A) Training for radiation machine vendors shall include, but shall not be limited to, a minimum of one day of training in radiation use and safety;

(B) The training specified in OAR 333-101-0020(3)(c)(A) must be taught by an Agency approved instructor. Approval will be based upon the following criteria;

(i) Current Radiologic Technologist license with the Oregon Board of Radiologic Technology and a minimum of two years of work experience in Radiologic Technology; and

(ii) Experience in the use of radiation measurement instruments; or

(iii) "Qualified Expert" as defined in OAR 333-100-0005(102); or

(iv) "Health Physics Consultant" as defined in OAR 333-101-0003(2).

(C) Subjects to be covered shall include but not be limited to:

(i) Nature of x-rays;

(ii) Radiation units;

(iii) Biological effects of x-ray radiation;

(iv) Principles of radiation protection;

(v) Radiation survey instruments;

(vi) Personnel monitoring equipment; and

(vii) Applicable federal and state radiation regulations.

(d) The type of measurement instruments to be used, frequency of calibration, source of calibration; and

(e) The type of personnel dosimeters supplied, frequency of reading and replacement or exchange schedule;

(4) All radiation machine vendors shall have measurement instruments that will assure compliance with all x-ray machine, or tanning bed installation requirements according to all applicable federal standards, as well as instruments to properly check items such as collimation, HVL, kVp, mA, time, and radiation output, or assure these tests are made by a qualified expert, and that the information is included in the installation report.

(5) For the purpose of OAR 333-101-0020, services may include but shall not be limited to:

(a) Sales or leasing of radiation machines, installation and/or servicing of radiation machines and associated radiation machine components;

(b) Calibration of radiation machines;

(c) Calibration and use of radiation measurement instruments or devices;

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(d) Radiation protection or health physics consultations or surveys; and  
(e) Personnel dosimetry services (not otherwise licensed under these rules).

(6) No individual shall perform services that are not specifically stated for that individual on the notice of licensure (certificate of validation or acknowledgment of validation) issued by the Agency.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.655

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 5-2005, f. & cert. ef. 4-11-05

## 333-106-0005

### Definitions

As used in this Division, the following definitions apply:

(1) "Accessible Surface" means the external surface of the enclosure or housing provided by the manufacturer.

(2) "Added Filtration" means any filtration that is in addition to the inherent filtration.

(3) "Aluminum Equivalent" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

**NOTE:** The nominal chemical composition of type 1100 aluminum alloy is 99.00 percent minimum aluminum, 0.12 percent copper.

(4) "Agency approved Instructor," means an individual who has been evaluated and approved by the Agency to teach Radiation Safety.

(5) "Agency approved training course" means a course of training that has been evaluated and approved by the Agency.

(6) "A.R.R.T." means the American Registry of Radiologic Technologists.

(7) "Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an x-ray system or subsystem. The term includes the owner of an x-ray system or his or her employee or agent who assembles components into an x-ray system that is subsequently used to provide professional or commercial services.

(8) "Attenuation Block" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(9) "Automatic Exposure Control (AEC)" means a device that automatically controls one or more technique factors in order to obtain at a pre-selected location(s) a required quantity of radiation. (See also "Photo timer".)

(10) "Barrier" (see "Protective Barrier").

(11) "Beam Axis" means a line from the source through the centers of the x-ray fields.

(12) "Beam-Limiting Device" means a device that provides a means to restrict the dimensions of the x-ray field.

(13) "Beam Monitoring System" means a system designed to detect and measure the radiation present in the useful beam.

(14) "C-arm x-ray system" means an x-ray system in which the image receptor and x-ray tube housing are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

(15) "Cephalometric Device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(16) "Certified Components" means components of x-ray systems that are subject to the x-ray Equipment Performance Standards promulgated under Public Law 90-602, the Radiation Control Agency for Health and Safety Act of 1968.

(17) "Certified System" means any x-ray system that has one or more certified component(s).

(18) "Changeable Filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical or physical process.

(19) "Coefficient of Variation (C)" means the ratio of the standard deviation to the mean value of a set of observations. It is estimated using the following equation:

Where  $s$  = Estimated standard deviation of the observed values = Mean value of observations in sample  $X_i$  =  $i$ th observation in sample. Where  $n$  = Number of observations in sample.

(20) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(21) "Contact Therapy System" means an x-ray system used for therapy with the tube port placed in contact with or within five centimeters of the surface being treated.

(22) "Control Panel" means that part of the x-ray control upon which are mounted the switches, knobs, pushbuttons and other hardware necessary for manually setting the technique factors.

(23) "Cooling Curve" means the graphical relationship between heat units stored and cooling time.

(24) "Dead-Man Switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(25) "Detector" (see "Radiation detector").

(26) "Diagnostic x-ray imaging system" means an assemblage of components for the generation, emission, and reception of x-rays and the transformation, storage, and visual display of the resultant x-ray image.

(27) "Diagnostic Source Assembly" means the tube housing assembly with a beam-limiting device attached.

(28) "Diagnostic-Type Protective Tube Housing" means a tube housing so constructed that the leakage radiation measured at a distance of one meter from the source does not exceed 100 milliroentgens in one hour when the tube is operated at its leakage technique factors.

(29) "Diagnostic X-Ray System" means an x-ray system designed for irradiation of any part of the human body or animal body for the purpose of diagnosis or visualization.

(30) "Direct Scattered Radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

(31) "Direct supervision" means that the person who directs the x-ray or fluoroscopic equipment operator(s) shall be present in the room while the individual operates the equipment.

(32) "Entrance Exposure Rate" means the exposure free in air per unit of time.

(33) "Field Emission Equipment" means equipment which uses a tube in which electron emission from the cathode is due solely to the action of an electric field.

(34) "Filter" means material placed in the useful beam to absorb preferentially selected radiations.

(35) "Fluoroscopic Benchmark" means a standard based upon the average cumulative fluoroscopic on-time normally found to be used for a specific fluoroscopic procedure at the site.

(36) "Fluoroscopic Imaging Assembly" means a subsystem in which x-ray photons produce a visible image. It includes the image receptor(s) such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and diagnostic source assembly.

(37) "Fluoroscopic x-ray equipment operator" means any individual who, adjusts technique factors, activates the exposure switch or button of a fluoroscopic x-ray machine or physically positions patients or animals. Human holders, used solely for immobilization purposes (i.e. veterinarian human holders) are excluded from this rule.

(38) "Focal Spot" means the area projected on the anode of the tube by the electrons accelerated from the cathode and from which the useful beam originates.

(39) "General Purpose Radiographic X-Ray System" means any radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(40) "General supervision" means that the person who directs the x-ray or fluoroscopic equipment operator(s), must be immediately available by telephone, pager, or other mode of communication, to provide direction if needed or requested.

(41) "Gonad Shield" means a protective barrier for the testes or ovaries.

(42) "Half-Value Layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(43) "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications when such tests are not specifically and individually ordered by an Oregon licensed practitioner of the healing arts legally authorized to prescribe such x-ray tests for the purpose of diagnosis or treatment.

(44) "Heat Unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes and seconds, i.e., kVp x mA x second.

(45) "HVL" (see "Half-value layer").



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(46) "Image Intensifier" means a device, installed in its housing, which instantaneously converts an x-ray pattern into a corresponding light image of higher energy density.

(47) "Image Receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident photons either into a visible image or into another form which can be made into a visible image by further transformations.

(48) "Indirect supervision" means that the person who directs the x-ray or fluoroscopic equipment operator(s) be readily available on facility premises when the x-ray or fluoroscopic equipment is operated.

(49) "Inherent Filtration" means the filtration of the useful beam provided by the permanently installed components of the tube housing assembly.

(50) "Interlock" means a device arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(51) "Irradiation" means the exposure of matter to ionizing radiation.

(52) "Kilovolt-Peak" (see "Peak tube potential").

(53) "kV" means kilovolts.

(54) "kVp" (see "Peak tube potential").

(55) "kWs" means kilowatt second. It is equivalent to 103 kV.mA.s, i.e., (A) kWs = (X) kV x (Y) mA x (Z) s x kWs = XYZ kWs 103kV x mA x 103

(56) "Lead Equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(57) "Leakage Radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

(a) The useful beam; and

(b) Radiation produced when the exposure switch or timer is not activated.

(58) "Leakage Technique Factors" means the technique factors associated with the diagnostic or therapeutic source assembly which are used in measuring leakage radiation. They are defined as follows:

(a) For diagnostic source assemblies intended for capacitor energy storage equipment, the maximum rated peak tube potential and the maximum-rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being 10 millicoulombs, i.e., 10 milliamperere seconds, or the minimum obtainable from the unit, whichever is larger.

(b) For diagnostic source assemblies intended for field emission equipment rated for pulsed operation, the maximum-rated peak tube potential and the maximum-rated number of x-ray pulses in an hour for operation at the maximum-rated peak tube potential.

(c) For all other diagnostic or therapeutic source assemblies, the maximum-rated peak tube potential and the maximum-rated continuous tube current for the maximum-rated peak tube potential.

(59) "Light Field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

(60) "Line-Voltage Regulation" means the difference between the no-load and the load line potentials expressed as a percent of the load line potential. It is calculated using the following equation:

$$\text{Percent line-voltage regulation} = 100 \frac{(V_n - V_l)}{V_l}$$

Where;

V<sub>n</sub> = No-load line potential and

V<sub>l</sub> = Load line potential.

(61) "mA" means milliamperere.

(62) "mAs" means milliamperere second.

(63) "Maximum Line Current" means the root-mean-square current in the supply line of an x-ray machine operating at its maximum rating.

(64) "Mobile Equipment" (see "Equipment").

(65) "Non-radiologist practitioner" means an individual who practices medicine as a medical doctor (M.D.), doctor of osteopathic medicine (D.O.), doctor of chiropractic medicine (D.C.), doctor of podiatric medicine (D.P.M.) or doctor of veterinary medicine (D.V.M.); and

(a) Are not specifically certified in diagnostic and/or therapeutic use of x-rays; and

(b) Are currently licensed by their respective Oregon licensing board.

(66) "Operator" means an individual who, under the supervision of a practitioner of the healing arts, uses ionizing radiation upon a human being for diagnostic or therapeutic purposes including the physical positioning of

the patient, the determination of exposure parameters, and the handling of ionizing radiation equipment.

(67) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(68) "Peak Tube Potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(69) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

(70) "Photo timer" means a method for controlling radiation exposures to image receptors by measuring the amount of radiation which reaches a radiation monitoring device(s). The radiation monitoring device(s) is a part of an electronic circuit which controls the duration of time the tube is activated (see also "Automatic exposure control").

(71) "PID" (see "Position indicating device").

(72) "Portable Equipment" (see "X-Ray Equipment").

(73) "Position Indicating Device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(74) "Primary Dose Monitoring System" means a system which will monitor useful beam during irradiation and which will terminate irradiation when a pre-selected number of dose monitor units have been acquired.

(75) "Primary Protective Barrier" (see "Protective barrier").

(76) "Protective Apron" means an apron made of radiation absorbing materials used to reduce radiation exposure.

(77) "Protected Area" means an area shielded with primary or secondary protective barriers or an area removed from the radiation source such that the exposure rate within the area due to normal operating procedures and workload does not exceed any of the following limits:

(a) Two milliroentgens in any one hour; or

(b) One hundred milliroentgens in any one year.

(c) See OAR 333-120-0180 for additional information.

(78) "Protective Barrier" means a barrier of radiation absorbing material(s) used to reduce radiation exposure. The types of protective barriers are as follows:

(a) "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure;

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(79) "Protective Glove" means a glove made of radiation absorbing materials used to reduce radiation exposure.

(80) "Qualified Expert" means an individual who has demonstrated to the satisfaction of the Agency that such individual possesses the knowledge, training and experience to measure ionizing radiation, evaluate safety techniques and to advise regarding radiation protection needs.

(81) "Quality Control Program" means a program directed at film processing and radiographic image quality whereby periodic monitoring of film processing is performed. Test films are compared against control film, either visually or by use of a densitometer, to determine if density or contrast have changed. Steps can then be taken to investigate such change and correct the problem. The x-ray machine itself can also be involved in the quality control program, as can other components of the imaging chain.

(82) "Radiation Detector" means a device which in the presence of radiation provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

(83) "Radiation Therapy Simulation System" means a radiographic or fluoroscopic system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(84) "Radiograph" means an image receptor on which the image is created directly or indirectly by a pattern and results in a permanent record.

(85) "Radiographic Imaging System" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(86) "Radiological Physicist" means an individual who:

(a) Is certified by the American Board of Radiology in therapeutic radiological physics, radiological physics, or x- and gamma-ray physics; or

(b) Has a bachelor's degree in one of the physical sciences or engineering and three years full-time experience working in therapeutic radiological physics under the direction of a physicist certified by the American Board of Radiology. The work duties must include duties involving the cal-

## ADMINISTRATIVE RULES

ibration and spot checks of a medical accelerator or a sealed source teletherapy unit; or

(c) Has a Master's or a Doctor's degree in physics, biophysics, radiological physics, health physics, or engineering; has had one year's full-time training in therapeutic radiological physics; and has had one year's full-time work experience in a radiotherapy facility where the individual's duties involve calibration and spot checks of a medical accelerator or a sealed source teletherapy unit.

(87) "Radiologist" means a physician trained in the diagnostic and/or therapeutic use of x-rays and who is;

(a) Currently licensed by their respective Oregon licensing board; and

(b) Board certified by the American Board of Radiology (ABR) or American Osteopathic Board of Radiology (AOBR) or American Chiropractic Board of Radiology (DACBR) or Royal College of Physicians and Surgeons of Canada (RCPSC) and currently licensed to practice medicine in Oregon.

(88) "Radiology Physician's Assistant" (R.P.A.)/ "Radiology Assistant" (R.A.) means an A.R.R.T. technologist who has successfully completed an advanced training program and is certified by A.R.R.T. as a R.A. or the Certification Board for Radiology Practitioner Assistants (CBRPA).

(89) "R.T." means a radiologic technologist certified in radiography and in good standing with the A.R.R.T.; and is currently licensed by the Oregon Board of Radiologic Technology.

(90) "Rating" means the operating limits as specified by the component manufacturer.

(91) "Recording" means producing a permanent form of an image resulting from x-ray photons.

(92) "Registrant," as used in this Division, means any person who owns or possesses and administratively controls an x-ray system which is used to deliberately expose humans or animals to the useful beam of the system and is required by the provisions contained in Divisions 100 and 101 of this chapter to register with the Agency.

(93) "Response Time" means the time required for an instrument system to reach 90 percent of its final reading when the radiation-sensitive volume of the instrument system is exposed to a step change in radiation flux from zero, sufficient to provide a steady state midscale reading.

(94) "Scattered Radiation" means radiation that, during passage through matter, has been deviated in direction (see "Direct Scattered Radiation").

(95) "Screening" means the use of a systematic approach to obtain cursory examinations of a person or group of persons without regard to specific clinical indications.

(96) "Secondary Dose Monitoring System" means a system which will terminate irradiation in the event of failure of the primary system.

(97) "Secondary Protective Barrier" (see "Protective barrier").

(98) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalence not less than that of the tube housing assembly.

(99) "SID" (see "Source-image receptor distance").

(100) "Source" means the focal spot of the x-ray tube.

(101) "Source-Image Receptor Distance" means the distance from the source to the center of the input surface of the image receptor.

(102) "Spot Check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(103) "Spot Film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(104) "Spot-Film Device" means a device intended to transport and/or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(105) "SSD" means the distance between the source and the skin of the patient.

(106) "Stationary Equipment" (see "X-Ray Equipment").

(107) "Stray Radiation" means the sum of leakage and scattered radiation.

(108) "Technique Factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs;

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses;

(c) For all other equipment, peak tube potential in kV and either tube current in mA and exposure time in seconds, or the product of tube current and exposure time in mAs.

(109) "Termination of Irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(110) "Traceable to a National Standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one or more intermediate steps and that all comparisons have been documented.

(111) "Tube" means an x-ray tube, unless otherwise specified.

(112) "Tube Housing Assembly" means the tube housing with tube installed. It includes high-voltage and/or filament transformers and other appropriate elements when such are contained within the tube housing.

(113) "Tube Rating Chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(114) "Unprotected Area" means any area in which the exposure rate, due to the use of the radiation machine under normal operating procedures and workload, exceeds any of the following limits:

(a) Two milliroentgens in any one hour; or

(b) One hundred milliroentgens in any seven consecutive days; or

(c) Five hundred milliroentgens in any one year.

(115) "Useful Beam" means the radiation emanating from the tube housing port or the radiation head and passing through the aperture of the beam limiting device when the exposure controls are in a mode to cause the system to produce radiation.

(116) "Variable-Aperture Beam-Limiting Device" means a beam-limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(117) "Visible Area" means that portion of the input surface of the image receptor over which the incident X-ray photons are producing a visible image.

(118) "Wedge Filter" means an added filter effecting continuous progressive attenuation on all or part of the useful beam.

(119) "X-Ray Control" means a device which controls input power to the x-ray high-voltage generator and/or the x-ray tube. It includes equipment such as exposure switches (control), timers, photo timers, automatic brightness stabilizers and similar devices, which control the technique factors of an x-ray exposure.

(120) "X-Ray Equipment" means an x-ray system, subsystem, or component thereof. Types of equipment are as follows:

(a) "Mobile equipment" means x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(b) "Portable equipment" means x-ray equipment designed to be hand-carried;

(c) "Stationary equipment" means x-ray equipment which is installed in a fixed location;

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(121) "X-ray equipment operator" means any individual who handles, adjusts technique factors, activates the exposure switch/ or button of an x-ray machine, or physically positions patients or animals for an x-ray.

(122) "X-Ray Field" means that area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(123) "X-Ray High-Voltage Generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube(s), high-voltage switches, electrical protective devices and other appropriate elements.

(124) "X-Ray System" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

(125) "X-Ray Subsystem" means any combination of two or more components of an x-ray system for which there are requirements specified in this Division.

(126) "X-Ray Tube" means any electron tube which is designed to be used primarily for the production of x-rays.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

# ADMINISTRATIVE RULES

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-106-0045

### Use of Best Procedures and Equipment

Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized. This is interpreted to include, but is not limited to:

(1) The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations.

(2) The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality, see Tables 1, 2 and 3. [Tables not included. See ED. NOTE.]

(3) Portable or mobile X-ray equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary X-ray installation.

(4) X-ray systems subject to OAR 333-106-0301(1) shall not be utilized in procedures where the source to patient distance is less than 30 centimeters.

(5) Cardboard cassettes without screens shall not be used (dental intraoral excluded).

(6) The number of radiographs taken for any radiographic examination should be the minimum number needed to adequately diagnose the clinical condition.

(7) Use of techniques designed to compensate for anatomical thickness variations after the primary beam has exited the patient is specifically prohibited. This includes "split screen" imaging techniques whereby multiple speed intensifying screens are placed in the same cassette, or any techniques which rely on attenuation of secondary (remnant) radiation for compensatory purposes. Lead lined grids, which are designed to reduce scattered radiation are excluded from this provision.

(8) Filter slot covers shall be provided for the x-ray operator's protection.

(9) Facilities shall determine or cause to be measured the typical patient exposure for their most common radiographic examinations. The exposures shall be recorded as milliroentgens measured in free air at the point of skin entrance for an average patient. These exposure amounts must then be compared to existing guidelines and rules, and if they exceed such guidelines or rules, action must be taken to reduce the exposure while at the same time maintaining or improving diagnostic image quality. In addition, typical patient exposure values shall be posted in the radiographic examination rooms so that they are readily available to administrators, X-ray operators, patients and practitioners.

(10) Protective equipment including aprons, gloves and shields shall be checked annually for defects, such as holes, cracks and tears to assure reliability and integrity. A record of this test shall be made and maintained for inspection by the Agency. If such defect is found, equipment shall be replaced or removed from service until repaired. Fluoroscopy shall only be used for this purpose if a visual and manual check indicated a potential problem.

(11) Dental x-ray machines designed and manufactured to be used for dental purposes shall be restricted to dental use only.

(12) An x-ray quality control program shall be implemented when required by the Agency.

(13) All x-ray equipment must be capable of functioning at the manufacturer's intended specifications.

(14) All patients' radiographic images or copies shall be made available for review by any practitioner of the healing arts, currently licensed by the appropriate Oregon licensing board, upon request of the patient.

(15) Requirements for the operation of fluoroscopic x-ray equipment. The operation of fluoroscopic equipment shall be restricted to the following categories of properly trained operators:

(a) Radiologists;

(b) Non-Radiologist practitioners with proper training in the operation and use of fluoroscopic X-ray equipment;

(c) R.T.'s;

(d) R.P.A.'s and R.A.'s;

(e) The operation of fluoroscopic equipment by R.T.'s, or R.P.A.'s or R.A.'s shall be performed under the supervision of a radiologist and is restricted to the healing arts exclusively for the purpose of localization and/or to assist physicians in obtaining images for diagnostic purposes.

(f) Where direct or indirect supervision by a radiologist is impractical, a non-radiologist practitioner who has had proper training in the use and operation of fluoroscopic x-ray equipment is permitted to supervise an R.T.

operating fluoroscopic equipment provided that the registrant arranges to have a radiologist or Medical or Health physicist to assist in;

(A) Developing fluoroscopic and radiation safety policies and procedures;

(B) Conducting an on-site practical evaluation of the Non-Radiologist practitioner's knowledge of radiation safety practices and ability to operate the fluoroscopic equipment; and

(C) At least annually, review the registrant's fluoroscopy program. The review should include an evaluation of the fluoroscopic on-times Quality Assurance reports, condition of fluoroscopic equipment and compliance with current rules. The registrant shall correct any deficiencies noted by the review.

(g) The operation of fluoroscopic equipment by a R.T. is restricted to the healing arts exclusively for the purpose of localization and/or to assist physicians in obtaining images for diagnostic purposes.

(h) Students currently enrolled in an approved school of Radiologic Technology as defined in ORS 688.405, may only operate fluoroscopic equipment under the direct supervision of a Radiologist or a R.T. while in the clinical phase of training.

(i) Students currently enrolled in an Agency approved R.P.A. or R.A. training program, may only operate fluoroscopic equipment under the direct or in-direct supervision of a Radiologist during their clinical phase of training.

(j) Only a radiologist or a trained non-radiologist practitioner can order fluoroscopic studies on patients.

(k) Overhead fluoroscopy is not to be used as a positioning tool for radiographic examinations except for those fluoroscopic examinations specified in the registrant's written policies/ procedures for fluoroscopy.

### Proper Training:

(l) Proper training in the operation of fluoroscopic X-ray equipment shall include but not be limited to the following:

(A) Principles and operation of the fluoroscopic x-ray machine;

(i) Generating x-rays;

(ii) kVp and mA;

(iii) Image intensification;

(iv) High level control versus standard operating mode;

(v) Magnification (multi-field);

(vi) Automatic Brightness Control (ABC);

(vii) Pulsed versus Continuous x-ray Dose Rates;

(viii) Image recording modes;

(ix) Imaging Systems (TV and Digital);

(x) Contrast, noise and resolution;

(B) Radiation units;

(i) Traditional units;

(ii) SI units;

(iii) Dose Area Product;

(C) Typical fluoroscopic outputs;

(i) Patient skin entrance dose;

(ii) Standard Roentgen per minute (R/min) dose rates;

(iii) High level/ Boost enable Roentgen per minute (R/min) dose rates;

(D) Dose reduction techniques for fluoroscopy;

(i) The use of collimation;

(ii) X-ray tube and Image intensifier placement;

(iii) Patient size versus Technique selection;

(iv) Use of grid;

(v) Use of last image hold;

(vi) Additional beam filtration;

(vii) Alternate gantry angles;

(viii) Use of spacer cone;

(ix) Pulsed fluoroscopy;

(E) Factors affecting personnel dose;

(i) Patient dose;

(ii) Scatter radiation;

(iii) Tube and Image intensifier placement;

(iv) Time, distance and shielding;

(F) Protective devices;

(i) Lead aprons and gloves;

(ii) Thyroid collars;

(iii) Protective glasses;

(iv) Leaded drapes;

(v) Bucky slot cover;

(vi) Protective shields/barriers;

(G) Radiation exposure monitoring;

(i) Personnel monitors;



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- (ii) Placement of personnel monitors;
- (iii) Occupational and non-occupational dose limits;
- (H) Biological effects of x-ray radiation;
- (i) X-rays and particulate matter;
- (ii) Absorption variables (field size, dose rate, etc.);
- (iii) Scatter radiation;
- (iv) Cell sensitivity;
- (v) Acute effects;
- (vi) Latent effects;
- (I) Applicable regulations;
- (i) Federal; and
- (ii) Oregon Rules for the Control of Radiation to include, but not limited to, Divisions 101, 103, 106, 111 and 120.

(16) Radiologists, R.A.'s or R.P.A.'s and R.T.'s currently licensed in Oregon are considered to have met the training requirements in OAR 333-106-0045(14)(k).

(17) Fluoroscopic equipment operators who qualified to operate fluoroscopic x-ray equipment prior to the effective date of this rule, will be considered as having met the training requirements in OAR 333-106-0045(14)(k) of this rule.

(18) All images formed by the use of fluoroscopy shall be viewed, directly or indirectly, and interpreted by a radiologist, cardiologist, non-radiologist practitioner or other qualified specialist. R.A.'s and R.P.A.'s may issue a preliminary report, however, the final report must be issued by their supervising radiologist.

(19) Written procedures for fluoroscopic x-ray equipment operators shall be available at the worksite and include:

- (a) A list of all individuals who are permitted to operate fluoroscopic x-ray equipment at the facility;
- (b) A list of the fluoroscopic x-ray equipment that each operator is qualified to operate;
- (c) Written procedures regarding the set up and operation of each fluoroscopic x-ray machine registered to the facility;
- (d) Written radiation safety procedures pertaining to the use and operation of fluoroscopy; and
- (e) The name and title of the individual who is responsible for the direction of R.T.'s who operate fluoroscopic equipment.

(20) Protective equipment including aprons, gloves and shields shall be available for use and checked annually for defects such as holes, cracks and tears to assure integrity. A record of this annual test shall be made and maintained for inspection by the Agency. If damage or defect is found, the equipment shall be replaced or removed from service. Fluoroscopy shall only be used to check aprons, gloves and shields if a visual and manual check indicated a potential problem.

(21) Facilities shall determine, or cause to be determined, the typical patient entrance exposure rate for their most common fluoroscopic examinations. The determination shall be made using an attenuation block as described in OAR 333-106-005(8) using measurement protocol in compliance with OAR 333-106-0210 and expressed in Roentgens per minute (R/min.) or milliRoentgens per minute (mR/min.). In addition, these entrance exposure rates shall be posted in the room where radiographic examinations are conducted so that they are readily available to administrators, x-ray operators, patients and practitioners.

(22) Facilities that utilize fluoroscopy shall maintain a record of the cumulative fluoroscopic exposure time used for each examination. The record must indicate the patients name, the type of examination, the date of the examination, the fluoroscopist's name, the fluoroscopic room in which the examination was done and the total cumulative fluoroscopic on time for each fluoroscopic examination and:

(a) No later than May 1, 2006, establish cumulative fluoroscopic on-time benchmarks for at least two (if applicable) of the most common types of fluoroscopic examinations performed at their site in each of the following categories:

- (A) Routine procedures performed on adults;
- (B) Routine procedures performed on children;
- (C) Orthopedic procedures performed in surgery;
- (D) Urologic procedures performed in surgery;
- (E) Angiographic procedures performed;
- (F) Interventional cardiac studies.

(b) Develop and perform periodic (not to exceed 12 month intervals) quality assurance studies to determine the status of each individual fluoroscopist's cumulative on-time in relation to the fluoroscopic benchmarks established for individual fluoroscopic examinations;

(c) Take appropriate action, when the established benchmarks are consistently exceeded. The Radiation Safety Committee (RSC) must

review the results of the cumulative fluoroscopic on-time Quality Assurance Study and take corrective action regarding those individuals who have exceeded the benchmark/s established by the facility for a particular procedure on three or more occasions during the study period. Documentation of the RSC review, as well as any corrective action/s taken, must be available for Agency review. Corrective action should, at a minimum, include:

(A) Notification of the individual; and

(B) Recommendation that the individual undergo additional coaching, training, etc. in the safe use of fluoroscopic equipment in order to assist them in reducing their cumulative fluoroscopic on-times.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-106-0055

### X-ray Operator Training

(1) The registrant shall assure that individuals who will be operating the x-ray equipment shall have adequate training in radiation safety. Adequate training in radiation safety means a minimum of forty (40) hours of didactic instruction for diagnostic medical x-ray equipment operators, eight (8) hours for Grenz ray x-ray equipment operators and twenty (20) hours for veterinary x-ray equipment operators from an Agency approved training course covering the following subjects:

- (a) Nature of x-rays;
- (b) Interaction of x-rays with matter;
- (c) Radiation units;
- (d) Principles of the x-ray machine;
- (e) Biological effects of x-ray;
- (f) Principles of radiation protection;
- (g) Low dose techniques;
- (h) Applicable Federal and State radiation regulations including those portions of Divisions 100, 101, 103, 106, 111 and 120 of the Oregon Rules for the Control of Radiation;
- (i) Darkroom and film processing;
- (j) Film critique.

NOTE: Subjects (g), (i) and (j) are not required for Grenz ray x-ray equipment operator training.

(2) Dental x-ray operators who meet the following requirements are considered to have met the requirements in 333-106-0055(1):

- (a) Currently licensed by the Oregon Board of Dentistry as a Dentist or Dental Hygienist; or
- (b) Is a Dental Assistant who is certified, by the Oregon Board of Dentistry, in radiologic proficiency; and
- (c) Successfully completed didactic and clinical radiography training covering the subject areas outlined in section (1) of this rule; and
- (d) Passed the Dental Assisting National Board, Inc. and clinical radiography examination or other comparable requirements approved by the Oregon Board of Dentistry.

(3) Medical x-ray equipment operators not regulated by the Oregon Board of Radiologic Technology. In addition to the above, medical x-ray equipment operators using diagnostic radiographic equipment on human patients, and who are not regulated by the Oregon Board of Radiologic Technology must have 100 hours or more of instruction in radiologic technology including, but not limited to, anatomy physiology, patient positioning, exposure and technique. The instruction must be appropriate to the types of x-ray examinations that the individual will be performing; and

(a) Have 200 hours or more of x-ray laboratory instruction and practice in the actual use of an energized x-ray unit, setting techniques and practicing positioning of the appropriate diagnostic radiographic procedures that they intend to administer; and

(b) Must have completed the required radiation use and safety hours and a minimum of 50 hours in x-ray laboratory before x-raying a human patient.

(4) Radiation Use and Safety Instructor Qualifications. The training required in OAR 333-106-0055(1), (2) and (3) of this rule must be taught by an Agency approved Instructor. Approval will be based upon the following criteria:

(a) Medical use and safety instructor: An individual who is currently licensed as a Radiologic Technologist and approved as an education provider by the Oregon Board of Radiologic Technology.

(b) A dental radiation use and safety instructor is an individual who has:

## ADMINISTRATIVE RULES

(A) Passed the Dental Assisting National Board (DANB) written radiation health and safety examination; or

(B) Has been evaluated and approved as a qualified Dental radiation use and safety instructor by the Oregon Board of Dentistry; and

(C) Is currently licensed, by the Oregon Board of Dentistry as a dentist; or

(D) Is a dental hygienist; or

(E) Is a dental assistant certified in Radiologic proficiency and has a minimum of two years of experience in taking dental radiographs.

(c) A veterinarian radiation use and safety instructor is an individual who is:

(A) Currently credentialed with the Oregon Veterinary Medical Examining Board; or

(B) Currently licensed as a Radiologic Technologist by the Oregon Board of Radiologic Technology; and

(C) Has completed training specific to veterinarian radiography; and

(D) Have a minimum of two years of experience in taking veterinary radiographs.

(d)(A) On a case by case basis, if an evaluation by the Agency reveals the individual has alternative qualifications that are substantially equivalent to the qualifications listed in OAR 333-106-0055(4)(a) or (b) or (c) or is an individual who is qualified under OAR 333-101-0230 as a Hospital Radiology Inspector; or

(B) The individual meets the requirements of a qualified expert as defined in OAR 333-100-0005(102).

(5) In addition to the requirements in OAR 333-106-0055(2), (9), (10) and (13), dental x-ray equipment operator must also satisfy any requirements established by the Oregon Board of Dentistry.

(6) The operator shall be able to demonstrate competency in the safe use of the x-ray equipment and associated x-ray procedures.

(7) Any diagnostic medical x-ray operator is deemed to have adequate training to meet the requirements of section (1) of this rule if they meet any of the following:

(a) Holds a current license from the Oregon Board of Radiologic Technology; or

(b) Holds a current limited permit from the Oregon Board of Radiologic Technology; or

(c) Is a student in a two-year approved school of Radiologic Technology as defined in ORS 688.405 while practicing Radiologic Technology under the supervision of a radiologist who is currently licensed with the Oregon Medical Examiners Board or a radiologic technologist who is currently registered with the American Registry of Radiologic Technologists and licensed with the Oregon Board of Radiologic Technology; or

(d) Is a student in an Oregon Board of Radiologic Technology approved limited permit program under a Radiologic Technologist who is currently registered with the American Registry of Radiologic Technologists and licensed by the Oregon Board of Radiologic Technology.

(8) Dental radiology students in an approved Oregon Board of Dentistry dental radiology course are permitted to take dental radiographs on human patients during their clinical training, under the indirect supervision of a Dentist or Dental Hygienist currently licensed or a dental assistant who has been certified in radiologic proficiency, by the Oregon Board of Dentistry provided that:

(a) They are enrolled in an Oregon Board of Dentistry approved radiology course; or

(b) A student studying under an Oregon Board of Dentistry approved radiology instructor; and

(c) The student has written authorization, signed by their instructor, attesting that the student has successfully completed training in the subject areas in section (1) of this rule; and

(d) Demonstrated to the instructor that they are ready to take dental radiographs on human patients through;

(A) The use of mannequins under indirect supervision; or

(B) Taking dental radiographs of human patients while under the direct supervision of the instructor; and

(C) The written authorization is on the training program or Oregon Board of Dentistry approved instructor's letterhead, a copy of which is maintained at the site/s of their clinical training and available for review by DHS Office of Public Health Systems inspection staff at the time of inspection.

(9) The students identified in OAR 333-106-0055(8) and (9) are prohibited from taking radiographs on human patients without proper authorization from a practitioner of the healing arts who is currently licensed in Oregon, as required in OAR 333-106-0035 of these rules.

(10) The students identified in OAR 333-106-0055(8) and (9) of this rule are considered to be in "student status" until they have successfully completed the clinical phase of their training. "Student status" shall not exceed a period of twelve (12) consecutive months.

(11) Radiation use and safety training programs approved prior to the May 1, 2005 will continue to be considered as meeting the requirements of OAR 333-106-0055(1) provided they cover those portions of the Oregon Rules for the Control of Radiation indicated in OAR 333-106-0055(1)(h).

(12) X-ray operator training approved prior to May 1, 2005 will continue to be considered as having met the requirements of OAR 333-106-0005(1), (2) or (3) as applicable.

(13) Reciprocity. X-ray equipment operators who have received their radiation safety training outside of Oregon will be considered to have met the training requirements listed in section (1) or (2) as applicable of this rule, if the Agency's or applicable Oregon Licensing Board's evaluation of their training or training and experience, reveals that they substantially meet the intent of OAR 333-106-0055(1) or (2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; HD 24-1994, f. & cert. ef. 9-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

### 333-106-0101

#### Diagnostic X-ray Systems

Additional Requirements. In addition to other requirements of this Division, all diagnostic x-ray systems shall meet the following requirements:

(1) Warning Label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This x-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed.

(2) The state will attach an identification number to each x-ray control panel:

(a) Identification numbers shall not be removed without written permission of the Agency;

(b) Identification numbers shall not be defaced.

(3) Mobile and portable x-ray systems shall meet the requirements of a stationary system when used for greater than seven consecutive days in the same location.

(4) Battery Charge Indicator. On battery-powered x-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

(5) Leakage Radiation from the Diagnostic Source Assembly. The leakage radiation from the diagnostic source assembly measured at a distance of one meter in any direction from the source shall not exceed 100 milliroentgens (25.8 C/kg) in one hour when the x-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(6) Radiation from Components Other Than the Diagnostic Source Assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed two milliroentgens (0.516 C/kg) in one hour at five centimeters from any accessible surface of the component when it is operated in an assembled x-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

(7) Beam Quality:

(a) Half-Value Layer:

(A) The half-value layer of the useful beam for a given x-ray tube potential shall not be less than the values shown in Table 4. If it is necessary to determine such half-value layer at an x-ray tube potential which is not listed in Table 4, linear interpolation or extrapolation may be made; [Table not included. See ED. NOTE.]

(B) In addition to the requirements of section (5) of this rule, all intraoral dental radiographic systems manufactured on and after December 1, 1980, shall have a minimum half-value layer not less than 1.5 millimeters aluminum equivalent filtration permanently installed in the useful beam;

(C) Beryllium window tubes shall have a minimum of 0.5 millimeter aluminum equivalent filtration permanently installed in the useful beam;

(D) For capacitor energy storage equipment, compliance with the requirements of section (5) of this rule shall be determined with the maximum quantity of charge per exposure;

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(E) The required minimal aluminum equivalent filtration shall include the filtration contributed by all materials, which are always, present between the source and the patient.

(b) Filtration Controls. For x-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) and shall prevent an exposure unless the minimum amount of filtration required by subsection (5)(a) of this rule is in the useful beam for the given kVp, which has been selected.

(8) Multiple Tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes, which have been selected, shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the x-ray control panel and at or near the tube housing assembly, which has been selected.

(9) Mechanical Support of Tube Head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless the tube housing movement is a designed function of the x-ray system.

(10) Technique Indicators:

(a) The technique factors to be used during an exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors, which are set prior to the exposure, shall be indicated;

(b) The requirement of subsection (10)(a) of this rule may be met by permanent marking on equipment having fixed technique factors.

(11) There shall be provided for each x-ray machine a means for determining the proper SID.

(12) X-ray film developing requirements. Compliance with this section is required of all healing arts registrants and is designed to ensure that patient and operator exposure is minimized and to produce optimum image quality and diagnostic information:

(a) Manual processing of films.

(A) The following relationship between temperature of the development and development time must be used standard chemistry only or manufacturer's recommendations. [Table not included. See ED. NOTE.]

(B) Processing of film. All films shall be processed in such a fashion as to achieve adequate sensitometric performance. This criterion shall be adjudged to have been met if:

(i) Film manufacturer's published recommendations for time and temperature are followed; or

(ii) Each film is developed in accordance with the time-temperature chart (see subsection (a) of this section).

(C) Chemical-film processing control.

(i) Chemicals shall be mixed in accordance with the chemical manufacturer's recommendations;

(ii) Developer replenisher shall be periodically added to the developer tank based on the recommendations of the chemical or film manufacturer. Solution may be removed from the tank to permit the addition of an adequate volume of replenisher.

(D) All processing chemicals shall be completely replaced at least every two months or as indicated by the manufacturer.

(E) Devices shall be available which will:

(i) Give the actual temperature of the developer; and

(ii) Give an audible or visible signal indicating the termination of a preset development time (in minutes or seconds).

(b) Automatic film processing. Films shall be processed in such a manner that the degree of film development is the same as would be achieved by proper adherence to subsection (a) of this section (manual processing).

(c) Darkrooms. Darkrooms shall be constructed so that film being processed, handled, or stored will be exposed only to light which has passed through an appropriate safelight filter.

(d) Safelights shall be mounted in accordance with manufacturer's recommendations.

(e) Light bulbs used in safelights shall be the type and wattage recommended by the manufacturer.

(f) Safelight lenses shall be the type recommended for use by the film manufacturer.

(g) Rapid film processing. Special chemicals have been designed for use in Endodontics. These chemicals have special development requirements and do not permit as large of a margin of error in darkroom technique as do standard developing chemicals. Failure to precisely follow manufacturer's recommendations can easily lead to overexposure and underdevelopment. Darkroom procedures shall include:

(A) The manufacturer's time temperature development is crucial and shall be followed exactly;

(B) Caution: A timer capable of accurately measuring the short development times required shall be used;

(C) If rapid chemical processing is used for general radiography all applicable requirements of section (12) of this rule shall be followed.

(h) The department shall make such tests as may be necessary to determine compliance with this section.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 4-1985, f. & cert. ef. 3-20-85; HD 1-1991, f. & cert. ef. 1-8-91; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

### 333-106-0370

#### Operator Requirements

(1) Computed Tomography (CT) X-ray systems shall be operated by individuals who:

(a) Are registered with the American Registry of Radiologic Technologists (A.R.R.T.); and

(b) Have received additional CT system training; and

(c) Meet the clinical experience requirements for C.T. established by A.R.R.T.; and

(d) Are currently licensed by the Oregon Board of Radiologic Technology.

(2) Individuals who are registered with the A.R.R.T. and credentialed as an R.T.(R) and (CT) are considered to have met the CT training requirement in 333-106-0370(1) and clinical experience requirement in OAR 333-106-0370(1)(a).

(3) Those individuals who have met the requirements of OAR 333-106-0370(1) prior to the effective date of this rule are considered to have met OAR 333-106-0370(1)(a).

(4) Technologists operating CT systems must do so under the direction of a radiologist.

(5) Positron Emission-Computed Tomography (PET/CT) or Single Photon Emission-Computed Tomography (SPECT/CT) systems shall be operated by:

(a) Any registered radiographer with the credential R.T. (R); or

(b) Registered radiation therapist with the credential R.T. (T); and

(c) Who are currently licensed by the Oregon Board of Radiologic Technology; or

(d) Registered certified nuclear medicine technologist with the credentials R.T. (N); or

(e) Certified Nuclear Medicine Technologist (CNMT) by the Nuclear Medicine Technologist Certification Board (NMTCB).

(6) The individuals mentioned in OAR 333-106-0370(5) of this rule must also have successfully completed appropriate additional education and training and demonstrated competency in the use and operation of PET/CT or SPECT/CT systems.

(7)(a) Appropriate additional training is considered training that covers the topic areas outlined in the PET/CT curriculum developed by the Multi-Organizational Curriculum Project Group sponsored by the American Society of Radiologic Technologists and the Society of Nuclear Medicine Technologists, or equivalent training approved by the Agency; and

(b) Includes the content specified in the PET/CT curriculum for the area(s) that the individual is not already trained or certified in; or

(c) Individuals meeting the requirements of OAR 333-106-0370(5) of this rule and who have successfully completed training that the Agency has evaluated and judged to be substantially equivalent to that specified in OAR 333-106-0370(7)(a).

(8) R.T.(N) 's or CNMT's who have become certified in Computed Tomography through the American Registry of Radiologic Technologists are considered to have met the training requirements in OAR 333-106-0370(5).

(9) Technologists operating PET/CT or SPECT/CT systems must do so under the direction of an authorized user licensed to perform imaging and localization studies in accordance with OAR 333-116-0320.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 5-2005, f. & cert. ef. 4-11-05

### 333-106-0512

#### Beam Quality

The registrant shall determine, or obtain from the manufacturer, data sufficient to assure that the following beam quality requirements are met:

(1) The absorbed dose resulting from X-rays in a useful electron beam at a point on the central axis of the beam ten centimeters greater than the



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practical range of the electrons shall not exceed the values stated in Table 5. Linear interpolation shall be used for values not stated. [Table not included. See ED. NOTE.]

(2) Compliance with section (1) of this rule shall be determined using:

(a) A measurement within a phantom with the incident surface of the phantom at the normal treatment distance and normal to the central axis of the beam;

(b) The largest field size available which does not exceed 15 by 15 centimeters; and

(c) A phantom whose cross-sectional dimensions exceed the measurement radiation field by at least five centimeters and whose depth is sufficient to perform the required measurement.

(3) The absorbed dose at a surface located at the normal treatment distance, at the point of intersection of that surface with the central axis of the useful beam during X-ray irradiation, shall not exceed the limits stated in Table 6. Linear interpolation shall be used for values not stated. [Table not included. See ED. NOTE.]

(4) Compliance with section (3) of this rule shall be determined by measurements made:

(a) Within a phantom using an instrument which will allow extrapolation to the surface absorbed dose;

(b) Using a phantom whose size and placement meet the requirements of section (2) of this rule;

(c) After removal of all beam modifying devices which can be removed without the use of tools, except for beam scattering or beam flattening filters; and

(d) Using the largest field size available which does not exceed 15 by 15 centimeters.

(5) The registrant shall determine, or obtain from the manufacturer, the maximum percentage absorbed dose in the useful beam due to neutrons, excluding stray neutron radiation, for specified operating conditions.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; HD 15-1994, f. & cert. ef. 5-6-94; PH 5-2005, f. & cert. ef. 4-11-05

### 333-106-0710

#### Equipment Standards

Only x-ray systems meeting the design and performance standards required under Mammography Quality Standards Act (MQSA) shall be used, unless otherwise specified in the following rules.

(1) System design. The x-ray system shall be specifically designed for mammography.

(2) Image receptor.

(a) Image receptor systems shall be specifically designed, or appropriate for mammography.

(b) Systems using screen-film image receptors shall provide, at a minimum, image receptor sizes of 18X24 and 24X30 centimeters (cm).

(c) An adequate number of image receptors shall be provided to accommodate the resting period recommended by the manufacturer.

(3) Target/filter. The x-ray system shall have the capability of providing kVp/target/filter combinations compatible with image receptor systems meeting the following requirements;

(a) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(b) When more than one target is provided, the system shall indicate, prior to exposure, the preselected target material.

(c) When the target material and/or focal spot is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after exposure, the target material and/or focal spot actually used during the exposure.

(4) Beam quality: When used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the useful beam shall have a minimum half-value layer (HVL). The minimum HVL, for mammography equipment designed to operate below 50 kVp, is determined by dividing the actual kVp by 100, and is expressed in millimeters (mm) of aluminum equivalent.

(5) Resolution: Until October 28, 2002, focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. After October 28, 2002, facilities shall evaluate focal spot condition only by determining system resolution.

(a) Each x-ray system used for mammography, in combination with the mammography screen-film combination used, shall provide a minimum resolution of 11 Cycles/millimeters (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the

anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

(b) The bar pattern shall be placed 4.5 centimeters (cm) above the image receptor support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 centimeter (cm) of the chest wall edge of the image receptor.

(6) Compression.

(a) All mammography systems shall incorporate a compression device capable of compressing the breast with a force of at least 25 pounds.

(b) Effective October 28, 2002, the maximum compression force for the initial power drive shall be between 25 pounds and 45 pounds.

(c) All mammography systems shall be equipped with different sized compression paddles that match the sizes of all full field image receptors provided for the system. The compression paddle shall:

(A) Be flat and parallel to the image receptor support and shall not deflect from parallel by more than 1.0 centimeter (cm) at any point on the surface of the compression paddle when compression is applied. If the compression paddle is not designed to be flat and parallel to the image receptor support during compression, it shall meet the manufacturer's design specifications and maintenance requirements;

(B) Have a chest wall edge that is straight and parallel to the edge of the image receptor support;

(C) Clearly indicate the size and available positions of the detector at the x-ray input surface of the compression paddle;

(D) Not extend beyond the chest wall edge of the image receptor support by more than one (1) percent of the SID when tested with the compression paddle placed above the support surface at a distance equivalent to a standard breast thickness;

(E) Shall not be visible, at its vertical edge, on the image.

(d) When equipped with a compression paddle height digital display, the display shall accurately represent the actual height of the compression paddle to within  $\pm 0.5$  centimeter (cm). Testing shall be performed according to manufacturer's specifications.

(7) System capabilities. A mammographic x-ray system utilizing screen-film image receptors shall:

(a) Be equipped with moving grids matched to all image receptor sizes provided.

(b) Provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, non-grid, magnification; and various target-filter combinations.

(A) The automatic exposure control shall be capable of maintaining film optical density (OD) within  $\pm 0.30$  of the mean optical density when thicknesses of a homogeneous material are varied over a range of 2 to 6 centimeters (cm) and the kVp is varied appropriately for such thicknesses over the kVp range used clinically. If this requirement can not be met, a technique chart shall be developed showing appropriate techniques (kVp and density control settings) for different thicknesses and compositions that must be used so that optical densities within  $\pm 0.30$  of the average under photo-timed conditions can be produced.

(B) After October 28, 2002, the AEC shall be capable of maintaining film optical density (OD) to within  $\pm 0.15$  of the mean optical density when thicknesses of a homogeneous material are varied over a range of 2 to 6 centimeters (cm) and the kVp is varied appropriately for such thicknesses over the kVp range used clinically.

(8) Breast entrance kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

(9) Collimation.

(a) All mammography systems shall have beam-limiting devices that allow the entire chest wall edge of the x-ray field to extend to the chest wall edge of the image receptor and provide means to assure that the X-ray field does not extend beyond any edge of the image receptor by more than two (2) percent of the SID. Under no circumstances, shall the x-ray field extend beyond the non-chest wall edges of the image receptor support.

(b) The total misalignment of the edges of the visually defined light field with the respective edges of the X-ray field either along the length or width of the visually defined field shall not exceed two (2) percent of the SID.

(10) Kilovoltage peak (kVp) accuracy and reproducibility;

(a) The kVp, shall be accurate within  $\pm$  five (5) percent of the indicated or selected kVp at the lowest clinical kVp that can be measured by a kVp test device, and the most commonly used, and highest available clinical kVp; and

(b) At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.

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(11) Dose. The average glandular dose delivered during a single cranio-caudal view of an FDA accepted phantom simulating a standard breast, shall not exceed 250 millirad (2.5 milliGy). The dose shall be determined with technique factors and conditions used, by the registrant, clinically for a standard breast. The testing protocol used shall be the same as used by MQSA.

(a) If the average glandular dose exceeds 250 millirad (2.5 milliGray) but is no greater than 275 millirad (2.75 milliGray), patient mammography may be continued until the cause of the problem is determined and corrected. Correction must be completed within thirty (30) working days of when the registrant became aware of the problem. If correction has not been completed within thirty (30) working days, and the registrant has not requested an extension in writing from the agency, patient mammography must cease until correction of the dose problem has occurred.

(b) If the average glandular dose exceeds 275 millirad (2.5 milliGray), patient mammography must cease until the cause of the dose problem is determined and corrected.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; HD 1-1995, f. & cert. ef. 4-26-95; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

### 333-106-0720

#### Quality Assurance Program

(1) The registrant shall have a written, on-going equipment quality assurance program specific to mammographic imaging, covering all components of the diagnostic x-ray imaging system. The quality assurance program shall include the testing required in section (5) of this rule, as well as the evaluation of the test results and corrective actions necessary to ensure consistently high-quality images with minimum patient exposure. Responsibilities under this requirement are as follows:

(a) The registrant shall identify in policy/procedure, by name, a Lead Interpreting Physician meeting the requirements of OAR 333-106-0750(2), whose responsibilities at a minimum must include:

(A) Ensuring that the registrant's quality assurance program meets all associated rules and regulations;

(B) Ensuring that an effective quality assurance program exists;

(C) Providing frequent feedback to mammography technologists regarding film quality and quality control procedures;

(D) Reviewing the Quality Control Technologist's test data at least every three months, or more if consistency has not been shown or problems are evident;

(E) Reviewing the Medical Physicist's annual survey report or equipment evaluation results.

(b) The registrant shall identify in policy/procedure, by name, and have the services of, a Medical Physicist who meets the requirements of OAR 333-106-0750(3). The Medical Physicist shall assist in overseeing the equipment quality assurance practices of the registrant. At a minimum, the Medical Physicist shall be responsible for the annual surveys, mammography equipment evaluations, and associated reports meeting all the requirements of MQSA.

(c) The registrant shall identify in policy/procedure, by name, a single qualified Quality Control Technologist meeting the requirements of OAR 333-106-0750(1), who shall be responsible for:

(A) Equipment performance monitoring functions;

(B) Analyzing the monitoring results to determine if there are problems requiring correction;

(C) Carrying out or arranging for the necessary corrective actions when results of quality control tests including those specified in section (5) of this rule, indicate the need; and

(D) The Quality Control Technologist may be assigned other tasks associated with the quality assurance program that are not assigned to the Lead Interpreting Physician or Medical Physicist. These additional tasks must be documented in written policy/procedure.

(2) Annual Survey. At intervals not to exceed 12-14 months, the registrant shall have a Medical Physicist meeting the requirements of OAR 333-106-0750(3) conduct a survey to evaluate the mammography equipment, and the effectiveness of the quality assurance program required in section (1) of this rule. Records of annual surveys shall be maintained for a minimum of two years, and shall be available on-site for agency review.

(3) Annual survey/or equipment evaluation corrective actions. Corrective action shall be completed within thirty (30) working days of when the registrant received written or verbal notice of recommendations or failures on their annual survey/or equipment evaluation report, unless otherwise noted in these rules or a written request for extension has been submitted to and approved by the Agency;

(a) Correction of equipment related failures or recommendations shall be demonstrated by a repeat test using the same test methodology and documentation, or a test accepted as the equivalent by the Agency, that was used to initially identify the problem.

(b) When the results of a quality control test/s fail to meet applicable action limits defined in these rules, the appropriate action regarding the suspension or continuation of mammography as defined in these rules or in MQSA, shall be taken.

(4) Quality assurance records. The registrant shall ensure that;

(a) Records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, policies, previous inspection findings, and radiation protection are maintained until inspected by the agency.

(b) Quality control monitoring data and records, problems detected by the analysis of that data, corrective actions, and records of the Lead Interpreting Physician's periodic reviews of the Quality Control Technologist's monitoring data taken must be maintained for a minimum of two years.

(5) Equipment quality control tests frequency. The registrant shall ensure that the following quality control tests are performed when applicable equipment or components are initially installed or replaced and performed thereafter at least as often as the frequency specified as follows; [Table not included. See ED. NOTE.]

(6) Testing methods and action limits for quality control tests shall meet the most current requirements of MQSA, in addition to the following;

(7) Screen/film contact. Screen film contact tests shall be performed on all screens used clinically, using a 40-mesh test tool and 4 cm thick sheet of acrylic. Screens demonstrating one or more areas of poor contact that are greater than 1 cm in diameter, that are not eliminated by screen cleaning, and remain in the same location during subsequent tests, shall not be used for mammography. Screen/film contact shall be such that any areas of poor contact, regardless of size, shall not detract from image quality.

(8) Processor performance. A processor performance test shall be performed by sensitometric means and evaluated daily, after the solution temperature in the processor has reached proper temperature, and just prior to processing any clinical mammograms. The test shall be an assessment of the base plus fog, mid-density, density difference, and developer temperature.

(a) Sensitometers and densitometers used to evaluate processor performance shall be calibrated per the manufacturer's recommended calibration procedures for such devices. A record of the calibration shall be maintained until inspected by the Agency. Densitometers shall be checked against the instrument control strip at least monthly.

(b) The mid-density and density difference action limits must be within  $\pm 0.15$  of the control operating level.

(c) The base plus fog (B+F) action limit must be within  $\pm 0.03$  of the control operating level.

(d) If the mid-density and/or the density difference fall outside of the  $+0.10$  or  $-0.10$  control limit but within the  $\pm 0.15$  control limit for a period of three (3) days (a trend), steps must be taken to determine the cause and correct the problem;

(e) If the mid-density and/or the density difference falls outside of the  $\pm 0.15$  control limit, mammograms must not be processed through the processor until the cause of the problem is determined, corrected, and a repeat test is done demonstrating that the mid-density and/or density difference are within the  $\pm 0.15$  control limit;

(f) Processor quality control graphs must be in the format of the registrant's accrediting body or equivalent, and indicate test date/s, mid-density and density difference action limits, base plus fog action limit, film brand, type and emulsion number in use, the date when chemistry changes occurred and corrective action(s) taken when limits are exceeded;

(g) Cross over records and calculations must be maintained until reviewed by the Agency during the annual inspection. New mid-density and/or density difference operating levels must be charted on a new graph page.

(h) Re-establishment of operating levels must be done in accordance with the accrediting body's protocol regarding the appropriateness of this procedure or at the specific direction of the facility's medical physicist.

(i) While re-establishing operating levels (five day average), the facility must chart each day's results against its old operating control levels. At the end of the five days, a new chart must be established, indicating the new calculated operating limits. During the five day average, the facility will not be cited for having exceeded the old processor operating levels; and

(j) When collecting data for the five day average, a phantom image test shall be conducted each day to verify the adequacy of image quality.

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Should the phantom image test exceed either the  $\pm 0.20$  background optical density limit or the  $\pm 0.05$  density difference limit, mammography must be suspended until the cause of the problem is identified and corrected, and a repeat phantom image test is shown to be within limits.

(9) Primary/secondary barrier transmission — upon initial x-ray system installation and significant modification of the system or the facility.

(10) Image quality. The mammography system must be capable of producing an image of the phantom demonstrating the following;

(a) A minimum score of four (4.0) fibers, three (3.0) speck groups, and three (3.0) masses (or the most current minimum score established by the accrediting body and accepted by the FDA).

(b) Background density action limits within  $\pm 0.20$  of the control level;

(c) Density difference action limits within  $\pm 0.05$  of the control level;

(d) Milliampere seconds (mAs) within  $\pm 15\%$  of the control level;

(e) Demonstrating a level of contrast sufficient enough to clearly help define fibril, speck, and mass edges.

(f) Without objectionable levels of image noise or quantum mottle that obscure the visualization of fibrils, specks, or masses.

(g) Demonstrating reasonably sharp fibril, and mass margins.

(h) With a minimum optical density (measured at the center of the phantom) of 1.20.

(i) Phantom image test records must be in the most current format of the registrant's accrediting body or the equivalent, and indicate the exposure mode, kVp, and photo-cell used for the test as well as remarks indicating the corrective action that was taken when limits were exceeded.

(j) When phantom image results do not meet the requirements defined in sections (a), (b), (c), (d), (e), (f), (g), or (h) of this rule, corrective action must occur, and a repeat phantom image test must be performed demonstrating compliance, before further mammography examinations are performed using the x-ray machine.

(11) Darkroom fog. Darkroom fog levels shall not exceed 0.05 in optical density when sensitized film is exposed to darkroom conditions with safelight on for two (2) minutes. Film shall be sensitized by exposing it to sufficient light from an appropriate intensifying screen so that after processing, an optical density of at least 1.20 is achieved.

(a) If the darkroom fog level exceeds 0.05 in optical density but is less than 0.10, mammography may be continued until the problem is corrected.

(b) If the darkroom fog level exceeds 0.10 in optical density, mammography must be curtailed until the problem is corrected and the fog level no longer exceeds 0.05 in optical density.

(12) Repeat rate. Corrective actions shall be recorded and the results of these corrective actions shall be assessed if the reject rate exceeds five (5) percent or changes by  $\pm 2\%$  from the previously measured rate. The reject rate shall be based on repeated clinical images.

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

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-106-0730

### Additional Requirements

(1) Masks. Masks shall be provided on the view boxes to block extraneous light from the viewer's eye when the illuminated surface of the view box is larger than the area of clinical interest.

(2) Film processors utilized for mammography shall be:

(a) Used with x-ray film for mammography that has been designated by the film manufacturer as appropriate for mammography.

(b) Use chemical solutions that are capable of developing the films used by the facility in a manner equivalent to the minimum requirements specified by the film manufacturer.

(c) Be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent.

(3) Instruments and devices. The following instruments and devices shall be available and properly maintained;

(a) FDA accepted image quality phantom;

(b) 21 step sensitometer;

(c) Densitometer.

(4) Image retention. Clinical images shall be retained for a minimum of five (5) years or not less than ten (10) years if no additional mammograms of the patient are performed.

(5) Mobile Mammography. In addition to meeting the requirements of this section as well as OAR 333-106-0699, 333-106-0710, 333-106-0720,

333-106-0730, and 333-106-0750, registrants shall ensure that for a mammography system that is used at more than one location:

(a) The film processor is operated in accordance with the requirements of OAR 333-106-0740(2)(a)(b)(c)(d), and is located where the mammography examinations are performed (batch processing is prohibited).

(b) The following tests are conducted, evaluated and documented after every move and before any mammography examinations are conducted, in order to verify that the unit's performance continues to meet quality requirements:

(A) Phantom image;

(B) The measured radiation output or the data from the post exposure mAs display does not deviate by more than  $\pm 10\%$  of the established operating level.

(6) Technique charts. Mammography technique charts shall posted in the vicinity of the mammography system's X-ray control. The technique chart shall indicate;

(a) Technique factors for 3, 3-5, 5-7, and  $> 7$  centimeter compressed breast thicknesses for fatty, 50 percent fatty-50 percent dense, and dense breast tissue;

(b) The target/filter combination to be used;

(c) The kVp to be selected for the patient sizes and breast tissue compositions indicated in section (a) of this rule, or if an auto-kVp mode is used, indicate the post kVp that is selected;

(d) The exposure mode to be used (i.e. auto-kVp, manual, etc.);

(e) The manual technique factors to be used for small, medium, and large sized breast tissue specimens, and Implanted breasts;

(f) The film/ screen combination to be used;

(g) The date that the technique chart was last reviewed for accuracy and the name of the reviewer.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.695

Hist.: HD 15-1994, f. & cert. ef. 5-6-94; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0490

### Installation, Maintenance, Adjustment and Repair

(1) Only a person specifically licensed by the Commission or an Agreement State shall install, maintain, adjust, or repair a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit that involves work on the source(s) shielding, the source(s) driving unit, or other electronic or mechanical component that could expose the source(s), reduce the shielding around the source(s), or compromise the radiation safety of the unit or the source(s).

(2) Except for low dose-rate remote afterloader units, only a person specifically licensed by the Commission or an Agreement State shall install, replace, relocate, or remove a sealed source or source contained in other remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units.

(3) For a low dose-rate remote afterloader unit, only a person specifically licensed by the Commission or an Agreement State or an authorized medical physicist shall install, replace, relocate, or remove a sealed source(s) contained in the unit.

(4) A licensee shall retain a record of the installation, maintenance, adjustment, and repair of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units in accordance with OAR 333-116-0620.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0540

### Radiation Monitoring Device

(1) A licensee shall have in each teletherapy room a permanent radiation monitor capable of continuously monitoring beam status.

(2) Each radiation monitor shall be capable of providing visible evidence of a teletherapy unit malfunction that results in an exposed or partially exposed source. The visible indicator of high radiation levels must be observable by an individual prior to entering the teletherapy room.

(3) Each radiation monitor shall be equipped with a backup power supply separate from the power supply to the teletherapy unit. This backup power supply may be a battery system or other type of uninterruptible power supply (UPS).

(4) Each radiation monitor must be checked with a dedicated check source for proper operation each day before the teletherapy unit is used for treatment of patients.



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(5) A licensee shall maintain a record of the check required by OAR 333-116-0540(4) until inspection by the Agency. The record shall include the date of the check, notation that the monitor indicates when the source is exposed and the initials of the individual who performed the check.

(6) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism that may result in an exposed or partially exposed source. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in OAR 333-116-0540(4).

(7) If a radiation monitor is inoperable, the licensee shall require any individual entering the teletherapy room to use a survey instrument or audible alarm personal dosimeter to monitor for any malfunction of the source exposure mechanism. The instrument or dosimeter shall be checked with a dedicated check source for proper operation at the beginning of each day of use. The licensee shall keep a record as described in OAR 333-116-0540(5).

(8) A licensee shall promptly repair or replace the radiation monitor if it is inoperable.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0660

### Training for Uptake, Dilution or Excretion Studies

Except as provided in OAR 333-116-0740 and 333-116-0750, the licensee shall require the authorized user of a radiopharmaceutical listed in OAR 333-116-0300 to be a physician who:

(1) Is certified in:

(a) Nuclear Medicine by the American Board of Nuclear Medicine; or

(b) Diagnostic Radiology by the American Board of Radiology; or

(c) Diagnostic Radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or

(d) Nuclear Medicine by the American Osteopathic Board of Nuclear Medicine; or

(e) Nuclear Medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed 40 hours of instruction in basic radioisotope handling techniques applicable to the use of prepared radiopharmaceuticals and 20 hours of supervised clinical experience:

(a) To satisfy the basic instruction requirement, 40 hours of classroom and laboratory instruction shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity;

(D) Radiation biology; and

(E) Radiopharmaceutical chemistry.

(b) To satisfy the requirement for 20 hours of supervised clinical experience, training must be under the supervision of an authorized user at a medical institution and shall include:

(A) Examining patients and reviewing their case histories to determine their suitability for radioisotope diagnosis, limitations or contraindications;

(B) Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;

(C) Administering dosages to patients and using syringe radiation shields;

(D) Collaborating with the authorized user in the interpretation of radioisotope test results; and

(E) Patient follow-up; or

(3) Has successfully completed a six month training program in nuclear medicine as part of a training program that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience and supervised clinical experience in all the topics identified in OAR 333-116-0660(2).

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0680

### Training for Therapeutic Use of Radiopharmaceuticals

Except as provided in OAR 333-116-0740, the licensee shall require the authorized user of a radiopharmaceutical listed in OAR 333-116-0360 for therapy to be a physician who:

(1) Is certified by:

(a) The American Board of Nuclear Medicine; or

(b) The American Board of Radiology in radiology or therapeutic radiology, or radiation oncology; or

(c) The American Osteopathic Board of Radiology after 1984; or

(d) Nuclear Medicine by the Royal College of Physicians and Surgeons of Canada; or

(2) Has completed 80 hours of instruction in basic radioisotope handling techniques applicable to the use of therapeutic radiopharmaceuticals and has had supervised clinical experience:

(a) To satisfy the requirement for instruction, 80 hours of classroom and laboratory training shall include:

(A) Radiation physics and instrumentation;

(B) Radiation protection;

(C) Mathematics pertaining to the use and measurement of radioactivity; and

(D) Radiation biology;

(b) To satisfy the requirement for supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:

(A) Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals;

(B) Use of soluble phosphorus-32 for the treatment of ascites polycythemia vera, leukemia or bone metastases in three individuals;

(C) Use of iodine-131 for treatment of thyroid carcinoma in three individuals; and

(D) Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three individuals.

(E) Use of phosphorus-32, strontium-89, or samarium-153 for treatment of pain associated with bone metastases in three individuals.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625, 453.635 & 453.665

Hist.: HD 1-1991, f. & cert. ef. 1-8-91; PH 3-2003, f. & cert. ef. 3-27-03; PH 31-2004(Temp), f. & cert. ef. 10-8-04 thru 4-5-05; PH 36-2004, f. & cert. ef. 12-1-04; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0860

### PET Clinic

In addition to requirements in OAR 333-116-0670, each authorized user and technologist must have at least 40 hours training and experience in handling and managing PET products.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.665

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 5-2005, f. & cert. ef. 4-11-05

## 333-116-0880

### Training and Experience for PET, PET/CT and SPECT/CT Personnel

(1) The accelerator must be operated by a trained, certified, operator who is licensed by the Oregon Board of Radiologic Technology as a Therapeutic Radiologic Technologist (LRTT).

(2) Pharmacy or chemistry personnel must have 40 extra hours above Nuclear Pharmacy requirements and 40 hours specific to PET. The 40 hours should be divided equally between didactic and practical applications.

(3) Authorized users who meet training requirements for human use in OAR 333-116-0670 must complete an additional 40 hours at an accepted PET training center.

(4) Technical personnel working under an authorized user must have basic radiation safety training, plus 40 additional hours specific to PET.

(5) Positron Emission-Computed Tomography (PET/CT) or Single Photon Emission-Computed Tomography (SPECT/CT) systems shall be operated by:

(a) Any registered radiographer with the credential R.T. (R); or

(b) Registered radiation therapist with the credential R.T. (T); and

(c) Who are currently licensed by the Oregon Board of Radiologic Technology; or

(d) Registered certified nuclear medicine technologist with the credentials R.T. (N); or

(e) Certified Nuclear Medicine Technologist (CNMT) by the Nuclear Medicine Technologist Certification Board (NMTCB).

(6) The individuals mentioned in OAR 333-116-0880(5) of this rule must also have successfully completed appropriate additional education

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and training and demonstrated competency in the use and operation of PET/CT or SPECT/CT systems.

(7)(a) Appropriate additional training is considered training that covers the topic areas outlined in the PET/CT curriculum developed by the Multi-Organizational Curriculum Project Group sponsored by the American Society of Radiologic Technologists and the Society of Nuclear Medicine Technologists, or equivalent training approved by the Agency; and

(b) Includes the content specified in the PET/CT curriculum for the area(s) that the individual is not already trained or certified in; or

(c) Individuals meeting the requirements of OAR 333-116-0880(5) of this rule and who have successfully completed training that the Agency has evaluated and judged to be substantially equivalent to that specified in OAR 333-116-0880(7)(a).

(8) R.T.(N)'s or CNMT's who have become certified in Computed Tomography through the American Registry of Radiologic Technologists are considered to have met the training requirements in OAR 333-116-0880(5).

(9) Technologists operating PET/CT or SPECT/CT systems must do so under the direction of an authorized user licensed to perform imaging and localization studies in accordance with OAR 333-116-0320.

Stat. Auth.: ORS 453.605 - 453.807

Stats. Implemented: ORS 453.625 & 453.665

Hist.: HD 1-1995, f. & cert. ef. 4-26-95; PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0001

### Purpose and Scope

(1) This Division contains requirements for the issuance of a license authorizing the use of sealed sources containing radioactive material in irradiators used to irradiate objects or materials using gamma radiation. This Division also contains radiation safety requirements for operating irradiators. The requirements of this Division are in addition to other requirements of these regulations. In particular, the provisions of Divisions 333-100, 333-102, 333-120, and 333-111 of these regulations apply to applications and licenses subject to this Division. Nothing in this Division relieves the licensee from complying with other applicable federal, state and local regulations governing the siting, zoning, land use, and building code requirements for industrial facilities.

(2) The regulations in this Division apply to panoramic irradiators that have either dry or wet storage of the radioactive sealed sources and to underwater irradiators in which both the source and the product being irradiated are under water. Irradiators whose dose rates exceed 5 grays (500 rads) per hour at 1 meter from the radioactive sealed sources in air or in water, as applicable for the irradiator type, are covered by this Division.

(3) The regulations in this Division do not apply to self-contained dry-source-storage irradiators in which both the source and the area subject to irradiation are contained within a device and are not accessible by personnel; medical radiology or teletherapy; radiography for the irradiation of materials for nondestructive testing purposes; gauging; or open-field, agricultural, irradiations.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0010

### Definitions

(1) "Annually" means at intervals not to exceed one year.

(2) "Doubly encapsulated sealed source" means a sealed source in which the radioactive material is sealed within an inner capsule and that capsule is sealed within an outer capsule.

(3) "Irradiator" means a facility that uses radioactive sealed sources for the irradiation of objects or materials and in which radiation dose rates exceeding 5 grays (500 rads) per hour exist at 1 meter from the sealed radioactive sources in air or water, as applicable for the irradiator type, but does not include irradiators in which both the sealed source and the area subject to irradiation are contained within a device and are not accessible to personnel.

(4) "Irradiator operator" means an individual who has successfully completed the training and testing described in OAR 333-121-0300 and is authorized by the terms of the license to operate the irradiator without a supervisor present.

(5) "Irradiator operator supervisor" means an individual who meets the requirements for an irradiator operator and who physically oversees operation of the irradiator by an individual who is currently receiving training and testing described in OAR 333-121-0300.

(6) "Panoramic dry-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to person-

nel and in which the sources are stored in shields made of solid materials. The term includes beam-type dry-source-storage irradiators in which only a narrow beam of radiation is produced for performing irradiations.

(7) "Panoramic irradiator" means an irradiator in which the irradiations are done in air in areas potentially accessible to personnel. The term includes beam-type irradiators.

(8) "Panoramic wet-source-storage irradiator" means an irradiator in which the irradiations occur in air in areas potentially accessible to personnel and in which the sources are stored under water in a storage pool.

(9) "Pool irradiator" means any irradiator at which the sources are stored or used in a pool of water including panoramic wet-source-storage irradiators and underwater irradiators.

(10) "Product conveyor system" means a system for moving the product to be irradiated to, from, and within the area where irradiation takes place.

(11) "Radiation room" means a shielded room in which irradiations take place. Underwater irradiators do not have radiation rooms.

(12) "Sealed source" means any radioactive material that is used as a source of radiation and is encased in a capsule designed to prevent leakage or escape of the byproduct material.

(13) "Seismic area" means any area where the probability of a horizontal acceleration in rock of more than 0.3 times the acceleration of gravity in 250 years is greater than 10%, as designated by the US Geological Survey.

(14) "Underwater irradiator" means an irradiator in which the sources always remain shielded under water and humans do not have access to the sealed sources or the space subject to irradiation without entering the pool.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0020

### Application for a Specific License

(1) Applications for specific licenses shall be filed on a form prescribed by the Agency.

(2) The Agency may at any time after the filing of the original application, and before the expiration of the license, require further statements in order to enable the Agency to determine whether the application should be granted or denied or whether a license should be modified or revoked.

(3) Each application shall be signed by the applicant or licensee or a person duly authorized to act for and on his behalf.

(4) An application for a license may include a request for a license authorizing one or more activities.

(5) In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the Agency provided such references are clear and specific.

(6) Applications and documents submitted to the Agency may be made available for public inspection except that the Agency may withhold any document or part thereof from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0030

### Specific Licenses for Irradiators

The Agency will approve an application for a specific license for the use of licensed material in an irradiator if the applicant meets the requirements contained in this section.

(1) The applicant shall satisfy the general requirements specified in Division 102 of these regulations and the requirements contained in this Division.

(2) The application must describe the training provided to irradiator operators including:

(a) Classroom training;

(b) On-the-job or simulator training;

(c) Safety reviews;

(d) Means employed by the applicant to test each operator's understanding of the Agency's regulations and licensing requirements and the irradiator operating, safety, and emergency procedures; and

(e) Minimum training and experience of personnel who may provide training.

(3) The application must include an outline of the written operating and emergency procedures listed in OAR 333-121-0310 that describes the radiation safety aspects of the procedures.

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(4) The application must describe the organizational structure for managing the irradiator, specifically the radiation safety responsibilities and authorities of the radiation safety officer and those management personnel who have radiation safety responsibilities or authorities. In particular, the application must specify who, within the management structure, has the authority to stop unsafe operations. The application must also describe the training and experience required for the position of radiation safety officer.

(5) The application must include a description of the access control systems required by OAR 333-121-0110 the radiation monitors required by OAR 333-121-0140 the method of detecting leaking sources required by OAR 333-121-0340 including the sensitivity of the method, and a diagram of the facility that shows the locations of all required interlocks and radiation monitors.

(6) If the applicant intends to perform leak testing, the applicant shall establish procedures for performing leak testing of dry-source-storage sealed sources and submit a description of these procedures to the Agency. The description must include the:

- (a) Methods of collecting the leak test samples;
- (b) Qualifications of the individual who collects the samples;
- (c) Instruments to be used; and
- (d) Methods of analyzing the samples.

(7) If licensee personnel are to load or unload sources, the applicant shall describe the qualifications and training of the personnel and the procedures to be used. If the applicant intends to contract for source loading or unloading at its facility, the loading or unloading must be done by a person specifically authorized by the Agency, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to load or unload irradiator sources.

(8) The applicant shall describe the inspection and maintenance checks, including the frequency of the checks required by OAR 333-121-0350.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0040

#### Start of Construction

The applicant may not begin construction of a new irradiator prior to the submission to the Agency of both an application for a license for the irradiator and any fee required by the applicable state requirement or statute. As used in this Division, the term "construction" includes the construction of any portion of the permanent irradiator structure on the site but does not include: engineering and design work, purchase of a site, site surveys or soil testing, site preparation, site excavation, construction of warehouse or auxiliary structures, and other similar tasks. Any activities undertaken prior to the issuance of a license are entirely at the risk of the applicant and have no bearing on the issuance of a license with respect to the requirements of the appropriate state statute, rules, regulations, and orders issued under the appropriate state statute.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0050

#### Applications for Exemptions

Any application for a license or for amendment of a license authorizing use of a teletherapy-type unit for irradiation of materials or objects may include proposed alternatives for the requirements of this Division. The Agency will approve the proposed alternatives if the applicant provides adequate rationale for the proposed alternatives and demonstrates that they are likely to provide an adequate level of safety for workers and the public.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0060

#### Request for Written Statements

Each license is issued with the condition that the licensee will, at any time before expiration of the license, upon the Agency's request, submit a written statement to enable the Agency to determine whether the license should be modified, suspended, or revoked.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0100

#### Performance Criteria for Sealed Sources

(1) Requirements for sealed sources installed after September 1, 2002:

- (a) Must have been evaluated in accordance with 10 CFR 32.210 or the equivalent state regulation;
- (b) Must be doubly encapsulated;
- (c) Must use radioactive material that is as nondispersible as practical and that is as insoluble as practical if the source is used in a wet-source-storage or wet-source-change irradiator;
- (d) Must be encapsulated in a material resistant to general corrosion and to localized corrosion, such as 316L stainless steel or other material with equivalent resistance if the sources are for use in irradiator pools; and
- (e) In prototype testing of the sealed source, must have been leak tested and found leak-free after each of the tests described in OAR 333-121-0100(2) through 333-121-0100(7).

(2) Temperature. The test source must be held at -40°C for 20 minutes, 600°C for one hour, and then be subjected to thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(3) Pressure. The test source must be twice subjected for at least five minutes to an absolute external pressure of 2 million newtons per square meter.

(4) Impact. A 2 kilogram steel weight, 2.5 centimeters in diameter, must be dropped from a height of 1 meter onto the test source.

(5) Vibration. The test source must be subjected three times for ten minutes each to vibrations sweeping from 25 hertz to 500 hertz with a peak amplitude of five times the acceleration of gravity. In addition, each test source must be vibrated for 30 minutes at each resonant frequency found.

(6) Puncture. A 50 gram weight and pin, 0.3 centimeter pin diameter, must be dropped from a height of 1 meter onto the test source.

(7) Bend. If the length of the source is more than 15 times larger than the minimum cross-sectional dimension, the test source must be subjected to a force of 2000 newtons at its center equidistant from two support cylinders, the distance between which is ten times the minimum cross-sectional dimension of the source.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0110

#### Access Control

(1) Each entrance to a radiation room at a panoramic irradiator must have a door or other physical barrier to prevent inadvertent entry of personnel if the sources are not in the shielded position. Product conveyor systems may serve as barriers as long as they reliably and consistently function as a barrier. It must not be possible to move the sources out of their shielded position if the door or barrier is open. Opening the door or barrier while the sources are exposed must cause the sources to return promptly to the shielded position. The personnel entrance door or barrier must have a lock that is operated by the same key used to move the sources. The control panel lock must be designed so that the key cannot be removed unless the sources have been returned to the shielded position. The doors and barriers must not prevent any individual in the radiation room from leaving.

(2) In addition, each entrance to a radiation room at a panoramic irradiator must have an independent backup access control to detect personnel entry while the sources are exposed. Detection of entry while the sources are exposed must cause the sources to return to their fully shielded position and must also activate a visible and audible alarm to make the individual entering the room aware of the hazard. The alarm must also alert at least one other individual who is on-site of the entry. That individual shall be trained on how to respond to the alarm and prepared to promptly render or summon assistance.

(3) A radiation monitor must be provided to detect the presence of high radiation levels in the radiation room of a panoramic irradiator before personnel entry. The monitor must be integrated with personnel access door locks to prevent room access when radiation levels are high. Attempted personnel entry while the monitor measures high radiation levels must activate the alarm described in OAR 333-121-0110(2). The monitor may be located in the entrance, normally referred to as the maze, but not in the direct radiation beam.

(4) Before the sources move from their shielded position in a panoramic irradiator, the source control must automatically activate conspicuous visible and audible alarms to alert people in the radiation room that the sources will be moved from their shielded position. The alarms must give individuals enough time to leave the room before the sources leave the shielded position.



# ADMINISTRATIVE RULES

(5) Each radiation room at a panoramic irradiator must have a clearly visible and readily accessible control that would allow an individual in the room to make the sources return to their fully shielded position.

(6) Each radiation room of a panoramic irradiator must contain a control that prevents the sources from moving from the shielded position unless the control has been activated and the door or barrier to the radiation room has been closed within a preset time after activation of the control.

(7) Each entrance to the radiation room of a panoramic irradiator and each entrance to the area within the personnel access barrier of an underwater irradiator must have a sign bearing the radiation symbol and the words, "Caution (or danger) radioactive material." Panoramic irradiators must also have a sign stating "Grave danger, very high radiation area," but the sign may be removed, covered, or otherwise made inoperative when the sources are fully shielded.

(8) If the radiation room of a panoramic irradiator has roof plugs or other movable shielding, it must not be possible to operate the irradiator unless the shielding is in its proper location. The requirement may be met by interlocks that prevent operation if shielding is not placed properly or by an operating procedure requiring inspection of shielding before operating.

(9) Underwater irradiators must have a personnel access barrier around the pool which must be locked to prevent access when the irradiator is not attended. Only operators or facility management shall have access to keys that operate the personnel access barrier. There must be an intrusion alarm to detect unauthorized entry when the personnel access barrier is locked. Activation of the intrusion alarm must alert an individual who is not necessarily on-site but who is prepared to respond or summon assistance.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0120 Shielding

(1) The radiation dose rate in areas that are normally occupied during operation of a panoramic irradiator may not exceed 0.02 millisievert (2 mrem) per hour at any location 30 centimeters or more from the wall of the room when the sources are exposed. The dose rate must be averaged over an area not to exceed 100 square centimeters having no linear dimension greater than 20 centimeters. Any area where the radiation dose rate exceeds 0.02 millisievert (2 mrem) per hour must be locked, roped off, or posted.

(2) The radiation dose at 30 centimeters over the edge of the pool of a pool irradiator may not exceed 0.02 millisievert (2 mrem) per hour when the sources are in the fully shielded position.

(3) The radiation dose rate at 1 meter from the shield of a dry-source-storage panoramic irradiator when the source is shielded may not exceed 0.02 millisievert (2 mrem) per hour and at 5 centimeters from the shield may not exceed 0.2 millisievert (20 mrem) per hour.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0130 Fire Protection

(1) The radiation room at a panoramic irradiator must have heat and smoke detectors. The detectors must activate an audible alarm. The alarm must be capable of alerting a person who is prepared to summon assistance promptly. The sources must automatically become fully shielded if a fire is detected.

(2) The radiation room at a panoramic irradiator must be equipped with a fire extinguishing system capable of extinguishing a fire without the entry of personnel into the room. The system for the radiation room must have a shut-off valve to control flooding into unrestricted areas.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0140 Radiation Monitors

(1) Irradiators with automatic product conveyor systems must have a radiation monitor with an audible alarm located to detect loose radioactive sources that are carried toward the product exit. If the monitor detects a source, an alarm must sound and product conveyors must stop automatically. The alarm must be capable of alerting an individual in the facility who is prepared to summon assistance. Underwater irradiators in which the product moves within an enclosed stationary tube are exempt from the requirements of this paragraph.

(2) Underwater irradiators that are not in a shielded radiation room must have a radiation monitor over the pool to detect abnormal radiation levels. The monitor must have an audible alarm and a visible indicator at

entrances to the personnel access barrier around the pool. The audible alarm may have a manual shut-off. The alarm must be capable of alerting an individual who is prepared to respond promptly.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0150 Control of Source Movement

(1) The mechanism that moves the sources of a panoramic irradiator must require a key to actuate. Actuation of the mechanism must cause an audible signal to indicate that the sources are leaving the shielded position. Only one key may be in use at any time, and only operators or facility management may possess it. The key must be attached to a portable radiation survey meter by a chain or cable. The lock for source control must be designed so that the key may not be removed if the sources are in an unshielded position. The door to the radiation room must require the same key.

(2) The console of a panoramic irradiator must have a source position indicator that indicates when the sources are in the fully shielded position, when they are in transit, and when the sources are exposed.

(3) The control console of a panoramic irradiator must have a control that promptly returns the sources to the shielded position.

(4) Each control for a panoramic irradiator must be clearly marked as to its function.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0160 Irradiator Pools

(1) For licenses initially issued after [the effective date of the rule], irradiator pools must either:

(a) Have a water-tight stainless steel liner or a liner metallurgically compatible with other components in the pool; or

(b) Be constructed so that there is a low likelihood of substantial leakage and have a surface designed to facilitate decontamination. In either case, the licensee shall have a method to safely store the sources during repairs of the pool.

(2) For licenses initially issued after [the effective date of the rule], irradiator pools must have no outlets more than 0.5 meter below the normal low water level that could allow water to drain out of the pool. Pipes that have intakes more than 0.5 meter below the normal low water level and that could act as siphons must have siphon breakers to prevent the siphoning of pool water.

(3) A means must be provided to replenish water losses from the pool.

(4) A visible indicator must be provided in a clearly observable location to indicate if the pool water level is below the normal low water level or above the normal high water level.

(5) Irradiator pools must be equipped with a purification system designed to be capable of maintaining the water during normal operation at a conductivity of 20 microsiemens per centimeter or less and with a clarity so that the sources can be seen clearly.

(6) A physical barrier, such as a railing or cover, must be used around or over irradiator pools during normal operation to prevent personnel from accidentally falling into the pool. The barrier may be removed during maintenance, inspection, and service operations.

(7) If long-handled tools or poles are used in irradiator pools, the radiation dose rate to the operator at the handling areas of the tools may not exceed 0.02 millisievert (2 mrem) per hour.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0170 Source Rack Protection

If the product to be irradiated moves on a product conveyor system, the source rack and the mechanism that moves the rack must be protected by a carrier or guides to prevent products and product carriers from hitting or touching the rack or mechanism.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0180 Power Failures

(1) If electrical power at a panoramic irradiator is lost for longer than ten seconds, the sources must automatically return to the shielded position.

## ADMINISTRATIVE RULES

(2) The lock on the door of the radiation room of a panoramic irradiator must remain locked in the event of a power failure.

(3) During a power failure, the area of any irradiator where sources are located may be entered only when using an operable and calibrated radiation survey meter.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0190

#### Design Requirements

Irradiators whose construction begins after September 1, 2002, must meet the design requirements of this section.

(1) Shielding. For panoramic irradiators, the licensee shall design shielding walls to meet generally accepted building code requirements for reinforced concrete and design the walls, wall penetrations, and entranceways to meet the radiation shielding requirements of OAR 333-121-0120. If the irradiator will use more than 2 x 10<sup>17</sup> becquerels (5 million Ci) of activity, the licensee shall evaluate the effects of heating of the shielding walls by the irradiator sources.

(2) Foundations. For panoramic irradiators, the licensee shall design the foundation, with consideration given to soil characteristics, to ensure it is adequate to support the weight of the facility shield walls.

(3) Pool integrity. For pool irradiators, the licensee shall design the pool to assure that it is leak resistant, that it is strong enough to bear the weight of the pool water and shipping casks, that a dropped cask would not fall on sealed sources, that all outlets or pipes meet the requirements of OAR 333-121-0160(2) and that metal components are metallurgically compatible with other components in the pool.

(4) Water handling system. For pool irradiators, the licensee shall verify that the design of the water purification system is adequate to meet the requirements of OAR 333-121-0160(5). The system must be designed so that water leaking from the system does not drain to unrestricted areas without being monitored.

(5) Radiation monitors. For all irradiators, the licensee shall evaluate the location and sensitivity of the monitor to detect sources carried by the product conveyor system as required by OAR 333-121-0140(1). The licensee shall verify that the product conveyor is designed to stop before a source on the product conveyor would cause a radiation overexposure to any person. For pool irradiators, if the licensee uses radiation monitors to detect contamination under OAR 333-121-0340(2), the licensee shall verify that the design of radiation monitoring systems to detect pool contamination includes sensitive detectors located close to where contamination is likely to concentrate.

(6) Source rack. For pool irradiators, the licensee shall verify that there are no crevices on the source or between the source and source holder that would promote corrosion on a critical area of the source. For panoramic irradiators, the licensee shall determine that source rack drops due to loss of power will not damage the source rack and that source rack drops due to failure of cables, or alternate means of support, will not cause loss of integrity of sealed sources. For panoramic irradiators, the licensee shall review the design of the mechanism that moves the sources to assure that the likelihood of a stuck source is low and that, if the rack sticks, a means exists to free it with minimal risk to personnel.

(7) Access control. For panoramic irradiators, the licensee shall verify from the design and logic diagram that the access control system will meet the requirements of OAR 333-121-0110.

(8) Fire protection. For panoramic irradiators, the licensee shall verify that the number, locations, and spacing of the smoke and heat detectors are appropriate to detect fires and that the detectors are protected from mechanical and radiation damage. The licensee shall verify that the design of the fire extinguishing system provides the necessary discharge patterns, densities, and flow characteristics for complete coverage of the radiation room and that the system is protected from mechanical and radiation damage.

(9) Source return. For panoramic irradiators, the licensee shall verify that the source rack will automatically return to the fully shielded position if power is lost for more than ten seconds.

(10) Seismic. For panoramic irradiators to be built in seismic areas, the licensee shall design the reinforced concrete radiation shields to retain their integrity in the event of an earthquake by designing to the seismic requirements of an appropriate source such as the American Concrete Institute Standard ACI 318-89, "Building Code Requirements for Reinforced Concrete," Chapter 21, "Special Provisions for Seismic Design," or local building codes, if current.

(11) Wiring. For panoramic irradiators, the licensee shall verify that electrical wiring and electrical equipment in the radiation room are selected to minimize failures due to prolonged exposure to radiation.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0200

#### Construction Monitoring and Acceptance Testing

The requirements of this section must be met for irradiators whose construction begins after September 1, 2002. The requirements must be met prior to loading sources.

(1) Shielding. For panoramic irradiators, the licensee shall monitor the construction of the shielding to verify that its construction meets design specifications and generally accepted building code requirements for reinforced concrete.

(2) Foundations. For panoramic irradiators, the licensee shall monitor the construction of the foundations to verify that their construction meets design specifications.

(3) Pool integrity. For pool irradiators, the licensee shall verify that the pool meets design specifications and shall test the integrity of the pool. The licensee shall verify that outlets and pipes meet the requirements of OAR 333-121-0160(2).

(4) Water handling system. For pool irradiators, the licensee shall verify that the water purification system, the conductivity meter, and the water level indicators operate properly.

(5) Radiation monitors. For all irradiators, the licensee shall verify the proper operation of the monitor to detect sources carried on the product conveyor system and the related alarms and interlocks required by OAR 333-121-0140(1). For pool irradiators, the licensee shall verify the proper operation of the radiation monitors and the related alarm if used to meet OAR 333-121-0340(2). For underwater irradiators, the licensee shall verify the proper operation of the over-the-pool monitor, alarms, and interlocks required by OAR 333-121-0140(2).

(6) Source rack. For panoramic irradiators, the licensee shall test the movement of the source racks for proper operation prior to source loading; testing must include source rack lowering due to simulated loss of power. For all irradiators with product conveyor systems, the licensee shall observe and test the operation of the conveyor system to assure that the requirements in OAR 333-121-0170 are met for protection of the source rack and the mechanism that moves the rack; testing must include tests of any limit switches and interlocks used to protect the source rack and mechanism that moves that rack from moving product carriers.

(7) Access control. For panoramic irradiators, the licensee shall test the completed access control system to assure that it functions as designed and that all alarms, controls, and interlocks work properly.

(8) Fire protection. For panoramic irradiators, the licensee shall test the ability of the heat and smoke detectors to detect a fire, to activate alarms, and to cause the source rack to automatically become fully shielded. The licensee shall test the operability of the fire extinguishing system.

(9) Source return. For panoramic irradiators, the licensee shall demonstrate that the source racks can be returned to their fully shielded positions without power.

(10) Computer systems. For panoramic irradiators that use a computer system to control the access control system, the licensee shall verify that the access control system will operate properly if power is lost and shall verify that the computer has security features that prevent an irradiator operator from commanding the computer to override the access control system when the system is required to be operable.

(11) Wiring. For panoramic irradiators, the licensee shall verify that the electrical wiring and electrical equipment that were installed meet the design specifications.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0300

#### Training

(1) Before an individual is permitted to act as an irradiator operator without a supervisor present, the individual must be instructed in:

(a) The fundamentals of radiation protection applied to irradiators. This must include the differences between external radiation and radioactive contamination, units of radiation dose, dose limits, why large radiation doses must be avoided, how shielding and access controls prevent large doses, how an irradiator is designed to prevent contamination, the proper use of survey meters and personnel dosimeters, other radiation safety features of an irradiator, and the basic function of the irradiator;

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(b) The requirements of Division 111 and Division 121 of these regulations that are relevant to the irradiator;

(c) The operation of the irradiator;

(d) Those operating and emergency procedures listed in OAR 333-121-0310 that the individual is responsible for performing; and

(e) Case histories of accidents or problems involving irradiators.

(2) Before an individual is permitted to act as an irradiator operator without a supervisor present, the individual shall pass a written test on the instruction received consisting primarily of questions based on the licensee's operating and emergency procedures that the individual is responsible for performing and other operations necessary to safely operate the irradiator without supervision.

(3) Before an individual is permitted to act as an irradiator operator without a supervisor present, the individual must have received on-the-job training or simulator training in the use of the irradiator as described in the license application. The individual shall also demonstrate the ability to perform those portions of the operating and emergency procedures that he or she is to perform.

(4) The licensee shall conduct safety reviews for irradiator operators at least annually. The licensee shall give each operator a brief written test on the information. Each safety review must include, to the extent appropriate, each of the following:

(a) Changes in operating and emergency procedures since the last review, if any;

(b) Changes in regulations and license conditions since the last review, if any;

(c) Reports on recent accidents, mistakes, or problems that have occurred at irradiators, if any;

(d) Relevant results of inspections of operator safety performance;

(e) Relevant results of the facility's inspection and maintenance checks; and

(f) A drill to practice an emergency or abnormal event procedure.

(5) The licensee shall evaluate the safety performance of each irradiator operator at least annually to ensure that regulations, license conditions, and operating, safety, and emergency procedures are followed. The licensee shall discuss the results of the evaluation with the operator and shall instruct the operator on how to correct any mistakes or deficiencies observed.

(6) Individuals who will be permitted unescorted access to the radiation room of the irradiator or the area around the pool of an underwater irradiator, but who have not received the training required for operators and the radiation safety officer, shall be instructed and tested in any precautions they should take to avoid radiation exposure, any procedures or parts of procedures listed in OAR 333-121-0310 that they are expected to perform or comply with, and their proper response to alarms required in this Division. Tests may be oral.

(7) Individuals who must be prepared to respond to alarms required by OAR 333-121-0110(2), 333-121-0130(1), 333-121-0140(1) and 333-121-0340(2) shall be trained and tested on how to respond. Each individual shall be retested at least annually. Tests may be oral.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0310

#### Operating and Emergency Procedures

(1) The licensee shall have and follow written operating procedures for:

(a) Operation of the irradiator, including entering and leaving the radiation room;

(b) Use of personnel dosimeters;

(c) Surveying the shielding of panoramic irradiators;

(d) Monitoring pool water for contamination while the water is in the pool and before release of pool water to unrestricted areas;

(e) Leak testing of sources;

(f) Inspection and maintenance checks required by OAR 333-121-0350;

(g) Loading, unloading, and repositioning sources, if the operations will be performed by the licensee; and

(h) Inspection of movable shielding required by OAR 333-121-0110(8), if applicable.

(2) The licensee shall have and follow emergency or abnormal event procedures, appropriate for the irradiator type, for:

(a) Sources stuck in the unshielded position;

(b) Personnel overexposures;

(c) A radiation alarm from the product exit portal monitor or pool monitor;

(d) Detection of leaking sources, pool contamination, or alarm caused by contamination of pool water;

(e) A low or high water level indicator, an abnormal water loss, or leakage from the source storage pool;

(f) A prolonged loss of electrical power;

(g) A fire alarm or explosion in the radiation room;

(h) An alarm indicating unauthorized entry into the radiation room, area around pool, or another alarmed area;

(i) Natural phenomena, including an earthquake, a tornado, flooding, or other phenomena as appropriate for the geographical location of the facility; and

(j) The jamming of automatic conveyor systems.

(3) The licensee may revise operating and emergency procedures without Agency approval only if all of the following conditions are met:

(a) The revisions do not reduce the safety of the facility;

(b) The revisions are consistent with the outline or summary of procedures submitted with the license application;

(c) The revisions have been reviewed and approved by the radiation safety officer; and

(d) The users or operators are instructed and tested on the revised procedures before they are put into use.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0320

#### Personnel Monitoring

(1) Irradiator operators shall wear either a film badge or a thermoluminescent dosimeter (TLD) while operating a panoramic irradiator or while in the area around the pool of an underwater irradiator. The film badge or TLD processor must be accredited by the National Voluntary Laboratory Accreditation Program for high energy photons in the normal and accident dose ranges, see 333-120-0200(3). Each film badge or TLD must be assigned to and worn by only one individual. Film badges must be processed at least monthly, and TLDs must be processed at least quarterly.

(2) Other individuals who enter the radiation room of a panoramic irradiator shall wear a dosimeter, which may be a pocket dosimeter. For groups of visitors, only two people who enter the radiation room are required to wear dosimeters. If pocket dosimeters are used to meet the requirements of the paragraph, a check of their response to radiation must be done at least annually. Acceptable dosimeters must read within  $\pm 20\%$  of the true radiation dose.

Stat. Auth.: ORS 453.675

Stats. Implemented: ORS 453.675

Hist.: PH 5-2005, f. & cert. ef. 4-11-05

### 333-121-0330

#### Radiation Surveys

(1) A radiation survey of the area outside the shielding of the radiation room of a panoramic irradiator must be conducted with the sources in the exposed position before the facility starts to operate. A radiation survey of the area above the pool of pool irradiators must be conducted after the sources are loaded but before the facility starts to operate. Additional radiation surveys of the shielding must be performed at intervals not to exceed three years and before resuming operation after addition of new sources or any modification to the radiation room shielding or structure that might increase dose rates.

(2) If the radiation levels specified in OAR 333-121-0120 are exceeded, the facility must be modified to comply with the requirements in OAR 333-121-0120.

(3) Portable radiation survey meters must be calibrated at least annually to an accuracy of  $\pm 20\%$  for the gamma energy of the sources in use. The calibration must be done at two points on each scale or, for digital instruments, at one point per decade over the range that will be used. Portable radiation survey meters must be of a type that does not saturate and read zero at high radiation dose rates.

(4) Water from the irradiator pool, other potentially contaminated liquids, and sediments from pool vacuuming must be monitored for radioactive contamination before release to unrestricted areas. Radioactive concentrations must not exceed those specified in 10 CFR 20, Table II, Column 2 or Table III of Appendix B, "Annual Limits on Intake (ALIs) and Derived Air Concentrations (DAC) of Radionuclides for Occupational Exposure; Effluent Concentrations; Concentrations for Release to Sanitary Sewerage."



# ADMINISTRATIVE RULES

(5) Before releasing resins for unrestricted use, they must be monitored before release in an area with a background level less than 0.5 microsievert (0.05 mrem) per hour. The resins may be released only if the survey does not detect radiation levels above background radiation levels. The survey meter used must be capable of detecting radiation levels of 0.5 microsievert (0.05 mrem) per hour.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0340

### Detection of Leaking Sources

(1) Each dry-source-storage sealed source must be tested for leakage at intervals not to exceed six months using a leak test kit or method approved by the Agency, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State. In the absence of a certificate from a transferor that a test has been made within the six months before the transfer, the sealed source may not be used until tested. The test must be capable of detecting the presence of 200 becquerels (0.005  $\mu$ Ci) of radioactive material and must be performed by a person approved by the Agency, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State to perform the test.

(2) For pool irradiators, sources may not be put into the pool unless the licensee tests the sources for leaks or has a certificate from a transferor that leak test has been done within the six months before the transfer. Water from the pool must be checked for contamination each day the irradiator operates. The check may be done either by using a radiation monitor on a pool water circulating system or by analysis of a sample of pool water. If a check for contamination is done by analysis of a sample of pool water, the results of the analysis must be available within 24 hours. If the licensee uses a radiation monitor on a pool water circulating system, the detection of above normal radiation levels must activate an alarm. The alarm set-point must be set as low as practical, but high enough to avoid false alarms. The licensee may reset the alarm set-point to a higher level if necessary to operate the pool water purification system to clear up contamination in the pool if specifically provided for in written emergency procedures.

(3) If a leaking source is detected, the licensee shall arrange to remove the leaking source from service and have it decontaminated, repaired, or disposed of by an Agency, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State licensee that is authorized to perform these functions. The licensee shall promptly check its personnel, equipment, facilities, and irradiated product for radioactive contamination. No product may be shipped until the product has been checked and found free of contamination. If a product has been shipped that may have been inadvertently contaminated, the licensee shall arrange to locate and survey that product for contamination. If any personnel are found to be contaminated, decontamination must be performed promptly. If contaminated equipment, facilities, or products are found, the licensee shall arrange to have them decontaminated or disposed of by an Agency, the Nuclear Regulatory Commission, an Agreement State, or a Licensing State licensee that is authorized to perform these functions. If a pool is contaminated, the licensee shall arrange to clean the pool until the contamination levels do not exceed the appropriate concentration in Table 2, Column 2, Appendix B of 10 CFR 20. See 333-120-0700 for reporting requirements.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0350

### Inspection and Maintenance

(1) The licensee shall perform inspection and maintenance checks that include, as a minimum, each of the following at the frequency specified in the license or license application:

(a) Operability of each aspect of the access control system required by OAR 333-121-0110.

(b) Functioning of the source position indicator required by OAR 333-121-0150(2).

(c) Operability of the radiation monitor for radioactive contamination in pool water required by OAR 333-121-0340(2), using a radiation check source, if applicable.

(d) Operability of the over-pool radiation monitor at underwater irradiators as required by OAR 333-121-0140(2).

(e) Operability of the product exit monitor required by OAR 333-121-0140(1).

(f) Operability of the emergency source return control required by OAR 333-121-0150(3).

(g) Visual inspection of leak-tightness of systems through which pool water circulates.

(h) Operability of the heat and smoke detectors and extinguisher system required by OAR 333-121-0130, without turning extinguishers on.

(i) Operability of the means of pool water replenishment required by OAR 333-121-0160(3).

(j) Operability of the indicators of high and low pool water levels required by OAR 333-121-0160(4).

(k) Operability of the intrusion alarm required by OAR 333-121-0110(9) if applicable.

(l) Functioning and wear of the system, mechanisms, and cables used to raise and lower sources.

(m) Condition of the barrier to prevent products from hitting the sources or source mechanism as required by OAR 333-121-0170.

(n) Amount of water added to the pool to determine if the pool is leaking.

(o) Electrical wiring on required safety systems for radiation damage.

(p) Pool water conductivity measurements and analysis as required by OAR 333-121-0360(2).

(2) Malfunctions and defects found during inspection and maintenance checks must be repaired within time frames specified in the license or license application.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0360

### Pool Water Purity

(1) Pool water purification system must be run sufficiently to maintain the conductivity of the pool water below 20 microsiemens per centimeter under normal circumstances. If pool water conductivity rises above 20 microsiemens per centimeter, the licensee shall take prompt actions to lower the pool water conductivity and shall take corrective actions to prevent future recurrences.

(2) The licensee shall measure the pool water conductivity frequently enough, but no less than weekly, to assure that the conductivity remains below 20 microsiemens per centimeter. Conductivity meters must be calibrated at least annually.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0370

### Attendance During Operation

(1) Both an irradiator operator and at least one other individual, who is trained on how to respond and prepared to promptly render or summon assistance if the access control alarm sounds, shall be present on site:

(a) Whenever the irradiator is operated using an automatic product conveyor system; and

(b) Whenever the product is moved into or out of the radiation room when the irradiator is operated in a batch mode.

(2) At a panoramic irradiator at which static irradiations with no movement of the product are occurring, a person who has received the training on how to respond to alarms described in OAR 333-121-0300(7) must be on site.

(3) At an underwater irradiator, an irradiator operator must be present at the facility whenever the product is moved into or out of the pool. Individuals who move the product into or out of the pool of an underwater irradiator need not be qualified as irradiator operators; however, they must have received the training described in OAR 333-121-0300(6) and 333-121-0300(7). Static irradiations may be performed without a person present at the facility.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0380

### Entering and Leaving the Radiation Room

(1) Upon first entering the radiation room of a panoramic irradiator after an irradiation, the irradiator operator shall use a survey meter to determine that the source has returned to its fully shielded position. The operator shall check the functioning of the survey meter with a radiation check source prior to entry.

(2) Before exiting from and locking the door to the radiation room of a panoramic irradiator prior to a planned irradiation, the irradiator operator shall:

(a) Visually inspect the entire radiation room to verify that no one else is in it; and

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(b) Activate a control in the radiation room that permits the sources to be moved from the shielded position only if the door to the radiation room is locked within a preset time after setting the control.

(3) During a power failure, the area around the pool of an underwater irradiator may not be entered without using an operable and calibrated radiation survey meter unless the over-the-pool monitor required by OAR 333-121-0140(2) is operating with backup power.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0390

### Irradiation of Explosive or Flammable Materials

(1) Irradiation of explosive material is prohibited unless the licensee has received prior written authorization from the Agency. Authorization will not be granted unless the licensee can demonstrate that detonation of the explosive would not rupture the sealed sources, injure personnel, damage safety systems, or cause radiation overexposures of personnel.

(2) Irradiation of more than small quantities of flammable material with a flash point below 140°F is prohibited in panoramic irradiators unless the licensee has received prior written authorization from the Agency. Authorization will not be granted unless the licensee can demonstrate that a fire in the radiation room could be controlled without damage to sealed sources or safety systems and without radiation overexposures of personnel.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0500

### Records and Retention Periods

The licensee shall maintain the following records at the irradiator for the periods specified.

(1) A copy of the license, the license conditions, documents incorporated into the license by reference, and amendments thereto until superseded by new documents or until the Agency terminates the license for documents not superseded.

(2) Records of each individual's training, tests, and safety reviews provided to meet the requirements of OAR 333-121-0300(1), 333-121-0300(2), 333-121-0300(3), 333-121-0300(4), 333-121-0300(6), and 333-121-0300(7) until three years after the individual terminates work.

(3) Records of the annual evaluations of the safety performance of irradiator operators required by 333-121-0300(5) for three years after the evaluation.

(4) A copy of the current operating and emergency procedures required by OAR 333-121-0310 until superseded or the Agency terminates the license. Records of the radiation safety officer's review and approval of changes in procedures as required by OAR 333-121-0310(3)(c) retained for three years from the date of the change.

(5) Film badge and TLD results required by OAR 333-121-0320 until the Agency terminates the license.

(6) Records of radiation surveys required by OAR 333-121-0330 for three years from the date of the survey.

(7) Records of radiation survey meter calibrations required by OAR 333-121-0330 and pool water conductivity meter calibrations required by OAR 333-121-0360(2) until three years from the date of calibration.

(8) Records of the results of leak tests required by OAR 333-121-0340(1) and the results of contamination checks required by OAR 333-121-0340(2) for three years from the date of each test.

(9) Records of inspection and maintenance checks required by OAR 333-121-0350. for three years.

(10) Records of major malfunctions, significant defects, operating difficulties or irregularities, and major operating problems that involve required radiation safety equipment for three years after repairs are completed.

(11) Records of the receipt, transfer and disposal, of all licensed sealed sources as required by 333-102-0330 of these rules.

(12) Records on the design checks required by OAR 333-121-0190 and the construction control checks as required by OAR 333-121-0200 until the license is terminated. The records must be signed and dated. The title or qualification of the person signing must be included.

(13) Records related to decommissioning of the irradiator as required by 333-102-0200(6).

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

## 333-121-0510

### Reports

(1) In addition to the reporting requirements in other parts of these regulations, the licensee shall report the following events if not reported under other parts of these regulations:

(a) Source stuck in an unshielded position.

(b) Any fire or explosion in a radiation room.

(c) Damage to the source racks.

(d) Failure of the cable or drive mechanism used to move the source racks.

(e) Inoperability of the access control system.

(f) Detection of radiation source by the product exit monitor.

(g) Detection of radioactive contamination attributable to licensed radioactive material.

(h) Structural damage to the pool liner or walls.

(i) Water loss or leakage from the source storage pool, greater than the irradiator pool design parameters submitted by the licensee or applicant.

(j) Pool water conductivity exceeding 100 microsiemens per centimeter.

(2) The report must include a telephone report within 24 hours as described in 333-120-0710(2), and a written report within 30 days as described in 333-120-0720.

Stat. Auth.: ORS 453.675  
Stats. Implemented: ORS 453.675  
Hist.: PH 5-2005, f. & cert. ef. 4-11-05

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**Adm. Order No.:** PH 6-2005

**Filed with Sec. of State:** 4-13-2005

**Certified to be Effective:** 4-13-05

**Notice Publication Date:** 8-1-04

**Rules Adopted:** 333-049-0065

**Subject:** Establishes fees for disclosure of information contained in Oregon Immunization ALERT used for quality improvement projects for privately insured patients. Fees will apply to health plans, health provider associations, private or non-profit institutions, other state registries and/or federal health agencies or their contractors. Fees will not apply to individual health care providers and clinics, Oregon schools, Oregon hospitals or the Oregon Department of Human Services, Office of Medical Assistance Programs (OMAP). Fees will not be assessed against entities making voluntary contributions in accordance with an established formula to help support the operation of Oregon Immunization ALERT.

**Rules Coordinator:** Christina Hartman—(503) 731-4405

## 333-049-0065

### Fees

For the purpose of implementing ORS Chapter 433.090 through 433.104 fees may be charged in accordance with this rule:

(1) Fees may be charged to authorized users including, but not limited to, the following: health plans, health provider associations, private or non-profit institutions, other state registries, federal health agencies or their contractors.

(2) Fees shall not be charged to the following users: individual health care providers and clinics, Oregon schools, Oregon children's facilities, Oregon hospitals or OMAP.

(3) Fees may be waived at the discretion of the ALERT Director or the DHS Immunization Program Manager.

(4) Unless waived, or exempt under subsection (2) of this rule, a fee of \$10 per client shall be charged to each authorized user for each client specific immunization data request.

(5) A request for client specific data shall be responded to only when made by an authorized user for information about a client under its care. Requests from persons other than authorized users or from authorized users for data beyond that of a specific patient(s) under its care will be considered on a case by case basis in the interests of public health practice and may be responded to only with aggregate/de-identified data.

Stat. Auth.: ORS 433.100  
Stats. Implemented: ORS 433.100  
Hist.: PH 6-2005, f. & cert. ef. 4-13-05

# ADMINISTRATIVE RULES

## Department of Human Services, Self-Sufficiency Programs Chapter 461

**Adm. Order No.:** SSP 4-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05, 3-1-05

**Rules Adopted:** 461-115-0071, 461-145-0345

**Rules Amended:** 461-115-0050, 461-120-0125, 461-135-0095, 461-135-0400, 461-135-0505, 461-135-0506, 461-135-0570, 461-135-0710, 461-135-0780, 461-135-1100, 461-135-1102, 461-135-1110, 461-135-1120, 461-140-0040, 461-140-0120, 461-140-0123, 461-140-0242, 461-145-0020, 461-145-0330, 461-145-0380, 461-145-0390, 461-145-0410, 461-145-0520, 461-145-0570, 461-145-0580, 461-145-0910, 461-150-0055, 461-150-0090, 461-155-0010, 461-155-0250, 461-155-0290, 461-155-0291, 461-155-0295, 461-155-0530, 461-160-0040, 461-160-0540, 461-160-0560, 461-165-0410, 461-165-0420, 461-165-0430, 461-175-0200, 461-175-0310, 461-180-0040, 461-180-0100, 461-195-0521, 461-195-0541

**Rules Repealed:** 461-140-0125, 461-140-0130, 461-140-0140, 461-140-0150, 461-180-0095

**Subject:** Rule 461-115-0050 is being amended to clarify existing policy regarding the filing of applications. For all Medicaid programs, the rule is being amended to reflect that a new application is not required when a single application can be used both to determine a client is ineligible in the month of application, and to determine the client is eligible within 45 days from the date of request, when anticipated changes make the filing group eligible within 45 days from the date of request. For OHP and TANF-related medical programs, the rule is being amended to reflect that a new application is not required when adding a person (including a newborn) to a benefit group.

Rule 461-115-0071 is being adopted to establish who must sign the application and complete the application process for all Children, Adults, and Families (CAF) and Seniors and People with Disabilities (SPD) programs.

Rule 461-120-0125 is being amended to add a reference to section (8) into section (4).

Rule 461-135-0095 is being amended to remove TANF fraud as a disqualifier for the Extended Medical (EXT) program.

Rule 461-135-0400 is being amended to clarify policy on specific qualifications for students for the ERDC-SBG program.

Rule 461-135-0505 is being amended to clarify that a person categorically eligible for the Food Stamp program is presumed to meet the requirements for social security number, sponsored alien information and residency, if verified in a public assistance program.

Rule 461-135-0506 is being amended because, for the Transitional Benefit Alternative (TBA) in the Food Stamp program, the TBA case stays with the head of household if the filing group divides into two groups during the TBA period. In addition, the household may not participate in TBA if the head of household becomes ineligible for the Food Stamp program due to being institutionalized or residing in a facility that provides at least 50% of the meals. Nor may the household participate in TBA if the TANF benefits end because of a change which results in ineligibility and the household did not report the change timely as required.

Rule 461-135-0570 is being amended to clarify FS-eligible student status for 2-parent households.

Rule 461-135-0710 is being amended to state that to be eligible for OSIP a person must be receiving SSI or be eligible for an ongoing special need.

Rule 461-135-0780 is being amended to correctly reflect the calculation in determining Medicaid eligibility under Public Law 94-566. Individuals who may have been determined ineligible for assistance can retain eligibility if this provision is applied correctly.

Rule 461-135-1100 is being amended to clarify existing policy regarding OHP-OPU (the OHP-OPU program, also called OHP Stan-

dard, provides medical assistance to low-income nonpregnant adults) applicants. The rule is being amended to reflect that OHP-OPU applicants who can obtain health insurance through their employer are required to cooperate with the Family Health Insurance Assistance Program (FHIAP) as per the requirements of 461-120-0345 (Clients Required to Obtain Medical Coverage).

Rule 461-135-1102 is being amended to clarify existing policy regarding new applicants (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). This rule is being amended to reflect that Medicaid applicants (excluding Qualified Medicare Beneficiary (QMB)), and Children's Health Insurance Plan (CHIP) applicants are not new applicants if their current benefits are ending and they are found eligible for OHP-OPU within 45 days of a date of request established during the last month of current eligibility or within 45 days of the date the Department initiates a redetermination of eligibility during the last month of current eligibility.

Rule 461-135-1110 is being amended to clarify existing policy regarding student eligibility (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). The rule is amended to reflect that students who provide verification of Pell grant eligibility through the school's financial aid office are considered to meet the requirements for a Pell grant.

Rule 461-135-1120 is being amended to clarify existing policy regarding premium requirements (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). The rule is being amended to reflect that premium amounts do not change during a certification period for clients whose protected eligibility is ending following pregnancy. A new certification is required to determine eligibility after protected eligibility ends.

Rule 461-140-0040 is being amended to clarify existing policy regarding the availability of income for victims of domestic violence in the Extended Medical (EXT), Food Stamp (FS), Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), the Oregon Health Plan (OHP), and Temporary Assistance to Needy Families (TANF) programs. This rule is being amended to reflect that income may be considered not available to the filing group only when the abuser is not a member of the filing group.

Rules 461-140-0120 and 461-140-0123 are being amended and rules 461-140-0125, 461-140-0130, 461-140-0140, 461-140-0150, and 461-180-0095 are being repealed to align the treatment of Lump-Sum Income in the GA and GAM programs with the OSIP, OSIPM, and QMB programs.

Rule 461-140-0242 is being amended to clarify that in order for a client's transfer of resources to a blind or disabled child to not cause a disqualification, the child's condition must meet the severity and durational requirements of SSI criteria.

Rule 461-145-0020 is being amended to clarify that when an annuity is not a disqualifying transfer of resources, the monthly annuity payments are counted as unearned income.

Rule 461-145-0330 is being amended to align the treatment of loans and interest on loans in the GA and GAM programs with the OSIP, OSIPM, and QMB programs.

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.

Rule 461-145-0380 is being amended to incorporate policy clarification received by the Food and Nutrition Service on when a retirement or pension plan is an excluded resource and when it must be counted for the Food Stamp program. In addition, the rule is being amended to indicate how funds from retirement plans are counted if withdrawn before retirement.

Rule 461-145-0390 is being amended to make the treatment of personal belongings the same for all programs administered by the Department.



## ADMINISTRATIVE RULES

Rule 461-145-0410 is being amended to clarify how to treat benefits from OSIP-IC for all programs.

Rule 461-145-0520 is being amended to clarify that during their minimum retention period, savings bonds are not counted if the client has requested a hardship waiver from the U.S. Department of the Treasury and been denied.

Rule 461-145-0570 is being amended to exclude the portion of the USDA meal reimbursement given to a day care provider for meals served to children in the provider's filing group.

Rule 461-145-0580 is being amended to clarify that Veterans' aid-and-attendance payments must be reimbursed to the Department up to the amount of institutional and home- or community-based care provided to the client.

Rule 461-145-0910 is being amended to correct FS policy on identifying self-employment and treatment of such income.

Rule 461-150-0055 is being amended to clarify existing policy regarding budget month (the OHP-OPU program, also called OHP Standard, provides medical assistance to low-income nonpregnant adults). This rule is being amended to reflect that when evaluating Oregon Supplemental Income Program Medical (OSIPM) clients for OHP when their OSIPM benefits are ending, the budget month is the last month of their current eligibility period.

Rule 461-150-0090 is being amended to align this rule with the policy change made in 2004 to rule 461-140-0110 regarding the treatment of periodic income for the Food Stamp program. Rule 461-140-0110 gives the household a choice on when and how periodic income is counted.

Rule 461-155-0010 is being amended to justify Medicaid eligibility for those not covered under a Home and Community Based Waiver.

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.

Rule 461-155-0530 is being amended to clarify who is eligible for food for guide dogs and special assistance animals for OSIP and OSIPM.

Rule 461-160-0040 is being amended to clarify that the dependent must be a member of the filing group in order to allow the cost of dependent care as a deduction for ERDC and FS.

Rule 461-160-0540 is being amended to clarify how to count income for the QMB-SMB program. Additionally, the rule is being amended to provide OSIPM to those who do not qualify under the special income standard (rule 461-135-0750).

Rule 461-160-0560 is being amended to remove the terms "companionship" and "home care" from the text of the rule. Both terms are obsolete in relation to in-home services which is being defined in this portion of the rule.

Rule 461-165-0410 is being amended to remove the list of crimes and refer to rules 410-007-0200 through 410-007-0380.

Rule 461-165-0420 is being amended to remove the requirement to notify parents of a provider's past criminal history or child protective services history when the Department has determined children safety is not likely jeopardized.

Rule 461-165-0430 is being amended to include procedures for child care providers who contest the Department's fitness determination decision.

Rule 461-175-0200 is being amended because when it was amended effective October 1, 2004, to reflect changes in the JOBS program, the Department inadvertently deleted the long-standing requirement to send a basic decision notice whenever an application for assistance, including retroactive medical assistance, is approved. This proposed change corrects that error.

Rule 461-175-0310 is being amended to delete the word "receive."

Rule 461-180-0040 is being amended to conform to the language created by the passage of Ballot Measure 99 which created the Home

Care Commission. The Commission provides for collective bargaining for those employed as home care workers as well as other benefits. Statutory authority is found in ORS 410.604, 410.612 and 410.614. The current version of this rule refers to client- employed providers which are now considered home care worker for the purposes of describing their rights and responsibilities. This amendment also updated references to other rules which are part of the creation of the Commission.

Rule 461-180-0100 is being amended to clarify existing policy regarding eligibility following closure for the Oregon Health Plan (OHP). This rule is being amended to reflect that an applicant's medical start date is the date the applicant meets all eligibility requirements if that date falls within 45 days of the date of request, if the date of request was established prior to ending current benefits.

Rule 461-195-0521 is being amended because only an eligible one- or two-person benefit group receives a minimum monthly allotment of \$10.

Rule 461-195-0541 is being amended to clarify existing policy regarding liability for overpayments for Medicaid programs. This rule is being amended to reflect that Medicaid programs do not collect overpayments from children or from caretaker relatives (if the caretaker relative is not in the benefit group).

**Rules Coordinator:** Annette Tesch—(503) 945-6067

### 461-115-0050

#### When an Application Must Be Filed

A client must file an application, or may amend an application already complete, as a prerequisite to receiving benefits as follows:

(1) Except as provided in sections (3), (4), (5), and (6) of this rule, a client wishing to apply for program benefits must submit a complete application on a form approved by the Department.

(2) An application is complete if the following requirements are met:

(a) All information necessary to determine the client's eligibility and benefit amount is provided on the application for all people in the filing group.

(b) The applicant, even if homeless, provides a mailing address.

(c) The application is signed. A person required but unable to sign the application may sign with a mark, witnessed by another person.

(d) The application is received by the Department.

(3) A new application is not required in the following situations:

(a) In the Food Stamp program, when a single application can be used both to determine a client is ineligible in the month of application and to determine the client is eligible the next month. This can be done when:

(A) Anticipated changes make the filing group eligible the second month; or

(B) The filing group provides verification between 30 and 60 days following the filing date, in accordance with OAR 461-180-0080.

(b) In all programs except the Food Stamp program, when a single application can be used both to determine a client is ineligible on the date of request and to determine the client is eligible when anticipated changes make the filing group eligible within 45 days from the date of request.

(c) When the case is closed and reopened during the same calendar month.

(d) When benefits were suspended for one month because of the level of income, and the case is reopened the month following the month of suspension.

(e) When reinstating medical benefits for a pregnant woman covered by OAR 461-135-0950(7).

(4) A new application is required to add a newborn child to a benefit group according to the following requirements:

(a) For the REF and TANF programs:

(A) A new application is not required if the child is listed on the application as "unborn" and there is sufficient information about the child to establish its eligibility.

(B) A new application is required if the child is not included on the application as "unborn."

(b) In the EXT, MAA, MAF, OHP, and REFM programs, no additional application is required to add the child to its mother's benefit group. The child may be added to a benefit group other than the benefit group of the child's mother if eligibility can be determined without submission of a new application.

(c) In the ERDC and FS programs, an application is not required to add the child to the benefit group.

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(d) For all other programs, an application is required.  
(5) A new application is required to add a person to a benefit group, other than a newborn child, according to the following requirements:  
(a) In the ERDC and Food Stamp programs, a new application is not required.

(b) In the EXT, MAA, MAF, OHP, REFM, SAC, and TANF programs, a person may be added by amending a current application if the information is sufficient to determine eligibility; otherwise a new application is required.

(c) In all other programs, a new application is required.

(6) Clients whose TANF grant is closing may request ERDC orally or in writing.

(7) For all programs except EXT, FS, MAA, MAF, and OHP, clients may change between programs administered by the Department using the current application if the following conditions are met:

(a) The client makes a verbal or written request for the change.

(b) The Department has sufficient evidence to determine eligibility and benefit level for the new program without a new application.

(c) The program change can be effected while the client is eligible for the first program.

(8) A client may change between EXT, MAA, MAF, and OHP using the client's most recent medical application.

Stat. Auth.: ORS 409.050, 411.060 & 411.816

Stats. Implemented: ORS 411.060 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 3-1991(Temp), f. & cert. ef. 1-17-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-1996, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; 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 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; AFS 21-2001(Temp), f. & cert. ef. 10-1-01 thru 12-31-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-115-0071

### Who Must Sign the Application and Complete the Application Process

(1) In the ERDC, MAA, MAF, REF, REFM, and TANF programs, the following people must sign the application and complete the application process:

(a) In the MAA, MAF, REF, REFM, and TANF programs:

(A) A parental caretaker relative must sign the application.

(B) A non-parental caretaker relative must sign the application, subject to the following specific requirements:

(i) If the non-parental caretaker relative applies for benefits with the dependent child and lives with a spouse, both the non-parental caretaker relative and the spouse must sign the application.

(ii) A non-parental caretaker relative who applies only for children must sign the application, but the non-parental caretaker relative's spouse is not required to sign the application.

(iii) If the non-parental caretaker relative changes, the new non-parental caretaker relative must sign a current application.

(b) In the ERDC program, a caretaker must sign.

(2) In the EA program:

(a) A caretaker relative must sign the application and complete the application process for a dependent child under age 18. If the child is not living with a caretaker relative, another adult may act on behalf of the child.

(b) If the caretaker relative lives with a spouse, both must sign the application.

(c) A dependent child age 18 who applies must sign the application and complete the application process.

(3) In the Food Stamp program, the primary person, the spouse of the primary person, or another adult member of the filing group must sign the application and complete the application process.

(4) In the GA, GAM, and QMB programs, an adult requesting assistance and the adult's spouse, if they live together, must complete the application process and sign the application.

(5) In the OHP program, the primary person, the spouse of the primary person, and other adult members of the filing group must sign the application and complete the application process.

(6) In the OSIP and OSIPM programs, an adult requesting assistance and the adult's spouse, if they live together, must sign the application and complete the application process. If the applicant dies prior to the determination of eligibility for OSIPM, the application may be processed if the Department receives the required verification.

(7) A person required to sign the application but unable to sign may sign with a mark, witnessed by an employee of the field office.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05

## 461-120-0125

### Alien Status; Not REF or REFM

(1) For purposes of this chapter of rules, a person is a "qualified non-citizen" if he or she is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 251(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) In all programs except the Food Stamp program — a battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c) and is in the United States on a conditional resident status, as determined by the United States Immigration and Naturalization Service.

(i) In the Food Stamp program — a non-citizen who has been battered or subjected to extreme cruelty in the United States by a spouse or parent or by a member of the spouse or parent's family residing in the same household as the non-citizen at the time of the abuse; a non-citizen whose child has been battered or subjected to battery or cruelty; or a non-citizen child whose parent has been battered.

(2) A person meets the alien status requirements if he or she is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the TANF program, a person meets the alien status requirements if he or she is one of the following:

(a) A person who is a qualified non-citizen.

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(4) In the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs, a qualified non-citizen meets the alien status requirements if he or she:

(a) Was a qualified non-citizen before August 22, 1996;

(b) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified-noncitizen status was obtained. A person is not continuously present in the United States if he or she is absent from the United States for more than 30 consecutive days or for a total of more than 90 days; or

(c) Is a person granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) Victims of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(d) Meets the alien status requirements in section (2), (7), or (8) of this rule.

(e) In the OSIPM program only, is receiving SSI benefits.

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(5) In the GA and GAM programs, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(c) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(6) In the OSIP program, a person meets the alien status requirement if he or she is one of the following:

(a) An individual who is blind or has a disability, was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) A qualified noncitizen who physically entered the United States on or after August 22, 1996, has had the qualified noncitizen status for at least five years, and has forty qualifying quarters of coverage as defined in section (10) of this rule.

(c) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(d) A person receiving SSI benefits.

(e) A person who meets one of the alien status requirements in section (2) or (7) of this rule.

(7) In all programs except TANF, a qualified non-citizen meets the alien status requirement if he or she is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. § 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of a person described in subsection (a) or (b) of this section.

(d) In the FS program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(8) Except as provided in sections (2), (4), (5), and (7) of this rule, a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996:

(a) Is ineligible for the BCCM, MAA, MAF, OHP, OSIPM, and SAC programs for five years beginning on the date the non-citizen received his or her qualified non-citizen status.

(b) Meets the alien status requirement following the five-year period.

(9) In the FS program, a person meets the alien status requirement if he or she is one of the following:

(a) A person granted any of the following alien statuses—

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) A person granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A victim of a severe form of trafficking under the Trafficking Victims Protection Act of 2000.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who is disabled, as defined in OAR 461-110-0110(4).

(10) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the FS program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means-tested benefits include FS, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that he or she has fewer than 40 quarters of coverage, may be provisionally certified for food stamp benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for food stamp benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

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

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

### 461-135-0095

#### Specific Requirements; EXT

(1) To be eligible for EXT benefits, the filing group must have been found eligible for the MAA, MAF, or Assessment program and then become ineligible because of an increase in the caretaker relative's earnings or in child support received. Eligibility for EXT is subject to the following limitations:

(a) Clients disqualified from TANF for failure to comply with requirements of the JOBS program (see the rules in division 130 of this chapter of rules) or requirements related to mental health or drug and alcohol (see OAR 461-135-0085) at the time the filing group becomes eligible for EXT are included in the benefit group if they are otherwise eligible for MAA, MAF, or the Assessment program.

(b) If the filing group becomes ineligible for the MAA, MAF, or Assessment program because of an increase in both earned income and support in one month, the Department will first determine the group's eligibility for EXT using only the increase in earned income.

(2) Once eligibility for EXT is established, members of the eligibility group are ineligible only if the filing group contains no dependent child.

(3) Subject to the limitations in OAR 461-135-0096(1):

(a) A benefit group can regain EXT eligibility after becoming ineligible whenever the group again meets the requirements listed in this rule.



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(b) Persons who have lost EXT eligibility because they leave the household during the EXT eligibility period may regain eligibility for the balance of the period if they return and if the rest of the family has been continuously eligible.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0400

### Specific Requirements; ERDC

The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules. To be eligible for ERDC, a filing group must meet the following requirements:

(1) For a filing group to be eligible for the ERDC-BAS program, at least one caretaker (see OAR 461-120-0610) must receive income from employment, including employment through a work study program. For clients who are in the start-up phase of self-employment, working on commission, or participating in job-related training that is a condition of employment, the requirement to have earned income may be waived for three months.

(2) In the ERDC-SBG program:

(a) At least one caretaker must be a student without a bachelor's degree who is an undergraduate, has obtained a high school diploma or GED, has been admitted to a two- or four-year post-secondary institution that is eligible for federal financial aid, and has registered for at least twelve quarter hours — or an equivalent number of credit hours in an institution that does not use the quarter system — that count toward graduation.

(b) A caretaker who meets the requirements of subsection (a) of this section must attend school for at least:

(A) Three out of four school quarters per or two semesters each academic year; or

(B) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion required by paragraph (A) of this subsection.

(c) A student may use ERDC-SBG benefits for child care needed in order to work during an absence from school or to attend school during a term in which the student is attending school less than 12 credit hours if:

(A) The student intends to attend school at least 12 credit hours the following term; and

(B) The absence or part-time status does not exceed:

(i) One out of four school quarters for students on the quarter system.

(ii) The summer break period for students in the semester system.

(iii) In an institution that does not use the quarter or semester system, a portion of the academic year equivalent to the portion allowed by subparagraph (i) or (ii) of this paragraph.

(d) Students must maintain good standing according to the standards of the institution they are attending.

(e) Students must complete at least 36 quarter hours — or the equivalent in an institution that does not use the quarter system — that count toward graduation each academic year.

(f) Participation in the student child care program is limited to a total of six years.

(3) The family must have an allowable child care need as described in OAR 461-160-0040. If in the filing group there are two adults who are required to be in the filing group, and if one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the group ineligible, except in the following situations:

(a) The unemployed adult is physically or mentally unable to provide adequate child care.

(b) The unemployed adult is unavailable to provide care while participating in requirements of a case plan other than requirements associated with post-secondary education. In the ERDC-SBG program only, the unemployed adult meets the requirements of section (2) of this rule.

(4) The caretaker must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(5) A client is not eligible for a child care payment in the ERDC program for more than six calendar months if the client is unwilling to obtain for the child a Certificate of Immunization Status.

(6) It is a requirement for eligibility in the ERDC-BAS program that child care is necessary to enable the caretaker to remain employed.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-

1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0505

### Categorical Eligibility for FS

(1) A person is categorically eligible for food stamps if the person:

(a) Receives or is authorized to receive GA or SSI benefits or cash benefits funded by TANF;

(b) Receives or is authorized to receive in-kind benefits or services funded by TANF;

(c) Is deemed to be receiving SSI under Section 1619(a) or 1619(b) of the Social Security Act (42 U.S.C. 1382h(a) or (b)); or

(d) Is a member of a financial group with *countable income* less than 1.85 times the amount given in OAR 461-155-0225(2)(a) — rounded to the next lower whole dollar — and has received a pamphlet about Information and Referral Services.

(2) A benefit or service is “funded by TANF” (see section (1) of this rule) if it is provided as part of the ADC-PLS, Assessment, EA, ERDC, JOBS, TA-DVS, transition, or other TANF-funded program.

(3) For an entire filing group to be categorically eligible for food stamps, it must contain only clients who are categorically eligible for food stamps. For the purpose of determining who is categorically eligible for food stamps, in some programs all members of the filing group are considered receiving the benefits of the program even if not all members receive the benefit. Those programs are the ERDC and TA-DVS programs and any housing assistance or transition service funded by TANF.

(4) A filing group that is eligible for transition services or the TA-DVS program is considered receiving benefits for the entire period of eligibility even if benefits are not received during each month of that period.

(5) A person categorically eligible for the Food Stamp program is presumed to meet the eligibility requirements for resources and countable and adjusted income limits. The person is also presumed to meet the requirements for a social security number, sponsored alien information, and residency, if verified in a public assistance program.

(6) When a filing group contains both members who are categorically eligible for food stamps and those who are not, a resource owned in whole or in part by a categorically eligible member is excluded.

(7) A person cannot be categorically eligible for food stamps in either of the following circumstances:

(a) The person is disqualified from receiving food stamps because of an intentional program violation.

(b) The person is a *primary person* disqualified from receiving food stamps for failure to comply with an OFSET activity or component contained in an OFSET *case plan*.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 29-2000(Temp), f. & cert. ef. 12-1-00 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 2-2003(Temp), f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0506

### Transitional Benefit Alternative (TBA) in the Food Stamp Program

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive food stamp benefits without reduction during the transition period. The transition period is five months. If the filing group separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) Clients in the Food Stamp program who receive a cash grant in the TANF program may participate in TBA when the TANF benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for FS during the last month before TBA begins, but the TANF grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

(a) The client files a new application in the Food Stamp program;

(b) A member of the household leaves and applies for food stamps as a member of another household;

(c) The household reports a change that results in an increase in benefits; or

(d) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA if:

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(a) A member of the filing group is receiving benefits of the TANF program.

(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to report the change timely.

(d) During the last month of eligibility for TANF, a person in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the Food Stamp program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group is subject to a penalty in the Food Stamp program because of the person's conduct, for instance, because the person:

(A) Was excluded from the need group under OAR 461-110-0630(6);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for food stamps under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the Food Stamp program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(5) Once the TBA benefits have ended, a client's eligibility for the Food Stamp program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0570

### Eligible and Ineligible Students; FS

(1) For the purposes of this rule, higher education includes the following:

(a) Public and private universities and colleges and community colleges. However, GED, ABE, ESL and high school equivalency programs at those institutions are not considered higher education.

(b) Post-secondary vocational, technical, business, and trade schools that normally require a high school diploma or equivalency certificate for enrollment in the institution or in a particular program at the institution. However, programs at those institutions that do not require the diploma or certificate are not considered higher education.

(2) A person 18 years of age and older, but under the age of 50 years, who is not disabled and who is enrolled at least half time in higher education is ineligible to receive FS benefits, unless any of the following is true:

(a) The student is:

(A) A paid employee working a minimum of 20 hours per week; or

(B) Self-employed for a minimum of 20 hours per week and receives weekly earnings at least equal to the federal minimum wage multiplied by 20 hours.

(b) The student is approved for state or federally funded work-study and expects to actually perform work in a work-study job in the current term or semester. Eligible student status:

(A) Begins with the month in which school begins or with the month that work study is approved, whichever is later.

(B) Continues for the duration of the term or semester, unless the student refuses a work-study job.

(C) Continues through breaks of less than a month. For breaks of a month or longer, eligibility continues only if the student performs work in a work-study job during the break.

(c) The student is responsible for the care of a child in the filing group, and the child is:

(A) Under six years of age; or

(B) Six years of age or older, but under the age of 12 years, and adequate child care is not available to enable the student to attend class and work 20 hours a week.

(d) The student is enrolled full time in higher education and is a single parent or a single adult who has parental control, with the responsibility of caring for a child under 12 years of age.

(e) The student is in a TANF benefit group.

(f) The student is physically or mentally unfit for employment.

(g) The student is in job training classes through the Workforce Investment Act of 1998 (Pub. L. 105-220).

(h) The student is in a program serving displaced workers (see Section 236 of the Trade Act of 1974, 19 U.S.C. 2296).

(i) The student is enrolled as a result of participation in the higher education component of the JOBS program.

(j) The student is enrolled as a result of employer-sponsored on-the-job training.

(3) A student's enrollment status continues during school vacation and breaks. A student's enrollment status ends when the student graduates, drops out (as verified by their disenrolling), is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

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

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 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 30-1990, f. 12-31-90, cert. ef. 1-1-91; 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 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 3-2002(Temp), f. 2-26-02, cert. ef. 3-1-02 thru 6-30-02; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0710

### Specific Requirements; OSIP, OSIPM (except OSIP-EPD and OSIPM-EPD)

(1) To be eligible for OSIP (except OSIP-EPD), a person must be receiving SSI or be eligible for an ongoing special need.

(2) To be eligible for OSIPM, a client must be eligible for OSIP or be eligible for but not receiving SSI and have income below the OSIP payment standard.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-0780

### Eligibility for Pickle Amendment Clients; OSIPM

(1) A client is eligible for OSIPM under the so-called Pickle amendment (Pub. L. No. 94-566, § 503, title V, 90 Stat. 2685 (1976)), if he or she meets all other eligibility requirements, and:

(a) Is receiving SSB;

(b) Was eligible for and receiving SSI or state supplements but became ineligible for those payments after April 1977; and

(c) Would be eligible for SSI or state supplement if the SSB COLA increases paid under section 215(i) of the Social Security Act, after the last month the client was both eligible for and received SSI or a supplement and was entitled to SSB, were deducted from current SSB benefits.

(2) The SSB amount received by the client when he or she became ineligible for SSI or OSIP is used as the client's countable income. If the amount cannot be determined, it is calculated in accordance with sections (3) and (4) of this rule.

(3) Determine the month in which the person was entitled to Social Security and received SSI in the same month. Use the table in section (4) of this rule to find the percentage that applies to that month. Multiply the present amount of the person's and if applicable the spouse's Social Security benefits by the applicable percentage. This amount is the person's countable Social Security for purposes of the Pickle Amendment. Add that figure to any other countable income the person has, if the total is less than the OSIP income standard plus the \$20 unearned income disregard the person is Pickle eligible. All other financial and non-financial eligibility criteria must be met.

(4) The following guide contains the calculations used to determine the SSB for prior years: If SSI was Last Received During Multiply Current SSB by: [Table not printed See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 14-2003(Temp), f. & cert. ef. 6-18-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-1100

### Specific Requirements; OHP

This rule explains who is eligible for the OHP program.

(1) To be eligible for OHP, a person cannot:

(a) Be receiving, or deemed to be receiving, SSI benefits;

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(b) Be eligible for Medicare, except that this requirement does not apply to OHP-OPP;

(c) Be receiving Medicaid through another program; or

(d) Be enrolled in a health insurance plan subsidized by the Family Health Insurance Assistance program (FHIAP, see ORS 735.720 to 735.740).

(2) To be eligible for the OHP-OPU program, a person must be 19 years of age or older and must not be pregnant. A person eligible for OHP-OPU is referred to as a health plan new/noncategorical (HPN) client. In addition to all other OHP eligibility requirements, an HPN client:

(a) Must not be covered by private major medical health insurance and must not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. *Private major medical health insurance* means health insurance coverage that provides medical care for physician and hospital services, including major illnesses, with a limit of not less than \$10,000 for each covered individual. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under the provisions of OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized through FHIAP and the client did not voluntarily end the insurance coverage; or

(D) A member of the person's filing group was a victim of domestic violence.

(b) Must meet the following eligibility requirements:

(A) The resource limit provided in OAR 461-160-0015.

(B) The higher education student requirements provided in OAR 461-135-1110.

(C) Payment of premiums determined in accordance with OAR 461-155-0235.

(D) Selection of a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the HPN client is exempted by OAR 410-141-0060.

(E) The requirements in OAR 461-120-0345 related to obtaining medical coverage for members of the benefit group through the Family Health Insurance Assistance Program (FHIAP), if applicable.

(3) To be eligible for the OHP-OPC program, a person must be less than 19 years of age.

(4) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(5) To be eligible for the OHP-OPP program, a person must be pregnant or must be a newborn assumed eligible under OAR 461-135-0010(4).

(6) To be eligible for the OHP-CHP program, a person must be under 19 years of age and must:

(a) Not be eligible for OHP-OPC, OHP-OPP or OHP-OP6;

(b) Meet the resource limit provided in OAR 461-160-0015;

(c) Meet budgeting requirements of OAR 461-160-0700;

(d) Select a medical, dental and mental health managed health care plan (MHCP) or primary care case manager (PCCM) if available, unless the client is exempted by OAR 410-141-0060; and

(e) Not be covered by private major medical health insurance or by any private major medical health insurance during the preceding six months. The six-month waiting period is waived if:

(A) The person has a condition that, without treatment, would be life-threatening or cause permanent loss of function or disability;

(B) The person's private health insurance premium was reimbursed under OAR 461-135-0990;

(C) The person's private health insurance premium was subsidized by FHIAP; or

(D) A member of the person's filing group was a victim of domestic violence.

(7) A child who becomes ineligible for OHP because of age while receiving in-patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in-patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-1102

### OHP-OPU; Effective Dates for the Program

(1) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in sections (2) and (3) of this rule, a new applicant is a person with a date of request (see OAR 461-115-0030) after June 30, 2004. A new applicant cannot be found eligible for the OHP-OPU program.

(2) A person is not a new applicant if the Department determines that the person is continuously eligible for medical assistance as follows:

(a) The person is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, or after that date pursuant to subsections (b) to (e) of this section, and the Department determines that the person continues after that date to meet the eligibility requirements for OHP-OPU.

(b) The person is eligible for and receiving benefits under the CAWEM program on June 30, 2004, and is eligible for CAWEM based on the OHP-OPU program, and the Department determines that the person continues to meet the eligibility requirements for OHP-OPU except for citizenship or alien status requirements.

(c) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or SAC program, or under CAWEM based on such program, and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(d) The person is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the person meets the eligibility requirements for OHP-OPU.

(e) The Department determines that the person was continuously eligible for OHP-OPU on or after June 30, 2004 under subsections (a) to (d) of this section.

(3) A person who is not continuously eligible under section (2) of this rule is not a new applicant if:

(a) The person's eligibility ends under the BCCM, EXT, GAM, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or SAC program, or the related CAWEM program; and

(b) The person meets the eligibility requirements for OHP-OPU or the related CAWEM program:

(A) Within 45 days of a date of request established during the last month of eligibility for a program listed in subsection (a) of this section; or

(B) Within 45 days of the date the Department initiates a redetermination or recertification of eligibility for a program listed in subsection (a) of this section.

(4) Except as provided in section (2) of this rule, a person who loses eligibility for a medical assistance program and applies or reapplies for medical assistance is treated as a new applicant for purposes of the OHP-OPU program.

(5) The Department intends that effective July 1, 2004, all other rules related to application, certification, recertification, or eligibility for the OHP-OPU program be applied and construed to achieve the purpose of this rule and that in the event of any ambiguity this rule controls.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 411.060, 2003 OL Ch. 710, 735

Hist.: SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-135-1110

### Eligible and Ineligible Students; OHP-OPU

(1) In the OHP-OPU program, a person who is enrolled full time in higher education is ineligible to receive benefits, unless one of the following is true:

(a) The student:

(A) Meets the income requirements for a Pell grant;

(B) Is not currently covered by private major medical health insurance or an HMO; and

(C) Has not been covered by private major medical health insurance or by an HMO for the six months immediately preceding the date of application.

(b) The student is in a program serving displaced workers under Section 236 of the Trade Act of 1974 (19 U.S.C. § 2296).

(2) For the purposes of this rule:

(a) *Higher education* includes the following:

(A) Any public or private university, college or community college.

(B) Any post-secondary vocational or technical school that is eligible to accept Pell grants.

(b) Full time is defined by the school.

(c) *Meets the income requirements for a Pell grant* means:



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(A) The student's Student Aid Report shows an "expected family contribution" less than \$3,851 for the 2003-2004 or 2004-2005 school year; or  
(B) The student is eligible for a Pell grant and provides documentation of eligibility from the school's financial aid office.

(3) A student's enrollment status continues during school vacation and breaks. A student's *higher education* status ends when the student graduates, drops out (as verified by their disenrolling), reduces their credit or attendance hours below full-time status, is suspended or expelled, or does not intend to register for the next school term (excluding summer term).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 13-2000, f. & cert. ef. 5-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 14-2002(Temp), f. & cert. ef. 10-30-02 thru 4-28-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

### 461-135-1120

#### Premium Requirement; OHP-OPU

In the OHP-OPU program, a monthly premium must be paid when the benefit group includes at least one non-exempt (HPN) client (see OAR 461-135-1100) as follows:

(1) The following HPNs are exempt from the premium requirement:

(a) Members of a federally recognized Indian tribe, band, or group.

(b) Eskimos, Aleuts, and other Alaska natives enrolled by the Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act.

(c) Persons eligible for benefits through an Indian Health Program.

(d) Clients who are eligible for the CAWEM program (see OAR 461-135-1070).

(2) The amount of the premium is determined in accordance with OAR 461-155-0235.

(3) All non-exempt clients in the benefit group are responsible for payment of premiums.

(4) Once the amount of the premium is established, the amount will not change during the certification period unless:

(a) An HPN client becomes pregnant.

(b) An HPN client becomes eligible for another program (for example, GA, OSIP or TANF).

(c) An HPN client leaves the filing group.

(d) OHP cases are combined during their certification periods.

(e) An HPN client's exemption status changes.

(f) An HPN client is no longer a member of the benefit group.

(5) For premiums billed on or after July 1, 2003 and prior to February 1, 2004, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 20th day of the month after the benefit month for which the premium was billed. For premiums billed prior to July 1, 2003, a premium is considered paid on time when payment is received by the Oregon Health Plan billing office on or before the 25th day of the month after the benefit month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received.

(6) For premiums billed on or after February 1, 2004, a premium is considered paid on time when the payment is received by the Oregon Health Plan billing office on or before the 20th of the month for which the premium was billed. The day the payment arrives in the office's post office box is the date it is received. A premium not paid on time is past due. A client who does not pay a required premium on time is disqualified under OAR 461-135-1130.

(7) A client who has been determined eligible for the OHP-OPU program and is required to pay a premium may, at any time, request a reasonable modification of section (6) of this rule based on a disability under Title II of the Americans with Disabilities Act or Section 504 of the Rehabilitation Act. The following procedure is followed:

(a) A client with a past due premium may request a reasonable modification of section (6) to pay the premium late without penalty under 461-135-1130. Medical documentation must be submitted to the Department verifying a disability that specifically affects the client's ability to pay bills in a timely fashion. The Department may request additional documentation from the client.

(b) The Department will approve a request for reasonable modification of section (6) if medical documentation demonstrates that the client's disabling conditions directly impaired or prevented the client's ability to pay OHP premiums on time.

(c) A client with an approved request for reasonable modification of section (6) will be allowed to make the past due premium payments late as

long as the client was otherwise eligible for the OHP-OPU program for the time period to which the past due payment applies. A disqualification imposed under OAR 461-135-1130 directly related to past due premiums for that period will be rescinded. All premiums must be paid before the client can establish a new certification period in the OHP-OPU program.

(d) An approved request for reasonable modification of section (6) does not apply to subsequent certification periods. Premium payments billed in subsequent certification periods need to be paid on time as required in sections (5) and (6) of this rule. Subsequent requests for reasonable modification of section (6) are allowed at any time and evaluated as described above based on the facts applicable to the time period covered by that request. The Department may request additional documentation from the client.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; Administrative correction 2-23-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 19-2003(Temp), f. & cert. ef. 7-1-03 thru 9-30-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 3-2004(Temp), f. & cert. ef. 2-19-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

### 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. For newspaper carriers, this unavailable income is limited to the monthly cost of newspapers, bags, and rubber bands.

(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 FS, MAF, and OHP programs, income controlled by the client's abuser if the client is a victim of domestic violence, the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

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(h) In the MAA 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; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-140-0120

### Lump-Sum Income

*Lump sum* income is treated as follows if it is received by a recipient or received by an applicant who has signed an application for program benefits:

(1) In the EA, MAA, MAF, REF, REFM, SAC, and TANF programs, lump-sum income is a resource.

(2) In the ERDC and EXT programs, lump-sum income is excluded.

(3) In the OHP program:

(a) If the lump-sum income is \$30 or less in a quarter, it is excluded for:

(A) Each financial group member who receives the lump-sum income; and

(B) Each financial group member the lump-sum income is intended for.

(b) If the lump-sum income exceeds \$30 in a quarter, it is counted as unearned income in the month received.

(4) In the Food Stamp program:

(a) Lump-sum income not exceeding \$30 a quarter is *excluded* income.

(b) If *lump-sum* income exceeds \$30 in a quarter, the entire amount is a resource.

(c) For Food Stamp clients in a filing group that includes at least one member who is working under a TANF JOBS Plus agreement, lump-sum income is excluded.

(5) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB programs, lump-sum income is treated as follows:

(a) Lump sum income not *excluded* is unearned income in the month of receipt, and any amount remaining in future months is a resource.

(b) The following *lump sum* income is excluded:

(A) The first \$20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained at OAR 461-155-0500 and following.

(c) For OSIP-EPD and OSIPM-EPD, *lump-sum income* is a resource.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 22-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-140-0123

### Availability of Lump-Sum Income; MAA, MAF, REF, TANF

Lump-sum income is considered *available* to the financial group when a member of the group receives the income and until the income

becomes unavailable for reasons beyond the group's control. Lump-sum income is considered unavailable for reasons beyond the group's control when the member who received the lump-sum income:

(1) Leaves the financial group before spending any of the lump-sum income; or

(2) Spends the lump-sum income on an emergency, such as a natural disaster or serious injury or death of a household member

Stat. Auth.: ORS 411.060, 411.710, 418.100

Stats. Implemented: ORS 411.060, 411.710, 418.100

Hist.: AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-140-0242

### Disqualifying Transfer of Resources Including Home; GA, GAM, OSIP, OSIPM, and QMB; On or After October 1, 1993

(1) In the GA, GAM, OSIP, OSIPM, and QMB programs, a transfer of a resource (including a home) by a client or the client's community spouse on or after October 1, 1993, is a disqualifying transfer unless the transfer was made exclusively for purposes other than qualifying for benefits, if the title to the resource was transferred as described in section (2) or (3) of this rule, or the title was transferred:

(a) To the person's spouse or to another for the sole benefit of the client's spouse;

(b) To a trust described in OAR 461-145-0540(10); or

(c) To or for the sole benefit of the client's child who is blind or disabled under the criteria of the Social Security Administration.

(2) A transfer of a home by a client or the client's community spouse after October 1, 1993, is a disqualifying transfer unless the title was transferred to the person's:

(a) Child under age 21;

(b) Sibling who has equity interest in the home and was residing in the home for at least one year immediately before the client's admission to long-term care; or

(c) Son or daughter who resided with the client for at least two years immediately prior to the client's admission to long-term care and provided care that permitted the client to reside at home rather than in an institution or long-term care facility. A son or daughter provides the care required by this subsection by doing most of the following for the client, without receiving payment from the Department, on a regular basis:

(A) Prepares meals;

(B) Shops for food and clothing;

(C) Helps maintain the home;

(D) Assists with financial affairs;

(E) Runs errands;

(F) Provides transportation;

(G) Provides personal services;

(H) Arranges for medical appointments;

(I) Assists with medication.

(3) A transfer of a resource (including a home) by a client or the client's community spouse on or after April 1, 1995, is a disqualifying transfer unless:

(a) The transfer was made exclusively for purposes other than establishing eligibility or maintaining benefits;

(b) The title to the resource was transferred to the person's spouse or child who is blind or disabled under the criteria of the Social Security Administration or to another for the sole benefit of the spouse or blind or disabled child provided the transfer is arranged in such a way that no individual or entity except the spouse or blind or disabled child can benefit from the resource transferred in any way, whether at the time of transfer or any time in the future. A direct transfer, transfer instrument or trust that provides for funds or property to pass to a beneficiary who is not the spouse or blind or disabled child is not considered to be established for the benefit of one of those individuals. In order for a transfer or a trust to be considered for the sole benefit of one of these individuals, the instrument or document must provide for the spending of the funds involved for the benefit of the individual based on the life expectancy of the individual. When this condition is not present, a transfer penalty will be imposed;

(c) The transfer is a transfer described in OAR 461-160-0580(2); or

(d) The resource is transferred by the community spouse after the Department has determined the community spouse's resource allowance in accordance with OAR 461-160-0580 and the resource has not been attributed to the institutionalized spouse. Notwithstanding this subsection, a transfer of a resource by a community spouse who is receiving or applying for benefits remains subject to all rules regarding the transfer of a resource by a client.

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(4) If a transfer described in section (3)(a) of this rule is made for less than fair market value, there is a rebuttable presumption that the resource was transferred for the purpose of establishing or maintaining eligibility. To rebut the presumption, the client must present evidence other than his or her own statement and must provide to the Department the information it requests for the purpose of evaluating the purpose of the transfer. To meet the burden, it is sufficient for the client to show that:

(a) The decision to make the transfer was not within the client's control;

(b) At the time of transfer, the client could not reasonably have anticipated applying for medical assistance;

(c) Unexpected loss of resources or income occurred between the time of transfer and the application for medical assistance;

(d) Because of other, similarly convincing, circumstances, it appears more likely than not that the transfer was not made, in whole or in part, for the purpose of establishing or maintaining eligibility for benefits.

(5) Section (3)(b) of this rule does not apply to a resource transferred to a trust described in OAR 461-145-0540(10).

Stat. Auth.: ORS 411.060, 411.710

Stats. Implemented: ORS 411.060, 411.710

Hist.: AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0020

### Annuities, Dividends, Interest, Royalties

(1) Interest income is counted as unearned income.

(2) Dividends are counted as unearned income unless the dividends are from a trust described in OAR 461-145-0540(10), in which case the dividends are not counted as income.

(3) Annuity payments are counted as follows:

(a) In the OSIP, OSIPM, and QMB programs, if a client or a client's spouse purchases or transfers an annuity, the transaction may be subject to the rules on resource transfers at OAR 461-140-0220 and following. For an annuity that is not disqualifying but meets the criteria of OAR 461-140-0220, the annuity payments are counted as unearned income.

(b) In all other programs, annuity payments are counted as unearned income.

(4) Royalties are counted as unearned income unless the client is actively engaged in the activity from which the royalties are accrued. If so, the royalties are counted as earned income.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0330

### Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) Educational loans are treated according to OAR 461-145-0150.

(3) Except in the GA, GAM, OSIP, OSIPM, and QMB programs, this rule applies only if there is a written loan agreement that stipulates when the loan is due and is signed and dated before the borrower receives the proceeds of the loan.

(4) In the GA, GAM, OSIP, OSIPM, and QMB programs, this rule applies whether the loan agreement is written or oral.

(5) Interest received on a loan is unearned income.

(6) For all programs except FS, the following are excluded:

(a) Loans obtained by the financial group, except as provided in sections (2) and (8) of this rule for clients in the GA, GAM, OSIP, OSIPM, and QMB programs.

(b) Payments made to the financial group on the principal portion of a loan the group has made to someone else.

(7) In the FS program, cash on-hand from a loan is a resource.

(8) In the FS, GA, GAM, OSIP, OSIPM, and QMB programs, the proceeds of a home equity loan or reverse annuity mortgage are excluded if received in regular, monthly payments. The proceeds not excluded under this rule are treated as lump sum income under OAR 461-140-0120.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.700 & 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0345

### Military Income

Military income (pay and allowances of a member of a uniformed service) is counted as follows:

(1) In all programs, military income is counted as earned income of the member's financial group.

(2) In all programs except FS, the portion of military pay and allowances available to the financial group is counted as unearned income if the member is not included in the filing group.

(3) In the FS program:

(a) The military income available to the financial group is counted as unearned income if the member is not in the filing group, except as provided in subsection (b) of this section.

(b) The additional pay received by a member during deployment to an area described in 37 U.S.C. 310 (hostile fire or imminent danger pay) is excluded.

(c) The following process is used to determine the countable amount after the exclusion under subsection (b) of this section:

(A) The amount of the group's military income immediately prior to the deployment is determined.

(B) The current amount of the group's military income is determined.

(C) The lesser of the two amounts is countable.

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0380

### Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(2) Benefits the client receives from retirement funds are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All other payments are counted as periodic or lump-sum income.

(3) Pension and retirement plans that allow clients to withdraw funds before retirement are treated as follows:

(a) In all programs except FS and OHP, the equity value of the plan, minus any penalty for early withdrawal, is counted as a resource.

(b) In the Food Stamp program, any portion of an individual retirement account (IRA), or a KEOGH plan that is available before, upon, or following retirement, is counted as an available resource, less a penalty for early withdrawal. Exclude the value of any other plan.

(c) In the OHP program, the equity value of the plan is excluded.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0390

### Personal Belongings

Personal belongings are such items as household furnishings, clothing, heirlooms, keepsakes, and hobby equipment. For all programs, the value of personal belongings is excluded.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0410

### Program Benefits

(1) Benefits from the GA, OSIP (except OSIP-IC), REF, and TANF programs (including the 10 percent late processing fee discussed in OAR 461-165-0150) are treated as follows:

(a) In all programs except EA, ERDC, FS, and OHP:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(b) In the EA program, the payments are counted as unearned income, except for benefit groups whose emergent need is the result of domestic violence. For those benefit groups, the payment is excluded.

(c) In the ERDC program, the payments are counted as unearned income.

(d) In the FS program:

(A) TANF payments are treated as unearned income.

(B) OSIP payments are treated as unearned income.

(C) GA and REF payments are treated as unearned income.



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(D) An amount received as a late processing payment is treated as lump-sum income.

(E) Payments made to correct an underpayment are treated as lump-sum income.

(F) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, shelter exceptions, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(e) In the OHP program:

(A) The payments are counted as unearned income if all the people included in the benefit group for the cash payment are also in the OHP financial group.

(B) A prorated share is counted as unearned income if any of the people in the cash payment are not included in the OHP financial group. A prorated share is determined by dividing the total payment by the number of people in the TANF benefit group.

(C) An administrative error overpayment (see OAR 461-195-0501(2)(a)) is excluded, and a payment made to correct an underpayment caused by the Department is excluded if the underpayment occurred prior to the budget period.

(2) TANF client incentive payments are treated as follows:

(a) In all programs except TANF, the monthly cooperation incentive special-need payment is counted as unearned income.

(b) Progress and outcome incentive payments received as cash are counted as lump-sum income. All other incentives are excluded.

(3) EA payments are treated as follows:

(a) In the ERDC and FS programs, payments made directly to the client are counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all other programs, the payments are excluded.

(4) Payments from the EXT, GAM, MAA, MAF, OHP, OSIP-IC, OSIPM, QMB, REFM, and SAC programs are excluded.

(5) Assessment Program payments are treated as follows:

(a) In all programs except FS, these payments are excluded.

(b) In the FS program, payments for basic living expenses, made directly to the client, are counted as unearned income. All other payments are excluded.

(6) ERDC payments and TANF child care payments are counted as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(7) In all programs except EA, the value of a FS benefit is excluded. In the EA program, it is counted as a resource when determining the filing group's emergency food needs.

(8) JOBS, JOBS Plus, and OFSET service payments are excluded.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.700, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0520

### Stocks, Bonds and Other Securities

(1) Except as provided in section (2) of this rule, securities, including stocks, bonds, and certificates of deposit (CDs), are counted as a resource.

(2) The value of a savings bond issued by the United States Department of the Treasury is excluded during the minimum retention period if the owner has received a denial of a request for a hardship waiver based on financial need.

(3) A request for a hardship waiver may be made to the United States Department of the Treasury, Bureau of Public Debt, Accrual Services Division, PO Box 1328, Parkersburg, West Virginia 26106-1328.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0570

### USDA Meal Reimbursement

(1) USDA meal reimbursements are cash reimbursements for family day-care providers who serve snacks and meals to children in their care.

The reimbursements are made by the United States Department of Education and are counted as self-employment income except for the portion excluded in accordance with section (2) of this rule.

(2) The proportionate share of a USDA meal reimbursement for children in the filing group is excluded.

Stat. Auth.: 411.060, 411.816

Stats. Implemented: 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-145-0580

### Veterans' Benefits

(1) Veterans' benefits, other than the aid-and-attendance, educational, and training and rehabilitation program benefits, are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) Other payments are counted as periodic or lump-sum income.

(2) Veterans' aid-and-attendance payments are treated as follows:

(a) In the FS and OHP programs, the payments are excluded.

(b) For OSIP, OSIPM, and QMB clients receiving long-term care or Title XIX waived services, the payments are treated as follows:

(A) The entire VA benefit, including the aid-and-attendance portion, is excluded.

(B) When calculating monthly benefits or patient liability, the payment is counted as unearned income.

(C) Payments for services not covered by the Department's programs are excluded.

(D) If the client receives a payment covering a previous period of eligibility, the client is required to turn over to the Department the full amount of the payment up to the cost of institutional and home- or community-based waived care provided to the client during the months covered by the payment. Any excess is counted as lump-sum or periodic income.

(c) In all other programs, aid-and-attendance payments are treated as follows:

(A) Payments for services not covered by the Department's programs are excluded.

(B) Reimbursements paid to the client for costs and services already paid for by the Department are third-party resources and may be recovered from the client. Any unrecovered third-party resource or payment above the actual cost is counted as lump-sum or periodic income.

(3) Educational benefits from the United States Veterans Administration are treated in accordance with OAR 461-145-0150.

(4) In the Food Stamp program, a subsistence allowance from a training and rehabilitation program of the United States Veterans Administration is treated as earned income. In all other programs, it is unearned income.

(5) Payments under Public Law 104-204, § 421(b)(1), 110 Stat. 2923 (1996), to children of Vietnam veterans who are born with spina bifida are excluded (see 38 U.S.C. 1805(d)).

Stat. Auth.: ORS 411.060, 411.700, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.700, 411.816, 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 4-2005, f. & cert. ef. 4-1-05

## 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) In all programs except FS, 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. In the FS program, a shareholder in an incorporated business cannot be self-employed in that business.

(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:

(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.

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(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 and newspaper carriers 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.

(5) In the ERDC, FS, MAA, MAF, REF, and TANF programs, self-employment income, including income from a microenterprise, is counted prospectively to determine eligibility as follows:

(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 treated as anticipated income 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; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-150-0055

### Eligibility and Budgeting; OHP

(1) In the OHP program, the budget month is:

(a) For applicants, the month of application.

(b) For clients reapplying in the last month of their OHP certification period, and for clients moving from GAM, MAA, MAF, OSIPM, REFM, or SAC to OHP, the last month of their current eligibility period.

(c) When a person is added to the filing group, the month the person is added.

(d) For late reapplications, the month the application is received.

(2) Countable income is determined as follows:

(a) Income is considered available during a month in accordance with OAR 461-140-0040.

(b) Income is not annualized, converted or prorated.

(c) For self-employed clients, countable self-employment income is determined in accordance with OAR 461-145-0920 and 461-145-0930.

(3) The financial group's average countable income is calculated as follows:

(a) The financial group's income from the three months preceding the budget month is added.

(b) The total is divided by three, and the result is the financial group's average countable income assigned to the budget month.

(c) The financial group's average countable income is used to determine eligibility for OHP in accordance with OAR 461-160-0700.

(4) If the benefit group is determined eligible, changes in income do not affect eligibility during their certification period or until their eligibility otherwise ends.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; 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 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-150-0090

### Annualizing Income

(1) For ERDC and FS, the following income must be annualized:

(a) A full year's income that is received in less than a 12-month period. This does not apply to income from work done on an hourly or piece-work basis or self employment. (Examples of people receiving this type of income include school employees and contract employees.)

(b) Some self-employment income (see OAR 461-145-0910).

(2) To annualize, do the following:

(a) For non-self-employment income, add the income from a 12-month period and divide by 12. If past income is not representative, use anticipated income. The resulting figure is the financial group's annualized income.

(b) For self-employment income, annualize:

(A) By using the financial group's most recent state and federal income tax forms; OR

(B) When there will be a substantial increase or decrease in next year's countable self-employment income, by using estimates of next year's anticipated income and costs.

(3) Use the group's annualized income as an estimate of what their income will be for each month.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0010

### Use of Payment Standards to Establish Need

(1) Need is the amount at the Department's payment standards that represents the client's need for items covered by the benefit.

(2) Special needs are costs in addition to standard allowances.

(3) In the GA and GAM programs, ongoing special needs are used to determine benefit amount as specified in OAR 461-160-0500.

(4) In the OSIP and OSIPM programs, special needs defined in 461-155-0520 and 461-155-0630 are used to determine initial and ongoing eligibility. All other special needs are used when determining the benefit amount or the client liability.

Stat. Auth.: ORS 411.060, 411.816

Stats. Implemented: ORS 411.060, 411.816

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0250

### Income and Payment Standard; OSIP, OSIPM

(1) For OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) clients in long-term care and in waived nonstandard living arrangements, the countable income limit standard is 300 percent of the SSI standard. The one-person SSI standard is used for an individual who has no income and is living alone in the community to compute the countable income limit. Other OSIP and OSIPM clients do not have a countable income limit.

(2) The non-SSI OSIP and OSIPM (except OSIP-EPD and OSIPM-EPD) adjusted income standard takes into consideration the need for housing, utilities, food, clothing, personal incidentals and household supplies. The standard is itemized as follows: [Table not included. See ED. NOTE.]

(3) The payment standard is used as the adjusted income limit and to calculate cash benefits for non-SSI OSIP clients. The OSIP-AB adjusted income standard includes a transportation allowance. The total standard is: [Table not included. See ED. NOTE.]

(4) The payment standard for SSI/OSIP clients living in the community is either the SIP amount or the ESB amount. The SIP (supplemental income payment) is a need amount added to any other special or service needs to determine the actual payment. The ESB (excess SSI benefit) is a resource amount used to offset special and service need payments:

(a) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is less than \$20: [Table not included. See ED. NOTE.]

(b) For clients whose unearned income minus any SSI or Veterans Nonservice-Connected Disability Benefits is \$20 or more: [Table not included. See ED. NOTE.]

(c) The SSI/OSIP-AB standard includes a transportation allowance. The standard for two assumes one individual is blind and the other is not. If both are blind, \$20 is added to the SIP amount.

(d) For SSI couples in an AFC, ALF or RCF, an amount is added to each person's SIP entry that equals the difference between the individual's income (including SSI and other income) and the OSIP standard for a one-person need group.

(5) For OSIP and OSIPM clients in long-term care, the following amounts are allowed for clothing and personal incidentals:

(a) For clients who receive a VA pension based on unusual medical expenses (UME), \$90 is allowed.

(b) For all other clients, \$30 is allowed.

# ADMINISTRATIVE RULES

(6) In the OSIP-EPD and OSIPM-EPD programs, the adjusted income limit is 250 percent of the 2005 federal poverty level for a family of one. This 250 percent limit equals \$1,995 per month or \$23,940 per year.

(7) In the OSIP-EPD and OSIPM-EPD programs, \$920 in earnings is needed to meet the requirement in OAR 461-110-0115 for “sufficient earnings” in the definition of “attached to the workforce.”

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 25-1991, f. 12-30-91, cert. ef. 1-1-92; AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 10-2003(Temp), f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0290

### Income Standard; QMB-BAS

The adjusted income standard for the QMB-BAS program is 100 percent of the 2005 federal poverty level. [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.070

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0291

### Income Standard; QMB-DW

The adjusted income standard for the QMB-DW program is 200 percent of the 2005 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: 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 8-1992, f. & cert. ef. 4-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0295

### Income Standard; QMB-SMB

The adjusted income standard for QMB-SMB is 135 percent of the 2005 federal poverty level (see OAR 461-155-0290). [Table not included. See ED. NOTE.]

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.070

Hist.: AFS 35-1992, f. 12-31-92, cert. ef. 1-1-93; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 3-1999, f. 3-31-99, cert. ef. 4-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 19-2002(Temp), f. 12-10-02, cert. ef. 1-1-03 thru 5-31-03; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-155-0530

### Special Need; Food for Guide Dogs and Special Assistance Animals

For OSIP and OSIPM clients who are receiving SSI or waived services, a food allowance is allowed for guide dogs and special assistance animals. The maximum amount to be authorized is established yearly based on average costs incurred by Schools for Guide Dogs. Authorization of this special need must be based on a proven medical need to sustain the client's independence.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-160-0040

### Dependent Care Costs; When They are Deductible and When They are Covered

(1) In the ERDC, FS, JOBS, JOBS Plus, MAF, OFSET, REFM, and TANF programs, the cost of dependent care can be deductible from a client's income, or may be paid for by the Department, only if all the following are true:

(a) The dependent:

(A) In the JOBS, JOBS Plus, MAF, REFM, and TANF programs, lives with the filing group.

(B) In the ERDC, FS, and OFSET programs, is a member of the filing group and is in the care, control, and custody of a person in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the dependent's parent.

(2) In the following programs, the cost of dependent care may be paid for by the Department (is covered) or may be deducted from income subject to the limitations provided in this section. The cost of child care is payable by the Department or is deductible only when free care is not available, such as while the child is in school:

(a) In the ERDC-BAS, REFM and TANF programs, dependent care is covered when care is necessary for the working client to maintain employment (including time required to work, commute or take a meal break). For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(b) In the ERDC-SBG program, dependent care is covered when the care is necessary for a client to continue his or her education, training or employment and the client is attending class, studying, working, commuting or on a meal break.

(c) In the Food Stamp program, dependent care is deductible (see OAR 461-160-0430) when the care is necessary and the client is working, commuting, on a meal break, in training, or participating in pre-employment education.

(3) Child care is not covered in the ERDC-BAS or TANF program if the nature of the caretaker's work does not make it necessary for a person other than the caretaker to provide the care. It is generally unnecessary during a period of time when:

(a) The caretaker works at home, or is self-employed, and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) The caretaker provides child care in a residence; or

(c) The caretaker works for a provider of child care in a residence that is not certified under OAR 414-350-0000 and following.

(4) In the JOBS and OFSET programs, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0221).

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-160-0540

### Determining Financial Eligibility and Benefits; QMB and OSIPM (except OSIPM-EPD) Living in the Community

(1) This rule is used to determine financial eligibility for QMB clients and OSIPM (except OSIPM-EPD) clients who:

(a) Live in the community;

(b) Do not receive SSI; and

(c) Do not receive Title XIX waived services.

(2) In the OSIPM program, to determine eligibility for non-waivered service clients, the amount of the service payment is added to the adjusted income standard defined in 461-155-0250(3). The sum of the service payment and the OSIPM adjusted income standard must be greater than the client's adjusted income. If the sum of the service payment and the OSIPM standard is less than the adjusted income, the client is not eligible. For all other OSIPM clients, they are eligible if their adjusted income is less than the OSIPM standard.

(3) In the QMB-BAS program, a client is eligible if his or her adjusted income is equal to or less than the QMB adjusted income standard.

(4) In the QMB-SMB program, a client is eligible if his or her adjusted income is less than the adjusted income standard.



# ADMINISTRATIVE RULES

Stat. Auth.: ORS 411.060, 411.07 & 414.042  
Stats. Implemented: ORS 411.060, 411.07 & 414.042  
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 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-160-0560

### Terms Used for OHP, OSIP, OSIPM Long-Term Care or Waivered

These terms apply to OHP, OSIP and OSIPM long-term care and waived clients:

(1) *Community spouse*: A person who is legally married to an institutionalized spouse and is not in a medical institution or nursing facility.

(2) *Continuous period of care*: A period of at least 30 consecutive days of care in a long-term care facility or waiverable home or community-based setting. There must be sufficient evidence to show there is a reasonable expectation that the client will remain in care for at least 30 consecutive days. For the purposes of this policy, an interruption in care (for example, leaving and then returning to a nursing home, or switching from one type of care to another) that lasts less than 30 days is not considered a break in the 30 consecutive days of care. A new period of care begins if care is interrupted for 30 or more days.

(3) *Eligible dependent*:

(a) For cases with a community spouse, eligible dependents are minor (under the age of 21) or dependent children, dependent parents, or dependent siblings of the institutionalized or community spouse who are residing with the community spouse and are claimed as tax dependents by either spouse.

(b) For cases without a community spouse, eligible dependents are minor (under the age of 21) or dependent children living in the client's household group.

(4) *Institutionalized spouse*: A person who is in long-term care or receiving waiverable home or community-based services for a continuous period and is married to a community spouse.

(5) *Waivered services* are services needed to keep a person out of a long-term care facility. Waivered services are:

- (a) In-home services.
- (b) Services in a residential care facility.
- (c) Services for a person in an assisted living facility.
- (d) Adult foster care services.
- (e) Home adaptations to accommodate a client's physical condition.
- (f) Home-delivered meals provided in conjunction with in-home services.

(g) Specialized Living Facilities.

(h) Adult Day Care.

(i) Community transition services.

(6) *Waivered client*: A client receiving Title XIX waived services for a continuous period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.700

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-165-0410

### Provider Listing; Disqualifying Criminal History

(1) This rule explains the grounds upon which the Department denies a request of a child care provider to receive child care payments from the Department based on the records of subject individuals. For the purposes of this rule, "subject individual" is defined in OAR 410-007-0210(27)(a)(H).

(2) The Department may find a child care provider ineligible for payment when the criminal history of a subject individual indicates behavior that may jeopardize the safety of a child or have a detrimental effect on a child while in the care of the provider, in the following circumstances:

(a) The subject individual has been charged with or arrested for a crime listed in OAR 410-007-0280. The subject individual must provide sufficient documentation of the disposition of the charges before the criminal history check and fitness determination can be completed. The provider is ineligible for payment until the criminal history check and fitness determination can be completed.

(b) The subject individual has been convicted of two or more crimes listed in OAR 410-007-0280 at any time.

(c) The subject individual has been convicted of violation of probation and a crime listed in OAR 410-007-0280, at any time, that relates to the person's qualification or duties as a child care provider.

(d) The subject individual has been charged with two or more crimes listed in OAR 410-007-0280 within the past five years or has three or more arrests at any time for a crime listed in OAR 410-007-0280.

(3) The Department may pay for the services of a child care provider even if a subject individual has a potentially disqualifying criminal history, defined by OAR 410-007-0280, only if the Department has determined, based on consideration of the information listed in OAR 410-007-0280, that repeated criminal behavior is unlikely and that the provider does not present a danger to a child in the provider's care.

Stat. Auth.: ORS 411.060, 411.122

Stats. Implemented: ORS 411.060, 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-165-0420

### Provider Listing; Disqualifying Child Protective Service History

(1) A provider of child care is not eligible for a payment from the Department if the Department determines, based on prior conduct, that a person listed in OAR 461-165-0180(3)(b)(A) is likely to engage in conduct that would jeopardize the safety of children in the provider's care. In order to make its determination, the Department may use any available information including the Child Protective Service (CPS) records of the Department.

(2) There is a rebuttable presumption that a person is likely to engage in conduct that would jeopardize the safety of children in the provider's care if, with respect to that person, there is a *Founded CPS Disposition* (a *founded report*), as defined in OAR 413-010-0705.

(3) Notwithstanding a *founded report* or other report in the records of the Department, the Department may determine the presence of the person listed in OAR 461-165-0180(3)(b)(A) would not likely jeopardize the safety of children in the provider's care based on:

(a) The content and source of the reports, the time elapsed since the reports, and the number of reports and referrals;

(b) The person's participation in rehabilitation, training, or counseling;

(c) The likelihood of the person's abuse of drugs or alcohol.

(4) If there is a *founded report* with respect to a person listed in OAR 461-165-0180(3)(b)(A), but the Department determines, based on a fitness determination made in accordance with the procedures in OAR 410-007-0320, that the presence of the person would not likely jeopardize the safety of children in the provider's care, the Department may pay for services of a child care provider.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, ORS 411.122

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-165-0430

### Child Care Provider Hearings

(1) A provider has a right to a contested case hearing only as provided in OAR 410-007-0200 and following to contest a fitness determination that results in a denial of eligibility for payment or to dispute an allegation of an overpayment of child care.

(2) In the case of an alleged overpayment, the provider may delay repayment on an overpayment until a final order is served by completing a request for hearing not later than the fifteenth day following the date of the overpayment notice.

(3) A provider whose application for listing is denied and who fails to request a hearing within the 45-day hearing request period is not eligible to reapply for listing until 180 days following the date of the denial notice.

(4) If a provider requests a hearing to contest a fitness determination resulting in a denial of eligibility for payment, the provider remains ineligible for payment pending the hearing unless the decision to deny eligibility was based on a mistake in identifying the person with the CH or CPS record.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060, 411.095

Hist.: AFS 12-1997, f. & cert. ef. 8-25-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-175-0200

### Notice Situations; General Information

(1) For all programs except OHP and the Assessment program, unless stated differently in a specific rule, the Department mails or otherwise provides the client with (sends) a decision notice as follows:

# ADMINISTRATIVE RULES

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(2) A notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice, unless the delay resulted from the client requesting a hearing. If the notice is void, a new notice is sent to inform the financial group of a new date on which their benefits will be reduced or closed.

(3) A notice approving MAA, MAF, REF, REFM, or TANF benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(4) For EA, a basic decision notice is sent for all situations.

(5) For OHP:

(a) A basic decision notice is sent when benefits are approved or denied, when the premium amount changes, and when benefits are ended because the OHP certification period has ended.

(b) Unless otherwise provided for, a timely continuing benefit decision notice is sent whenever benefits are otherwise reduced or closed.

(6) For the Assessment program, a basic decision notice is sent when payment for basic living expenses is denied. No other notices are required for this program.

(7) No decision notice is required if:

(a) Benefits are ended because there is no living person in the benefit group.

(b) A hearing order upholds a Department decision, and notice was sent before the client requested the hearing.

(c) A request for a support service in the JOBS program is approved.

Stat. Auth.: ORS 411.060, 411.816 & 418.100

Stats. Implemented: ORS 411.060, 411.117, 411.816 & 418.100

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-175-0310

### Notice Situation; Resource Transfer Disqualification

(1) When the Department proposes to disqualify a filing group because of a disqualifying transfer of resources (see OAR 461-140-0210), the following notice is sent:

(a) For new applicants, a basic decision notice.

(b) For ongoing clients, a timely continuing benefit decision notice.

(2) A notice required by this rule includes the amount of uncompensated value used in the eligibility determination and the period of ineligibility caused by the transfer.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-180-0040

### Effective Dates; Changes in Special or Service Need

(1) The effective date for a special need is the date of request for the special need item.

(2) The effective date for long-term care is the date the service plan is implemented. A service plan is considered implemented when:

(a) The client employs a homemaker worker (see OAR 411-031-0020 and 411-031-0040) or a contracted in-home agency (see OAR 411-030-0090), and the homemaker worker or agency is an enrolled Medicaid provider; or

(b) The client is placed in a licensed community-based setting or Medicaid-certified nursing facility.

(3) Payment for long-term care will be authorized:

(a) For applicants — from the date of request for applicants who have met all the financial, nonfinancial and service eligibility requirements; and

(b) For recipients — upon authorization of the Department.

(4) The effective date for a termination of or a decrease in service or a special need is the later of the following:

(a) The end of the ten-day timely-continuing-benefit-notice period; and

(b) The day of change in a special need or the termination date of a service plan.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-180-0100

### Effective Dates; Eligibility Following Closure

The new effective date of eligibility following closure of benefits or following the end of a certification period is determined as follows:

(1) For the Food Stamp program, see OAR 461-115-0450.

(2) In the OHP program, the effective date is determined as follows:

(a) If the Department initiates a recertification of eligibility for the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(b) If the filing group establishes a date of request before the end of a certification period in the OHP program, the effective date for the subsequent certification period is the first day that the client meets all eligibility requirements for OHP following the prior certification period.

(c) If the filing group requests medical benefits while eligible for medical assistance from a program other than OHP, the effective date for the certification period is the first day that the client meets all eligibility requirements following the closure of the program under which the group was receiving medical assistance.

(d) If the filing group requests medical benefits after the closing date for the prior certification period, or if an effective date cannot be determined by subsection (a), (b), or (c) of this section, the effective date is determined by OAR 461-180-0090.

(3) In the ERDC program, eligibility starts the first day of the month following closure.

(4) In the TANF program:

(a) Eligibility starts on the date provided by OAR 461-180-0070 for TANF unless the client meets the requirements of subsection (b) of this section.

(b) Eligibility starts the first day of the month following closure if the client contacts the Department during the month of closure and submits to the Department a complete application not later than the end of the month following closure.

(5) In all other programs, eligibility starts on the first day of the month following closure if the filing group meets all eligibility requirements on that date and if:

(a) The filing group established a date of request (see OAR 461-115-0030 for the meaning of date of request) prior to closure; or

(b) The Department initiated a redetermination of eligibility prior to closure.

Stat. Auth.: ORS 411.060, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.816, 418.100

Hist.: AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

## 461-195-0521

### Special Rules for Calculation of Overpayments

This rule contains special rules for calculating an overpayment.

(1) If a client directly receives support that should be, but is not, used to reimburse the Department for assistance or to reduce benefits, there is an overpayment for the lesser of the following:

(a) The amount of support the client received directly that should have been used to reimburse the Department or reduce benefits; and

(b) The cash benefits received by the benefit group for the month, minus support from an obligor that was used as reimbursement to the state.

(2) If a client failed to comply with the requirements of OAR 461-120-0345 relating to medical insurance, an overpayment is calculated according to this section. The client is not included in the need group (see OAR 461-110-0630) during any period in which the client failed to meet a requirement of the OAR 461-120-0345 by withholding information or giving false information. Therefore, there is an overpayment equal to the difference between the benefits the group received and the reduced amount it would have received had the client been removed from the need group.

(3) If the benefit group was categorically eligible for food stamps, there is no Food Stamp overpayment based on resources, Social Security number, or residency. A Food Stamp overpayment may exist based on incorrect income.

(a) For a group found eligible for food stamps under OAR 461-135-0505(1)(a), (b) or (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for food

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stamps. Benefit groups of one or two persons would be entitled to at least \$10 in food stamp benefits.

(b) For a group found eligible for food stamps only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185% Federal Poverty Level, the group is no longer categorically eligible and the overpayment is the food stamp benefit amount.

(4) When a client receives waived services in the OSIPM program and does not contribute toward their services, the overpayment is either his or her adjusted income or the actual cost of the waived services, whichever is less.

(5) Credit against an overpayment is allowed as follows:

(a) In the GA, REF and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless it would have been authorized if requested.

(b) Credit is allowed for an underpayment of benefits.

(c) In the FS program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(6) Benefits paid during the notice period (see OAR 461-175-0050) are included in the calculation of the overpayment if:

(a) The client failed to report changes within the reporting time frame; and

(b) Benefits could have been adjusted in time to prevent the overpayment if the client had reported changes at any time within the reporting time frame.

(7) An overpayment is determined and calculated by assigning unreported income to the applicable budget month without averaging the unreported income. There is a rebuttable presumption that a client's earnings reported in a quarterly earnings report from the Employment Department were received by the client in equal amounts during the months identified in the report.

(8) Earned income deductions are applied in calculating an overpayment except as follows:

(a) For MAA, MAF, REF and TANF, no earned income deduction (see OAR 461-160-0160 and 0190) is allowed for a client who, without good cause, did either of the following:

(A) Failed to report all earned income within the reporting time frame.

(B) Under reported earned income.

(b) For FS, no deduction is applied to earned income not timely reported.

(9) For the purposes of section (8) of this rule, good cause means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(10) In the TANF program, the amount of support retained by the Department as current reimbursement each month is added to other income to determine ineligibility. In the case of a client not eligible for TANF, the overpayment is offset by support retained by the Department as current reimbursement.

(11) When a client has incurred an overpayment due to both an *administrative error* and a *client error* in the same month, the client error overpayment is calculated by determining the total overpayment for the month and subtracting from it the portion due to administrative error.

(12)(a) In the medical programs, there is no overpayment if the client was ineligible for financial assistance but, during the period in question, would have been eligible for EXT or any other medical program.

(b) When an overpayment is caused by *administrative error*, there is no corresponding overpayment in the medical programs if the client had been eligible to receive medical benefits under EXT, GAM, MAA, MAF, OSIPM or SAC. In such cases, the overpaid cash benefits are not counted as income in calculating eligibility for EXT, GAM, MAA, MAF, OSIPM or SAC and are not used in determining the client's *spend down* (see OAR 461-160-0080).

Stat. Auth.: ORS 411.060, 411.660, 411.816, 418.100

Stats. Implemented: ORS 411.060, 411.630, 411.635, 411.660, 411.816, 418.100

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert. ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

### 461-195-0541

#### Liability for Client Overpayments

(1) For all programs except BCCM, EXT, FS, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC, the following people are liable for repayment of an overpayment:

(a) Each person included in the benefit group when the overpayment was incurred, except for people who did not reside with, and did not know they were included in, the benefit group;

(b) A caretaker relative and his or her spouse who were not part of, but resided with, the filing group when the overpayment was incurred;

(c) If a person currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(2) In the Food Stamp program, the following people are liable for repayment of an overpayment:

(a) The primary person (see OAR 461-110-0110) of any age, an ineligible student in the household, and all adults who were members of the filing group when excess benefits were issued, except no member of a financial group is liable for an overpayment caused by a change the group was not required to report.

(b) All members of a filing group that contains a person described in subsection (a) of this section.

(c) A drug or alcohol treatment center or residential care facility that acted as the client's authorized representative if it gave incorrect information or withheld information causing the overpayment.

(3) In the BCCM, EXT, GAM, MAA, MAF, OHP, OSIPM, QMB, REFM, and SAC programs, the following people are liable for repayment of an overpayment:

(a) The primary person, if that person is an adult, and all other adults in the filing group except the following:

(A) An adult not in the benefit group, except a parent of a child in the benefit group.

(B) An adult who was in the benefit group when the overpayment occurred but who did not live with the benefit group and was unknowingly in the benefit group.

(b) If a person currently in a benefit group is liable for an overpayment, the entire benefit group is liable for the overpayment. In this case, the Department will not collect from the benefit group until it has unsuccessfully attempted to collect the overpayment from all other liable persons.

(4) In all programs, both the noncitizen and the noncitizen's sponsor are liable for an overpayment incurred if the overpayment results from the sponsor's failure to provide correct information (see OAR 461-145-0820 through -0840). If the sponsor had good cause for withholding the information, the noncitizen alone is liable for the overpayment.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.630, 411.635

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05

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**Adm. Order No.:** SSP 5-2005(Temp)

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05 thru 6-30-05

**Notice Publication Date:**

**Rules Amended:** 461-140-0040, 461-145-0910

**Subject:** Rules 461-140-0040 and 461-145-0910 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. These temporary rule changes were filed effective February 1, 2005 but due to a subsequent rulemaking effective April 1, 2005, need to be re-filed to continue the February 1, 2005 temporary changes.

**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:



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(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 FS, MAF, and OHP programs, income controlled by the client's abuser if the client is a victim of domestic violence, the client's abuser controls the income and will not make the money available to the filing group, and the abuser is not in the client's filing group.

(h) In the MAA 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; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 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) In all programs except FS, 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. In the FS program, a shareholder in an incorporated business cannot be self-employed in that business.

(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:

(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 counted prospectively to determine eligibility as follows:

(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 treated as anticipated income 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; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05

## Department of Justice Chapter 137

**Adm. Order No.:** DOJ 3-2005(Temp)

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 3-18-05 thru 9-2-05

**Notice Publication Date:**

**Rules Adopted:** 137-009-0125, 137-009-0130, 137-009-0135, 137-009-0140, 137-009-0145, 137-009-0150, 137-009-0155, 137-009-0160, 137-009-0165

**Rules Suspended:** 137-009-0000, 137-009-0005, 137-009-0010, 137-009-0045, 137-009-0060, 137-009-0065, 137-009-0100, 137-009-0120

**Subject:** The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to establish personal services contracts with individuals or entities to perform such services. Previous rules substantially identical to the rules being adopted expired by operation of law when the new Public Procurement Code became effective on March 1, 2005 and

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are being suspended. The only change in text between the expired/suspended rules and the rules being adopted are corrections to references to rule numbers and the addition of references to the successor to the Department of Administrative Services' VIP System.  
**Rules Coordinator:** Carol Riches—(503) 378-6313

## 137-009-0000

### Purpose

The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to select individuals or entities to perform such services.

Stat. Auth.: ORS 180.140(5), 279.051(1), 279.712(2)(g) & 279.712(2)(i)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0005

### Definitions

For purposes of OAR chapter 137, division 009, these terms have the following meanings:

(1) "Attorney General" means the Attorney General of the State of Oregon.

(2) "Contractor" means an individual or entity that is obligated under a contract with the Department to provide legal services required by law to be performed by the Attorney General.

(3) "Department" means the Department of Justice of the State of Oregon.

(4) "Deputy" means the Deputy Attorney General, appointed by the Attorney General to that position pursuant to ORS 180.130.

(5) "Designated Practice Areas" means subject matter areas generally recognized within the legal profession as requiring specialized knowledge of a particular field of law.

(6) "Lowest Overall Cost" means the lowest cost to the state taken as a whole including the prospective Contractor's hourly rates (or other billing methods), available resources, expertise, and ability to accomplish an optimal, timely outcome to a particular matter.

(7) "Master Agreement" means a document that contains contractual provisions that will be included in certain future contracts between the parties. Each future contract will provide detail on scope of services, delivery terms, not-to-exceed amounts and other items necessary to establish a definite contract. A Master Agreement is not a contract, but is a document of understanding between the Department and an individual or entity.

(8) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0010

### Policy

The policy of the Department is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering highly competent legal services at the Lowest Overall Cost to the State of Oregon.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
[JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0045

### Methods for Selecting Contractors

(1) The Department will use one of the following methods to select a Contractor:

(a) The Department may select a Contractor from a list of individuals or entities established for a Designated Practice Area as set forth in OAR 137-009-0060.

(b) The Department may select a Contractor from a group of respondents to a specific matter Solicitation as set forth in OAR 137-009-0065.

(c) The Department may select a Contractor through direct negotiation as set forth in OAR 137-009-0120.

(2) Nothing in this section shall prevent the Department from entering into an amendment to a contract for legal services according to its terms.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
Hist.: JD 2-1983, f. & ef. 5-17-83; DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0060

### Procedure to Develop Lists of Individuals or Entities under Master Agreements

(1) The Department may use a Solicitation to request proposals or information that describes general or specific legal services to be performed within a defined period of time. The purpose of such a Solicitation is to establish a list of individuals or entities under Master Agreements for a specified period of time to provide legal services within Designated Practice Areas as requested by the Department and agreed to by the individual or entity.

(a) The Department shall provide notice of the Solicitation on the VIP System or its successor operated by the Department of Administrative Services or in any other manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities to develop adequate lists of available individuals or entities.

(b) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses.

(2) The evaluation criteria in the Solicitation may include, without limitation, consideration of the following factors:

(a) Availability and capability to perform the work;

(b) Fees or costs, including proposed discounts from rates generally charged other clients;

(c) Geographic proximity to the location where the legal services will primarily be performed;

(d) Ethical considerations, such as the existence of conflicts of interest;

(e) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background;

(f) Any other criteria the Department determines relevant to the provision of legal services.

(3) In weighing the factors set forth above, no single factor shall be determinative. But if one factor strongly suggests the Department should enter into a Master Agreement with a proposer with respect to a Designated Practice Area, it may outweigh one or more other factors that favor other proposers.

(4) The Department may either sign a Master Agreement with qualified individuals or entities in particular Designated Practice Areas or cancel the Solicitation.

(5) For purposes of subsection (1)(b) of this section, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System or its successor as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging Small Businesses by posting the notice on the VIP System for at least five calendar days.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5), 279.051(1) & 200.035  
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0065

### Solicitation to Engage a Contractor to Provide Legal Services for a Specific Matter

The Department may use a Solicitation to request proposals to provide legal services on a specific matter:

(1) The Department may provide notice of the Solicitation in any manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities, but in no event shall notice of a Solicitation under this section be provided to fewer than three prospective proposers.

(2) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses. For purposes of this subsection, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging

# ADMINISTRATIVE RULES

Small Businesses by posting the notice on the VIP System for at least five calendar days.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5), 279.051(1) & 200.035  
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0100

### Criteria for Selection of Contractor for Specific Matter under OAR 137-009-0060 or 137-009-0065

(1) If the Department decides to select a Contractor for a specific matter from a list of individuals or entities developed pursuant to OAR 137-009-0060, or from among the proposers to a Solicitation under OAR 137-009-0065, the Department will use the evaluation process described in this section.

(2) The Department will make its selection decision based on an evaluation of factors that the Department determines appropriate in any particular instance, which may include, without limitation:

(a) The experience and level of expertise of Contractor and Contractor's available personnel, as determined by the Department, in the Designated Practice Area and for the type of legal services the Department requires;

(b) Whether the Contractor's available personnel possess any required licenses or certifications required to perform the legal services for the specific matter, such as licenses to practice law in the appropriate jurisdiction, or license to appear in a certain forum;

(c) The legal and business constraints or requirements, if any, imposed by particular characteristics of the matter for which the Department seeks legal services;

(d) The extent and nature of any likely conflicts of interest that exist or could arise if Contractor provided legal services with respect to a particular matter;

(e) The training, expertise, temperament, style and experience of the particular Contractor personnel available to perform work on the specific matter and the training, expertise, temperament, style and experience of the particular State of Oregon agency personnel that will be working on the matter with the Contractor's personnel;

(f) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background.

(g) Lowest Overall Cost; or

(h) Other factors the Department considers relevant to the selection of a Contractor to provide particular legal services.

(3) In weighing the evaluation factors, no single factor shall be determinative, but Lowest Overall Cost always will be considered.

(4) To reduce the Lowest Overall Cost to the state, the Department should select a Contractor from the list of firms established under OAR 137-009-0060 when the work is within an individual's or entity's Designated Practice Area under a Master Agreement and the Department determines:

(a) The administrative cost of selecting a Contractor under OAR 137-009-0065 outweighs potential cost savings under that process;

(b) The services are likely to be integrally related to other services provided by the Contractor under a Master Agreement, resulting in greater economy and efficiency; or

(c) The Department's need for services is of such urgency that selecting a Contractor under OAR 137-009-0065 would result in unacceptable delay.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0120

### Direct Negotiation and Contracting

(1) The Department may directly negotiate and enter into contracts with Contractors to provide legal services without following the procedures set forth in OAR 137-009-0060 through 137-009-0100 in the following circumstances:

(a) The contract's maximum consideration does not exceed \$25,000;

(b) The subject matter of the representation is highly confidential, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by a more public Solicitation;

(c) The subject matter of the representation is highly time sensitive, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by any delay in obtaining a Contractor;

(d) The cost of the representation will be borne in whole or in part by a nonstate entity and the nonstate entity has a legal right to influence selection of legal counsel; or

(e) Any other situation in which the Attorney General or the Deputy determines that the interests of the Department or the State of Oregon are best served by direct negotiation and contracting with Contractors.

(2) In directly negotiating and entering into a contract with a Contractor, the Department shall consider Lowest Overall Cost.

Stat. Auth.: ORS 180.140(5), 279.051(1) & 279.712(2)(g)  
Stats. Implemented: ORS 180.140(5) & 279.051(1)  
Hist.: DOJ 7-2002(Temp), f. & cert. ef. 12-12-02 thru 6-10-03; DOJ 4-2003, f. 6-5-03, cert. ef. 6-11-03; Suspended by DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0125

### Purpose

The Department may contract for the services of special legal assistants or private counsel to provide legal services otherwise required by law to be performed by the Attorney General. These rules specify the screening and selection procedures the Department will use to select individuals or entities to perform such services.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5), 279.051(1) & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0130

### Definitions

For purposes of OAR chapter 137, division 009, these terms have the following meanings:

(1) "Attorney General" means the Attorney General of the State of Oregon.

(2) "Contractor" means an individual or entity that is obligated under a contract with the Department to provide legal services required by law to be performed by the Attorney General.

(3) "Department" means the Department of Justice of the State of Oregon.

(4) "Deputy" means the Deputy Attorney General, appointed by the Attorney General to that position pursuant to ORS 180.130.

(5) "Designated Practice Areas" means subject matter areas generally recognized within the legal profession as requiring specialized knowledge of a particular field of law.

(6) "Lowest Overall Cost" means the lowest cost to the state taken as a whole including the prospective Contractor's hourly rates (or other billing methods), available resources, expertise, and ability to accomplish an optimal, timely outcome to a particular matter.

(7) "Master Agreement" means a document that contains contractual provisions that will be included in certain future contracts between the parties. Each future contract will provide detail on scope of services, delivery terms, not-to-exceed amounts and other items necessary to establish a definite contract. A Master Agreement is not a contract, but is a document of understanding between the Department and an individual or entity.

(8) "Solicitation" means a written or oral request for offers, proposals, statements of qualifications, or other information from individuals or entities.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0135

### Policy

The policy of the Department is to select Contractors in an expeditious and efficient manner that is consistent with the goal of delivering highly competent legal services at the Lowest Overall Cost to the State of Oregon.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0140

### Methods for Selecting Contractors

(1) The Department will use one of the following methods to select a Contractor:

(a) The Department may select a Contractor from a list of individuals or entities established for a Designated Practice Area as set forth in OAR 137-009-0145.

(b) The Department may select a Contractor from a group of respondents to a specific matter Solicitation as set forth in OAR 137-009-0150.

(c) The Department may select a Contractor through direct negotiation as set forth in OAR 137-009-0160.



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(2) Nothing in this section shall prevent the Department from entering into an amendment to a contract for legal services according to its terms.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0145

### Procedure to Develop Lists of Individuals or Entities under Master Agreements

(1) The Department may use a Solicitation to request proposals or information that describes general or specific legal services to be performed within a defined period of time. The purpose of such a Solicitation is to establish a list of individuals or entities under Master Agreements for a specified period of time to provide legal services within Designated Practice Areas as requested by the Department and agreed to by the individual or entity.

(a) The Department shall provide notice of the Solicitation on the VIP System or its successor operated by the Department of Administrative Services or in any other manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities to develop adequate lists of available individuals or entities.

(b) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses.

(2) The evaluation criteria in the Solicitation may include, without limitation, consideration of the following factors:

(a) Availability and capability to perform the work;

(b) Fees or costs, including proposed discounts from rates generally charged other clients;

(c) Geographic proximity to the location where the legal services will primarily be performed;

(d) Ethical considerations, such as the existence of conflicts of interest;

(e) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background;

(f) Any other criteria the Department determines relevant to the provision of legal services.

(3) In weighing the factors set forth above, no single factor shall be determinative. But if one factor strongly suggests the Department should enter into a Master Agreement with a proposer with respect to a Designated Practice Area, it may outweigh one or more other factors that favor other proposers.

(4) The Department may either sign a Master Agreement with qualified individuals or entities in particular Designated Practice Areas or cancel the Solicitation.

(5) For purposes of subsection (1)(b) of this section, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System or its successor as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging Small Businesses by posting the notice on the VIP System or its successor for at least five calendar days.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5), 200.035 & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0150

### Solicitation to Engage a Contractor to Provide Legal Services for a Specific Matter

The Department may use a Solicitation to request proposals to provide legal services on a specific matter:

(1) The Department may provide notice of the Solicitation in any manner the Department deems appropriate to provide notice to a sufficient number of individuals or entities, but in no event shall notice of a Solicitation under this section be provided to fewer than three prospective proposers.

(2) In accordance with ORS 200.035, the Department will notify the Advocate for Minority, Women and Emerging Small Businesses. For purposes of this subsection, if the Department has notified the Advocate for Minority, Women and Emerging Small Businesses of its intent to use the VIP System or its successor as its official vehicle for notifying the Advocate about opportunities to contract to provide legal services, the Department may satisfy the requirement for notice to the Advocate for Minority, Women and Emerging Small Businesses by posting the notice on the VIP System or its successor for at least five calendar days.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5), 200.035 & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0155

### Criteria for Selection of Contractor for Specific Matter under OAR 137-009-0145 or 137-009-0150

(1) If the Department decides to select a Contractor for a specific matter from a list of individuals or entities developed pursuant to OAR 137-009-0145, or from among the proposers to a Solicitation under OAR 137-009-0150, the Department will use the evaluation process described in this section.

(2) The Department will make its selection decision based on an evaluation of factors that the Department determines appropriate in any particular instance, which may include, without limitation:

(a) The experience and level of expertise of Contractor and Contractor's available personnel, as determined by the Department, in the Designated Practice Area and for the type of legal services the Department requires;

(b) Whether the Contractor's available personnel possess any required licenses or certifications required to perform the legal services for the specific matter, such as licenses to practice law in the appropriate jurisdiction, or license to appear in a certain forum;

(c) The legal and business constraints or requirements, if any, imposed by particular characteristics of the matter for which the Department seeks legal services;

(d) The extent and nature of any likely conflicts of interest that exist or could arise if Contractor provided legal services with respect to a particular matter;

(e) The training, expertise, temperament, style and experience of the particular Contractor personnel available to perform work on the specific matter and the training, expertise, temperament, style and experience of the particular State of Oregon agency personnel that will be working on the matter with the Contractor's personnel;

(f) Recommendations of subject matter experts, such as client agency representatives with special knowledge or insights into necessary or desirable non-legal knowledge or background.

(g) Lowest Overall Cost; or

(h) Other factors the Department considers relevant to the selection of a Contractor to provide particular legal services.

(3) In weighing the evaluation factors, no single factor shall be determinative, but Lowest Overall Cost always will be considered.

(4) To reduce the Lowest Overall Cost to the state, the Department should select a Contractor from the list of firms established under OAR 137-009-0145 when the work is within an individual's or entity's Designated Practice Area under a Master Agreement and the Department determines:

(a) The administrative cost of selecting a Contractor under OAR 137-009-0150 outweighs potential cost savings under that process;

(b) The services are likely to be integrally related to other services provided by the Contractor under a Master Agreement, resulting in greater economy and efficiency; or

(c) The Department's need for services is of such urgency that selecting a Contractor under OAR 137-009-0150 would result in unacceptable delay.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)  
Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)  
Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

## 137-009-0160

### Direct Negotiation and Contracting

(1) The Department may directly negotiate and enter into contracts with Contractors to provide legal services without following the procedures set forth in OAR 137-009-0145 through 137-009-0155 in the following circumstances:

(a) The contract's maximum consideration does not exceed \$25,000;

(b) The subject matter of the representation is highly confidential, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by a more public Solicitation;

(c) The subject matter of the representation is highly time sensitive, and there is a substantial risk that the interests of the State of Oregon or the Department would be adversely affected by any delay in obtaining a Contractor;

(d) The cost of the representation will be borne in whole or in part by a nonstate entity and the nonstate entity has a legal right to influence selection of legal counsel; or

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(e) Any other situation in which the Attorney General or the Deputy determines that the interests of the Department or the State of Oregon are best served by direct negotiation and contracting with Contractors.

(2) In directly negotiating and entering into a contract with a Contractor, the Department shall consider Lowest Overall Cost.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)

Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)

Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

### 137-009-0165

#### Repealed Rules

As required by Or Laws 2003, Chapter 794, Section 334, OAR 137-009-0000, 137-009-0005, 137-009-0010, 137-009-0045, 137-009-0060, 137-009-0065, 137-009-0100 and 137-009-0120 are repealed.

Stat. Auth.: ORS 180.140(5), 279A.025(2)(j) & 183.310(9)

Stats. Implemented: ORS 180.140(5) & 279A.025(2)(j)

Hist.: DOJ 3-2005(Temp), f. & cert. ef. 3-18-05 thru 9-2-05

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**Adm. Order No.:** DOJ 4-2005

**Filed with Sec. of State:** 4-1-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05

**Rules Adopted:** 137-055-1090

**Rules Amended:** 137-055-1100, 137-055-1120, 137-055-3420, 137-055-3430, 137-055-4340, 137-055-5120

**Subject:** The adoption of OAR 137-055-1090 is due to DCS needing to put into rule the policy of how the program has previously decided how cases which are coded good cause should be handled when a subsequent referral or application is received. Issue Research Paper 01-28 memorialized those decisions. However, the IRP needs to be put in the rule because of its effect on the public. The amendments to: OAR 137-055-1100 are cite changes only based on changes to OAR 137-055-1120; OAR 137-055-1120 added additional circumstances to when the administrator may close a case with or without notice, based on Federal Regulations; OAR's 137-055-3420 and 137-055-3430 clarify that when making a determination of whether an order is in substantial compliance the formula will be applied to the currently ordered support amount; OAR 137-055-4340 amends the delinquency of arrears criteria from three months to 45 days before a case will be sent for federal tax offset; OAR 137-055-5120 adds to the finding of good cause to not distribute directly to a child attending school when another state notifies us that they are unable to distribute support directly to the child.

**Rules Coordinator:** Shawn Irish—(503) 986-6240

### 137-055-1090

#### Good Cause

(1) For the purposes of OAR chapter 137, division 055, "good cause" means the Child Support Program (CSP) is exempt from providing services as defined in ORS 25.080. This definition specifically excludes good cause for not withholding as defined in ORS 25.396 and OAR 137-055-4060.

(2) Good cause must be determined by:

(a) The Department of Human Services (DHS), pursuant to OAR 413-100-0830, 461-120-0350, 461-120-0360, 461-135-1200 or 461-135-1205, if TANF, Title IV-E or Medicaid benefits are being provided;

(b) The Oregon Youth Authority (OYA), pursuant to OAR 416-100-0020 and Policy Statement II-E-1.5, if the child is in OYA's custody;

(c) The Director of the CSP when the provisions of OAR 137-055-3080 apply; or

(d) The administrator when the provisions of subsections (a) through (c) of this section do not apply.

(3) When the provisions of subsection (2)(d) apply, the administrator will make a finding and determination of good cause when it is determined that provision of services is not in the best interest of the child and:

(a) The obligee makes a verbal or written claim that the provision of services may result in emotional or physical harm to the child or obligee; or

(b) The obligee completes and returns the good cause document contained in the Client Safety Packet.

(4) In determining whether providing services is in the best interest of the child, the administrator will consider:

(a) The likelihood that provision of services will result in physical or emotional harm to the child or obligee, taking into consideration:

(A) Information received from the obligee; or

(B) Records or corroborative statements of past physical or emotional harm to the child or obligee, if any.

(b) The likelihood that failure to provide services will result in physical or emotional harm to the child or obligee;

(c) The degree of cooperation needed to complete the service;

(d) The availability and viability of other protections, such as a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160; and

(e) The extent of involvement of the child in the services sought.

(5) A finding and determination by the Administrator that good cause does not apply, may be appealed as provided in ORS 183.484.

(6) A finding and determination of good cause applies to any case which involves the same obligee and child, or any case in which a child is no longer in the physical custody of the obligee, but there is a support order for the child in favor of the obligee.

(7) When an application for services is received from an obligee and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and there has been a previous finding and determination of good cause, the administrator will:

(a) Notify the obligee of the previous finding and determination of good cause and provide a Client Safety Packet;

(b) Allow the obligee 30 days to retract the application for services or return appropriate documents from the Client Safety Packet; and

(c) If no objection to proceeding or good cause form is received from the obligee, document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(8) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody and there is no previous support award, the administrator will open a new case without good cause coding with the physical custodian as the obligee.

(9)(a) When an application for services is received from a physical custodian of a child, the physical custodian is not the obligee who originally claimed good cause and TANF, Title IV-E or Medicaid benefits are not being provided, the child is not in OYA's custody, and the case in which there has been a finding and determination of good cause has a support award in favor of the obligee who originally claimed good cause, the administrator will:

(A) Notify the obligee who originally claimed good cause that an application has been received and provide a Client Safety Packet;

(B) Advise the obligee who originally claimed good cause that the previous good cause finding and determination will be treated as a claim of risk as provided in OAR 137-055-1160; and

(C) Allow the obligee 30 days to provide an address of record as provided in OAR 137-055-1180.

(b) If an objection or good cause form is received from the obligee who originally claimed good cause, or if the location of the obligee who originally claimed good cause is unknown, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed;

(c) If no objection or good cause form is received from the obligee who originally claimed good cause, the administrator will document CSEAS, make a finding of risk and order for non-disclosure pursuant to OAR 137-055-1160 for that obligee, remove the good cause designation, and, if the case has been closed, reopen the case.

(10)(a) If a request for services under ORS chapter 110 is received from another state and TANF, Title IV-E or Medicaid benefits are not being provided by the State of Oregon, the child is not in OYA's custody and there has been a finding and determination of good cause, the administrator will:

(A) If the location of the obligee is known, notify the obligee that the referral has been received, provide a Client Safety Packet and ask the obligee to contact both the referring state and the administrator if there is an objection to proceeding; and

(B) Notify the referring state of the finding and determination of good cause and request that the state consult with the obligee to determine whether good cause should still apply.

(b) If an objection or good cause form is received from the obligee, the administrator will forward the objection, form or case to the Director of the CSP for a determination of whether to proceed.

(c) If there is no objection or good cause form received from the obligee, or if the obligee's address is unknown, and the referring state advises that the finding and determination of good cause no longer applies,

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the administrator will document CSEAS, remove the good cause designation and, if the case has been closed, reopen the case.

(11) If a referral for services under ORS 25.080 is received because TANF, Title IV-E or Medicaid benefits are being provided or the child is in OYA's custody, and there has been a previous finding and determination of good cause, the administrator shall notify the appropriate state agency of the previous finding and determination of good cause and:

(a) If TANF, Title IV-E or Medicaid benefits are being provided, DHS will, in consultation with the office which made the good cause finding and determination and as provided in DHS policy SS-PT-05-005, decide whether good cause still applies pursuant to OAR 413-100-0830, 461-135-1200, 461-135-1205, 461-120-0350 or 461-120-0360; or

(b) If the child is in OYA's custody, OYA shall, in consultation with the office which made the good cause finding and determination and as provided in OYA Policy II-E-1.5, determine if the circumstances that created the good cause still exist and, if they do not, request that the agency which determined good cause remove the coding.

(12) When the provisions of section (14) apply, the administrator will not provide services unless and until good cause coding is removed by the agency who made the good cause finding and determination.

(13) In any case in which a good cause finding and determination has been made and subsequently removed, past support under ORS 416.422 and OAR 137-055-3220 may not be sought for any periods prior to the determination that good cause no longer applies.

Stat. Auth.: ORS 180.345  
Stats. Implemented: ORS 25.080  
Hist.: DOJ 4-2005, f. & cert. ef. 4-1-05

## 137-055-1100

### Continuation of Service

(1) When a family's assistance grant is closed, support enforcement services shall automatically be continued. The Division of Child Support (DCS) shall notify the support obligee, in writing, of the services to be provided. DCS will notify the obligee that subject to the obligor's right to request services:

(a) An obligee may at any time request that support enforcement services no longer be provided. If the obligee so requests and case closure procedures pursuant to OAR 137-055-1120 have been completed, all support enforcement services on behalf of the obligee shall be discontinued. However, except as provided in section (2) of this rule, if an order has already been established, DCS shall continue efforts to collect arrears assigned to the state. DCS shall apply any collections received against the assigned arrears until this amount has been collected.

(b) An obligee may also request under section (2) of this rule that support enforcement services no longer be provided for either the obligee or the state.

(2) If an obligee believes that physical or emotional harm to the family may result if support enforcement services are provided, the obligee may request that the administrator discontinue all activity against the obligor. Upon such a request by an obligee, the administrator shall immediately suspend all activity on the case, add good cause case coding and send a Client Safety Packet on Good Cause to the obligee requesting a response within 30 days.

(a) If the obligee returns the completed and signed Good Cause portion of the Client Safety Packet on Good Cause, the administrator shall proceed with case closure pursuant to OAR 137-055-1120(1)(i), and DCS shall satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(1)(g).

(b) If the obligee returns the completed and signed Claim of Risk portion of the Client Safety Packet on Good Cause, the administrator shall remove the good cause case coding and make a finding and order for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(c) If the obligee returns the completed and signed Address of Record portion of the Client Safety Packet on Good Cause, the administrator shall remove the good cause case coding and update the child support case record appropriately.

(d) If the obligee does not send a reply to the Client Safety Packet on Good Cause within 30 days, the administrator shall proceed with case closure pursuant to OAR 137-055-1120(1)(i), and DCS shall satisfy any and all permanently assigned arrears as defined in OAR 137-055-6020(1)(g).

(3) If a case has been closed pursuant to this rule, an obligee may at any time request the child support case be reopened by completing a new application for services. If an application for services is received, arrears may be reestablished pursuant to OAR 137-055-3240, except for perma-

nently assigned arrears which have been satisfied or which accrued to the state prior to the reapplication for services.

Stat. Auth.: ORS 25.080, 180.345  
Stats. Implemented: ORS 18.400, 25.020 & 25.080  
Hist.: AFS 34-1986(Temp), f. & ef. 4-14-86; AFS 65-1986, f. & ef. 9-19-86; AFS 28-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-035-0054; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0055; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1100; DOJ 4-2005, f. & cert. ef. 4-1-05

## 137-055-1120

### Case Closure

(1) The administrator, may close a child support case, whenever the case meets at least one of the following criteria for case closure:

(a) There is no longer a current support order, and arrears are under \$500 and there are no reasonable expectations for collection or the arrears are uncollectible under state law;

(b) The non-custodial parent or putative father is deceased and no further action, including a levy against the estate, can be taken;

(c) Paternity cannot be established because:

(A) A parentage test, or a court or administrative process, has excluded the putative father and no other putative father can be identified;

(B) In a case involving incest or forcible rape, or where legal proceedings for adoption are pending, the Department of Human Services (DHS) or the administrator has determined that it would not be in the best interests of the child to establish paternity; or

(C) The identity of the biological father is unknown and cannot be identified after diligent efforts, including at least one interview by the administrator with the recipient of services;

(D) Action to establish paternity has not been initiated and the child is at least 18 years old.

(d) The location of the non-custodial parent is unknown, and the state parent locator service has made regular attempts using multiple sources, all of which have been unsuccessful, to locate the non-custodial parent:

(A) Over a three-year period when there is sufficient information to initiate an automated locate effort; or

(B) Over a one-year period when there is not sufficient information to initiate an automated locate effort;

(e) When paternity is not at issue and the non-custodial parent cannot pay support for the duration of the child's minority because the parent is both:

(A) Institutionalized in a psychiatric facility, is incarcerated with no chance for parole, or has a medically verified total and permanent disability with no evidence of support potential; and

(B) Without available income or assets which could be levied or attached for support;

(f) The non-custodial parent:

(A) Is a citizen of, and lives in, a foreign country;

(B) Does not work for the Federal government or for a company or state with headquarters in or offices in the United States;

(C) Has no reachable income or assets in the United States; and

(D) Oregon has been unable to establish reciprocity with the country;

(g) The state parent locator service has provided location-only services based upon a request under 45 CFR 302.35(c)(3);

(h) The custodial parent, or applicant for services, requests closure, and:

(A) There is no assignment to the state of medical support; and

(B) There is no assignment of arrears that have accrued on the case;

(i) DHS or the administrator pursuant to OAR 137-055-1100(2), has made a finding of good cause or other exceptions to cooperation and has determined that support enforcement may not proceed without risk or harm to the child or caretaker;

(j) In a non-TANF case (excluding a Medicaid case), the administrator is unable to contact the custodial parent, or applicant for services, within 60 calendar days, despite an attempt of at least one letter sent by first class mail to the last known address;

(k) In a non-TANF case, the administrator documents the circumstances of non-cooperation by the custodial parent, or applicant for services, and an action by the custodial parent, or applicant for services, is essential for the next step in providing enforcement services; or

(l) The administrator documents failure by the initiating state to take an action which is essential for the next step in providing services.

(2)(a)(A) If the administrator elects to close a case pursuant to subsection (1)(a), (1)(c), (1)(e), (1)(f), (1)(h) or (1)(j) through (1)(l) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case.



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(B) If the administrator elects to close a case pursuant to subsection (1)(b) or (1)(d) of this rule, the administrator:

(i) Will notify the obligee in writing at least 60 days prior to closure of the case of the intent to close the case;

(ii) Is not required to notify the obligor of the intent to close the case; and

(iii) If the provisions of paragraph (1)(c)(D) apply, is not required to notify any other party.

(C) If the administrator elects to close a case pursuant to subsection (1)(g) of this rule, the administrator is not required to notify either obligee or obligor of the intent to close the case.

(D) If the administrator elects to close a case pursuant to subsection (1)(h) of this rule, the administrator will notify all parties to the case in writing at least 60 calendar days prior to closure of the case of the intent to close the case, except:

(i) When the case is a Child Welfare or Oregon Youth Authority case in which the child has left state care, an order under OAR 137-055-3290 is not appropriate, and a notice and finding has not been initiated, the case will be closed immediately; and

(ii) No closure notice will be sent to the parties unless a party had contact with the Child Support Program, Child Welfare or the Oregon Youth Authority regarding the child support case.

(E) If the administrator elects to close a case pursuant to subsection (1)(i) of this rule, the administrator will:

(i) notify the obligee in writing at least 60 days prior to closure of the case of the intent to close the case; and

(ii) not notify the obligor of the intent to close the case.

(b) The 60-day time frame in paragraph 2(a)(A) is independent of the 60-day calendar time frame in subsection (1)(j).

(c) The administrator will document the notice of case closure by entering a narrative line, or lines, on the child support computer system and will include the date of the notice.

(d) The content of the notice in paragraph 2(a)(A) must include, but is not limited to, the specific reason for closure, actions a party can take to prevent closure, and a statement that an individual may reapply for services at any time.

(3) Notwithstanding paragraph (2)(a)(A) of this rule, a case may be closed immediately under subsection (1)(h) of this rule if:

(a) All parties agree to waive the notice of intent to close and the 60-day objection period when the notice of intent to close has not yet been sent; or

(b) All parties agree to waive the remainder of the 60-day objection period when the notice of intent to close has already been sent.

(4) The administrator will keep a case open if, in response to the notice sent pursuant to paragraph (2)(a)(A) of this rule:

(a) The applicant or recipient of services:

(A) Supplies information which could lead to the establishment of paternity or of a support order, or enforcement of an order; or

(B) Reestablishes contact with the administrator, in cases where the administrator proposed to close the case under subsection (1)(j) of this rule; or

(b) the party who is not the applicant or recipient of services completes an application for services.

(5) A party may request at a later date that the case be reopened if there is a change in circumstances that could lead to the establishment of paternity or a support order, or enforcement of an order, by completing a new application for services.

(6) The administrator will document the justification for case closure by entering a narrative line or lines on the child support computer system in sufficient detail to communicate the basis for the case closure.

Stat. Auth.: ORS 25.080, 180.345

Stats. Implemented: ORS 25.020 & 25.080

Hist.: AFS 35-1986(Temp), f. & ef. 4-14-86; AFS 66-1986, f. & ef. 9-19-86; AFS 27-1988, f. & cert. ef. 4-5-88; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89; Renumbered from 461-0350-055; AFS 15-1993, f. 8-13-93, cert. ef. 8-15-93; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0050; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-1120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-1120; DOJ 4-2005, f. & cert. ef. 4-1-05

### 137-055-3420

#### Periodic Review and Modification of Child Support Order Amounts

(1) For the purposes of this rule, the following definitions apply:

(a) "Determination" means an order resulting from a periodic review which finds that the current order of support is in "substantial compliance" with the Oregon guidelines.

(b) "Guidelines" means the guidelines, the formula, and related provisions in OAR 137-050-0320 through 137-050-0490.

(c) "Periodic Review" means proceedings initiated under ORS 25.287.

(d) "Review" means an objective evaluation by the administrator of the information necessary for application of the guidelines to determine:

(A) The presumptively correct child support amount; and

(B) The need to provide in the order for the child's health care needs through health care coverage or other means, not to include Medicaid, regardless of whether an adjustment in the amount of child support is necessary.

(e) "Substantial compliance" means that the current support order is within at least 15 percent or \$50, whichever is less, of the presumptively correct child support amount as calculated using the guidelines. When making this determination, the 15 percent or \$50 formula will be applied to the currently ordered support amount.

(2) For all child support cases receiving support enforcement services under ORS 25.080, the Child Support Program shall notify annually the obligor and obligee of their right to request a periodic review of the amount of support ordered.

(3) The purpose of a periodic review is to determine, based on information from the parties and other sources as appropriate, whether the current child support order should be modified to assure substantial compliance with Oregon's child support guidelines, or to order health care coverage for the child(ren).

(4) The administrator may initiate a periodic review if a written request for periodic review is received from any party and 24 months have passed since the date the most recent support order took effect, or the date of a determination that the most recent support order should not be adjusted.

(5) The administrator must complete the determination that the order is in substantial compliance with the guidelines or complete the modification of the existing order within 180 days of receiving a written request for a periodic review, or locating the non-requesting parent, if necessary, whichever occurs later.

(6) The administrator is responsible for conducting a periodic review in this state or for requesting that another state conduct a review pursuant to OAR 137-055-7190. As provided in ORS 110.429 and 110.432, the law of the state reviewing the order applies in determining if a basis for modification exists.

(7) Upon receipt of a written request for a periodic review, the administrator will notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice must advise the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days has passed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(8) The administrator will notify the obligor and obligee in writing of the presumed correct support amount under the child support guidelines. This notification:

(a) May be by service of a proposed determination that the existing order is in substantial compliance with the guidelines, or a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Must advise both the obligor and obligee that each party has 30 days from the date of service of the notice to object to the determination or proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has passed; and

(c) Must include the request for hearing form for each of the parties if the administrator uses an administrative determination or motion form.

(9) If a party wishes to object to the proposed determination or modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(10) Upon receipt of a written request for hearing opposing the proposed determination or modification, the administrator will:

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- (a) Review the case to determine whether the support should be recalculated and, if so, notify both parties of the new presumed amount;
- (b) Seek a consent order; or
- (c) Ensure that the matter is set for hearing if no other resolution is achieved.

(11) If no request for hearing is filed within the 30 day period, the administrator will submit the determination or modification of the support order to the circuit court for entry in the court register.

(12) If a hearing is held on a determination and the administrative law judge makes a finding that the order is not in substantial compliance with the guidelines, the administrative law judge must enter a modified order with the support amount that complies with the guidelines.

(13) An appeal under this rule will be as provided in ORS 25.287.

(14) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

Stat. Auth.: ORS 416.455 & 180.345

Stats. Implemented: ORS 25.080, 25.287, 107.135 & 416.425

Hist.: AFS 65-1989, f. 10-31-89, cert. ef. 11-1-89; AFS 11-1992(Temp), f. & cert. ef. 4-30-92; AFS 26-1992, f. & cert. ef. 9-30-92; AFS 20-1993, f. 10-11-93, cert. ef. 10-13-93; AFS 21-1994, f. 9-13-94, cert. ef. 12-1-94; AFS 17-1997(Temp), f. & cert. ef. 9-16-97; AFS 17-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 75-1998, f. 9-11-98, cert. ef. 9-15-98; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 9-2000, f. 3-13-00, cert. ef. 4-1-00; AFS 21-2000, f. & cert. ef. 8-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0072; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 28-2001, f. 12-28-01, cert. ef. 1-1-02; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3420; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3420; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05

## 137-055-3430

### Substantial Change in Circumstance Review and Modification of Child Support Order Amounts

(1) For purposes of this rule the definitions provided in OAR 137-055-3420 apply.

(2) Notwithstanding OAR 137-055-3420, proceedings may be initiated at any time to review and modify a support obligation based upon a substantial change in circumstances.

(3) The administrator will conduct a review based upon a request for a change of circumstances modification only when:

(a) Oregon has jurisdiction to modify; and

(b) The administrator receives a written request for modification based upon a change of circumstances and at least 60 days have passed from the date the existing support order was entered, except for those cases where a review is requested pursuant to paragraphs (3)(c)(H) or (I); and

(c) At least one of the following criteria are met:

(A) A change in the written parenting time agreement or order has taken place;

(B) The financial or household circumstances of one or more of the parties are different now than they were at the time the order was entered;

(C) Social Security benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(D) Veterans' benefits received on behalf of a child due to a parent's disability or retirement were not previously considered in the order or they were considered in an action initiated before October 23, 1999;

(E) Survivors' and Dependents' Education Assistance benefits received by the child or on behalf of the child were not previously considered in the order;

(F) Since the date of the last order, the obligor has been incarcerated, as defined in OAR 137-055-3300;

(G) The needs of the child(ren) have changed;

(H) There is a need to provide health care coverage for the child(ren);

or

(I) A change in the physical custody of the child(ren) has taken place.

(d) And the requesting party:

(A) Completes a written request for modification based upon a substantial change of circumstances;

(B) Pursuant to ORS 416.425(6), provides appropriate documentation for the criteria in subsection (c) of this section showing that a substantial change of circumstances has occurred; and

(C) Completes a Uniform Income Statement or Uniform Support Affidavit.

(4) Upon receipt of a written request for a review and modification, the administrator will notify the non-requesting party of the review in writing and provide a copy of the notice to the requesting party. The notice will inform the parties:

(a) Of the opportunity to provide information, with regard to themselves and the other party if known, which might affect the administrator's calculation of the presumed correct support amount under the child support guidelines, and that each party has 30 days from the date of the notice to provide such information in writing to the administrator;

(b) That the administrator will consider written information received from any party prior to calculating the presumed correct amount of support;

(c) That the administrator will not conduct a review or calculate a presumed correct child support amount until 30 days have passed since the date of the notice unless documentation or written information is received from both the obligor and obligee before the 30 days have passed; and

(d) That a modification to the support amount will affect only support owing on or after the date of service on the last non-requesting party.

(5) A request for review will be granted unless:

(a) The conditions in section (3) have not been met; or

(b) The review was requested due to one of the criteria in paragraphs (3)(c)(A) through (3)(c)(G), and the order is in substantial compliance with the guidelines. The determination of substantial compliance will be made as outlined in OAR 137-055-3420(1)(e).

(6) If the request for review is granted, the administrator will:

(a) Initiate a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(b) Advise the parties in writing of the presumed correct support amount under the child support guidelines. This notification:

(A) Must be by service of a motion or petition to modify the current support order, pursuant to applicable statutes and administrative rules;

(B) Must advise the parties that each party has 30 days from the date of service of the notice to object to the proposed modification in writing if they so choose, and that the order will not be final until at least the 30 day period has elapsed; and

(C) Must include the request for hearing form for each of the parties as provided in OAR 137-055-2160, if the administrator uses an administrative motion form.

(7) If a party wishes to object to the proposed modification, the party must file a written request for hearing with the administrator or court before the 30 day period has passed.

(8) Upon receipt of a written request for hearing opposing the proposed modification, the administrator will:

(a) Review the case to determine whether the support should be recalculated and, if so, notify both parties of the new presumed amount;

(b) Seek a consent order; or

(c) Ensure that the matter is set for hearing if no other resolution is achieved.

(9) If a party submits, in writing, newly acquired information after a proposed modification has been served, the administrator will review the case pursuant to subsection (9)(a).

(10) If no request for hearing is filed within the 30 day period, the administrator will submit the modification of the support order to the circuit court for entry in the court register.

(11) If the request for review is denied, the administrator will notify the requesting party of the denial in writing within 30 days and inform the party of their right to file a motion for modification as provided in ORS 416.425. The administrator will advise the party on how to obtain the Oregon Judicial Department packet which has been prescribed for this purpose.

(12) An appeal under this rule will be as provided in ORS 416.427.

(13) No provision of this rule precludes the parties from obtaining the services of private legal counsel at any time to pursue modification of the support order pursuant to all applicable laws.

(14) If a request for review and modification is received because a change in the physical custody of the child(ren) has taken place, a party may also request a credit back to the date the change in physical custody took place in accordance with OAR 137-055-5510.

Stat. Auth.: ORS 416.455 & 180.345

Stats. Implemented: ORS 25.080, 25.287, 107.135 & 416.425

Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 4-2005, f. & cert. ef. 4-1-05

## 137-055-4340

### Collection of Delinquent Support Obligations Through the U.S. Secretary of the Treasury

(1) The administrator, may claim federal tax refunds and administrative offset of other payments from the federal government through the U.S. Secretary of the Treasury (Secretary) otherwise due to be paid to an obligor or to collect support arrears.

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(2) The Division of Child Support (DCS) will file such claims with the Secretary according to rules and procedures established by the federal government.

(3) Referral of arrears shall be a liquidated claim, debt, or account established by a court or administrative order.

(4) DCS shall not refer any case for federal tax refund or administrative offset where the case record indicates that one or more of the following is applicable:

(a) The arrears assigned to the state are less than \$150 and the support amount is less than 45 days delinquent;

(b) The arrears are less than \$500 on a case where none of the arrears have been assigned to the state;

(c) The obligor has filed for bankruptcy, as defined by federal bankruptcy code, unless the bankruptcy claim has been resolved and the administrator has legal authority to proceed with collection; or

(d) The obligee has claimed "good cause" for not cooperating with efforts to establish or enforce support.

(5) DCS shall distribute tax refunds and other federal administrative offsets recovered by this process as set out in OAR 137-055-6020.

(6) A one-time pre-offset notice will be sent to the obligor and obligee by either the federal government or DCS of the intent to claim the tax refund, or other federal payments through the Secretary, and apply them to the obligor's account. Such notice shall advise of the obligor's right to an administrative review regarding this action. The only issues that may be considered in the review are:

(a) Whether the obligor is the person who owes the support as indicated by the case record; or

(b) Whether the arrears indicated in the notice are correct.

(7) Upon receipt of the request for review, the administrator will schedule the review and notify the obligor and obligee of the date, time and place of the review.

Stat. Auth.: ORS 25.625, 180.345

Stats. Implemented: ORS 25.625

Hist.: AFS 7-1997, f. & cert. ef. 6-13-97; AFS 15-1997(Temp), f. & cert. ef. 9-2-97; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-2000, f. 2-19-00, cert. ef. 3-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0210; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-4340; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-4340; DOJ 4-2005, f. & cert. ef. 4-1-05

### 137-055-5120

#### Support for Child Attending School — Oregon Orders Entered on or After October 4, 1997

(1) The purpose of this rule is to define how the Division of Child Support (DCS) will apply the provisions of ORS 107.108, regarding support or maintenance for a child attending school, in performing its official billing, accrual, distribution, and record-keeping functions for ongoing support when:

(a) The most recent order or modification for support was entered on or after October 4, 1997; and

(b) The order or modification provides for support until the child is age 21 so long as the child is a child attending school in accordance with ORS 107.108.

(2) The terms used in this rule shall have the meanings set out in OAR 137-055-5110.

(3) DCS will perform its official billing, accrual, distribution, and record-keeping functions for each child on a support obligation who qualifies as a child attending school after attaining age 18, unless the child:

(a) Has failed to comply with the provisions set out in section (4) of this rule and the administrator has received a written objection from the obligor; or

(b) Has failed to provide written notification as provided in section (7) of this rule.

(4) Beginning with the first full term or semester after the child attains age 18, or the first full term or semester after a pre-October 4, 1997, order is modified to include post October 4, 1997, provisions as set out in ORS 107.108, whichever occurs later:

(a) The child must submit the completed Child Support Program (CSP) Child Attending School Compliance Form to the obligor and to the administrator. The completed compliance form must be received by the obligor and the administrator within 30 calendar days from the first official day of classes for each term or semester. If the 30th day falls on a state holiday, a Saturday, or a Sunday, the compliance form must be received by the next working day. For schools which do not have traditional terms or semesters, or have courses which last longer than six months, the administrator may require that a compliance form be submitted "quarterly" in addition to within 30 calendar days from the first day of class.

(b) The child must maintain the equivalent of a cumulative "C" grade average or better as defined by the current school or, if the child is still attending high school, or a high school equivalency course as provided in OAR 137-055-5110, the child may have either a cumulative "C" grade average or better, or a "C" grade average or better for each term, semester or quarter after attaining age 18;

(c) The child must submit, to the obligor and to the administrator, copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled;

(d) If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the child may send the obligor's copy of the documents to the administrator for the administrator to forward to the obligor. The child must submit a copy of the documents to the CSP per the time periods set out in subsection (a) of this section. The administrator will redact the following information prior to sending a copy of documents to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(5) Notwithstanding the form requirement of subsection (4)(a) of this rule, as of the Fall term or semester of 2002, the child may submit to the obligor and to the administrator, within the time frames set out subsection (4)(a) of this rule, the CSP Child Attending School Compliance Form with only the portion of the form "TO BE COMPLETED BY STUDENT/CHILD ATTENDING SCHOOL" completed, but the child must attach:

(a) An enrollment verification certificate from the school's contracted clearinghouse;

(b) Documentation from the school verifying grades of at least a cumulative "C" grade point average (or equivalent) as set out in subsection (4)(b) of this rule, such as:

(A) An official or unofficial transcript; or

(B) A report card which indicates a cumulative grade point average; and

(c) Copies of the grades for the last term or semester and a list of courses in which the child is currently enrolled.

(6) When a child is attending school and a "normal break" occurs between academic terms at the school, the obligor will continue to owe ongoing support and the DCS shall continue official accounting functions throughout such break if the case records show that the child intends to resume classes at the start of the first regular academic term following the break. The administrator may require the child to provide additional documentation if at least 120 days have passed since the end of the child's last term or semester.

(7) At least 30 days prior to the child's 18th birthday, the administrator will send written notification to the obligee, the child, and, if appropriate, the Oregon Youth Authority (OYA) that unless the obligee or the child sends written notification to the administrator prior to the child's 18th birthday that the child will continue to attend school, DCS will terminate official accounting functions effective the date the child attains age 18.

(8) Upon receipt of the written notification from the obligee or the child that the child will continue to attend school, the administrator will send the Child Attending School Compliance Requirements, along with a copy of the CSP Child Attending School Compliance Form, to the parties and the child. Such notice shall:

(a) List all of the compliance requirements to continue to receive support as a child attending school;

(b) Include objection information;

(c) Advise the parties of their right to a change in circumstance modification in accordance with OAR 137-055-3420;

(d) Include distribution information for distributing support directly to the child; and

(e) Include information for the child to make a claim of risk for nondisclosure of information pursuant to ORS 25.020 and OAR 137-055-1160.

(9) DCS will distribute support directly to the child unless good cause is found to distribute support in some other manner. For purposes of this section "good cause" may include:

(a) The child is in the care of the Oregon Youth Authority (OYA);

(b) The child provides written authorization for distribution to the obligee;



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(c) The court, administrative law judge or administrator orders otherwise; or

(d) The administrator is enforcing the Oregon order at the request of another state and that state has indicated they are unable to distribute support directly to the child.

(10) When there are multiple children for whom support is ordered, the amount paid directly to the child under section (9) of this rule will be a prorated share.

(11) If a child attending school is in the care of OYA, any and all reporting duties of the child as outlined in this rule will be the duty of OYA.

(12) DCS will terminate official accounting functions on the case when one of the following conditions occurs:

(a) The obligee or child fails to provide written notification as required under section (7) of this rule;

(b) The child has failed to comply with section (4) of this rule, and the obligor has submitted a written objection under section (15) of this rule;

(c) During a normal school break, the child has failed to provide additional documentation as requested under section (6) of this rule;

(d) The child sends written notice that the child no longer qualifies as a child attending school; or

(e) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that an authorized representative of the school sent a written notice to the administrator that the child no longer qualifies as a child attending school.

(f) The child fails to provide a valid compliance form within 30 calendar days from the date of a written notice from the administrator advising that OYA has notified the administrator that the child is no longer in the care of the OYA.

(13) Once DCS terminates official accounting functions on the case, the official accounting functions cannot be resumed except as provided in section (16) of this rule.

(14) When the administrator receives written notification from the child or authorized representative of the school that the child no longer qualifies as a child attending school or notification from OYA that the child is no longer in the care of OYA, the DCS will terminate official accounting functions on the case for any such child effective the date the notice is received by the administrator.

(15) If an obligor submits a written objection asserting that the child no longer is attending school, the administrator will review the official records for compliance. The administrator will presume that the child's statutory reporting requirements as outlined in section (4) of this rule have been fulfilled if the administrator has record of a completed compliance form with any required documentation for the current or most recent, as appropriate, term or semester.

(a) If compliance has occurred according to case records, the administrator will send a copy of the proof of compliance to the obligor. If there has been a finding and order of nondisclosure on behalf of the child pursuant to ORS 25.020, the administrator will redact the following information prior to sending a copy to the obligor:

(A) Residence, mailing or contact address including the school name and address;

(B) Social security number;

(C) Telephone number including the school telephone number;

(D) Driver's license number;

(E) Employer's name, address and telephone number; and

(F) Name of registrar or school official.

(b) If compliance has not occurred according to case records, DCS will terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written objection and will notify all parties of this termination.

(16) Notwithstanding subsection (15)(b), up until the child attains the age of 21, as long as the child is still attending school, DCS will resume official accounting functions upon receipt of a written statement from the obligor that the obligor wishes to continue paying ongoing support for such child. If such verification occurs, DCS will inform all parties and resume its official accounting functions effective the payment due date following receipt of such verification. If the obligor later decides to stop paying ongoing support for such child, the obligor shall provide a written statement to the administrator and DCS will terminate official accounting functions on the case for any such child effective the date the administrator receives the obligor's written statement and will notify all parties of this termination.

(17) The administrator will honor the provisions of a court or administrative order to reinstate or terminate the duty of support to a "child attending school" under ORS 107.108.

(18) If the most recent order or modification for support cites ORS 107.108 or otherwise provides for support of a "child attending school," the administrator will follow the provisions of ORS 107.108 and this rule, regardless of other child attending school provisions that may be in the support order.

Stat. Auth.: ORS 25.020 & 180.345

Stats. Implemented: ORS 107.108

Hist.: AFS 21-1991, f. 10-23-91, cert. ef. 11-1-91; AFS 26-1991, f. 12-31-91, cert. ef. 1-1-92; AFS 9-1992, f. & cert. ef. 4-1-92; AFS 31-1992, f. 10-29-92, cert. ef. 11-1-92; AFS 18-1997(Temp), f. 9-23-97, cert. ef. 10-4-97; AFS 18-1997(Temp) Repealed by AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 2-2000, f. 1-28-00, cert. ef. 2-1-00; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0136; AFS 23-2001, f. 10-2-01, cert. ef. 10-6-01; AFS 17-2002(Temp), f. 10-30-02, cert. ef. 11-1-02 thru 4-29-03; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5120; DOJ 12-2004, f. & cert. ef. 10-1-04; DOJ 4-2005, f. & cert. ef. 4-1-05

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

**Adm. Order No.:** OSFM 5-2005

**Filed with Sec. of State:** 3-31-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05

**Rules Adopted:** 837-085-0305

**Rules Amended:** 837-085-0020, 837-085-0030, 837-085-0040, 837-085-0070, 837-085-0080, 837-085-0090, 837-085-0110, 837-085-0180, 837-085-0210, 837-085-0250, 837-085-0260, 837-085-0270, 837-085-0280, 837-085-0290, 837-085-0300, 837-085-0310, 837-085-0320, 837-085-0350

**Subject:** The rules are being modified mainly to outline the process and monetary values associated with the Notice of Non-Compliance system. In the past, the Administrative Rules allowed for a daily accrual of \$1,000 a day, however, did not place a limit or date at which the Office of State Fire Marshal would stop assessing a penalty. The proposed process will repeal the daily accrual language and place a cap at which the Office of State Fire Marshal will stop assessing a penalty.

Other changes include general housekeeping and changing from the Standard Industrial Classification system to the North American Industry Classification system. This change is being proposed due to the federal government updating the classification system.

**Rules Coordinator:** Pat Carroll—(503) 373-1540, ext. 276

### 837-085-0020

#### Purpose and Scope

(1) The purpose of OAR chapter 837, division 085, is:

(a) To insure that all reportable hazardous substances or wastes manufactured, generated, used, stored, possessed or disposed of at fixed facilities are identified and the information is submitted to the Office of State Fire Marshal;

(b) To address the process by which hazardous substance information is identified and communicated to the Office of State Fire Marshal;

(c) To address the process by which information received through the Office of State Fire Marshal's Hazardous Substance Information Survey and Incident Reporting Systems are distributed to emergency personnel, public agencies, and the public;

(d) To address the process of assessing penalties;

(e) To address the process by which covered employers, owners and operators will be evaluated to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act;

(f) To establish procedures for Notice of Noncompliance and Proposed/Final Penalty Assessment Order to covered employers, owners and operators who fail to comply with the reporting requirements.

(2) The "Community Right-to-Know and Protection Act," ORS 453.307 to 453.414, requires covered employers, owners and operators to report to the Office of State Fire Marshal, the identity, associated hazard classification(s) and other information for all reportable hazardous substances or waste which they manufacture, generate, use, store or dispose of at fixed facilities.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307 & 453.372

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

# ADMINISTRATIVE RULES

## 837-085-0030

### Covered Employers, Owners, Operators and the North American Industry Classification System (NAICS)

(1) Persons operating one or more facilities, where hazardous substances are present in reportable quantities are required to notify the Office of State Fire Marshal within 30 days and are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090.

(2) Persons operating facilities within the North American Industry Classification System that have been identified by the Office of State Fire Marshal as having the potential to possess, store or otherwise use hazardous substances in reportable quantities are subject to the hazardous substance information reporting requirements contained in ORS 453.307 to 453.414 and OAR 837-085-0090 if sent a Hazardous Substance Information Survey by the Office of State Fire Marshal.

(3) Persons with facilities not covered may voluntarily complete and submit the Office of State Fire Marshal's Hazardous Substance Information Survey. Such persons shall not be subject to Hazardous Substance Possession Fees.

(4) Person(s) classified within construction or logging NAICS are not required to report their temporary work sites.

(5) Persons having facilities classified within the NAICS 424930 (Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers and/or the NAICS 444220 Nursery, Garden Center, and Farm Supply Stores, that do not sell, or otherwise market, products that require a material safety data sheet to be developed by the manufacture, are not required to report for that facility.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.307(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0040

### Definitions

(1) "Act" means the Community Right-to-Know and Protection Act, ORS 453.307 to 453.414.

(2) "Appeal" means the written request for a contested case in order to contest the required submission of Hazardous Substance Information Survey information or to contest a "Notice of Noncompliance and Proposed/Final Penalty Assessment" order, or a response to a request for exemption.

(3) "Approved Form" means a form either provided by or authorized by the Office of State Fire Marshal.

(4) "Audit" means the evaluation of covered employers, owners or operators to determine their level of compliance with the Oregon Community Right-to-Know and Protection Act.

(5) "Chemical" means any element, chemical compound, or mixture of elements and/or compounds.

(6) "Chemical Name" means the scientific designation of a chemical in accordance with the nomenclature system developed by the International Union of Pure and Applied Chemistry (IUPAC) or the Chemical Abstracts Services (CAS) rules of nomenclature.

(7) "Common Name" means any designation or identification such as code name, code number, trade name, brand name or generic name, used to identify a chemical other than by its chemical name.

(8) "Compliance Auditor" means a designated employee of the Office of State Fire Marshal whose responsibility is to conduct audits, identify noncompliance issues and propose penalties, establish correction dates and assist employers, owners and operators in voluntarily complying with ORS 453.307 to 453.414.

(9) "Compliance or Due Date" means the date set for submitting a Hazardous Substance Information Survey, substantive change or other information requested by the Office of State Fire Marshal.

(10) "Compressed Gas" means:

(a) A gas or mixture of gases, in a container, having an absolute pressure exceeding 40 psi at 70° F. (21.1° C.); or

(b) A gas or mixture of gases, in a container, having an absolute pressure exceeding 104 psi at 130° F. (54.4° C.) regardless of the pressure at 70° F. (21.1° C.); or

(c) A liquid having a vapor pressure exceeding 40 psi at 100° F. (37.8° C.) as determined by ASTM D-323-72, Test Method of Vapor Pressure of Petroleum Products (Reid Method).

(11) "Confidential" means information submitted to a public body in confidence (ORS 192.502(3)).

(12) "Confidentiality Agreement" means a written agreement between a covered employer, owner or operator and an entity authorized

under ORS 453.337 and OAR chapter 837, division 085 to request and receive trade secret information.

(13) "Correction Order" means a written order that directs an employer, owner or operator to submit Hazardous Substance Information Survey information.

(14) "Covered Employer, Owner or Operator" means:

(a) Any person(s) operating a facility possessing reportable quantities of hazardous substances as defined by the Office of State Fire Marshal in OAR 837-085-0070.

(b) Any person(s) operating a facility that the Office of State Fire Marshal believes has the potential to store, generate, use, or otherwise possess hazardous substances in reportable quantities.

(15) "Division" means OAR chapter 837, division 085 of the Office of State Fire Marshal.

(16) "Emergency" means any human caused or natural event or circumstance causing or threatening loss of life, injury to person or property, human suffering or financial loss which includes, but is not limited to, fire, explosion, flood, severe weather, drought, earthquake, volcanic activity, spills of oil or other substances, contamination, utility or transportation accidents, disease, blight, infestation, civil disturbance, riot, sabotage/war.

(17) "Emergency Service(s)" means those activities provided by state and local government agencies with emergency operational responsibilities to prepare for and carry out any activity to prevent, minimize, respond to or recover from an emergency. Without limitation, these activities include coordination, preplanning, training, interagency liaison, fire fighting, hazardous substance management, law enforcement, medical, health and sanitation services, engineering and public works, search and rescue activities, public information, damage assessment, administration and fiscal management.

(18) "Emergency Service Agency" means an organization, which performs essential services for the public's benefit prior to, during, or following an emergency. This includes, but is not limited to, organizational units within local governments, such as emergency medical technicians, health, medical and sanitation services, public works and engineering, public information and communications.

(19) "Entity" means any individual trust, firm, association, corporation, partnership, joint stock company, joint venture, public or municipal corporation, commission, political subdivision, the state or any agency or commission thereof, interstate body, and the federal government and any agency thereof.

(20) "Exempted Substance" means a substance that is not required to be reported.

(21) "Exemption" means the written authority given to a person by the Office of State Fire Marshal, granting an exemption from the requirements of a rule or law.

(22) "Explosives" means a hazardous substance that has been classified as an explosive by the U.S. Department of Transportation.

(23) "Extension" means the written authorization of the Office of State Fire Marshal to extend a compliance or due date.

(24) "Facility" means all buildings, equipment structures and other stationary items that are located on a single site or on contiguous or adjacent sites that are owned or operated by a covered employer, owner or operator.

(25) "Facility/Reporting" means all buildings, equipment structures and other stationary items that are located at a single address that are owned and/or operated by a covered employer, owner or operator.

(26) "Facility Representative" means any individual designated by an employer, owner or operator to serve as spokesperson or, in the absence of a designated spokesperson, the person in charge of a facility being audited.

(27) "Filed" means the receipt of a document by the Office of State Fire Marshal, except that an appeal will be considered filed upon receipt at any regional office of the Office of State Fire Marshal.

(28) "Fire District" means any agency having responsibility for providing fire protection services.

(29) "Fixed Facility" means a facility having permanent and/or non-mobile operations.

(30) "Hazard Classification" means the U.S. Department of Transportation hazard class as published in the Bureau of Explosives Tariff No. BOE-6000-E, effective June 14, 1985. However, when the definitions in Tariff No. BOE-6000-E refer to transportation or hazards associated with transportation, they shall be deemed to refer to storage and/or other regulated activities under OAR chapter 837, division 085.

(31) "Hazardous Substance" means:

## ADMINISTRATIVE RULES

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the Office of State Fire Marshal; or

(b) Any substance required to have a Material Safety Data Sheet (MSDS) pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (CFR 1910.1200), subdivision Z, and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienist (ACGIH); or

(c) Any substance required to have an MSDS pursuant to Oregon Occupational Safety and Health Division's OAR 437, division 2 (CFR 1910.1200), subdivision Z, except:

(A) Substances exempted by designation of the Office of State Fire Marshal; or

(B) Substances which are solids and do not react or dissolve and are stored in unprotected areas; or

(C) Substances exempted by the rules of OAR chapter 837, division 085; or

(D) Gases intended and used for human ingestion and/or inhalation either directly or added to a product, if the gas is present at the site where ingestion and/or inhalation occurs; and the gas is not being used in a manufacturing process; and the gas is not a cryogenic; and the gas is not being stored at the site in a quantity that exceeds 1,000 cubic feet. This rule applies to gases used for animals as well.

(d) Any substance for which a manufacturer is required to develop an MSDS, that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(e) Any waste substance that presents a physical or health hazard to emergency response personnel or the public under normal conditions of use and/or during an emergency situation; or

(f) Any radioactive waste and/or radioactive material as defined in ORS 469.300(19) and radioactive substance as defined in ORS 453.005.

(32) "Hazardous Substance Information Survey" means a hazardous substance report that covered employers, owners or operators are required to submit, on an approved form, to the Office of State Fire Marshal.

(33) "Health Professional" means a physician as defined in ORS 677.010, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical technician.

(34) "Identity" means any chemical or common name that is indicated:

(a) On a Material Safety Data Sheet (MSDS) as required under OAR 437, division 2 (CFR 1910.1200), subdivision Z; or

(b) On shipping documents as required under 49 CFR Part 171-177 under the Transportation Safety Act of 1974 (49 U.S.C. 1801 et seq.) and as published in the Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985; or

(c) On hazardous waste manifests as required by OAR chapter 340, division 102 as adopted by the Department of Environmental Quality; or

(d) On packaging or container labels as required under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) and labeling regulations issued under the Act by the Environmental Protection Agency; or

(e) On a radioactive material license as issued under OAR chapter 333, divisions 100 through 113 as adopted by the Radiation Control Section of the Health Division of the Oregon Department of Human Resources.

(35) "Incident" means the threatened or actual injury or damage to a human, wildlife, domestic animal or the environment, or any property loss resulting from a hazardous substance release.

(36) "Law Enforcement Agency" means county sheriffs, municipal police departments, state police, other police officers of this and other states and law enforcement agencies of the federal government.

(37) "Liquefied Gas" means a gas that is received and stored as a liquid through the use of pressure and/or cryogenic conditions.

(38) "Material Safety Data Sheet (MSDS)" means written printed or electronic material concerning a hazardous chemical which is prepared in accordance OAR 437, division 2 (CFR 1910.1200), subdivision Z, Hazard Communication rules of the Occupational Safety and Health Division of the Department of Consumer and Business Services.

(39) "North American Industry Classification System" means a system developed by the Office of Management and Budget for the purpose of classifying establishments by the type of activity they engage in. The number assigned to each group classified is called the NAICS code.

(40) "No Longer Reportable" means a previously reported substance was not on site in a reportable quantity during the current survey period.

(41) "Noncompliance" means failure of a covered employer, owner or operator to comply with the Community Right-to-Know and Protection Act and/or its administrative rules.

(42) "Noncompliance Classification" means the category assigned to issues of noncompliance for the purposes of assessing a penalty.

(43) "Notice of Noncompliance and Proposed/Final Penalty Assessment Order" means a written document issued to covered employers, owners or operators that advises them they were not complying with the Community Right-to-Know and Protection Act, establishes correction dates and notifies them of penalty assessments.

(44) "Person" means: Any entity including, but not limited to, an individual, trust, firm, joint stock company, corporation, partnership, association, municipal corporation, political subdivision, interstate body, the state and any agency or commission thereof, and the federal government and any agency thereof;

(45) "Poison Class A and B" means a poisonous substance as defined in 49 CFR, Part 173.326 as published in the Bureau of Explosives Tariff No. BOE-6000-E effective June 14, 1985.

(46) "Record" means any recorded information.

(47) "Repeat Noncompliance" means a covered employer, owner and or operator has failed to comply with the same rule(s) of OAR 837-085 two or more times within a five year period of time.

(48) "Reportable Hazardous Substance" is a hazardous substance that is manufactured, generated, used, stored, possessed, or disposed of at a fixed site location(s) by covered employers, owners and operators at or above the reportable quantities at any time during the survey period.

(49) "Reportable Quantity" means the amount of hazardous substance that must be present at a facility before reporting is required.

(50) "Reporting Range" means a range of quantities assigned by the Office of State Fire Marshal for reporting hazardous substances.

(51) "Significant Maximum Daily Amount Change" means a change in the maximum daily quantity reporting range to a higher reporting range than previously was reported.

(52) "Single Combined Survey" means a survey that has multiple substations reported on it.

(53) "Source Generation Sites" means facilities generating that which is relayed, pumped and/or stored by substations.

(54) "State Fire Marshal" means the State Fire Marshal or designee.

(55) "Substantive Change" means a change(s) in hazardous substance reporting information that requires notification to the Office of State Fire Marshal.

(56) "Substation" means facilities that function only as electrical transmission relays, telephone transmission relays, pager transmission relays, cable TV transmission relays, cellular phone transmission relays, radar transmission relays, water storage reservoir, water pump and/or chlorinating stations, sewerage/storm water pump stations, natural gas pump stations and/or road sand storage.

(57) "Survey Period" means the 12 months preceding the date the Hazardous Substance Information Survey is mailed to, or completed by, the covered employer, owner and/or operator.

(58) "Temporary Worksite" means a single site location where activities, such as construction and logging, will likely occur for less than 24 months.

(59) "Trade Name" means the brand name or trademark given to a hazardous substance by a manufacturer or distributor.

(60) "Trade Secret(s)" means, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented; which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service or to locate minerals or other substances having commercial value; and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(61) "Waste Hazardous Substance" means any substance, which meets the Department of Environmental Quality's definition of "hazardous waste."

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99 & cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

### 837-085-0070

#### Hazardous Substance Information Survey — Reportable Quantities

(1) If at anytime during the survey period, a covered employer, owner or operator has manufactured, generated, used, stored, possessed, or dis-



# ADMINISTRATIVE RULES

posed of hazardous substance(s) in an amount at or above the reportable quantities, they shall report the hazardous substance.

(2) The hazardous substance reportable quantities shall be as follows:

(a) Any quantity of radioactive substance including radioactive wastes; Exception: Sealed source radioactive materials, as defined by OAR 333-100-0005(118) contained in smoke detectors, survey equipment and small laboratory testing equipment are not required to be reported.

(b) Any Class A or B poison or explosive in quantities equal to or greater than ten pounds, five gallons or 20 cubic feet;

(c) Any Extremely Hazardous Substance that meets or exceeds the Threshold Planning Quantities as defined by Sara Title III-Emergency Planning and Community Right to Know Act under Section 302.

(d) Any other hazardous substance in quantities equal to or greater than 50 gallons, 200 cubic feet, or 500 pounds.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0080

### Hazardous Substance Information Survey — Reportable Quantities

(1) Covered employers, owners and operators shall calculate the following for each hazardous substance manufactured, generated, used, stored, possessed or disposed of during the survey period:

(a) Average daily amount;

(b) Total Maximum daily amount for each substance reported;

(c) Maximum daily amount for each storage location reported;

(d) Total amount transported to the facility;

(e) Total amount transported from the facility.

(2) The quantities of hazardous substances shall be measured in the physical state assumed at "Standard Temperature and Pressure" (STP) or when released uncontrolled into the environment.

**NOTE:** Although liquefied gases are reported in gallons, their reportability is determined by measuring them in cubic feet.

(3) The total amounts of hazardous substances shall be reported in the following units:

(a) Solids shall be reported in units of pounds;

(b) Liquids shall be reported in units of gallons;

(c) Liquefied gases shall be reported in units of gallons;

(d) Compressed gases that are not liquefied shall be reported in units of cubic feet;

(e) Radioactive materials shall be reported in units of millicuries.

(4) The following methods shall be used to calculate reportable amounts:

(a) The "Average Amount" of each hazardous substance may be calculated by dividing the total amount of the hazardous substance on-site during the year by the total estimated number of days on-site.

(b) The "Maximum Daily Amount" of each hazardous substance shall be determined by reviewing purchasing records, inventory records, production records, receiving records, etc., to identify the one day during the survey period that the highest amount of the hazardous substance was on-site for more than 24 hours;

(c) The "Amount In" may be calculated for each hazardous substance by reviewing purchasing records, inventory records, receiving records, etc., to identify the total amount of the substance transported to the facility during the survey period;

(d) The "Amount Out" may be calculated for each hazardous substance by reviewing inventory records, production records, shipping records, etc., to identify the total amount of the substance transported from the facility during the survey period.

(5) For a mixture, the total amount of the substance is reported regardless of the concentration of hazardous substance(s) in the mixture.

(6) The amounts of a hazardous substance with the same chemical composition in separate containers at one facility shall be added together for reporting purposes.

(7) Like substances which are exempted from the Hazardous Substance Possession Fee shall be grouped and reported together. Examples of these groups include but are not limited to: Gasoline, motor oils, asphalt emulsion, and diesels.

(8) Water based paints with the same major components shall be grouped and reported together. Solvent based paints with the same major components shall be grouped and reported together.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0090

### Hazardous Substance Information Survey — Reporting Requirements

(1) Covered employers, owners and operators shall report hazardous substance information as required by these rules on the survey form provided or approved by the Office of State Fire Marshal.

(2) Covered employers, owners and operators who receive the Office of State Fire Marshal's annual Hazardous Substance Information Survey shall complete and return it to the Office of State Fire Marshal by the due date indicated on the survey in accordance with OAR 837-085-0050(3) through (8) of these rules.

(3) Covered employers, owners and operators receiving a survey for one or more of their facilities shall submit a separate survey for each of their facilities that are subject to the reporting requirements.

(4) Covered employers, owners and operators who operate substations, as defined by OAR 837-085-0040(55), that are of the same type may report all their substations on a single combined survey instead of reporting each location separately.

(a) Source generation sites, as defined by OAR 837-085-0040(53), must be reported separately.

(b) Substations that have no hazardous substances are exempt from reporting.

(c) Each Substation reported on a single combined survey must have identification posted at it that identifies the site by a company unique number or name and the survey (Facility) ID number issued by the Office of State Fire Marshal.

(A) The identification must be readable from a distance of 50 feet.

(B) Substations that are completely underground and can only be accessed through a manhole or excavation are exempt from this posting requirement.

(5) Within 30 days of receiving a survey, covered employers, owners and operators shall request a survey from the Office of State Fire Marshal for each of their subject facilities not receiving a survey.

(6) Covered employers, owners and operators receiving the survey shall provide the following information:

(a) The facilities reporting status, including:

(A) Whether or not hazardous substances were present at the site in reportable quantities;

(B) Whether or not extremely hazardous substances were present that met or exceeded the threshold planning quantity of CFR Title 40, Part 355, Appendix A and B;

(C) Whether or not the facility is subject to the reporting requirements of Section 112(r) of the Clean Air Act;

(D) Whether or not the facility is subject to the Process Safety Management requirements.

(b) Demographic information including:

(A) The primary and, if applicable, secondary North American Industry Classification System code for the facility;

(B) A description of the type of business. Examples: An automotive repair shop, silicon chip manufacturing, a chemical warehouse;

(C) The Dun and Bradstreet Number, if applicable, which can often be obtained by checking with the firm's Certified Public Accountant (CPA);

(D) The name of the Owner/CEO/Reg Agent of the entity;

(E) The known business name, which the firm operates under as well as the department, division;

(F) The physical site address including the street, city, county, and zip code or grid location acceptable to responding fire department if no address exists, as well as a phone number for the site;

(G) The e-mail address of the business or contact person if available;

(H) The mailing address if different from the site address;

(I) The number of employees at the site;

(J) The name and telephone number(s) of personnel qualified to give technical, on-site information about hazardous substances present at the facility in the event of an emergency. Listed phone numbers shall include both business and after-hours contact information;

(K) The name of the responding fire department by local jurisdiction;

(L) A brief summary of any procedures established by the covered employer, owner or operator for the control of hazardous substances in the event of an emergency; and

(M) Whether the hazardous substance storage location(s) for each reportable hazardous substance(s) is placarding according to National Fire Protection Association (NFPA) Standard 704.

(c) The name and signature of the person completing the survey and the date the survey was completed.

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(d) Information about each reportable hazardous substance meeting the reportable quantity thresholds including, but not limited to:

(A) The common name or trade name for each reportable hazardous substance;

(B) The chemical name of the hazardous ingredient present in the highest concentration in each reportable hazardous substance;

(C) Whether or not the substance reported contains a CFR Title 40, Part 355, listed extremely hazardous substance;

(D) Whether or not the substance reported contains a Clean Air Act, Section 112(r), listed chemical;

(E) Whether or not the substance reported contains a Process Safety Management, listed chemical;

(F) Information regarding whether the substance is pure or a mixture;

(G) The physical state of the hazardous substance as it is released into the environment at STP (Standard Temperature and Pressure) relating whether it is a solid, liquid or a gas;

(H) The unit of measure used to report the quantity range of the hazardous substance, i.e., relating whether it is reported in pounds, gallons, cubic feet or millilicuries;

(I) The average amount of each reportable hazardous substance;

(J) The total maximum amount of each reportable hazardous substance;

(K) The maximum amount of each reported hazardous substance for each location reported;

(L) The total amount of each reportable hazardous substance transported to the facility;

(M) The total amount of each reportable hazardous substance transported from the facility;

(N) The total estimated number of days each hazardous substance was on-site;

(O) The type(s) of containers used for storage of each reportable hazardous substance(s);

(P) The pressure and temperature at which the substance is stored;

(Q) The primary and secondary associated U.S. Department of Transportation hazard classification(s) for each reportable hazardous substance;

(R) The Chemical Abstract Service (CAS) number, if known, for each reportable hazardous substance;

(S) The four-digit United Nations (UN) or North American (NA) number, if known, for each reportable hazardous substance;

(T) The EPA Pesticide Registration number for each reportable hazardous substance; and

(U) The storage location (s) for each reportable hazardous substance(s).

(e) Upon request of the Office of State Fire Marshal, covered employers, owners and operators shall provide Material Safety Data Sheets (MSDSs) for clarification, evaluation and reference purposes;

(f) Other information that may be requested by the Office of State Fire Marshal in order to meet the intent of The Community Right-to-Know and Protection Act.

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.317(1) & 453.317(2)

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1994, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0110

### Record Keeping Requirements

(1) Covered employers, owners and operators shall maintain complete and accurate records of each hazardous substance they manufacture, generate, use, store, possess or dispose of (ORS 453.406):

(a) These records shall be maintained for a period of three calendar years;

(b) Copies of these records shall be kept at the facility for which they apply. EXCEPTION: Records for facilities and/or remote sites, where the covered employer, owner or operator is not set up to maintain such records, may be maintained at another of their facilities within the state.

(c) Examples of hazardous substance records include, but are not limited to:

(A) Material Safety Data Sheets (MSDSs);

(B) Invoice and purchase records;

(C) Receiving and shipping papers;

(D) Bills of lading;

(E) Production records;

(F) Waste/recycling records; and

(G) Inventory/dispensing records.

(H) Risk Management Plan if facility is required to create one by the Environmental Protection Agency.

(2) Covered employers, owners and operators shall maintain a copy of Hazardous Substance Information Survey:

(a) Copies of the survey shall be maintained for a period of three calendar years;

(b) Copies of the survey shall be kept at the facility for which they apply. EXCEPTION: Surveys for facilities and/or remote sites where the employers, owners and operators do not have staff available to complete the survey, may be kept at the facility where the person responsible for submitting the survey works.

(3) Covered employers, owners and operators shall maintain copies of Notice of Noncompliance and Proposed/Final Penalty Assessment Order issued by the Office of State Fire Marshal:

(a) Copies of Notice of Noncompliance and Proposed/Final Penalty Assessment Order shall be maintained for a period of five years;

(b) These copies shall be kept with the covered employer, owner or operator's Hazardous Substance Information Survey.

(4) Covered employers, owners and operators shall, upon request, make records information available and provide copies of those records to the Office of State Fire Marshal (ORS 453.317(2)).

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.406

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0180

### Trade Secrets — Refusal to Disclose

(1) If the covered employer denies a written request, submitted in accordance with OAR 837-085-0170(2), for disclosure of a specific chemical identity, the denial must:

(a) Be provided to the health professional within 30 days of the request;

(b) Be in writing;

(c) State the specific reasons why the request is being denied;

(d) Include evidence to support the claim that the specific chemical identity is a trade secret; and

(e) Explain in detail how alternative information may satisfy the specific planning or health need without revealing the specific chemical identity.

(2) The health professional whose request for information, as authorized by OAR chapter 837, division 085, is denied may refer the request and the covered employer's written denial to the Office of State Fire Marshal for consideration.

(3) When the health professional refers the denial to the Office of State Fire Marshal, the State Fire Marshal shall consider the evidence to determine if:

(a) The covered employer has supported the claim that the specific chemical identity is a trade secret;

(b) The health professional has supported the claim that there is a medical, planning, or health need for the information; and

(c) The health professional has demonstrated adequate means to protect the confidentiality.

(4) If a covered employer, owner or operator demonstrates to the Office of State Fire Marshal that the execution of a confidentiality agreement would not provide sufficient protection against the potential harm from the unauthorized disclosure of trade secret data, the State Fire Marshal may issue such orders or impose such additional limitations or conditions upon the disclosure of the requested chemical information as may be appropriate to assure that the health or planning services are provided without undue risk of harm to the covered employer.

(5) If the Office of State Fire Marshal determines that the specific chemical identity requested under OAR 837-085-0140 is not a bona fide trade secret, or that it is a trade secret but the requesting health professional has a legitimate need for the information, has executed a written confidentiality agreement and has shown adequate means to protect the confidentiality of the information, the covered employer, owner or operator shall provide the requested information.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 453.327 - 453.337

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0210

### Scheduling and Selection of Compliance Audits

(1) Compliance audits may be conducted when the Office of State Fire Marshal deems it necessary to confirm or validate hazardous substance information surveys.

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(2) The reasons the Office of State Fire Marshal would deem it necessary to conduct an audit include, but are not limited to, the following:

- (a) A covered employer, owner or operator fails to submit their survey;
  - (b) A review of survey records show reporting errors may have been made;
  - (c) Information is received that indicates reporting errors may have been made;
  - (d) A covered employer, owner or operator requests an audit be conducted;
  - (e) A North American Industry Classification System code review indicates misreporting may exist;
  - (f) To verify survey information.
- Stat. Auth.: ORS 453.367  
Stats. Implemented: ORS 453.317(8)  
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0250

### Notice of Noncompliance and Proposed/Final Penalty Assessment Order

(1) If, during an audit initiated by the Office of State Fire Marshal, it is concluded that a covered employer, owner or operator has not complied with the Community Right-to-Know and Protection Act and its administrative rules, a Notice of Noncompliance and Proposed/Final Penalty Assessment Order will be issued to the covered employer, owner or operator which shall:

- (a) State the name of the covered employer, owner or operator, location of the facility, and the date of the compliance audit. The period of time the employer, owner or operator is in noncompliance will be included;
- (b) Describe how the covered employer, owner or operator was in noncompliance, such description to take the form of findings of fact and inclusion of law and rule;
- (c) State the classification(s) of noncompliance;
- (d) Identify the rule or order the covered employer, owner or operator failed to comply with and any other statute or rules involved;
- (e) Establish a compliance date if compliance is not obtained prior to issuing a Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
- (f) State the total dollar amount of penalties assessed and the amount subject to suspension;
- (g) Inform the covered employer, owner or operator of the right to appeal the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the compliance date; and
- (h) Notify the covered employer, owner or operator that the Office of State Fire Marshal has designated its file in this matter as the record in this case and that the Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final if a written appeal is not filed within 30 days of its service.

(2) The Notice of Noncompliance and Proposed/Final Penalty Assessment Order shall be served on the covered employer, owner or operator in person or by:

- (a) Regular mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been suspended in full;
- (b) Certified or registered mail, postage prepaid, true, exact and full copies when penalties for noncompliance have been assessed.

Stat. Auth.: ORS 453.367  
Stats. Implemented: ORS 453.357  
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; FM 4-1995, f. 12-14-94, cert. ef. 12-15-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0260

### Covered Employer, Owner or Operator Response to Notice of Noncompliance and Proposed/Final Penalty Assessment Order

(1) After receipt of a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, the covered employer, owner or operator shall submit all information requested by the Office of State Fire Marshal on or before the established compliance date.

(2) The above requirements shall not limit a covered employer's appeal rights.

Stat. Auth.: ORS 453.367  
Stats. Implemented: ORS 453.357  
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0270

### Penalty Criteria for Noncompliance — General

(1) Issuance of any penalty is subject to appeal in accordance with OAR 837-085-0330 through 837-085-0370.

(2) Any covered employer, owner or operator found to be in noncompliance may be assessed a penalty of up to a maximum of \$1,000 per day for each day of noncompliance in accordance with ORS 453.357.

(a) The daily penalty maximum for failing to comply with OAR 837-085 shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(b) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

(c) The daily maximum penalty shall be calculated by dividing the total penalties assessed by the number of days it takes the covered employer, owner or operator to achieve compliance.

(3) The noncompliance classification established in OAR 837-085-0280 shall be used to determine the penalty, if any, that will be assessed.

(4) Covered employers, owners or operators found to be in noncompliance in more than one Noncompliance Class (OAR 837-085-0280) shall have a penalty calculated and assessed for each Noncompliance Class.

(5) Covered employers, owners or operators found to be in noncompliance with the same administrative rule(s) within a five year period of time will be assessed additional penalties for the repeat noncompliance.

(a) If a covered employer, owner or operator is found to be in repeat noncompliance within any classification the penalty for that classification shall be based on the repeat noncompliance.

(b) The maximum amount of penalty for each classification can not exceed the amount of 5th instance penalty identified in OAR 837-085-0290(2) or 837-085-0300(7).

(c) OAR 837-085-0270(5) does not apply to class V Noncompliance.

(6) At any time prior to a Notice of Noncompliance and Proposed/Final Penalty Assessment Order becoming final, the Office of State Fire Marshal may modify the notice to reflect the correct noncompliance classification and/or penalty assessment.

(7) Nothing in these rules shall affect the ability of the Office of State Fire Marshal to modify penalties through a Stipulated Final Order.

(8) Penalty suspensions may be made in accordance with OAR 837-085-0310.

(9) Daily penalties shall be assessed in accordance with OAR 837-085-0305.

Stat. Auth.: ORS 453.367  
Stats. Implemented: ORS 453.357  
Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0280

### Noncompliance Classes

For the purpose of determining the penalties that may be assessed for noncompliance, the following "Noncompliance Classes" are established:

(1) Class I Noncompliance. Covered employers, owners and operators who fail to notify the Office of State Fire Marshal they have reportable quantities of hazardous substances, or fail to request and/or submit their Hazardous Substance Information Survey or substantive changes when required, shall be considered in Class I Noncompliance.

(2) Class II Noncompliance. Covered employers, owners and operators who fail to maintain records in accordance with OAR 837-085-0110; or when requested by the Office of State Fire Marshal, fail to provide an MSDS or other hazardous substance information not elsewhere classified, shall be considered in Class II Noncompliance.

(3) Class III Noncompliance. Covered employers, owners and operators who report all their hazardous substances but fail to submit the information required by OAR 837-085-0090 or who report the information incorrectly shall be considered in Class III Noncompliance. Exceptions: Failing to submit or submitting incorrect information on the following will not be considered Class III Noncompliance or any other class of noncompliance:

- (a) North American Industry Classification System;
- (b) Dun and Bradstreet Number;
- (c) Send to Attention of;
- (d) E-Mail Address;
- (e) Department or Division;
- (f) Number of Employees;
- (g) Special Fire Department Information including, but not limited to:
  - (A) Written Emergency Plan and, if so, the location;
  - (B) Automatic Fire Suppression System;
  - (C) NFPA 704 Placarding;
  - (D) Other Types of Placarding.
- (h) Pure or Mixture;



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- (i) Chemical Abstract Service Number; or
- (j) UN or NA Numbers.

(4) Class IV Noncompliance. Covered employers, owners and operators who, when submitting their Hazardous Substance Information Survey, substantive changes or survey corrections, fail to report all reportable hazardous substances or fail to report the correct maximum daily quantity shall be considered in Class IV Noncompliance.

(5) Class V Noncompliance. Covered employers, owners and operators who intentionally misreport on their Hazardous Substance Information Survey, substantive changes, survey corrections or records of hazardous substance(s) or fail to provide health professionals with any pertinent hazardous substance information, in accordance with OAR 837-085-0170, shall be considered in Class V Noncompliance.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 1-1999, f. 2-2-99, cert. ef. 2-3-99; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0290

### Penalties for Class I, II and III Noncompliance

(1) Covered employers, owners or operators identified as being in Class I, II, III Noncompliance shall be assessed a penalty for each Noncompliance Class for which they are found to be in noncompliance. The penalty assessments shall be made using the penalty schedule set forth in subsection 2 of this section.

(2) Class I, II and III Noncompliance Penalty Schedule: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0300

### Penalties for Class IV Noncompliance

(1) A penalty shall be calculated for the total quantity of unreported radioactive substances, radioactive waste, Class A and B poisons and explosives. These substances are required to be reported at the "Lower Reporting Levels" (LRL) of five gallons, ten pounds or 20 cubic feet.

(a) Penalties for all Extremely Hazardous Substances shall be calculated at the LRL.

(b) For the purpose of determining Class IV Noncompliance penalties, radioactive substances, radioactive waste, Class A and B poisons, explosives and Extremely Hazardous Substances shall be identified as LRL substances.

(2) A separate penalty shall be calculated for the total quantity of all other unreported quantities of hazardous substances. These substances are required to be reported at the "Upper Reporting Levels" (URL) of their reportable quantity. For the purpose of determining Class IV Noncompliance penalties, these substances shall be identified as URL substances.

(3) To calculate the penalty for LRL and URL substances the following criteria shall be used:

(a) A "Total Quantity Range" shall be determined and established for LRL substances, by adding together the daily maximum quantity amounts of all LRL substances, not reported;

(b) A "Total Quantity Range" shall be determined and established for URL substances, by adding together the daily maximum quantity amounts of all URL substances, not reported;

(c) The daily maximum quantity amounts shall be added together as though they were measured in the same unit of measurement;

(d) The Total Quantity Range(s) shall be converted to a Total Quantity Range Code using the Total Quantity Range Code Chart in subsection 5 of this section.

(4) A penalty determination shall be made for Lower Reporting Levels (LRL) and Upper Reporting Levels (URL) substances using the "Class IV Noncompliance Penalty Schedule in subsection 5 of this section:

(a) Penalties will be determined by intersecting the appropriate "Reporting Level," i.e., LRL or URL with the corresponding Penalty Quantity Code;

(b) If penalties are determined for both LRL and URL substances, the higher penalty shall be assessed.

(5) Class IV Noncompliance Penalty Calculation Chart and Schedule: [Table not included. See ED. NOTE.]

(6) Penalties for repeat noncompliance of class IV Noncompliance within a five year period of time shall be calculated in accordance with 837-085-0300 and increased using the following schedule: [Table not included. See ED. NOTE.]

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 9-2002, f. 11-14-02, cert. ef. 11-17-02; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0305

### Penalties for Class V Noncompliance

(1) Covered employers, owners or operators identified as being in Class V Noncompliance shall be assessed a \$1000 penalty for each day they are in noncompliance.

(2) The number of days the covered employer owner or operator is considered in noncompliance shall be based on the total number of days that pass between the date compliance was required to the date compliance is achieved.

(3) Compliance shall be considered achieved when the required correct and accurate information is received by the Office of State Fire Marshal or in the case of noncompliance with OAR 837-085-0170(1) and/or (2) the required information is received by the requesting health professional.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0310

### Penalty Suspensions

(1) Penalties assessed for Class I, II, III and IV Noncompliance will be suspended in accordance with the following criteria:

(a) To receive a penalty suspension covered employers, owners or operators receiving a Notice of Noncompliance and Proposed/Final Penalty Assessment Order must comply with all the noncompliance issues identified in the notice.

(b) Penalty suspensions will be calculated from the date the Notice of Noncompliance and Proposed/Final Penalty Assessment Order was issued to the date the complete and accurate hazardous substance information is received by the Office of State Fire Marshal.

(c) Penalty suspensions will be based on the number of days it takes the affected covered employer, owner or operator to comply with the Notice of Noncompliance and Proposed/Final Penalty Assessment Order and the number of instances involved with the notice.

(d) Penalty suspensions will be calculated for each class of noncompliance identified in the Notice of Noncompliance and Proposed/Final Penalty Assessment Order.

(e) Penalty suspensions will be determined using the Penalty Suspension Schedule set forth in subsection 3 of this section.

(2) If a covered employer, owner or operator is found to be in repeat noncompliance the amount of penalty suspended shall be reduced based on the instance of the repeat noncompliance.

(3) Penalty Suspension Schedule: [Table not included. See ED. NOTE.]

(4) Penalty suspensions will not be made on Class V Noncompliance penalty assessments.

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

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0320

### Payment of Penalties

(1) All civil penalties become due and owing ten days after the Notice of Noncompliance and Proposed/Final Penalty Assessment Order becomes final.

(2) If payment is not received within ten days after the order becomes final, it may be docketed as a judgment as provided by law.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## 837-085-0350

### Informal Conference

(1) The Office of State Fire Marshal will provide an opportunity for a person to discuss their appeal informally. An informal conference may be requested and held prior to or in lieu of a formal hearing.

(2) An informal conference concerning survey reporting requirements, Notice of Noncompliance and Proposed/Final Penalty Assessment Order *shall not* extend the 30 days allowed for filing appeals.

(3) The informal conference may be used to:

(a) Clarify requirements of the Community Right-to-Know and Protection Act;

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- (b) Discuss the basis for any Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
  - (c) Discuss correction dates;
  - (d) Clarify the wording and meaning of the Notice of Noncompliance and Proposed/Final Penalty Assessment Order;
  - (e) Improve a person's understanding of the Community Right-to-Know and Protection Act;
  - (f) Correct errors in a Notice of Noncompliance and Proposed/Final Penalty Assessment Order or penalty;
  - (g) Narrow issues of concern; and/or
  - (h) Arrive at the basis for an informal disposition of an appeal.
- (4) As the result of an informal conference, the Office of State Fire Marshal may amend, withdraw, extend, delete or reduce a Notice of Noncompliance and Proposed/Final Penalty Assessment Order, for good cause.

Stat. Auth.: ORS 453.367

Stats. Implemented: ORS 435.357

Hist.: FM 1-1994, f. & cert. ef. 1-14-94; OSFM 5-2005, f. 3-31-05, cert. ef. 4-1-05

## Department of Public Safety Standards and Training Chapter 259

**Adm. Order No.:** DPSST 2-2005(Temp)

**Filed with Sec. of State:** 3-29-2005

**Certified to be Effective:** 4-1-05 thru 9-28-05

**Notice Publication Date:**

**Rules Amended:** 259-008-0068

**Subject:** Housekeeping change only. Increases fingerprint processing fee for Certified Retired Police Officers based on current charges by Oregon State Police and Federal Bureau of Investigation. OSP recently adopted a fee increase by temporary rule, effective 3-1-05.

**Rules Coordinator:** Bonnie Salle—(503) 378-2431

### 259-008-0068

#### Retired Police Officer Certification and Maintenance Standards

- (1) Definitions
  - (a) "Honorably retired" means reaching the state of Oregon's recognized retirement age and retiring in good standing from active service as a police officer with a minimum of five years of full-time law enforcement experience in Oregon.
  - (A) "Retired Police Officer" means an honorably retired police officer who may carry a DPSST Retirement card.
  - (B) "Certified Retired Police Officer" means an honorably retired police officer who obtains and maintains her or his certification.
- (2) Certified Retired Police Officer Status
  - (a) The certification of an honorably retired police officer that meets and maintains the minimum standards established in section (5) of this rule will not lapse. To have police officer authority, a certified honorably retired police officer must be affiliated with and under the direction of a law enforcement agency.
  - (b) A certified honorably retired police officer that resumes full-time, permanent employment with a law enforcement agency, in a certified discipline, must meet active police certification requirements as required by OAR 259-008-0060.
  - (A) The law enforcement agency must submit the form F-4 and F-7 to the Department when a certified honorably retired police officer is hired on a permanent, full-time basis.
  - (3) The process for obtaining a police officer Retirement Card shall be as stated in OAR 259-008-0100.
  - (4) Process for obtaining Retired Police Officer certification.
    - (a) To avoid a lapse of certification, upon retirement or within 90 days after retirement, an honorably retired police officer must submit a form F-7R with the required fees and two fingerprint cards.
    - (b) After a lapse of certification (90 days) but before 2 1/2 years, the honorably retired police officer must submit the application for Retired Police Officer certification with the required fees and two fingerprint cards.
    - (c) After a lapse of 2 1/2 years but less than 5 years, the honorably retired police officer must submit the application for Retired Police Officer certification, complete the DPSST Police Career Office Development (COD) training course; see OAR 259-008-0025(1)(f), submit the required fees and two fingerprint cards.
    - (d) After a lapse of more than 5 years, the honorably retired police officer is no longer eligible to obtain a Retired Police Officer certification.
    - (e) For the honorably retired police officer whose certification has lapsed between October 29, 1999, and January 16, 2004, and who is not

covered by (a) or (b) of this section, Certified Retired Police Officer status may be achieved by submitting a form F-7R, the required fees and two fingerprint cards, within 180 days from January 16, 2004, and provides evidence that;

(A) The police officer honorably retired between October 29, 1999, and January 16, 2004, see Definitions 1(a) for criteria; and

(B) The honorably retired police officer has had no disqualifying behavior since retirement as established by a CCH and/or other satisfactory evidence to refute an allegation(s) of disqualifying behavior if such is received by the Department from any source.

(5) Process for maintaining Certified Retired Police Officer certification.

(a) A new application must be submitted to DPSST every three years with;

(A) Two fingerprint cards; and

(B) The required fees.

(b) Evidence must be provided on a form supplied by the Department that the maintenance training, as required by OAR 259-008-0065, has been met during the previous three-year period.

(A) Failure to notify the Department of the required training will result in a warning notification letter being sent to the certified honorably retired officer.

(B) A six (6) month extension will be automatically authorized.

(C) The honorably retired police officer must request recertification, along with an explanation of why the training was not completed, and

(D) Provide verification that the missed training was completed by submitting a form F-15.

(E) Failure to complete the training and/or submit the completed Form F-15, after the warning notification letter and before the six (6) month extension has expired will result in non-renewal of the Certified Retired Police Officer certification.

(c) It is the certified honorably retired police officer's responsibility to fund and coordinate training needs to meet the mandatory training requirements.

(d) The certified honorably retired police officer who maintains the retired certification will be excluded from the "lapsed" status and will not be required to retake any basic police training in order to re-certify as an active police officer.

(e) The renewal application, fingerprints, and fees will not be required if the honorably retired officer is employed in a full-time capacity.

(6) Denial or revocation of a Retired Police Officer Certification shall be handled in the same manner as active police officer certification pursuant to OAR 259-008-0070.

(7) Fees. Payments to the Department are non-refundable, and must be paid by personal check, money order or cashier's check. No credit cards or cash will be accepted. The Department, in carrying out the provisions of OAR 259-008-0068, shall charge the following fees.

(a) A fee of \$40 shall be submitted with each application for a Certified Retired Police Officer certification.

(b) Appropriate fees shall be submitted with each application for a fingerprint criminal history check. These fees are to recover the costs of the fingerprint check through the Oregon State Police and Federal Bureau of Investigation. An additional fee will be charged for the third submittal of fingerprint cards when rejected for filing by the FBI. Current fee schedules for processing fingerprints may be obtained from the Department.

Stat. Auth.: ORS 181.667

Stats. Implemented: ORS 181.667

Hist.: DPSST 2-2004, f. & cert. ef. 1-16-04; DPSST 2-2005(Temp), f. 3-29-05, cert. ef. 4-1-05 thru 9-28-05

## Department of State Lands Chapter 141

**Adm. Order No.:** DSL 2-2005

**Filed with Sec. of State:** 4-13-2005

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**Notice Publication Date:** 1-1-05

**Rules Adopted:** 141-130-0010, 141-130-0020, 141-130-0030, 141-130-0040

**Subject:** The rules are necessary to implement the provisions of sections 28 to 30 of Enrolled SB 311 (2003 Legislative Session). The legislation authorized the Oregon Department of State Lands to enter into agreements with volunteer groups and others to assist with

# ADMINISTRATIVE RULES

Department programs and maintenance and to provide interpretive and educational functions of State Lands.

**Rules Coordinator:** Nicole Kielsmeier—(503) 378-3805, ext. 239

## 141-130-0010

### Purpose

The purpose of OAR chapter 141, division 130 is to establish procedures for volunteer associations to enter into agreements with the Department of State Lands to provide volunteer services. These services may include assistance with program implementation, maintenance or improvement of state lands administered by the department, and interpretive and educational programs.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045

Stats. Implemented: ORS 273.196 - 273.199

Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

## 141-130-0020

### Definitions

The following definitions apply to this division:

(1) "Agreement" means a form signed by a volunteer association and the department.

(2) "Department" means the Department of State Lands.

(3) "Director" means the director of the Department of State Lands or designee.

(4) "State land facility" means a building or other structure located on lands owned by or under the control of the department.

(5) "Volunteer association" means:

(a) An entity that is tax exempt under section 501(c)(3) of the Internal Revenue Code including a group of individuals, volunteer group, service club;

(b) A private, non-profit scientific, historic, or educational organization organized solely for the purpose of providing interpretative services for state land facilities in Oregon;

(c) A business; or

(d) A state or federal agency other than the Department of State Lands.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045

Stats. Implemented: ORS 273.196 - 273.199

Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

## 141-130-0030

### Volunteer Agreements

(1) A volunteer association may request that the department enter into an agreement with the association to allow volunteers to participate in:

(a) The operation of department programs;

(b) The maintenance or improvement of state lands or state land facility; or

(c) Providing educational and interpretive programs and information to the public.

(2) If more than one volunteer association requests an agreement under section (1) above, the department may solicit a proposal for services from each association. The department shall select an association based upon the needs and priorities of the state lands or state land facility. The department may enter into an agreement with more than one association if the services provided by the associations are complementary for an area of state lands or a state land facility.

(3) An agreement between the department and a volunteer association shall remain in effect for five years and shall be on a form developed by the department. The agreement shall include, but need not be limited to:

(a) Identification of the state lands or state lands facility where the activity will occur;

(b) A list of the duties and responsibilities of the department and the volunteer association under the agreement;

(c) If the department agrees to provide space to a volunteer association at a state land facility, the agreement shall include a description of the space provided and the uses of the space;

(d) A requirement that the volunteer association or its members submit the appropriate information to receive volunteer injury coverage under ORS 278.125 for those members who will be participating in activities covered by an agreement;

(e) A requirement that the volunteer association or its members submit the appropriate forms to indemnify, defend and hold harmless the State of Oregon, the State Land Board and members thereof, the department, together with its officers, agents and employees from all claims, suits or actions of any nature, including but not limited to negligence, arising from or in connection with an activity conducted under an agreement;

(f) A requirement that any member of the volunteer association who is participating in an activity under an agreement will be fingerprinted if the member:

(A) Is working with minors and is unsupervised by department staff; or

(B) Has access to department funds.

(g) An agreement by the parties to enter into an annual written work plan detailing how the general duties and responsibilities described in a five-year agreement will be carried out. The annual work plan shall be incorporated by reference into the five-year agreement and shall be renewed annually by both parties. Either party may request an amendment to the work plan at any time. An amendment shall require the approval of both parties.

(4) An agreement shall remain in effect for five years unless terminated by either the department or the volunteer association upon 30 days written notice to the other party. A five-year agreement may be amended or renewed upon the review and approval of both parties.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045

Stats. Implemented: ORS 273.196 - 273.199

Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

## 141-130-0040

### Guidelines for Approval of Interpretive and Educational Materials

(1) The state land facility manager has final approval authority for any items sold or displayed by a volunteer association at a state land facility. The following guidelines apply to any sales or displays:

(a) An association may display educational or interpretive products;

(b) A private, non-profit scientific, historic or educational organization organized solely for the purpose of providing interpretive services for state land facilities in Oregon may sell educational or interpretive products; and

(c) The products should relate to, be consistent with and provide information about or promote the mission, cultural, natural or historical features of the state land facility, the state lands, or the surrounding region.

(2) No tobacco, firearms, ammunition or alcohol products may be sold at a state land facility.

Stat. Auth.: ORS 273.196 - 273.199 & 273.045

Stats. Implemented: ORS 273.196 - 273.199

Hist.: DSL 2-2005, f. 4-13-05, cert. ef. 4-15-05

## Department of Transportation Chapter 731

**Adm. Order No.:** DOT 4-2005

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 3-18-05

**Notice Publication Date:** 2-1-05

**Rules Adopted:** 731-080-0010, 731-080-0020, 731-080-0030, 731-080-0040, 731-080-0050, 731-080-0060, 731-080-0070

**Subject:** Chapter 862, Oregon Laws 2001 authorizes the Department of Transportation to develop one or more alternatives to the current system of taxing highway use through motor vehicle fuel taxes. Section 43, Chapter 618, Oregon Laws 2003 allows the Department to vary any fee established under a pilot program to facilitate the maximum use of road capacity. These rules establish the Road User Fee Pilot Program. The pilot program volunteer participants will pay a new mileage fee and not pay the current fuels tax. The fees collected are based on the miles driven and where the person drives within the state of Oregon. The rules establish the fees that will be charged and general guidelines for the program. All participation by individuals and service stations is voluntary. Volunteers will be required to enter into an agreement with ODOT.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

## 731-080-0010

### Authority and Purpose

Chapter 862, Oregon Laws 2001 authorizes the Department of Transportation to develop one or more alternatives to the current system of taxing highway use through motor vehicle fuel taxes. Section 43, Chapter 618, Oregon Laws 2003 allows the Department to vary any fee established under a pilot program to facilitate the maximum use of road capacity. The purpose of OAR 731-080-0010 through 731-080-0070 is to establish the Road User Fee Pilot Program.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05



# ADMINISTRATIVE RULES

## 731-080-0020

### Definitions

(1) "Area Pricing" means a different fee charged per mile driven in an area specified as an Area Pricing Zone during certain hours on certain days, as specified in the Pilot Program Agreement.

(2) "Area Pricing Zone" means a specified area within Oregon in which a Program Volunteer is charged a different fee when driving within that area during certain hours on certain days.

(3) "Area Pricing Group" means the group of Program Volunteers who are subject to Area Pricing.

(4) "Applicant" means an individual or service station that has indicated an interest in participating in the Pilot Program by completing and submitting an application for consideration.

(5) "Control Group" means the group of Program Volunteers who will not pay a VMT.

(6) "Fuels Tax" means the Oregon Motor Vehicle Fuels Tax as administered under ORS 319.010 through 319.430.

(7) "Non-Area Pricing Group" means the group of Program Volunteers who are not subject to Area Pricing.

(8) "Participating Service Station" means a service station selected to participate in the Pilot Program by installing necessary equipment for the Pilot Program.

(9) "Pilot Area" means the geographic area where the Program Volunteers reside.

(10) "Pilot Program" means the ODOT pilot program designed to test a mileage fee concept recommended by the RUFTF to the legislature in "Report to the 72nd Oregon Legislative Assembly" March 2003.

(11) "Program Volunteer" means an individual selected to participate in the Pilot Program.

(12) "Reader Device" means a VMT reader.

(13) "Reader Location Owner" means the owner of a location where a Reader Device is located, with the exception of Participating Service Stations.

(14) "Road User Fee Task Force" or "RUFTF" means the task force described in sections 1-6, chapter 862, Oregon Laws 2001.

(15) "Vehicle Miles Traveled" or "VMT" means miles driven.

(16) "VMT Fee" means a fee charged per mile driven in Oregon.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

## 731-080-0030

### Road User Fee Task Force Pilot Program Generally

(1) ODOT will conduct a Pilot Program in which Program Volunteers must pay a designated VMT Fee in lieu of paying an amount equal to the Fuels Tax associated with the fuel purchased except for those in the Control Group.

(2) The VMT Fee for the Non-Area-Pricing Group is 1.2 cents per mile.

(3) The VMT Fee for the Area Pricing Group is .43 cents per mile outside Area Pricing Zones and 10 cents per mile in Area Pricing Zones.

(4) Area Pricing Zones will be determined by ODOT prior to the start of the Pilot Program.

(5) Area Pricing Zones will be determined by ODOT based on high volume traffic locations and times.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

## 731-080-0040

### Program Volunteers

(1) ODOT may recruit up to 500 Applicants to participate in the Pilot Program as Program Volunteers.

(2) Program Volunteers will not have the Fuels Tax associated with fuel purchased at Participating Service Stations included in the fuel purchase price except for those in the Control Group.

(3) ODOT will assess Program Volunteers the VMT Fee and refund the Fuels Tax associated with the fuel purchased when the Program Volunteer purchases fuel from a service station other than a Participating Service Station except for those in the Control Group.

(4) ODOT will ensure that Participating Service Stations are reimbursed for Fuels Tax associated with the amount of fuel purchased by Program Volunteers each month.

(5) Participating Service Stations will pay to ODOT any VMT Fees collected in excess of the Fuels Tax associated with the fuel purchased by Program Volunteers each month.

(6) All Program Volunteers will receive compensation for participating in the Pilot Program in equal amounts.

(7) Program Volunteers are required to enter into a Pilot Program agreement, outlining the duties and obligations of each party in the Pilot Program. Fulfillment of all requirements of such agreement is a prerequisite to receipt of any compensation.

(8) ODOT may limit the amount of additional VMT Fee paid in comparison to the amount of Fuels Tax which would have otherwise been associated with the amount of fuel purchased by Program Volunteers. Such loss limit shall apply equally to all Program Volunteers except for those in the Control Group.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

## 731-080-0050

### Participating Service Stations

(1) ODOT may select up to four Applicants to participate in the Pilot Program as Participating Service Stations. ODOT will issue a Request for Information (RFI) for interested Applicants, which will be distributed throughout the Pilot Area. The RFI may include the invitation to an informational meeting with ODOT.

(2) Participating Service Stations will be selected based on location, expense to upgrade existing technology, and the number of the Applicant's service stations in the Pilot Area.

(3) ODOT may fund technology system upgrades for Participating Service Stations.

(4) ODOT may enter into negotiations with Participating Service Stations to determine compensation.

(5) Participating Service Stations are required to enter into a Pilot Program agreement, outlining the duties and obligations of each party in the Pilot Program. Fulfillment of all requirements of such agreement is a prerequisite to agreed upon payment for technology system upgrade and receipt of any compensation.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

## 731-080-0060

### Reader Location Owners

(1) ODOT may select sites in addition to Participating Service Stations for installation of Reader Devices.

(2) Locations will be selected based on location and convenience to Program Volunteers.

(3) ODOT will fund installation and removal of Reader Devices at such locations.

(4) ODOT may enter into negotiations with Reader Location Owners to determine any compensation.

(5) Reader Locations Owners are required to enter into a Pilot Program agreement, outlining the duties and obligations of each party in the Pilot Program. Fulfillment of all requirements of such agreement is a prerequisite to agreed upon receipt of any compensation.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003

Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003

Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

## 731-080-0070

### VMT Fee or Fuels Tax Collection

(1) A Program Volunteer will pay the VMT Fee when purchasing fuel at a Participating Service Station except if in the Control Group.

(2) The amount of Fuels Tax associated with the amount of fuel purchased by the Program Volunteer will be automatically deducted from the purchase price by the Participating Service Station except if in the Control Group.

(3) When a Program Volunteer, except if in the Control Group, purchases fuel from a service station that is not a Participating Service Station and ODOT receives documentation of such purchase, including the amount of fuel purchased, the Fuels Tax associated with the purchase and the VMT:

(a) The Program Volunteer will be charged the VMT Fee by ODOT; and

(b) ODOT will refund the Fuels Tax associated with the amount of fuel purchased, on a monthly basis.

(4) ODOT will reimburse Participating Service Stations, on a monthly basis, any Fuels Tax amounts associated with fuel purchased that have been deducted from a Program Volunteer's purchase price which are greater than the VMT Fees collected.

(5) Participating Service Stations will pay to ODOT, on a monthly basis, any VMT Fees collected that exceed the amount of Fuels Tax that

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would have otherwise been associated with fuel purchased by and collected from Program Volunteers except for those in the Control Group.

Stat. Auth.: ORS 184.616, 184.619, Ch. 862, OL 2001 & Ch. 618, OL 2003  
Stats. Implemented: Ch. 862, OL 2001 & Ch. 618, OL 2003  
Hist.: DOT 4-2005, f. & cert. ef. 3-18-05

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

**Adm. Order No.:** DMV 10-2005

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 3-18-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 735-024-0025

**Subject:** OAR 735-024-0025(1) describes when DMV will issue a branded Oregon title or a title with an “assembled” make. OAR 735-024-0025(1)(a) erroneously refers to OAR 735-024-0015, section (2), as the section that describes the title brand(s) that may be added to an Oregon title. The correct reference should be OAR 735-024-0015, section (3). The amendment to OAR 735-024-0025(1)(a) corrects the reference to OAR 735-024-0015(3).

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 735-024-0025

#### Title Brands; When Issued, Removed and Exceptions

(1) When Issued. DMV will issue a branded title or a title with an “assembled” make when an application for an Oregon title is submitted and:

(a) The vehicle’s title carries a brand(s) described under OAR 735-024-0015(3);

(b) The vehicle meets the definition of an “Assembled vehicle” as defined under OAR 735-024-0015(2); or

(c) The vehicle meets the definition of a “Reconstructed Vehicle,” a “Replica” or a “Totaled vehicle” as those terms are defined under OAR 735-024-0015.

(2) An Oregon title issued under section (1) of this rule:

(a) Will not necessarily be issued with the same brand that appeared on the vehicle’s previous certificate of title or other ownership document(s);

(b) Will be issued with a brand described under OAR 735-024-0015 determined by DMV to be most comparable to the brand that appeared on the previous certificate of title. This subsection does not apply to a “branded” brand;

(c) Will indicate the name of the jurisdiction that issued the title brand, unless the title brand was issued by DMV; and

(d) Will be issued with a brand or “assembled” make described under OAR 735-024-0015 when DMV determines from a previous title or vehicle record, from the application for title or from information obtained from any source that a brand or “assembled” make should be placed on the Oregon title as set forth in section (1) of this rule. DMV may require documentation to determine if a vehicle should be issued an Oregon title with an “assembled” make, or a “reconstructed” or “replica” brand.

(3) Except as specifically provided in section (4) of this rule, once a title brand or “assembled” make has been placed on a vehicle’s Oregon Certificate of Title that brand or “assembled” make will appear on any subsequent Oregon title issued for the vehicle.

(4) DMV may omit, remove, add or change a title brand or “assembled” make when:

(a) DMV receives information that indicates an Oregon title or Oregon Salvage Title Certificate was issued with an incorrect brand or “assembled” make. For example, DMV receives written information from an originating jurisdiction that indicates its title incorrectly reflects a title brand;

(b) DMV is satisfied the title brand or “assembled” make was placed on the Oregon title or Oregon Salvage Title Certificate in error;

(c) DMV failed to place a title brand or “assembled” make on the Oregon title or Oregon Salvage Title Certificate when required under section (1) of this rule or subsections (d), (e) and (f) of this section.

(d) A subsequent accident or occurrence causes the vehicle to be identified with a brand or different brand such as “totaled” or “reconstructed.”

(e) A vehicle issued an Oregon title with any brand or an “assembled” make other than totaled is reported to DMV as a totaled vehicle under ORS 819.012 or 819.014. Except as described in subsection (f) of this section, if DMV issues a new Oregon title, it will include a totaled brand, which

replaces any previous brand shown on the Oregon title. For example, a vehicle issued an Oregon title with a flood brand, will be issued an Oregon title with a totaled -reconstructed brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle;

(f) Notwithstanding subsection (e) of this section, a vehicle issued an Oregon title with an assembled make, or glider kit, reconstructed or replica brand is reported to DMV as a totaled vehicle. If DMV issues a new Oregon title, it will include the original brand and a totaled brand. For example, a vehicle issued an Oregon title with a “replica” brand that is later reported to DMV as “totaled” under ORS 819.020 or 819.014, will be issued an Oregon title with a “replica-totaled-reconstructed” brand when the vehicle is reported to DMV as a totaled vehicle and is subsequently titled as a reconstructed vehicle; or

(g) The reason the vehicle was reported to DMV as a totaled vehicle is theft and the vehicle is recovered and no longer meets the definition of a “totaled vehicle” under ORS 801.527.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 803.012, 803.015, 803.0140, 819.016, 821.060  
Stats. Implemented: ORS 803.015 & 803.420

Hist.: DMV 18-2004, f. & cert. ef. 8-20-04; DMV 10-2005, f. 3-18-05

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## Department of Transportation, Highway Division Chapter 734

**Adm. Order No.:** HWD 2-2005

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 3-18-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 734-073-0051, 734-073-0056, 734-073-0060, 734-073-0065, 734-073-0100, 734-073-0110, 734-073-0120, 734-073-0130, 734-073-0140, 734-074-0008, 734-074-0010, 734-074-0020, 734-074-0045, 734-074-0051, 734-082-0005, 734-082-0040

**Subject:** Division 73, 74 and 82 rules govern vehicles and loads that exceed statutory maximum size and weight limits. The amendments include: updating references to maps and forms; revising definitions to be consistent with other rules governing over-dimensional vehicles and loads; reducing the minimum visibility distance required for triple trailer operations to be consistent with other inclement weather visibility requirements; and making minor corrections. Further, amendments clarify Department policy regarding implementation of section 3, chapter 185, Oregon Laws 2003 (SB 425), which states that a road authority may not issue a permit if the sole purpose of the permit is to specify highways where a vehicle or combination of vehicles may not travel.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

### 734-073-0051

#### Definitions

As used in division 73 rules, the following definitions shall apply:

(1) “Automobile transporter” means a combination of vehicles that transports vehicles on a semitrailer and may also transport vehicles on the power unit behind the cab or on an over-cab rack.

(2) “Boat transporter” means a combination of vehicles that transports boats on a semitrailer and may also transport boats on the power unit behind the cab or on an over-cab rack.

(3) “Bus” means a vehicle designed and operated exclusively to transport not less than 10 persons excluding the driver, primarily for hire. The term “bus” does not include motor homes or busses converted or used for any other purpose.

(4) “Drive-away saddlemount vehicle transporter combination” and “drive-away saddlemount with fullmount vehicle transporter” means a combination of vehicles consisting of a truck-tractor that tows not more than three saddlemounted vehicles. These vehicles may also include not more than one fullmounted vehicle.

(5) “Automobile transporter towing stinger-steered semitrailer” means an automobile transporter having the fifth-wheel assembly mounted on a stinger or extension to the framework of the truck. The fifth-wheel connection must be behind and below the axle in front of it.

(6) “Boat transporter towing stinger-steered semitrailer” means a boat transporter having the fifth-wheel assembly mounted on a stinger or extension to the framework of the truck. The fifth-wheel connection must be behind and below the axle in front of it.

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(7) "MCTD" means Motor Carrier Transportation Division of the Oregon Department of Transportation.

(8) "Overall length," as used in division 73 is as defined in OAR 734-071-0010(2)(i).

(9) "Traditional automobile transporter" means an automobile transporter having the fifth-wheel assembly over the drive axle(s) and towing a semitrailer. The power unit may include a framework or other assembly that provides the ability to also transport automobiles.

(10) "Traditional boat transporter" means a boat transporter having the fifth-wheel assembly over the drive axle(s) and towing a semitrailer. The power unit may include a framework or other assembly that provides the ability to also transport boats.

(11) "Truck-tractor semitrailer-semi-trailer" means a combination of vehicles consisting of a truck-tractor which also tows two semitrailers connected by kingpin to fifth-wheel assemblies. These combinations of vehicles do not have an intermediate converter dolly between the two semitrailers which is normally used in double trailer operations. This is commonly referred to as a "B-Train."

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060 & 818.200

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0056

### Truck-Tractor and Semitrailer Combinations — National Network Highways

(1) The Federal Highway Administration determined Oregon's grandfathered semitrailer length to be 53 feet, allowed by the STAA 1982. The length of a semitrailer operated in Oregon on the National Network Highways designated by the STAA 1982 shall not exceed 53 feet. The overall length is not restricted.

(2) The length of any load carried on the semitrailer authorized in section (1) of this rule shall not extend beyond the rear of the semitrailer by more than five feet.

(3) The National Network Highways in Oregon approved for operation by this rule consist only of those highways listed in Code of Federal Regulations Title 23, Part 658, Appendix A. These routes are shown in green on Route Map 7, available from the MCTD Over-Dimensional Permit Unit. Route Map 7 dated January 2005 is by reference made a part of Division 73 rules.

(4) A permit is not required for the dimensions and routes authorized by this rule.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 4-1992, f. & cert. ef. 3-25-92; HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0060

### Truck-Tractor with Semitrailer Combinations — State-Approved Highways

(1) The length of a semitrailer in a truck-tractor and semitrailer combination shall not exceed 53 feet. The overall length of the combination shall not exceed 65 feet.

(2) The length of any load carried on the semitrailer authorized in section (1) of this rule, shall not extend beyond the rear of the semitrailer by more than five feet.

(3) State approved highways for the movement of combinations of vehicles described in section (1) of this rule, shall consist of the state highways designated by the Chief Engineer. The list of approved highways and types of vehicle combinations authorized are maintained by the Chief Engineer, and are displayed in black on Route Map 7.

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 2HD 20-1983, f. & cert. ef. 9-23-83; HWY 4-1992, f. & cert. ef. 3-25-92; HWY 1-1995, f. & cert. ef. 9-18-95; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0065

### Truck-Tractor with Semitrailer and Trailer Combinations and Truck-Tractor with Semitrailer and Semitrailer Combinations

(1) The maximum length of any semitrailer or trailer in a truck-tractor with semitrailer and trailer or truck-tractor with semitrailer and semitrailer combination shall not exceed 40 feet.

(2) The overall length of the combination is not restricted; however, the maximum dimension when measured from the front of the first semitrailer to the rear of the second semitrailer or trailer shall not exceed those dimensions set forth in section (3) of this rule.

(3)(a) Provided the distance from the front of the first semitrailer to the rear of the second semitrailer or trailer does not exceed 60 feet, the com-

bination of vehicles may operate over Group 1 highways. Group 1 highways are shown on Group Map 1, available from the MCTD Over-Dimensional Permit Unit. Group Map 1 dated January 2005 is by reference made a part of Division 73 rules;

(b) If the distance from the front of the first semitrailer to the rear of the second semitrailer or trailer is more than 60 feet but does not exceed 68 feet, the combination of vehicles may operate over those state highways listed in Code of Federal Regulations Title 23, Part 658, Appendix A, and are displayed on Route Map 7;

(c) In no instance shall the distance from the front of the first semitrailer to the rear of the second semitrailer or trailer exceed 68 feet; and

(d) The length of any load carried on the semitrailer or trailer of a truck-tractor with semitrailer and trailer or truck-tractor with semitrailer and semitrailer combination as described in this rule shall not extend beyond the rear of the semitrailer or trailer by more than five feet.

(4) A permit is not required for the dimensions and routes authorized by this rule.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 2HD 20-1983, f. & cert. ef. 9-23-83; HWY 4-1992, f. & cert. ef. 3-25-92; HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0100

### 65-Foot Tractor-Semitrailer Combinations

Tractor-semi-trailer combinations having an overall length in excess of 60 feet, but not exceeding 65 feet, may operate over certain designated highways. In such combinations the semitrailer may not exceed 48 feet. Designated highways where these combinations may operate are restricted to the following:

(1) Any state highway or section thereof which has two or more lanes of travel in the same direction.

(2) The highways indicated in solid black on Route Map 7, which by this reference is made a part hereof.

(3) Such additional highways which, after investigation and consideration, the Chief Engineer may deem capable of safely accommodating the described combinations of vehicles. Trial test runs may be required in determining additional route approval.

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060, 818.200 & 818.220

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: 1 OTC 5-1980, f. & cert. ef. 3-27-80; HWY 1-1995, f. & cert. ef. 9-18-95; Renumbered from 734-071-0020; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0110

### Specialized Equipment — Automobile Transporters

The Federal Highway Administration determines Automobile Transporters are Specialized Equipment as provided by 23 CFR 658.13(e).

(1) Traditional automobile transporters are authorized to operate on National Network Highways without permit or overall length restriction, provided the semitrailer does not exceed 53 feet, and the load does not extend beyond the rear of the semitrailer by more than five feet.

(2) Automobile transporters towing stinger-steered semitrailers may operate without a permit on National Network Highways with a length of 75 feet, excluding load overhangs, provided the semitrailer does not exceed 53 feet and the load does not extend beyond the front of the power unit by more than four feet and does not extend beyond the rear of the semitrailer by more than five feet.

(3) Automobile transporters are authorized to have load protection devices or aerodynamic devices provided the devices do not exceed legal load extensions as defined in section (2) of this rule and the device is not load bearing.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0120

### Specialized Equipment — Boat Transporters

The Federal Highway Administration determines Boat Transporters are Specialized Equipment as provided by 23 CFR 658.13(e).

(1) Traditional boat transporters are authorized to operate on National Network Highways without permit or overall length restriction, provided the semitrailer does not exceed 53 feet, and the load does not extend beyond the rear of the semitrailer by more than five feet.

(2) Boat transporters towing stinger-steered semitrailers may operate without a permit on National Network Highways with a length of 75 feet, excluding load overhangs, provided the semitrailer does not exceed 53 feet



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and the load does not extend beyond the front of the power unit by more than four feet and does not extend beyond the rear of the semitrailer by more than five feet.

(3) Boat transporters are authorized to have load protection devices or aerodynamic devices provided the devices do not exceed legal load extensions as defined in section (2) of this rule and the device is not load bearing.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWY 8-1997, f. & cert. ef. 8-26-97; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0130

### Specialized Equipment — Drive-Away Operations

The Federal Highway Administration determines Drive-away saddle-mount vehicle transporter combinations are Specialized Equipment as provided by 23 CFR 658.13(e)(iii).

(1) A Drive-away saddle-mount vehicle transporter combination or a Drive-away saddlemount with fullmount vehicle transporter may operate without permit on National Network Highways with an overall length limit of 75 feet.

(2) All Drive-away saddlemount vehicle transporter combinations must comply with all applicable safety regulations of 49 CFR 393.71.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050, 810.060, 818.200 & 818.220

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-073-0140

### Specialized Equipment for Transporting Logs or Poles

(1) As used in OAR chapter 734, division 73, the following two combinations of vehicles are considered the same as a truck-tractor with semitrailer and trailer combinations:

(a) A combination of vehicles capable of carrying no more than two loads of logs placed end to end consisting of a log-truck and pole trailer pulling a trailer; or

(b) A combination of vehicles transporting logs and consisting of a log-truck and two load carrying stinger-steered pole trailers with the first stinger-steered pole trailer supporting one end of logs loaded on the log-truck and one end of logs loaded on the second stinger-steered pole trailer.

(2) The following conditions apply to the vehicle combinations described in section (1) of this rule:

(a) These combinations of vehicles may not travel unladen and must only be used to transport logs or poles;

(b) The distance measured from the log bunk on the truck to the rear of the second stinger-steered pole trailer or trailer shall not exceed 68 feet;

(c) The reach of a pole trailer may not extend more than five feet from the end of the tunnel housing; and

(d) The overall length is not restricted.

(3) No part of any load carried on the trailer or the second stinger-steered pole trailer shall extend beyond the rear more than five feet.

(4) The routes approved for operation of these combinations of vehicles consist only of those highways listed in Code of Federal Regulations Title 23, Part 658, Appendix A and other approved highways as displayed on Route Map 7.

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

Stat. Auth.: ORS 184.616, 184.619, 810.030 & 818.200

Stats. Implemented: ORS 818.030, 818.200 & 818.220

Hist.: HWY 1-1995, f. & cert. ef. 9-18-95; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-074-0008

### Definitions

As used in division 74 rules:

(1) "Auxiliary axle" is an axle that qualifies as a booster axle, flip axle or lift axle and when attached to the rear of a trailer shall be included in the measurement of the trailer.

(2) "Booster Axles(s)" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning.

(3) "Converter dolly" means those devices towed behind a vehicle and used to convert a semitrailer to function as a self-supporting trailer.

(4) "Dromedary truck-tractor" means a motor truck designed to carry a load and also pull a semitrailer by using a kingpin to fifthwheel connection. Unless specifically authorized, a dromedary truck-tractor may not tow a stinger steered trailer.

(5) "Flip axle" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length and hauling capacity of the trailer.

(6) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298.

(7) "Lift Axle" means an axle(s) that can be raised from or lowered to the surface of the ground.

(8) "Log-truck" means a motor vehicle designed and used in conjunction with a pole trailer to transport one load of logs where one end of the logs rests upon the log truck and one end of the logs rests upon the pole trailer.

(9) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(10) "Motor Truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers.

(11) "Pole Trailer" means a trailer attached or secured to a vehicle and ordinarily used for transportation of long or irregular loads such as logs capable of generally sustaining themselves as beams between the towing vehicle and the pole trailer.

(12) "Reasonably uniform in length" as used in ORS 818.210, means a variance of not more than eight feet from the longest to shortest self-supporting trailers or semitrailers within the authorized combination of vehicles. It does not include the length of a converter dolly when used to convert a semitrailer to a self-supporting trailer.

(13) "Tandem drive axles" means two or more axles spaced more than 40 inches but not more than 96 inches apart, neither of which can be raised from the surface of the ground, and where no one axle carries less than forty percent (40%) of the tandem axle weight. Each axle of a tandem drive axle shall have four tires or each axle may have two tires if tire width is at least 15 inches and each axle transmits motive power to the road surface. Any weight controls for the tandem axles on a power unit must be designed, installed and used such that the axles always distribute the load so no axle, tandem axle or group of axles exceeds the legal weight limits or bridge formula limits. All axle assemblies of the tandem drive axles (including axles, tires, brakes) must be adequate to carry the weight loading but may not have less than a 20,000 pound rating for each axle.

(14) "Truck-Tractor" means a motor vehicle designed and used primarily for drawing (towing) other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as drawn.

(15) "Variable-load suspension axle" means an axle that can vary the amount of weight being transmitted to the surface of the road by adjustments made by the driver. Examples of adjustments available to the driver include, but are not limited to, the use of tool(s), lock and key, pressure regulators with handles or knobs. The term variable load suspension axle does not include use of devices such as height control valves, axles controlled by devices that raise the axle when the vehicle moves backward or pre-set pressure regulators which are not adjustable by the driver.

Stat. Auth.: ORS 184.616 & 184.619 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-074-0010

### Vehicle Combinations Eligible for Permits

(1) The following vehicle combinations are eligible for permits issued under OAR chapter 734, division 74 as long as they are in compliance with all applicable rules in OAR chapter 734, division 74:

(a) Combinations of vehicles described in ORS Chapter 818 that meet the requirements of OAR 734-074-0005;

(b) Combinations of vehicles described in OAR chapter 734, division 71;

(c) Combinations of vehicles described in OAR chapter 734, division 73;

(d) Combinations of vehicles that include a dromedary truck-tractor having a dromedary box, plate or deck not exceeding 12-feet, 6-inches in length including any load overhang on the dromedary box, plate or deck, provided the overall length does not exceed that authorized by ORS Chapter 818, OAR chapter 734, division 71 or OAR chapter 734, division 73, whichever is appropriate for the combination of vehicles and the route of travel;

(e) A dromedary truck-tractor having a dromedary box, plate or deck not exceeding 17-feet, 6-inches in length including any load overhang on the dromedary box, plate or deck, towing one stinger-steered semitrailer which is not longer than 53-feet and having an overall length of not more

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than 75 feet and operating on Group 1 Highways established in OAR chapter 734, division 71;

(f) A laden or unladen combination of vehicles designed and used exclusively to transport overseas marine containers that are enroute to or from a marine port or an intermodal transportation facility. Travel is authorized only on routes indicated in green on Route Map 7. Route Map 7, dated January 2005, is by reference made a part of Division 74 rules. The semitrailer may not be longer than 53 feet, and overall length must be 105 feet or less. This combination of vehicles may consist of not more than one truck-tractor, one jeep, one overseas marine container trailer and one booster axle; and

(g) A combination of vehicles commonly known as triples, consisting of a motor truck and two self-supporting trailers, or a truck tractor and semitrailer drawing two self-supporting trailers or semitrailers mounted on dollies equipped with fifthwheels having an overall length not in excess of 105 feet. The self-supporting trailers must be reasonably uniform in length. A motor truck in this combination may not exceed 35 feet in overall length. This combination of vehicles may tow an unladen dolly used to transport a third load carrying semitrailer, provided the combination, including the dolly, does not exceed 85 feet.

(2) The maximum allowable overall lengths for vehicles described in subsections (1)(a) through (c) of this rule are as follows:

(a) For combinations of vehicles described under subsection (1)(a) of this rule, those lengths indicated in ORS Chapter 818 that comply with OAR 734-074-0005;

(b) For combinations of vehicles described under subsection (1)(b) of this rule, those lengths described in OAR chapter 734, division 71; and

(c) For combinations of vehicles described under subsection (1)(c) of this rule, those lengths described in OAR chapter 734, division 73.

(3) All combinations of vehicles operating under permits authorized by OAR chapter 734, division 74 must have power units equipped with tandem drive axles, except:

(a) The power unit of triple combinations may be equipped with a single drive axle; and

(b) The power unit of double trailer combinations placed in service prior to April 1, 1983, may be equipped with a single drive axle.

(4) A lift or variable load axle(s) may be allowed. The following conditions apply:

(a) The controls for the lift axle may be mounted inside the cab of the power unit provided that it limits the axle movement to the complete up or complete down position;

(b) The control for a variable load, or lift axle, which allows adjustment to increase or decrease loading on the vehicle shall not be accessible from the cab;

(c) The axle must always distribute the load so no axle, tandem axle or group of axles exceeds the legal weight limits or bridge formula limits; and

(d) The lift axle assembly (including axles, tires, brakes) must be adequate to carry the weight loading but may not have less than a 10,000 pound rating.

(5) When the weight difference between any trailer or semitrailer of a triple trailer combination is 1,500 pounds or more, the trailers shall be placed from the heaviest to the lightest, with the lightest trailer placed to the rear of the combination.

(6) Combinations of vehicles described as "triple trailers" shall have a visible and fully operable method of adjustment to eliminate slack in the hitch mechanism. The device used may be air chamber operated or it may be adjustable by a mechanical cam method.

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

Stat. Auth.: ORS 184.616, 184.619 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 6-1980, f. & ef. 3-27-80; 2HD 6-1983, f. & ef. 2-18-83; HWY 6-1988, f. & cert. ef. 9-22-88; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 12-1992, f. & cert. ef. 10-16-92; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-074-0020

### Maximum Allowable Weights

(1) The maximum allowable weights for single axles and tandem axles shall not exceed those specified under ORS 818.010(1) and (2).

(2) When a group of axles or gross weight is 80,000 pounds or less, the maximum allowable weight shall not exceed those specified under ORS 818.010(3).

(3) When a group of axles or gross weight is more than 80,000 pounds, the maximum allowable weights shall not exceed those set forth in Permit Weight Table 2, available from the MCTD Over-Dimensional Permit Unit as Form 735-8111 (February 2000). Permit Weight Table 2, is

by reference made part of Division 74 rules. In no case may gross weight exceed the sum of the permissible axle, tandem axle or group of axle weights, whichever is less.

(4) In no case may any rim or wheel carry more weight than that specified by the manufacturer of the rim or wheel.

(5) All single axles of triple trailer combinations must have four tires except for the power unit steering axle and lift axles that may have two tires.

(6) For purposes of Division 74 rules, the axle(s) of a converter dolly or dolly are not included in determining authorized weight unless those axles carry part of the weight of the cargo being transported.

(7) In any triple trailer combination, the first two cargo carrying units, including the power unit, may not weigh more than 80,000 pounds unless equipped with tandem drive axles.

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

Stat. Auth.: ORS 184.616, 184.619 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 6-1980, f. & ef. 3-27-80; 2HD 6-1983, f. & ef. 2-18-83; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 10-1992, f. & cert. ef. 9-16-92; HWY 1-1993, f. & cert. ef. 3-16-93; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-074-0045

### Weather Restrictions

(1) Movement of triple trailer combinations is prohibited when road surfaces are hazardous or when wind or other conditions may cause the unit or any part thereof to swerve, to whip, to sway or fail to follow substantially in the path of the towing vehicle.

(2) Road surfaces are considered hazardous for triple trailers when the surface is other than bare or wet pavement. Examples of "other than bare or wet pavement" include surfaces that have frost, ice, sleet or snow on the roadway.

(3) Triple trailer movement is prohibited when visibility is less than 500 feet due to snow, mist, rain, dust, smoke, fog or other atmospheric conditions.

(4) All other combinations of vehicles operating under permits issued by Division 074 rules must comply with the traction device requirements of OAR chapter 740, division 100, OAR chapter 734, division 017, and any other lawful order requiring the use of traction tires or devices.

Stat. Auth.: ORS 184.616 & 184.619

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 1 OTC 6-1980, f. & ef. 3-27-80; 2HD 6-1983, f. & ef. 2-18-83; HWY 1-1993, f. & cert. ef. 3-16-93; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-074-0051

### Splash and Spray Suppressant Devices

(1) The Chief Engineer requires combinations of vehicles operating under OAR chapter 734, division 74 when highways are wet, including those surfaces that have rain, frost, ice, sleet or snow to be equipped with devices designed to suppress water splash and spray.

(2) The Chief Engineer is hereby granted authority to approve and require by written order the type, style, design, and installation details of splash and spray devices. These devices may consist of but are not limited to the following:

(a) Air deflectors mounted on the vehicles;

(b) Fender flaps behind wheels;

(c) Side flaps over wheels; and

(d) Water collection type fenders.

(3) Minimum splash and spray requirements are shown on MCTD Forms 734-2351 (April 2002) and 734-2351A (March 2002). These forms are available from the MCTD Over-Dimensional Permit Unit and by reference are made a part of these rules.

(4) The headlights of a triple trailer combination must be illuminated any time windshield wipers are used.

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

Stat. Auth.: ORS 184.616 & 184.619 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 2HD 6-1983, f. & ef. 2-18-83; 2HD 21-1983, f. & ef. 9-23-83; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-082-0005

### Definitions

As used in OAR chapter 734, division 82:

(1) "Auxiliary axle(s)" is an axle that qualifies as a booster axle, flip axle, or lift axle.

(2) "Boom dolly" means a separate vehicle designed to carry part of the weight of a boom.

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(3) "Booster axle(s)" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning.

(4) "Business day" is any day Monday through Friday, except holidays as defined in section (13) of this rule.

(5) "Chief Engineer" means the Chief Engineer of the Oregon Department of Transportation or a person designated to act for the Chief Engineer.

(6) "Daylight hours" shall mean one-half hour before sunrise until one-half hour after sunset.

(7) "Dolly" means those devices attached to a frame, deck or load converting the frame to a trailer or semitrailer and is included in the measurement of the trailer. The dolly must bear weight when the permitted vehicle is laden.

(8) "Dromedary truck-tractor" means a motor vehicle designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer.

(9) "Equivalent Single-Axle Load" (ESAL) means the relationship between actual or requested weight and an 18,000 pound single-axle load as determined by the American Association of State Highway and Transportation Officials Road Tests reported at the Proceedings Conference of 1962.

(10) "Fire apparatus" means a vehicle or combination of vehicles designed and used exclusively for fire suppression or rescue operations. These emergency vehicles and associated loads or equipment are necessary to protect the public safety and are considered non-divisible loads.

(11) "Flip axle(s)" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length or hauling capacity of the trailer.

(12) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298.

(13) "Holiday" for the purposes of these rules means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and includes any other days on which the state officially observes the aforementioned holidays by the closure of State offices.

(14) "Jeep axle(s)" means a separate vehicle connected to a motor vehicle by kingpin to fifth wheel connection. A jeep axle(s) shall bear all or part of the weight of the load of another vehicle and shall be connected to that other vehicle either by kingpin to fifth wheel connection or a pintle hook.

(15) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground.

(16) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(17) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers.

(18) "Non-divisible load" means any load or vehicle exceeding applicable length or weight limits that, if separated into smaller loads or vehicles, would:

(a) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(b) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(c) Require more than eight workhours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(19) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use.

(20) "Permit Weight Table 1" is the table of legal weight found in ORS 818.010.

(21) "Permit Weight Table 2" is the Extended Weight Table used for oversize loads that cannot be reduced in size, except as specified in OAR 734-082-0051 and 734-082-0053, and having authorized divisible load weights. Permit Weight Table 2 is available from MCTD as Form 735-8111 (February 2000).

(22) "Permit Weight Table 3" is a table based on two wheelbase weight formulas. The first formula is 1,000 times (the wheelbase in feet plus 40) for groups of axles or combinations of vehicles having 18 feet or less wheelbase. The second formula is 1,200 times (the wheelbase in feet plus 40) for groups of axles, vehicles or combinations of vehicles having more than 18 feet of wheelbase. Permit Weight Table 3 is available from MCTD as Form 735-8112 (October 1999).

(23) "Permit Weight Table 4" is a table based on two wheelbase weight formulas. The first formula is 1,200 times (the wheelbase in feet

plus 40) for groups of axles or combinations of vehicles having 18 feet or less wheelbase. The second formula is 1,400 times (the wheelbase in feet plus 40) for groups of axles, vehicles or combinations of vehicles having more than 18 feet of wheelbase. Permit Weight Table 4 is available from MCTD as Form 735-8113 (October 1999).

(24) "Permit Weight Table 5" is a table using three wheelbase weight formulas. The first formula is 6,500 times the wheelbase when wheelbase is over eight feet but not more than ten feet. The second formula is 2,200 times (the wheelbase in feet plus 20) when wheelbase is more than ten feet but not more than 30 feet. The third formula is 1,600 times (the wheelbase in feet plus 40) when wheelbase is more than 30 feet. Permit Weight Table 5 is available from MCTD as Form 735-8114 (October 1999).

(25) "Primary haul" means the non-divisible load transported under OAR 734-082-0053.

(26) "Road use assessment fee" means a fee for each ESAL mile of travel as established by ORS 818.225.

(27) "Secondary haul" means the divisible load transported under OAR 734-082-0053.

(28) "Self propelled fixed load vehicle" means a vehicle with motive power designed and used primarily to support and move a permanent load in the form of equipment or appliances constructed as part of, or permanently attached to, the body of the vehicle.

(29) "Stinger steered" is as defined in ORS 801.507.

(30) "Transport" means to tow, haul, drive, or otherwise move a vehicle or load on the State highway system.

(31) "Truck-tractor" means a motor vehicle designed and used primarily for drawing other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as being drawn.

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

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05

## 734-082-0040

### Combination of Vehicles

(1) The following vehicles or combinations of vehicles may be authorized for continuous trip permits over authorized routes provided the width does not exceed 14 feet, the height does not exceed 14 feet, and the overall length does not exceed that stated below:

(a) A solo vehicle shall not exceed 40 feet and vehicle inclusive of load shall not exceed 50 feet in overall length;

(b) Truck-tractor and semitrailer combinations, which may include an auxiliary axle, shall not exceed the length limits as shown on the reverse of Group Map 1 or Route Map 7, whichever is greater, and the semitrailer shall not exceed 53 feet in length including the auxiliary axle. An auxiliary axle attached to the rear of a trailer shall be included in the measurement of the trailer unless the combination measurement exceeds 53 feet. Group Map 1 and Route Map 7, both dated January 2005, available from the Over-Dimensional Permit Unit, are by reference made a part of Division 82 rules;

(c) Motor truck and trailer shall not exceed 75 feet in overall length;

(d) Truck-tractor with semitrailer and trailer combinations shall not exceed the length limits shown on the reverse of Group Map 1 or Route Map 7, whichever is greater;

(e) Passenger or light vehicles towing any trailer shall not exceed 70 feet in overall length;

(f) An unladen combination of vehicles used to transport non-divisible loads may consist of the truck-tractor, one jeep axle(s), one semitrailer, one booster axle(s) and removable deck section(s). Semitrailer length shall not exceed 62 feet. Overall length shall not exceed 105 feet. Unladen movement is authorized with fewer vehicles, or with the jeep axle(s) and/or booster axle(s) loaded on the semitrailer; and

(g) A combination consisting of a truck-tractor towing manufactured home chassis, which may include axles and tires attached to each chassis hauled, may operate on a continuous trip permit under the following conditions:

(A) Chassis length inclusive of tongue shall not exceed 75 feet;

(B) The chassis shall not be loaded end to end but may be staggered lengthwise for transport;

(C) Overhang shall not extend more than five feet off the rear of the chassis transporting the load;

(D) Overall length of the combination shall not exceed 90 feet; and

(E) The chassis transporting the load shall be equipped with brakes and lights that meet the requirements of CFR 49 Part 393.



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(2) When the combination of vehicles includes jeep axles, or other vehicles of a size or weight not authorized by section (1) of this rule, movement shall be by single trip permit only.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060

Stats. Implemented: ORS 818.220 & 818.225

Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1991(Temp), f. & cert. ef. 8-23-91; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05

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

**Adm. Order No.:** MCTD 1-2005

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 740-045-0010

**Subject:** The Oregon Weight Receipt and Tax Identifier (OWRATI) is the permanent operating credential issued to commercial motor vehicles that are subject to Oregon's weight mile tax. Each OWRATI is unique to the commercial motor vehicle to which it is issued and it is linked to the state registration plate issued to the vehicle. While OWRATI's are reissued annually on January 1, some states may renew vehicle registration by issuing a replacement registration plate after January 1. Under those circumstances, a replacement OWRATI is required. It has been Department policy to not charge the fee described in ORS 825.450 for a replacement OWRATI when the replacement is caused by another state's annual registration date. Motor carriers from those states should not be required to pay OWRATI fees twice annually under the circumstances described. The amendments clarify existing Department policy.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

#### 740-045-0010

##### Commercial Vehicle Operating Credentials

(1) The Department will issue operating credentials in one or more of the following forms for each self-propelled vehicle for which registration fees have been paid and which may be listed or added to a certificate or permit:

(a) Oregon commercial or apportioned vehicle registration plates, registration cards and stickers set forth in ORS Chapter 826;

(b) Oregon Weight Receipt and Tax Identifiers set forth in ORS Chapter 825;

(c) Temporary credentials issued pursuant to ORS Chapters 825 and 826, including temporary Oregon Weight Receipt and Tax Identifiers to vehicles for which base jurisdiction license plate information has not been provided; and

(d) Identification plates for vehicles that are not subject to vehicle registration requirements, but are subject to weight-mile tax requirements.

(2) Oregon commercial or apportioned vehicle registration plates, Oregon Weight Receipt and Tax Identifiers, or temporary credentials must be fastened to, carried in, or identified on the self-propelled vehicle for which it is issued as provided in these rules. This identification must be available for inspection by the Department, its representative or other authorized persons at all times.

(3) Valid Oregon commercial or apportioned vehicle registration plates, Oregon Weight Receipt and Tax Identifiers, or temporary credentials must not be removed from the vehicle to which it is issued or transferred to any other vehicle under any circumstances not provided for in these rules.

(4) An Oregon Weight Receipt and Tax Identifier shall be considered invalid if:

(a) The vehicle is for any reason retired from service or removed from the carrier's list of vehicles under the permit or certificate upon which it is listed;

(b) The certificate or permit is for any reason suspended or canceled;

(c) The base jurisdiction license information for the vehicle changes;

(d) The information contained on the receipt is not legible or has been altered; or

(e) There has been a failure to provide insurance or bond as required by ORS Chapter 825.

(5) Oregon commercial or apportioned vehicle registration plates shall be considered cancelled and must immediately be removed from the vehicle if:

(a) Registration fees are not paid;

(b) The vehicle is for any reason retired from service or removed from the carrier's list of vehicles;

(c) There has been a failure to provide insurance or bond as required by ORS Chapter 825 and ORS chapter 826; or

(d) The vehicle is removed from a fleet by the end of the calendar year for which apportioned fees have been paid. Returned plates must be received in a Department office by January 10 of the year following the registration year.

(6) An Oregon Weight Receipt and Tax Identifier will be considered cancelled if it is not valid at the time of renewal or is otherwise not timely renewed.

(7) The fee described in ORS 825.450 for an Oregon Weight Receipt and Tax Identifier may be waived for a replacement Oregon Weight Receipt and Tax Identifier if the Department finds that:

(a) An original Oregon Weight Receipt and Tax Identifier was issued and the required fee was paid for the current year of operation; and

(b) The replacement is necessary because the base state invalidated the original registration plate and issued a replacement registration plate.

Stat. Auth.: ORS 823.011, 825.232, 825.450, 826.031

Stats. Implemented: ORS 825.454, 825.470 & 826.023

Hist.: PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 152, f. & ef. 12-22-69 (Order No. 46489); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 4-79, f. & ef. 9-21-79 (Order No. 79-641); PUC 3-80, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 3-80, Part 2, f. & ef. 6-30-80 (Order No. 80-475); Renumbered from 860-034-0005; PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 12-1988, f. & cert. ef. 6-16-88 (Order No. 88-601); PUC 7-1993, f. & cert. ef. 3-19-93 (Order No. 93-285); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-064-0005; MCTB 1-2002, f. 6-21-02, cert. ef. 7-1-02; MCTD 1-2005, f. 3-18-05, cert. ef. 4-1-05

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**Adm. Order No.:** MCTD 2-2005

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 4-1-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 740-100-0010, 740-100-0015, 740-100-0020, 740-100-0070, 740-100-0080, 740-100-0090, 740-100-0100, 740-110-0010

**Subject:** These rules cover the annual adoption of federal motor carrier safety and hazardous materials transportation regulations. In addition, these rules cover the adoption of international standards related to driver, vehicle and hazardous materials out-of-service violations. The changes are necessary to ensure Oregon's motor carrier safety; hazardous materials; and driver, vehicle and hazardous materials out-of-service requirements are current with national and international standards. In addition, Oregon is adopting Title 49 CFR Part 380 related to Special Training Requirements for new commercial motor vehicle drivers and drivers of long combination vehicles (LCV). Part 380 was added to Title 49 in 2004 and is currently applicable to interstate operations. An amendment to OAR 740-100-0015 clarifies that ODOT may require a certified commercial vehicle inspector to sever an employment relationship with a regulated motor carrier as a condition of being certified. Currently motor carriers file two separate accident reports. The amendments to OAR 740-100-0020 will streamline accident reporting by simplifying availability and filing of both required ODOT accident forms and will extend protection of personal information to the Motor Carrier Crash Report. OAR 740-100-0100 is amended to adopt the current Uniform Fine Schedule for motor carrier out-of-service violations.

**Rules Coordinator:** Brenda Trump—(503) 945-5278

#### 740-100-0010

##### Adoption of Federal Safety Regulations

(1) Except as provided in section (3) of this rule, the rules and regulations adopted by the United States Department of Transportation contained in Title 49, Code of Federal Regulations (CFR), Parts 380 (Special Training Requirements), 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards Requirements and Penalties), 385 (Safety Fitness Procedures), 387 (Minimum Levels of Financial Responsibility for Motor Carriers), 390 (Federal Motor Carrier Safety Regulations: General), 391 (Qualification of Drivers), 392 (Driving

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of Motor Vehicles), 393 (Parts and Accessories Necessary for Safe Operation), 395 (Hours of Service of Drivers), 396 (Inspection, Repair, and Maintenance), 398 (Transportation of Migrant Workers), 399 (Employee Safety and Health Standards), and all amendments thereto in effect April 1, 2005, are adopted and prescribed by the Department of Transportation (ODOT) to be observed by carriers conducting operations in interstate commerce, subject to ORS Chapter 825.

(2) The provisions of section (1) of this rule as adopted are prescribed by the Department to be observed by carriers conducting operations in intrastate commerce, subject to ORS Chapter 825, except:

(a) The provisions of Part 387 shall apply to intrastate motor carriers only when transporting hazardous materials, hazardous substances or hazardous wastes;

(b) With reference to Part 390.21, external identification requirements do not apply to vehicles with a gross combination weight rating of 26,000 pounds or less and operated exclusively in intrastate private carriage, except those vehicles transporting hazardous materials of a type or quantity requiring placarding or passenger vehicles with a seating capacity of more than 15 passengers including the driver;

(c) The rules in Part 391 (except Part 391.15, Disqualification of Drivers) do not apply to a driver who is employed by a private carrier and does not transport hazardous materials of a type or quantity requiring the vehicle to be marked or placarded in accordance with Title 49, CFR, Part 177.823, and drives a motor vehicle with a gross vehicle or gross combination weight rating of 26,000 pounds or less;

(d) Notwithstanding Title 49, CFR, Parts 391.41 to 391.49 (Subpart E — Physical Qualifications and Examinations) the Department may, upon receipt of a favorable recommendation from the State Health Division or a licensed health care professional under contract to ODOT, issue a waiver of physical disqualification to a commercial vehicle driver who has met the conditions established by the Department and who is in compliance with motor carrier safety regulations applicable to drivers;

(e) With reference to Title 49, CFR, Part 395.5, motor carriers conducting intrastate transportation of passengers may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period after being on-duty for 16 hours following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days;

(f) With reference to Title 49, CFR, Part 395.3, motor carriers conducting intrastate transportation of property may not require or permit any driver used by it to drive a commercial motor vehicle, nor may any such driver:

(A) Exceed 12 hours driving following eight consecutive hours off-duty;

(B) Drive for any period beyond the 16th hour after coming on-duty following eight consecutive hours off-duty;

(C) Drive for any period following 70 hours on-duty in any seven consecutive days, except any period of seven consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours; or

(D) Drive for any period following 80 hours on-duty in any eight consecutive days, except any period of eight consecutive days may end with the beginning of any off-duty period of 34 or more consecutive hours;

(g) Notwithstanding the provisions of Title 49, CFR, Part 395.1(e) relating to 100-airmile radius drivers, such drivers need not maintain a daily driver's record-of-duty status, as described in Title 49, CFR, Part 395.8, if:

(A) The driver operates within a 100-airmile radius of the normal work reporting location;

(B) The driver returns to the work reporting location and is released from work within 16 consecutive hours;

(C) The driver has at least eight consecutive hours off duty between each 16 hours on duty;

(D) The driver does not exceed 12 hours maximum driving time following eight consecutive hours off duty; and

(E) The motor carrier maintains and retains for a period of six months accurate and true driver time records showing:

(i) The time the driver reports for duty each day;

(ii) The total number of hours the driver is on duty each day;

(iii) The time the driver is released from duty each day; and

(iv) The total time for the preceding seven days in accordance with Title 49, CFR, Part 395.8(j)(2), for such drivers used for the first time or intermittently;

(h) The provisions of subsections (f) and (g) of this section are not applicable to the transportation of hazardous materials of a type or quantity requiring placarding. Motor carriers transporting hazardous materials of a type or quantity requiring placarding must comply with Title 49, CFR, Part 395;

(i) All public utilities as defined in ORS 757.005, telecommunications utilities as defined in ORS 759.005, and electric, gas, water, and telecommunications utilities that are a people's utility district organized under ORS Chapter 261, a municipal utility operating under ORS Chapter 225, or a cooperative organized under ORS Chapter 62, are relieved from the drivers' hours-of-service requirements and restrictions prescribed in Title 49, CFR, Part 395, when such utility is engaged in the provision or restoration of essential utility services and such restoration is unplanned, unscheduled and the direct result of circumstances beyond the control of the utility; and

(j) The provisions of Title 49, CFR, Parts 396.17 through 396.23 (Periodic Inspection Requirements), are not applicable to operations conducted wholly in intrastate commerce.

(3) The provisions of Title 49, CFR, Part 386.83(a)(1) and Part 386.84(a)(1), related to sanctions for failure to pay civil monetary penalties are adopted for operations conducted in intrastate commerce, and are subject to penalties and sanctions found in ORS Chapter 825, pursuant to the provisions of ORS Chapter 183.

(4) The intracity operation exemption adopted by the US Department of Transportation found in Part 391.62 is not adopted and prescribed.

(5) Wherever reference is made in Title 49 of the CFR as adopted by this rule to a federal entity, including but not limited to "Federal Highway Administrator," "Regional Director," "Special Agent of the Federal Highway Administration" or the "Federal Motor Carrier Safety Administration," it shall be construed to mean the Oregon Department of Transportation or a person authorized by the Oregon Department of Transportation to act on its behalf.

(6) Copies of the federal regulations referred to in this rule are available from ODOT Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 825.137, 825.210, 825.232 & 825.252

Stats. Implemented: ORS 825.210, 825.250 & 825.252

Hist.: PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 4-1979, f. & ef. 9-21-79 (Order No. 79-641); PUC 5-1979, f. & ef. 9-21-79 (Order No. 79-635); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); Part 2, f. & ef. 6-30-80 (Order No. 80-475); PUC 7-1980, f. & ef. 11-6-80 (Order No. 80-845); Renumbered from 860-035-0010; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 12-1982(Temp), f. 12-20-82, ef. 1-1-83 (Order No. 82-872); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 2-1983, f. & ef. 3-1-83 (Order No. 83-117); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 19-1984, f. & ef. 9-10-84 (Order No. 84-713); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 17-1986 (Temp), f. & ef. 12-3-86; (Order No. 86-1239); PUC 2-1987 (Temp), f. & ef. 2-25-87 (Order No. 87-248); PUC 4-1987, f. & ef. 6-9-87 (Order No. 87-509); PUC 16-1987(Temp), f. & ef. 12-11-87 (Order No. 87-1244); PUC 4-1988(Temp), f. & cert. ef. 2-12-88 (Order No. 88-161); PUC 6-1988(Temp), f. & cert. ef. 3-9-88 (Order No. 88-818); PUC 14-1988, f. & cert. ef. 7-22-88 (Order No. 88-245); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (and corrected 1-31-91) (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 13-1992(Temp), f. & cert. ef. 9-4-92 (Order No. 92-1303); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0010; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCT 2-1997, f. & cert. ef. 5-9-97; MCT 6-1997, f. & cert. ef. 8-26-97; MCT 10-1997, f. & cert. ef. 12-22-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 2-1998, f. & cert. ef. 8-20-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

### 740-100-0015

#### Commercial Vehicle Inspector

(1) The Department may certify an individual as a commercial vehicle inspector pursuant to ORS 810.560 if the individual:

(a) Is an employee of the Department and:

(A) Successfully completes a commercial vehicle safety inspector training program administered by the Department; and

(B) Performs the minimum number of North American Standard safety inspections as prescribed by the Commercial Vehicle Safety Alliance;

(b) Is employed by an agency, or party, under contract with the Department to conduct commercial vehicle inspections and:

(A) Successfully completes a commercial vehicle safety inspector training program administered by the Department;

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(B) Performs the minimum number of North American Standard safety inspections as prescribed by the Commercial Vehicle Safety Alliance; and

(C) Has disclosed to the Department any pecuniary interest in, or current employment relationship with, a regulated motor carrier, and if requested by the Department, has divested of any such pecuniary interest or severed any such employment relationship.

(2) A commercial vehicle inspector certification may be revoked by the Department if Department records or investigation indicates that the inspector:

(a) No longer meets the criteria established in section (1) of this rule;

(b) Has repeatedly failed, without adequate reason, to maintain annual equipment or driver out-of-service rates that are reasonably consistent with, or exceed, Oregon out-of-service averages;

(c) Has failed to adhere to the Commercial Vehicle Safety Plan published by the Department; or

(d) Has committed malfeasance in the performance of official duties.

(3) A commercial vehicle inspector who has had their certification revoked, may be re-certified only after Department approval.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 810.560, 825.210 & 825.250

Hist.: MCTD 1-2004, f. & cert. ef. 1-15-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-100-0020

### Motor Carrier Accident Notification and Reporting

(1) Definition of Reportable Accident: The term "reportable accident" means an occurrence, involving a commercial motor vehicle operated on public highways by a motor carrier subject to the provisions of ORS Chapter 825, resulting in:

(a) Fatality: The death of a human being at the scene or within 30 days as a result of the accident;

(b) Injury: A person injured as a result of the accident, and transported from the scene for medical treatment; or

(c) Towaway: Vehicles disabled as a result of the accident, and towed from the scene, or assisted in order to proceed under their own power.

(2) Immediate Notification of Fatal Accidents:

(a) When a reportable accident involves the death of one or more persons, the motor carrier will notify ODOT within 24 hours of the time they learned of the fatality. Notification should be made by telephone (503) 986-3507, or by fax (503) 986-4249, and must include the information in subsection (b) of this section.

(b) The notification required by subsection (a) of this section shall include the most reliable information available to the motor carrier on the following subjects:

(A) Date and time of the accident;

(B) Location of the accident;

(C) Name of each carrier involved;

(D) Number of persons killed;

(E) Brief description of the accident; and

(F) Name and telephone number of the person reporting.

(3) Reporting of Accidents:

(a) Within 30 days after the date of a reportable accident, the motor carrier must submit the completed original of ODOT Form 735-9229 (Motor Carrier Crash Report) with Form 735-32 "Oregon Traffic Accident and Insurance Report" to the ODOT DMV Accident Reporting Unit, 1905 Lana Ave. NE, Salem OR 97314.

(b) The motor carrier must fill in the form completely and accurately with the most reliable information available to the carrier at the time the report is submitted.

(c) ODOT Form 735-9229 is attached to Form 735-32 "Oregon Traffic Accident and Insurance Report," available at DMV offices statewide or by phone at (503) 986-3507.

Stat. Auth.: ORS 823.011 & 825.252

Stats. Implemented: ORS 825.252

Hist.: PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0012; MCT 5-1997, f. & cert. ef. 8-26-97; MCTB 5-2000, f. & cert. ef. 9-21-00; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-100-0070

### North American Uniform Vehicle Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2005, is adopted by and incorporated into this rule. Inspection violations identified in the chart may be subject to one or more of the following:

(a) Out-of-Service Condition: When any motor vehicle by reason of its mechanical condition or loading, is determined to be so unsafe as to like-

ly cause an accident or breakdown, or when such conditions would likely contribute to loss of control of the vehicle by the driver, said vehicle shall be placed out-of-service. No motor carrier shall permit or require nor shall any person operate any motor vehicle declared and marked "out-of-service" until all required repairs of violations which resulted in the out-of-service condition have been completed. If, at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted only at the direction of an official authority.

(b) Other: Violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispach.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.252

Hist.: PUC 3-1986, f. & cert. ef. 4-18-86 (Order No. 86-372); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0030; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-100-0080

### North American Uniform Hazardous Material Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2005, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to out-of-service action. Condition(s) categorized in this Appendix as "Out-of-Service" shall not be allowed to continue in commerce until the condition(s) is/are corrected and the shipment complies with Title 49, CFR. If at the discretion of the inspector, it is less hazardous to the public to relocate the vehicle, it shall be towed, transported, or escorted to a safe location only at the direction of an official authority.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250 & 825.258

Hist.: PUC 3-1986, f. & cert. ef. 4-18-86 (Order No. 86-377); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0035; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-100-0090

### North American Uniform Driver Out-of-Service Criteria

(1) Appendix A of the North American Uniform Vehicle Out-of-Service Criteria, published by the Commercial Vehicle Safety Alliance, in effect April 1, 2005, is adopted and incorporated in this rule. Inspection violations identified in the chart may be subject to one or both of the following:

(a) Out-of-Service Violation: Drivers with violations under this category shall not operate a commercial motor vehicle for a specified period of time or for some violations until a required condition is met.

(b) Other: Violations other than out-of-service violations require no immediate action by the driver or motor carrier. The carrier only has to complete the "Motor Carrier Certification of Action Taken" in accordance with the terms contained on the inspection document and return it to the Department of Transportation within 15 days.

(2) Copies of Appendix A are available from the Commercial Vehicle Safety Alliance at: 1101 17th St NW, Suite 803, Washington, DC 20036.

Stat. Auth.: ORS 823.011 & 825.232

Stats. Implemented: ORS 825.250, 825.252 & 825.260

Hist.: PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1991, f. & cert. ef. 4-9-91 (Order No. 91-455); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 15-1993(Temp), f. & cert. ef. 8-19-93 (Order No. 93-1156); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 3-1996, f. & cert. ef. 3-14-96; Renumbered from 860-065-0040; MCT 4-1996, f. 3-20-96, cert. ef. 4-1-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB



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1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. & 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-100-0100

### Uniform Fine Schedule

(1) Appendix B, The North American Uniform Out-of-Service Criteria Reference to Maximum Fine Schedule published by the Commercial Vehicle Safety Alliance, revised March 2004, is adopted and incorporated in this rule.

(2) Except as provided in sections (3) and (4) of this rule, the foundation fine for a violation described in Appendix B shall be the lesser of the amount specified in Appendix B for One Driver Violation or 40 percent of the maximum fine for a Class A traffic violation established in ORS 153.018.

(3) Violations of OAR 740-100-0040 related to failure to carry traction devices shall have a minimum foundation fine of \$60. Violations of OAR 740-100-0040, related to failure to use traction devices when required, shall be subject to the fine established in section (5) of this rule.

(4) Except as provided in section (3) of this rule, violations of commercial motor carrier safety regulations found in OAR 740-100, 740-105 and 740-110, not specifically addressed in Appendix B shall carry a foundation penalty equal to the amount for a Group 3 violation contained in Appendix B.

(5) In the event that a violation was a substantial contributing factor to an accident or created substantial risk of injury to another person, the foundation fine shall be 60 percent of the maximum fine for a Class A traffic violation.

(6) Unitary assessments and county assessments required by ORS 137.290 and 137.309 are in addition to foundation fines specified in this rule.

(7) Copies of Appendix B are available from the Commercial Vehicle Safety Alliance: 1101 17th St. NW, Suite 803, Washington DC 20036.

Stat. Auth.: ORS 153.022, 823.011, 825.252, 825.990

Stats. Implemented: ORS 825.252

Hist.: PUC 4-1995, f. & ef. 6-19-95 (Order No. 95-517); MCT 2-1996, f. & cert. ef. 2-16-96; Renumbered from 860-065-0050; MCT 3-1996, f. & cert. ef. 3-14-96; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 4-1999(Temp), f. 12-21-99, cert. ef. 1-1-00 thru 6-28-00; MCTB 2-2000, f. & cert. ef. 4-28-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## 740-110-0010

### Adoption of United States Department of Transportation Hazardous Materials Regulations

(1) Any person subject to ORS Chapter 825 who transports a hazardous material and any person subject to ORS 823.061 who causes to be transported a hazardous material shall comply with the rules and regulations governing the transportation of hazardous materials as prescribed by the United States Department of Transportation in Title 49, Code of Federal Regulations, Part 397 and such portions of Parts 107-178 and 180 as are applicable, and amendments thereto, in effect on April 1, 2005.

(2) Copies of the federal regulations referred to in this rule are available from ODOT, Motor Carrier Transportation Division or may be accessed on the Federal Motor Carrier Safety Administration website [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov).

Stat. Auth.: ORS 823.011, 823.061 & 825.258

Stats. Implemented: ORS 825.258

Hist.: Refiled in PUC 18, f. 1-21-55, ef. 9-1-54 (Order No. 33203); PUC 98, f. 1-18-61, ef. 1-12-61 (Order No. 37620); PUC 120, f. 10-26-62, ef. 11-15-62 (Order No. 38811); PUC 132, f. 3-29-65, ef. 4-1-65 (Order No. 41035); PUC 135, f. 5-9-66, ef. 5-15-66 (Order No. 42332); PUC 148, f. 7-29-68, ef. 9-1-68 (Order No. 44783); PUC 150, f. 11-7-68, ef. 12-1-68 (Order No. 45141); PUC 156, f. 8-6-73, ef. 8-15-73 (Order No. 73-507); PUC 181, f. 12-30-77, ef. 1-15-78 (Order No. 77-896); PUC 2-1980, f. & ef. 3-27-80 (Order No. 80-179); PUC 3-1980, Part 1, f. & ef. 6-30-80 (Order No. 79-805); PUC 5-1980, f. & ef. 10-13-80 (Order No. 80-758); Renumbered from 860-036-0055; PUC 1-1981, f. & ef. 2-9-81; PUC 12-1981, f. & ef. 12-16-81 (Order No. 81-880); PUC 6-1982, f. & ef. 5-6-82 (Order No. 82-336); PUC 1-1983, f. & ef. 1-17-83 (Order No. 83-024); PUC 1-1984, f. & ef. 2-9-84 (Order No. 84-076); PUC 13-1984, f. & ef. 7-26-84 (Order No. 84-546); PUC 8-1985, f. & ef. 6-10-85 (Order No. 85-499); PUC 7-1986(Temp), f. & ef. 7-25-86 (Order No. 86-736); PUC 13-1986, f. & ef. 10-30-86 (Order No. 86-1106); PUC 7-1989, f. & cert. ef. 5-23-89 (Order No. 89-663); PUC 1-1991, f. & cert. ef. 1-11-91 (Order No. 91-20); PUC 6-1992, f. & cert. ef. 2-26-92 (Order No. 92-292); PUC 10-1993, f. & cert. ef. 6-3-93 (Order No. 93-693 & 93-761); PUC 6-1994, f. & cert. ef. 3-28-94 (Order No. 94-525); PUC 6-1995, f. & cert. ef. 7-13-95 (Order No. 95-562); MCT 1-1996, f. 2-16-96, cert. ef. 4-1-96; Renumbered from 860-066-0055; MCT 3-1996, f. & cert. ef. 3-14-96; MCT 5-1996, f. & cert. ef. 9-17-96; MCT 1-1997, f. 3-24-97, cert. ef. 4-1-97; MCTB 1-1998, f. 3-10-98, cert. ef. 4-1-98; MCTB 1-1999, f. & cert. ef. 4-22-99; MCTB 1-2000, f. 3-16-00, cert. ef. 4-1-00; MCTB 2-2001, f. 3-13-01, cert. ef. 4-1-01; MCTB 2-2002, f. & cert. ef. 6-21-02; MCTD 2-2003, f. & cert. ef. 4-21-03; MCTD 6-2003, f. 11-18-03, cert. ef. 1-1-04; MCTD 2-2005, f. 3-18-05, cert. ef. 4-1-05

## Department of Veterans' Affairs Chapter 274

**Adm. Order No.:** DVA 1-2005(Temp)

**Filed with Sec. of State:** 4-7-2005

**Certified to be Effective:** 4-8-05 thru 10-3-05

**Notice Publication Date:**

**Rules Amended:** 274-020-0341

**Subject:** This Temporary rule amends the Permanent OAR filed on September 22, 2004 and effective September 22, 2004.

Applications on all ODVA's Veterans' Home Loan Program loans that have a maturity date of no more than 30 years and received on or after April 8, 2005 shall have the interest rate of 5.25 percent with an origination fee of 1.0 percent or 5.125 percent with an origination fee of 1.5 percent.

**Rules Coordinator:** Herbert D. Riley—(503) 373-2055

## 274-020-0341

### Interest

(1) Prior to May 27, 1971, fixed interest rates on loans to eligible veterans are as follows:

(a) Four percent on all loans through August 21, 1969;

(b) Effective August 22, 1969, four percent on the first \$18,500 of a home loan balance, and four percent on the first \$50,000 of a farm loan balance;

(c) For loans made from August 22, 1969 through May 26, 1971, the interest rate on the loan amount in excess of \$18,500 for home loans and \$50,000 for farm loans is as follows:

(A) Effective August 22, 1969, 5.2 percent;

(B) Effective September 4, 1969, 6.9 percent;

(C) Effective December 10, 1969, 7.1 percent;

(D) Effective April 8, 1970, 6.8 percent;

(E) Effective August 19, 1970, 6.4 percent;

(F) Effective January 6, 1971, 5.4 percent.

(2) As provided by ORS 407.325, the interest rate on variable rate real property loans are as follows:

(a) Effective May 27, 1971, 5.9 percent on all loans;

(b) Effective April 1, 1981, 7.2 percent on loans for which applications were received after December 31, 1980;

(c) Effective April 1, 1981, 6.2 percent on loans in effect or for which applications were received on or before December 31, 1980;

(d) Effective November 1, 1981, 7.5 percent on loans for which applications were received after December 31, 1980, and before August 24, 1981. The loan payment for principal and interest on the loans affected will be adjusted on February 1, 1982;

(e) Effective December 22, 1981, 11 percent on loans for which applications were received on or after August 24, 1981;

(f) Effective January 1, 1983, 6.7 percent on loans for which applications were received on or after July 1, 1979, and on or before December 31, 1980;

(g) Effective January 1, 1983, 8.2 percent on loans for which applications were received after December 31, 1980, and before August 24, 1981;

(h) Effective October 15, 1982, 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed on or after October 15, 1982;

(i) Effective January 1, 1983, the interest rate shall be adjusted to 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed before October 15, 1982.

(3) As provided by ORS 407.325, the interest rate on variable rate personal property loans shall be as follows:

(a) Effective May 30, 1975, 7.9 percent on personal property and leaseholds. Leaseholds were defined as real property on October 4, 1977, with rates established as provided in section (2) of this rule;

(b) Effective November 1, 1981, 13 percent on loans for which applications were received on or after August 24, 1981;

(c) Effective December 22, 1981, 11 percent on loans for which applications were received on or after August 24, 1981;

(d) Effective October 15, 1982, 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds were disbursed on or after October 15, 1982;

(e) Effective January 1, 1983, the interest rate shall be adjusted to 10.5 percent on loans for which applications were received on or after August 24, 1981, and funds disbursed before October 15, 1982;

## ADMINISTRATIVE RULES

(4) Effective January 1, 1986, the interest rate on certain loans shall be changed as follows:

- (a) The interest rate on 6.2 percent loans becomes 7.2 percent;
- (b) The interest rate on 6.7 percent loans becomes 7.7 percent;
- (c) The interest rate on 7.9 percent loans becomes 8.9 percent;
- (d) The interest rate on 8.2 percent loans becomes 9.2 percent.

(5) As provided by ORS 407.327, the interest rate on loans made on or after:

(a) April 15, 1992, shall be fixed and shall be 7.6 percent on loans for which applications were received on or after April 8, 1992.

(b) August 17, 1992, shall be fixed and shall be 7 percent on loans with a maturity date of 15 years or less, and 7.3 percent on loans with a maturity date in excess of 15 years.

(c) April 1, 1993, shall be fixed and shall be 6.7 percent on loans with a maturity date of 15 years or less, and 7.0 percent on loans with a maturity date in excess of 15 years.

(d) November 1, 1993, shall be fixed and shall be 6.0 percent on loans with a maturity date of 15 years or less, and 7.0 percent on loans with a maturity date in excess of 15 years.

(6) As provided by ORS 407.327, the interest rate on loans for which applications were received from April 15, 1994, through June 21, 1994, shall be fixed and shall be 6.6 percent on loans that have a maturity date of at least 15 years, and 7.0 percent on loans with a maturity date in excess of 15 years. (Temporary Rule)

(7) As provided by ORS 407.327, the interest rate on loans for which applications were received on or after:

(a) June 22, 1994, shall be fixed and shall be 7.0 percent on loans that have a maturity date of at least 15 years, and 7.4 percent on loans with a maturity date in excess of 15 years.

(b) September 20, 1994, through November 17, 1994, shall be fixed and shall be 7.4 percent on loans that have a maturity date of at least 15 years, and 7.7 percent on loans with a maturity date in excess of 15 years. (Temporary Rule)

(c) November 18, 1994, shall be fixed and shall be 7.9 percent on loans that have a maturity date of at least 15 years, and 8.1 percent on loans with a maturity date in excess of 15 years.

(d) May 11, 1995, shall be fixed and shall be 7.4 percent on loans that have a maturity date of at least 15 years, and 7.6 percent on loans with a maturity date in excess of 15 years. (Temporary)

(e) May 18, 1995, shall be fixed and shall be 7.1 percent on loans that have a maturity date of at least 15 years, and 7.3 percent on loans with a maturity date in excess of 15 years. (Temporary)

(f) June 26, 1995, shall be fixed and shall be 6.80 percent on loans that have a maturity date of at least 15 years, and 7.0 percent on loans with a maturity date in excess of 15 years.

(g) November 1, 1995, shall be fixed and shall be 6.30 percent on loans that have a maturity date of not less than 15 years or more than 30 years.

(h) February 7, 1997, shall be fixed and shall be 6.60 percent on all loans that have a maturity date of no more than 30 years.

(i) February 2, 1998, shall be fixed and shall be 6.30 percent on all loans that have a maturity date of no more than 30 years.

(j) August 1, 1998, shall be fixed and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(k) September 22, 1999, shall be fixed, and shall be 5.95 percent with an origination fee of 2.00 percent, or 6.00 percent, with an origination fee 1.75 percent, on loans that have a maturity date of no more than 30 years.

(l) December 16, 1999, shall be fixed, and shall be 6.85 percent with an origination fee of 2.00 percent, or 6.90 percent, with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years. (Temporary)

(m) March 31, 2000, shall be fixed, and shall be 6.50 percent with an origination fee of 2.00 percent, or 6.55 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years.

(n) June 12, 2000, shall be fixed, and shall be 7.15 percent with an origination fee of 2.00 percent, or 7.20 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years. (Temporary)

(o) July 17, 2000, shall be fixed, and shall be 6.90 percent with an origination fee of 2.00 percent, or 6.95 percent with an origination fee of 1.75 percent, on all loans that have a maturity date of no more than 30 years. (Temporary)

(p) September 11, 2000, shall be fixed, and shall be 6.25 percent with an origination fee of 2.00 percent, or 6.30 percent with an origination fee of

1.75 percent, on all loans that have a maturity date of no more than 30 years.

(q) September 10, 2001, shall be fixed, and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(r) April 1, 2002, shall be fixed, and shall be 6.15 percent on all loans that have a maturity date of no more than 30 years. (Temporary)

(s) June 27, 2002, shall be fixed, and shall be 5.95 percent on all loans that have a maturity date of no more than 30 years.

(t) September 26, 2002, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be:

(A) 5.95 percent with an origination fee of 1.0 percent;

(B) 5.79 percent with an origination fee of 1.5 percent; or

(C) 5.65 percent with an origination fee of 2.0 percent. (Temporary)

(u) January 21, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) ODVA's Veterans' Loan Program 1990 loans.

(i) 5.55 percent with an origination fee of 1.0 percent;

(ii) 5.39 percent with an origination fee of 1.5 percent; or

(iii) 5.25 percent with an origination fee of 2.0 percent.

(B) ODVA's Post Vietnam Era Veterans' Home Loan Program loans.

(i) 5.95 percent with an origination fee of 1.0 percent;

(ii) 5.79 percent with an origination fee of 1.5 percent; or

(iii) 5.65 percent with an origination fee of 2.0 percent.

(v) April 21, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) ODVA's Veterans' Loan Program 1990 loans:

(i) 5.25 percent with an origination fee of 1.0 percent; or

(ii) 4.99 percent with an origination fee of 1.5 percent.

(B) ODVA's Post Vietnam Era Veterans' Home Loan Program loans:

(i) 5.25 percent with an origination fee of 1.0 percent; or

(ii) 5.125 percent with an origination fee of 1.5 percent. (Temporary)

(v) July 25, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.375 percent with an origination fee of 1.0 percent; or

(B) 5.25 percent with an origination fee of 1.5 percent. (Temporary)

(w) August 1, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.50 percent with an origination fee of 1.0 percent; or

(B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)

(x) August 15, 2003, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.75 percent with an origination fee of 1.0 percent; or

(B) 5.625 percent with an origination fee of 1.5 percent.

(y) October 8, 2003 shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.5 percent with an origination fee of 1.0 percent; or

(B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)

(z) January 22, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.125 percent with an origination fee of 1.0 percent; or

(B) 5.0 percent with an origination fee of 1.5 percent. (Temporary)

(aa) March 26, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.0 percent with an origination fee of 1.0 percent; or

(B) 4.875 percent with an origination fee of 1.5 percent.

(bb) April 08, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.25 percent with an origination fee of 1.0 percent; or

(B) 5.125 percent with an origination fee of 1.5 percent. (Temporary)

(cc) April 29, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.50 percent with an origination fee of 1.0 percent; or

(B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)

(dd) May 11, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.75 percent with an origination fee of 1.0 percent; or

(B) 5.625 percent with an origination fee of 1.5 percent. (Temporary)

(ee) August 6, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.50 percent with an origination fee of 1.0 percent; or

(B) 5.375 percent with an origination fee of 1.5 percent. (Temporary)

(ff) August 19, 2004, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

(A) 5.125 percent with an origination fee of 1.0 percent; or

(B) 4.99 percent with an origination fee of 1.5 percent.

# ADMINISTRATIVE RULES

(gg) April 8, 2005, shall be fixed on all loans that have a maturity date of no more than 30 years and shall be as follows:

- (A) 5.25 percent with an origination fee of 1.0 percent; or
- (B) 5.125 percent with an origination fee of 1.5 percent.

(8) As provided by ORS 407.327, the interest rate on home improvement loans for which applications are received on or after:

- (a) November 12, 1997, shall be fixed and shall be 7.95 percent.
- (b) February 2, 1998, shall be fixed and shall be 7.5 percent.

Stat. Auth.: ORS 406.030, 407.115, 407.325 & 407.327

Stats. Implemented: ORS 407.325 & 407.327

Hist.: DVA 40, f. 5-27-71, ef. 5-27-71; DVA 45, f. & ef. 12-1-75; DVA 49, f. & ef. 6-1-77; DVA 50, f. 11-16-77, ef. 12-1-77; DVA 2-1978, f. & ef. 12-1-78; DVA 1-1979, f. & ef. 12-5-79; DVA 4-1980, f. & ef. 12-1-80; DVA 6-1980(Temp), f. 12-19-80, ef. 1-1-81; DVA 1-1981, f. 3-1-81, ef. 4-1-81; DVA 2-1981(Temp), f. 3-11-81, ef. 4-1-81; DVA 4-1981, f. & ef. 4-16-81; DVA 5-1981(Temp), f. & ef. 8-10-81; DVA 7-1981, f. 10-30-81, ef. 11-1-81; DVA 8-1981, f. 10-30-81, ef. 12-1-81; DVA 10-1981(Temp), f. & ef. 12-22-81; DVA 3-1982(Temp), f. & ef. 2-3-82; DVA 11-1982, f. 4-23-82, ef. 1-1-83; DVA 15-1982, f. & ef. 6-1-82; DVA 27-1982(Temp), f. & ef. 10-15-82; DVA 5-1983, f. & ef. 2-15-83; DVA 10-1985, f. 8-23-85, ef. 1-1-86; DVA 6-1992(Temp), f. & cert. ef. 4-15-92; DVA 9-1992, f. & cert. ef. 8-3-92; DVA 10-1992(Temp), f. & cert. ef. 8-17-92; DVA 1-1993, f. & cert. ef. 1-4-93; DVA 6-1993(Temp), f. 3-30-93, cert. ef. 4-1-93; DVA 8-1993, f. 7-30-93, cert. ef. 9-27-93; DVA 10-1993(Temp), f. 10-18-93, cert. ef. 11-1-93; DVA 1-1994, f. 1-10-94, cert. ef. 2-1-94; DVA 2-1994(Temp), f. & cert. ef. 4-15-94; DVA 4-1994, f. & cert. ef. 6-22-94; DVA 5-1994(Temp), f. 9-15-94, cert. ef. 9-20-94; DVA 6-1994(Temp), f. 11-15-94, cert. ef. 11-18-94; DVA 2-1995, f. & cert. ef. 3-23-95; DVA 3-1995(Temp), f. & cert. ef. 5-11-95; DVA 4-1995(Temp), f. & cert. ef. 5-18-95; DVA 6-1995(Temp), f. 6-23-95, cert. ef. 6-26-96; DVA 13-1995, f. & cert. ef. 10-23-95; DVA 14-1995(Temp), f. 10-30-95, cert. ef. 11-1-95; DVA 1-1996, f. & cert. ef. 3-22-96; DVA 1-1997(Temp), f. 2-4-97, cert. ef. 2-7-97; DVA 3-1997, f. & cert. ef. 6-25-97; DVA 5-1997, f. & cert. ef. 10-22-97; DVA 2-1998(Temp), f. 1-26-98, cert. ef. 2-2-98 thru 7-31-98; DVA 6-1998, f. & cert. ef. 6-23-98; DVA 8-1998(Temp), f. 7-28-98, cert. ef. 8-1-98 thru 1-27-99; DVA 1-1999, f. & cert. ef. 1-22-99; DVA 2-1999, f. & cert. ef. 9-22-99; DVA 4-1999(Temp), f. 12-14-99, cert. ef. 12-16-99 thru 6-12-00; DVA 2-2000(Temp), f. 3-30-00, f. 3-31-00 thru 6-12-00; DVA 6-2000, f. & cert. ef. 5-23-00; DVA 7-2000(Temp), 6-12-00 thru 12-9-00; DVA 8-2000(Temp), f. 7-14-00, cert. ef. 7-17-00 thru 12-9-00; DVA 9-2000(Temp), f. 9-8-00, cert. ef. 9-11-00 thru 12-9-00; DVA 10-2000, f. 12-5-00, cert. ef. 12-10-00; DVA 6-2001(Temp), f. 9-7-01, cert. ef. 9-10-01 thru 3-8-02; DVA 2-2002, f. & cert. ef. 2-22-02; DVA 3-2002(Temp), f. 3-29-02, cert. ef. 4-1-02 thru 9-27-02; DVA 5-2002(Temp), f. 6-26-02, cert. ef. 6-27-02 thru 9-27-02; DVA 6-2002, f. & cert. ef. 9-24-02; DVA 8-2002(Temp), f. 9-25-02, cert. ef. 9-26-02 thru 3-24-03; DVA 1-2003(Temp), f. 1-17-03, cert. ef. 1-21-03 thru 3-24-03; DVA 2-2003, f. & cert. ef. 3-24-03; DVA 4-2003(Temp), f. 4-18-03, cert. ef. 4-21-03 thru 10-17-03; DVA 6-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 10-17-03; DVA 7-2003(Temp), f. 7-31-03, cert. ef. 8-1-03 thru 10-17-03; DVA 8-2003(Temp), f. 8-14-03, cert. ef. 8-15-03 thru 10-17-03; DVA 10-2003, f. & cert. ef. 9-23-03; DVA 13-2003(Temp), f. & cert. ef. 10-8-03 thru 4-5-04; DVA 2-2004(Temp), f. 1-21-04, cert. ef. 1-22-04 thru 4-5-04; DVA 4-2004, f. 3-25-04, cert. ef. 3-26-04; DVA 5-2004(Temp), f. 4-6-04, cert. ef. 4-8-04 thru 10-4-04; DVA 7-2004(Temp), f. 4-28-04, cert. ef. 4-29-04 thru 10-4-04; DVA 8-2004(Temp), f. 5-10-04, cert. ef. 5-11-04 thru 10-4-04; DVA 9-2004(Temp), f. 8-5-04 cert. ef. 8-6-04 thru 10-4-04; DVA 10-2004(Temp), f. 8-18-04 cert. ef. 8-19-04 thru 10-4-04; DVA 12-2004, f. & cert. ef. 9-22-04; DVA 1-2005(Temp), f. 4-7-05, cert. ef. 4-8-05 thru 10-3-05

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## Land Conservation and Development Department Chapter 660

**Adm. Order No.:** LCDD 2-2005(Temp)

**Filed with Sec. of State:** 3-18-2005

**Certified to be Effective:** 3-18-05 thru 9-13-05

**Notice Publication Date:**

**Rules Amended:** 660-002-0005, 660-002-0010, 660-002-0015, 660-002-0020

**Subject:** The temporary rule amends OAR chapter 660, division 002, to specify that the Director of the Department of Land Conservation and Development (DLCD) will take action for DLCD on claims filed with the DLCD under Measure 37. The rule requires the Director to provide non-monetary relief in response to claims that are determined to be valid, unless the Oregon legislature appropriates funds to DLCD for the payment of claims.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

### 660-002-0005

#### Purpose

This rule delegates to the Director of the Department of Land Conservation and Development (Director) certain duties and responsibilities in addition to those conferred upon the Director by ORS Chapter 197 and other administrative rules adopted by the Land Conservation and Development Commission (Commission). This rule further provides for review by the Commission of any action taken by the Director pursuant to this delegation of authority, except that all actions of the Director under OAR 660-002-0010(8) are final and will not be reviewed by the Commission unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05

### 660-002-0010

#### Authority to Director

In addition to the other duties and responsibilities conferred on the Director by ORS Chapter 197, the Director shall exercise and hereinafter be vested with authority to:

(1) Assent to a modification of a planning extension or a compliance schedule of a city or county in accordance with ORS 197.251(2);

(2) Condition a compliance schedule in accordance with ORS 197.252;

(3) Approve a planning assistance grant agreement with a city or county, including modifications thereto; and

(4) Request that the Commission schedule a hearing to consider an enforcement order if the Director has good cause to believe that any of the conditions exist as set forth in ORS 197.320(1) through (10);

(5) Execute any written order, on behalf of the Commission, which has been consented to in writing by the parties adversely affected thereby;

(6) Prepare and execute written orders, on behalf of the Commission, implementing any action taken by the Commission on any matter;

(7) Establish procedures by which the Director shall periodically review and report to the Commission the status of comprehensive plans within each city and county;

(8) Carry out the responsibilities and exercise the authorities of the Commission and the Department in responding to claims under Chapter 1, Oregon Laws 2005 (2004 Ballot Measure 37), including:

(a) Review of claims under OAR 125-145-0100;

(b) Denial of claims under OAR 125-145-0100; and

(c) Approval of claims under OAR 125-145-0100, except that the Director may approve a claim only by not applying the statute(s), rule(s) or goal(s) that are the basis of the claim unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005.

Stat. Auth.: ORS 183, 196 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCD 3-1979, f. & ef. 3-27-79; LCDC 7-1980(Temp), f. & ef. 12-17-80; LCD 1-1981, f. & ef. 2-23-81; LCD 4-1981, f. & ef. 4-3-81; LCDC 2-1983(Temp), f. & ef. 2-9-83; LCDC 3-1983, f. & ef. 5-5-83; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 3-2004, f. & cert. ef. 5-7-04; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05

### 660-002-0015

#### Notice of Director's Actions

(1) The Director shall establish procedures which shall be reasonably calculated to provide notice to interested members of the public and other units of government of the Director's actions taken pursuant to OAR 660-002-0010, except that notice of any action of the Director with regard to a claim under OAR 660-002-0010(8) will be provided as set forth in OAR 125-145-0080.

(2) The Director shall provide the Commission with a monthly report summarizing actions taken by the Director during the preceding month pursuant to this rule and any written public comments received by the Department which pertain to those actions.

Stat. Auth.: ORS 183 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05

### 660-002-0020

#### Commission Review of Director's Action Under Rule 660-002-0005

(1) Any action of the Director pursuant to the authority vested in the Director pursuant to OAR 660-002-0010 shall be reviewed by the Commission upon petition filed by any "party" as defined in ORS 183.310(6) or upon its own motion, except that all actions of the Director under OAR 660-002-0010(8) are final and will not be reviewed by the Commission unless legislation is enacted that appropriates funds for the payment of claims under Chapter 1, Oregon Laws 2005

(2) Any petition filed pursuant to this section shall:

(a) Contain the name, address, and telephone number of the petitioner and, if the petitioner is other than the governmental body directly affected by the action, a brief statement of the petitioner's interest in the outcome of the action sought to be reviewed or of the public interest represented by the petitioner;

(b) Specify the action of the Director to be reviewed, when that action was taken, the Commission action sought by the petitioner, and the reason why the Commission should so act in the matter;

(c) Be filed with the Director or the Director's designee within fifteen days of the date of the taking of the action sought to be reviewed.



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(3) The Commission shall, by order within 60 days of the filing of the request, or within a period of time not to exceed 120 days if good cause therefore is shown, either affirm, reverse, or modify the action of the Director. The Director shall provide reasonable notice to all parties of the date, time, and place that the Commission will take action on the petition, and the manner in which such parties may express their views.

(4) Any petition under this rule which is a contested case as defined in ORS 183.310 shall be governed by the Attorney General's Model Rule of Procedure, OAR 660-001-0005.

Stat. Auth.: ORS 183, 196 & 197

Stats. Implemented: ORS 197.040, 197.045 & 197.090

Hist.: LCD 4-1978, f. & ef. 3-24-78; LCDC 1-1985(Temp), f. & ef. 3-13-85; LCDC 5-1988, f. & cert. ef. 9-29-88; LCDC 3-1990, f. & cert. ef. 6-6-90; LCDD 2-2005(Temp), f. & cert. ef. 3-18-05 thru 9-13-05

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**Adm. Order No.:** LCDD 3-2005

**Filed with Sec. of State:** 4-11-2005

**Certified to be Effective:** 4-11-05

**Notice Publication Date:** 1-1-05

**Rules Amended:** 660-012-0005, 660-012-0060

**Subject:** Section 0005 added a definition, minor transportation improvements, causing the remainder of the definitions to be renumbered. Section 0060 of the Transportation Planning Rule (OAR Chapter 660, Division 012), requires that local governments assess whether proposed plan and land use regulation amendments will significantly affect the transportation system. Where an effect occurs, local governments are required to take steps to put planned land use in balance with the planned transportation system. The adopted amendments clarify how local governments should assess whether or not a proposed plan or land use regulation amendment causes a significant effect and what corrective actions may be taken to put land use and transportation in balance.

**Rules Coordinator:** Shelia Preston—(503) 373-0050, ext. 222

### 660-012-0005

#### Definitions

For the purposes of this division, the definitions in ORS 197.015, the Statewide Planning Goals and OAR Chapter 660 shall apply. In addition the definitions listed below shall apply:

(1) "Access Management" means measures regulating access to streets, roads and highways from public roads and private driveways. Measures may include but are not limited to restrictions on the siting of interchanges, restrictions on the type and amount of access to roadways, and use of physical controls, such as signals and channelization including raised medians, to reduce impacts of approach road traffic on the main facility.

(2) "Accessway" means a walkway that provides pedestrian and or bicycle passage either between streets or from a street to a building or other destination such as a school, park, or transit stop. Accessways generally include a walkway and additional land on either side of the walkway, often in the form of an easement or right-of-way, to provide clearance and separation between the walkway and adjacent uses. Accessways through parking lots are generally physically separated from adjacent vehicle parking or parallel vehicle traffic by curbs or similar devices and include landscaping, trees and lighting. Where accessways cross driveways, they are generally raised, paved or marked in a manner which provides convenient access for pedestrians.

(3) "Affected Local Government" means a city, county or metropolitan service district that is directly impacted by a proposed transportation facility or improvement.

(4) At or near a major transit stop: "At" means a parcel or ownership which is adjacent to or includes a major transit stop generally including portions of such parcels or ownerships that are within 200 feet of a transit stop. "Near" generally means a parcel or ownership that is within 300 feet of a major transit stop. The term "generally" is intended to allow local governments through their plans and ordinances to adopt more specific definitions of these terms considering local needs and circumstances consistent with the overall objective and requirement to provide convenient pedestrian access to transit.

(5) "Committed Transportation Facilities" means those proposed transportation facilities and improvements which are consistent with the acknowledged comprehensive plan and have approved funding for construction in a public facilities plan or the Six-Year Highway or Transportation Improvement Program.

(6) "Demand Management" means actions which are designed to change travel behavior in order to improve performance of transportation facilities and to reduce need for additional road capacity. Methods may include but are not limited to the use of alternative modes, ride-sharing and vanpool programs, and trip-reduction ordinances.

(7) "Local Street Standards" include but are not limited to standards for right-of-way, pavement width, travel lanes, parking lanes, curb turning radius, and accessways.

(8) "Major" means, in general, those facilities or developments which, considering the size of the urban or rural area and the range of size, capacity or service level of similar facilities or developments in the area, are either larger than average, serve more than neighborhood needs or have significant land use or traffic impacts on more than the immediate neighborhood:

(a) "Major" as it modifies transit corridors, stops, transfer stations and new transportation facilities means those facilities which are most important to the functioning of the system or which provide a high level, volume or frequency of service;

(b) "Major" as it modifies industrial, institutional and retail development means such developments which are larger than average, serve more than neighborhood needs or which have traffic impacts on more than the immediate neighborhood;

(c) Application of the term "major" will vary from area to area depending upon the scale of transportation improvements, transit facilities and development which occur in the area. A facility considered to be major in a smaller or less densely developed area may, because of the relative significance and impact of the facility or development, not be considered a major facility in a larger or more densely developed area with larger or more intense development or facilities.

(9) "Major transit stop" means:

(a) Existing and planned light rail stations and transit transfer stations, except for temporary facilities;

(b) Other planned stops designated as major transit stops in a transportation system plan and existing stops which:

(A) Have or are planned for an above average frequency of scheduled, fixed-route service when compared to region wide service. In urban areas of 1,000,000 or more population major transit stops are generally located along routes that have or are planned for 20 minute service during the peak hour; and

(B) Are located in a transit oriented development or within 1/4 mile of an area planned and zoned for:

(i) Medium or high density residential development; or

(ii) Intensive commercial or institutional uses within 1/4 mile of subsection (i); or

(iii) Uses likely to generate a relatively high level of transit ridership.

(10) "Metropolitan Planning Organization (MPO)" means an organization located within the State of Oregon and designated by the Governor to coordinate transportation planning in an urbanized area of the state including such designations made subsequent to the adoption of this rule. The Longview-Kelso-Rainier MPO is not considered an MPO for the purposes of this rule.

(11) "Minor transportation improvements" include, but are not limited to, signalization, addition of turn lanes or merge/deceleration lanes on arterial or collector streets, provision of local streets, and transportation system management measures. Minor transportation improvements may or may not be listed as planned projects in a TSP where the improvement is otherwise consistent with the TSP. Minor transportation improvements do not include interchanges or new interchange ramps, new collector or arterial streets, road realignments or addition of travel lanes.

(12) "ODOT" means the Oregon Department of Transportation.

(13) "Parking Spaces" means on and off street spaces designated for automobile parking in areas planned for industrial, commercial, institutional or public uses. The following are not considered parking spaces for the purposes of OAR 660-012-0045(5)(c): park and ride lots, handicapped parking, and parking spaces for carpools and vanpools.

(14) "Pedestrian connection" means a continuous, unobstructed, reasonably direct route between two points that is intended and suitable for pedestrian use. Pedestrian connections include but are not limited to sidewalks, walkways, accessways, stairways and pedestrian bridges. On developed parcels, pedestrian connections are generally hard surfaced. In parks and natural areas, pedestrian connections may be soft-surfaced pathways. On undeveloped parcels and parcels intended for redevelopment, pedestrian connections may also include rights of way or easements for future pedestrian improvements.

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(15) "Pedestrian district" means a comprehensive plan designation or implementing land use regulations, such as an overlay zone, that establish requirements to provide a safe and convenient pedestrian environment in an area planned for a mix of uses likely to support a relatively high level of pedestrian activity. Such areas include but are not limited to:

- (a) Lands planned for a mix of commercial or institutional uses near lands planned for medium to high density housing; or
- (b) Areas with a concentration of employment and retail activity; and
- (c) Which have or could develop a network of streets and accessways which provide convenient pedestrian circulations.

(16) "Pedestrian plaza" means a small semi-enclosed area usually adjoining a sidewalk or a transit stop which provides a place for pedestrians to sit, stand or rest. They are usually paved with concrete, pavers, bricks or similar material and include seating, pedestrian scale lighting and similar pedestrian improvements. Low walls or planters and landscaping are usually provided to create a semi-enclosed space and to buffer and separate the plaza from adjoining parking lots and vehicle maneuvering areas. Plazas are generally located at a transit stop, building entrance or an intersection and connect directly to adjacent sidewalks, walkways, transit stops and buildings entrance or an intersection and connect directly to adjacent sidewalks, walkways, transit stops and building. A plaza including 150–250 square feet would be considered "small."

(17) "Pedestrian scale" means site and building design elements that are dimensionally less than those intended to accommodate automobile traffic, flow and buffering. Examples include ornamental lighting of limited height; bricks, pavers or other modules of paving with small dimensions; a variety of planting and landscaping materials; arcades or awnings that reduce the height of walls; and signage and signpost details that can only be perceived from a short distance.

(18) "Planning Period" means the twenty-year period beginning with the date of adoption of a TSP to meet the requirements of this rule.

(19) "Preliminary Design" means an engineering design which specifies in detail the location and alignment of a planned transportation facility or improvement.

(20) "Reasonably direct" means either a route that does not deviate unnecessarily from a straight line or a route that does not involve a significant amount of out-of-direction travel for likely users.

(21) "Refinement Plan" means an amendment to the transportation system plan, which resolves, at a systems level, determinations on function, mode or general location which were deferred during transportation system planning because detailed information needed to make those determinations could not reasonably be obtained during that process.

(22) "Roads" means streets, roads and highways.

(23) "Rural community" means areas defined as resort communities and rural communities in accordance with OAR 660-022-0010(6) and (7). For the purposes of this division, the area need only meet the definitions contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with OAR 660-022-0020.

(24) "Transit-Oriented Development (TOD)" means a mix of residential, retail and office uses and a supporting network of roads, bicycle and pedestrian ways focused on a major transit stop designed to support a high level of transit use. The key features of transit oriented development include:

- (a) A mixed-use center at the transit stop, oriented principally to transit riders and pedestrian and bicycle travel from the surrounding area;
- (b) High density of residential development proximate to the transit stop sufficient to support transit operation and neighborhood commercial uses within the TOD;
- (c) A network of roads, and bicycle and pedestrian paths to support high levels of pedestrian access within the TOD and high levels of transit use.

(25) "Transportation Facilities" means any physical facility that moves or assist in the movement of people or goods including facilities identified in OAR 660-012-0020 but excluding electricity, sewage and water systems.

(26) "Transportation System Management Measures" means techniques for increasing the efficiency, safety, capacity or level of service of a transportation facility without increasing its size. Examples include, but are not limited to, traffic signal improvements, traffic control devices including installing medians and parking removal, channelization, access management, ramp metering, and restriping of high occupancy vehicle (HOV) lanes.

(27) "Transportation Needs" means estimates of the movement of people and goods consistent with acknowledged comprehensive plan and

the requirements of this rule. Needs are typically based on projections of future travel demand resulting from a continuation of current trends as modified by policy objectives, including those expressed in Goal 12 and this rule, especially those for avoiding principal reliance on any one mode of transportation.

(28) "Transportation Needs, Local" means needs for movement of people and goods within communities and portions of counties and the need to provide access to local destinations.

(29) "Transportation Needs, Regional" means needs for movement of people and goods between and through communities and accessibility to regional destinations within a metropolitan area, county or associated group of counties.

(30) "Transportation Needs, State" means needs for movement of people and goods between and through regions of the state and between the state and other states.

(31) "Transportation Project Development" means implementing the transportation system plan (TSP) by determining the precise location, alignment, and preliminary design of improvements included in the TSP based on site-specific engineering and environmental studies.

(32) "Transportation Service" means a service for moving people and goods, such as intercity bus service and passenger rail service.

(33) "Transportation System Plan (TSP)" means a plan for one or more transportation facilities that are planned, developed, operated and maintained in a coordinated manner to supply continuity of movement between modes, and within and between geographic and jurisdictional areas.

(34) "Urban Area" means lands within an urban growth boundary, two or more contiguous urban growth boundaries, and urban unincorporated communities as defined by OAR 660-022-0010(9). For the purposes of this division, the area need only meet the definition contained in the Unincorporated Communities Rule although the area may not have been designated as an unincorporated community in accordance with OAR 660-022-0020.

(35) "Urban Fringe" means:

(a) Areas outside the urban growth boundary that are within 5 miles of the urban growth boundary of an MPO area; and

(b) Areas outside the urban growth boundary within 2 miles of the urban growth boundary of an urban area containing a population greater than 25,000.

(36) "Walkway" means a hard surfaced area intended and suitable for use by pedestrians, including sidewalks and surfaced portions of accessways.

(37) Vehicle Miles of Travel (VMT): means automobile vehicle miles of travel. Automobiles, for purposes of this definition, include automobiles, light trucks, and other similar vehicles used for movement of people. The definition does not include buses, heavy trucks and trips that involve commercial movement of goods. VMT includes trips with an origin and a destination within the MPO boundary and excludes pass through trips (i.e., trips with a beginning and end point outside of the MPO) and external trips (i.e., trips with a beginning or end point outside of the MPO boundary). VMT is estimated prospectively through the use of metropolitan area transportation models.

(38) "Metropolitan area" means the local governments that are responsible for adopting local or regional transportation system plans within a metropolitan planning organization (MPO) boundary. This includes cities, counties, and, in the Portland Metropolitan area, Metro.

Stat. Auth.: ORS 183, 197.040 & 197.2456

Stats. Implemented: ORS 195.025, 197.015, 197.040, 197.230, 197.245, 197.712 & 197.717  
Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDC 3-1995, f. & cert. ef. 3-31-95; LCDC 4-1995, f. & cert. ef. 5-8-95; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 3-2005, f. & cert. ef. 4-11-05

### 660-012-0060

#### Plan and Land Use Regulation Amendments

(1) Where an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation would significantly affect an existing or planned transportation facility, the local government shall put in place measures as provided in section (2) of this rule to assure that allowed land uses are consistent with the identified function, capacity, and performance standards (e.g. level of service, volume to capacity ratio, etc.) of the facility. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

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(c) As measured at the end of the planning period identified in the adopted transportation system plan:

(A) Allow land uses or levels of development that would result in types or levels of travel or access that are inconsistent with the functional classification of an existing or planned transportation facility;

(B) Reduce the performance of an existing or planned transportation facility below the minimum acceptable performance standard identified in the TSP or comprehensive plan; or

(C) Worsen the performance of an existing or planned transportation facility that is otherwise projected to perform below the minimum acceptable performance standard identified in the TSP or comprehensive plan.

(2) Where a local government determines that there would be a significant effect, compliance with section (1) shall be accomplished through one or a combination of the following:

(a) Adopting measures that demonstrate allowed land uses are consistent with the planned function, capacity, and performance standards of the transportation facility.

(b) Amending the TSP or comprehensive plan to provide transportation facilities, improvements or services adequate to support the proposed land uses consistent with the requirements of this division; such amendments shall include a funding plan or mechanism consistent with section (4) or include an amendment to the transportation finance plan so that the facility, improvement, or service will be provided by the end of the planning period.

(c) Altering land use designations, densities, or design requirements to reduce demand for automobile travel and meet travel needs through other modes.

(d) Amending the TSP to modify the planned function, capacity or performance standards of the transportation facility.

(e) Providing other measures as a condition of development or through a development agreement or similar funding method, including transportation system management measures, demand management or minor transportation improvements. Local governments shall as part of the amendment specify when measures or improvements provided pursuant to this subsection will be provided.

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) The facility is already performing below the minimum acceptable performance standard identified in the TSP or comprehensive plan on the date the amendment application is submitted;

(b) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

(c) Development resulting from the amendment will, at a minimum, mitigate the impacts of the amendment in a manner that avoids further degradation to the performance of the facility by the time of the development through one or a combination of transportation improvements or measures;

(d) The amendment does not involve property located in an interchange area as defined in paragraph (4)(d)(C); and

(e) For affected state highways, ODOT provides a written statement that the proposed funding and timing for the identified mitigation improvements or measures are, at a minimum, sufficient to avoid further degradation to the performance of the affected state highway. However, if a local government provides the appropriate ODOT regional office with written notice of a proposed amendment in a manner that provides ODOT reasonable opportunity to submit a written statement into the record of the local government proceeding, and ODOT does not provide a written statement, then the local government may proceed with applying subsections (a) through (d) of this section.

(4) Determinations under sections (1)–(3) of this rule shall be coordinated with affected transportation facility and service providers and other affected local governments.

(a) In determining whether an amendment has a significant effect on an existing or planned transportation facility under subsection (1)(c) of this rule, local governments shall rely on existing transportation facilities and services and on the planned transportation facilities, improvements and services set forth in subsections (b) and (c) below.

(b) Outside of interstate interchange areas, the following are considered planned facilities, improvements and services:

(A) Transportation facilities, improvements or services that are funded for construction or implementation in the Statewide Transportation Improvement Program or a locally or regionally adopted transportation improvement program or capital improvement plan or program of a transportation service provider.

(B) Transportation facilities, improvements or services that are authorized in a local transportation system plan and for which a funding plan or mechanism is in place or approved. These include, but are not limited to, transportation facilities, improvements or services for which: transportation systems development charge revenues are being collected; a local improvement district or reimbursement district has been established or will be established prior to development; a development agreement has been adopted; or conditions of approval to fund the improvement have been adopted.

(C) Transportation facilities, improvements or services in a metropolitan planning organization (MPO) area that are part of the area's federally-approved, financially constrained regional transportation system plan.

(D) Improvements to state highways that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when ODOT provides a written statement that the improvements are reasonably likely to be provided by the end of the planning period.

(E) Improvements to regional and local roads, streets or other transportation facilities or services that are included as planned improvements in a regional or local transportation system plan or comprehensive plan when the local government(s) or transportation service provider(s) responsible for the facility, improvement or service provides a written statement that the facility, improvement or service is reasonably likely to be provided by the end of the planning period.

(c) Within interstate interchange areas, the improvements included in (b)(A)–(C) are considered planned facilities, improvements and services, except where:

(A) ODOT provides a written statement that the proposed funding and timing of mitigation measures are sufficient to avoid a significant adverse impact on the Interstate Highway system, then local governments may also rely on the improvements identified in paragraphs (b)(D) and (E) of this section; or

(B) There is an adopted interchange area management plan, then local governments may also rely on the improvements identified in that plan and which are also identified in paragraphs (b)(D) and (E) of this section.

(d) As used in this section and section (3):

(A) Planned interchange means new interchanges and relocation of existing interchanges that are authorized in an adopted transportation system plan or comprehensive plan;

(B) Interstate highway means Interstates 5, 82, 84, 105, 205 and 405; and

(C) Interstate interchange area means:

(i) Property within one-half mile of an existing or planned interchange on an Interstate Highway as measured from the center point of the interchange; or

(ii) The interchange area as defined in the Interchange Area Management Plan adopted as an amendment to the Oregon Highway Plan.

(e) For purposes of this section, a written statement provided pursuant to paragraphs (b)(D), (b)(E) or (c)(A) provided by ODOT, a local government or transportation facility provider, as appropriate, shall be conclusive in determining whether a transportation facility, improvement or service is a planned transportation facility, improvement or service. In the absence of a written statement, a local government can only rely upon planned transportation facilities, improvements and services identified in paragraphs (b)(A)–(C) to determine whether there is a significant effect that requires application of the remedies in section (2).

(5) The presence of a transportation facility or improvement shall not be a basis for an exception to allow residential, commercial, institutional or industrial development on rural lands under this division or OAR 660-004-0022 and 660-004-0028.

(6) In determining whether proposed land uses would affect or be consistent with planned transportation facilities as provided in 0060(1) and (2), local governments shall give full credit for potential reduction in vehicle trips for uses located in mixed-use, pedestrian-friendly centers, and neighborhoods as provided in (a)–(d) below;

(a) Absent adopted local standards or detailed information about the vehicle trip reduction benefits of mixed-use, pedestrian-friendly development, local governments shall assume that uses located within a mixed-use, pedestrian-friendly center, or neighborhood, will generate 10% fewer daily and peak hour trips than are specified in available published estimates, such



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as those provided by the Institute of Transportation Engineers (ITE) Trip Generation Manual that do not specifically account for the effects of mixed-use, pedestrian-friendly development. The 10% reduction allowed for by this section shall be available only if uses which rely solely on auto trips, such as gas stations, car washes, storage facilities, and motels are prohibited;

(b) Local governments shall use detailed or local information about the trip reduction benefits of mixed-use, pedestrian-friendly development where such information is available and presented to the local government. Local governments may, based on such information, allow reductions greater than the 10% reduction required in (a);

(c) Where a local government assumes or estimates lower vehicle trip generation as provided in (a) or (b) above, it shall assure through conditions of approval, site plans, or approval standards that subsequent development approvals support the development of a mixed-use, pedestrian-friendly center or neighborhood and provide for on-site bike and pedestrian connectivity and access to transit as provided for in 0045(3) and (4). The provision of on-site bike and pedestrian connectivity and access to transit may be accomplished through application of acknowledged ordinance provisions which comply with 0045(3) and (4) or through conditions of approval or findings adopted with the plan amendment that assure compliance with these rule requirements at the time of development approval; and

(d) The purpose of this section is to provide an incentive for the designation and implementation of pedestrian-friendly, mixed-use centers and neighborhoods by lowering the regulatory barriers to plan amendments which accomplish this type of development. The actual trip reduction benefits of mixed-use, pedestrian-friendly development will vary from case to case and may be somewhat higher or lower than presumed pursuant to (a) above. The Commission concludes that this assumption is warranted given general information about the expected effects of mixed-use, pedestrian-friendly development and its intent to encourage changes to plans and development patterns. Nothing in this section is intended to affect the application of provisions in local plans or ordinances which provide for the calculation or assessment of systems development charges or in preparing conformity determinations required under the federal Clean Air Act.

(7) Amendments to acknowledged comprehensive plans and land use regulations which meet all of the criteria listed in (a)–(c) below shall include an amendment to the comprehensive plan, transportation system plan the adoption of a local street plan, access management plan, future street plan or other binding local transportation plan to provide for on-site alignment of streets or accessways with existing and planned arterial, collector, and local streets surrounding the site as necessary to implement the requirements in Section 0020(2)(b) and Section 0045(3) of this division:

(a) The plan or land use regulation amendment results in designation of two or more acres of land for commercial use;

(b) The local government has not adopted a TSP or local street plan which complies with Section 0020(2)(b) or, in the Portland Metropolitan Area, has not complied with Metro's requirement for street connectivity as contained in Title 6, Section 3 of the Urban Growth Management Functional Plan; and

(c) The proposed amendment would significantly affect a transportation facility as provided in 0060(1).

(8) A "mixed-use, pedestrian-friendly center or neighborhood" for the purposes of this rule, means:

(a) Any one of the following:

(A) An existing central business district or downtown;

(B) An area designated as a central city, regional center, town center or main street in the Portland Metro 2040 Regional Growth Concept;

(C) An area designated in an acknowledged comprehensive plan as a transit oriented development or a pedestrian district; or

(D) An area designated as a special transportation area as provided for in the Oregon Highway Plan.

(b) An area other than those listed in (a) which includes or is planned to include the following characteristics:

(A) A concentration of a variety of land uses in a well-defined area, including the following:

(i) Medium to high density residential development (12 or more units per acre);

(ii) Offices or office buildings;

(iii) Retail stores and services;

(iv) Restaurants; and

(v) Public open space or private open space which is available for public use, such as a park or plaza.

(B) Generally include civic or cultural uses;

(C) A core commercial area where multi-story buildings are permitted;

(D) Buildings and building entrances oriented to streets;

(E) Street connections and crossings that make the center safe and conveniently accessible from adjacent areas;

(F) A network of streets and, where appropriate, accessways and major driveways that make it attractive and highly convenient for people to walk between uses within the center or neighborhood, including streets and major driveways within the center with wide sidewalks and other features, including pedestrian-oriented street crossings, street trees, pedestrian-scale lighting and on-street parking;

(G) One or more transit stops (in urban areas with fixed route transit service); and

(H) Limit or do not allow low-intensity or land extensive uses, such as most industrial uses, automobile sales and services, and drive-through services.

Stat. Auth.: ORS 183 & 197.040

Stats. Implemented: ORS 195.025, 197.040, 197.230, 197.245, 197.610 - 197.625, 197.628 - 197.646, 197.712, 197.717 & 197.732

Hist.: LCDC 1-1991, f. & cert. ef. 5-8-91; LCDD 6-1998, f. & cert. ef. 10-30-98; LCDD 6-1999, f. & cert. ef. 8-6-99; LCDD 3-2005, f. & cert. ef. 4-11-05

### Landscape Contractors Board Chapter 808

**Adm. Order No.:** LCB 2-2005

**Filed with Sec. of State:** 4-5-2005

**Certified to be Effective:** 4-5-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 808-003-0025, 808-005-0020

**Subject:** 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 a cooperative work experience requirement in landscaping.

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

**Rules Coordinator:** Kim Gladwill-Rowley—(503) 986-6570

#### 808-003-0025

##### Alternative Experience

(1) In lieu of experience required by ORS 671.570(1)(a), an applicant may submit documentation showing two years of related landscaping experience by identifying six individual projects per calendar year for two years. For the maximum, two years' experience, the applicant may document 24 projects, six per calendar year, for four years.

(2) To qualify under subsection (1), the applicant shall submit documentation for each project on forms provided by the agency. The following shall be provided for each project, for use by the agency in verifying the information:

(a) Name and address of person for whom the project was done;

(b) Description of work done;

(c) Cost of project (must be \$100 or more but less than \$500 for a single non-recurring project);

(d) Date of project; and

(e) Copy of contract, if available.

(f) Signature of client;

(g) Telephone number of client for verification purposes.

(3) An applicant will be deemed to have qualifying experience under ORS 671.570(1)(b) if the applicant:

(a) Completes the Certified Landscape Technician (CLT) program administered by the Oregon Landscape Contractors Association (OLCA) or another entity licensed to the Professional Landcare Network; or

(b) Obtains an Associate, Bachelors or Masters Degree in horticulture or other related fields from an accredited school or college, which includes the completion of a cooperative work experience requirement in landscaping; or

(c) Obtains 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 a cooperative work experience requirement in landscaping; or

(d) Holds an active license under ORS 701 and holds a current certification with the International Society of Arboriculture (ISA) as a Certified Arborist.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.570

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Hist.: LC 1-1985, f. & ef. 7-1-85; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0016; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 2-1998, f. & cert. ef. 4-30-98; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 2-2005, f. & cert. ef. 4-5-05

## 808-005-0020

### Schedule of Civil Penalties

The agency may assess civil penalties according to the following schedule, which may be adjusted per the terms of a settlement agreement:

(1) For operating as a landscaping business in violation of ORS 671.530(3) or (4), \$1,000.

(2) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when a claim has been filed for damages arising out of that work, \$2,000.

(3) For operating as a landscaping business in violation of ORS 671.530(3) or (4), when one or more previous violations have occurred, \$2,000.

(4) For advertising in violation of ORS 671.530(2) or (4), \$600.

(5) For advertising in violation of ORS 671.530(2) or (4) when one or more previous violations have occurred, \$600.

(6) For operating as a landscaping business without employing at least one licensed landscape contractor licensed within the phase of work performed, in violation of OAR 808-003-0040, \$200.

(7) For performing landscaping work while not subject to a written contract, in violation of ORS 671.625(2) and OAR 808-002-0020:

(a) Warning for the first offense;

(b) \$200 for the second offense occurring after action taken on first offense; and

(c) \$500 for subsequent offenses.

(8) For failure to include the license number in all written advertising, in violation of OAR 808-003-0010:

(a) Warning for the first offense;

(b) \$200 for the second offense occurring after action taken on first offense; and

(c) \$500 for subsequent offenses.

(9) For performing work outside the scope of the business' license in violation of OAR 808-003-0040, \$400.

(10) For installation of an irrigation backflow prevention device or tapping into the potable water supply:

(a) In violation of OAR 808-003-0040, \$500; or

(b) In violation of a written agreement with the Board as provided in OAR 808-003-0035 and 808-003-0040, \$1,000 and suspension of the license until LIBDI license is obtained.

(11) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, \$200.

(12) For failure to maintain the insurance required by ORS 671.565 in effect continuously throughout the license period, if the licensee, in performance of work subject to ORS 671.510 to 671.710, causes damage to another entity or to the property of another person for which that entity or person could have been compensated by an insurance company had the required insurance been in effect, \$2,000, in addition to such other action as may be authorized by statute.

(13) Failure to conform to information provided on the application in violation of ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of conformance with the application.

(14) Failure to comply with any part of ORS Chapters 316, 656, 657, and 671, as authorized by ORS 671.510 to 671.710, \$1,000 and suspension of the license until the applicant provides the agency with proof of compliance with the statutes.

(15) Violating an order to stop work as authorized by ORS 671.510 to 671.710, \$1,000 per day.

(16) For failure to obtain a permit to tap into a potable water supply prior to the installation of an irrigation backflow prevention device or failure to comply with applicable plumbing code requirements, \$500.

(17) Failure to obtain the appropriate building code permit(s), \$500.

(18) When as set forth in ORS 671.610(8), the number of licensed landscaping businesses working together on the same task on the same job site, where one of the businesses is licensed exempt under ORS 671.525(2)(b), exceeded two sole proprietors, one partnership, or one limited liability company, penalties shall be imposed on each of the persons to whom the contract is awarded and each of the persons who award the contract, as follows:

(a) \$1,000 for the first offense;

(b) \$2,000 for the second offense;

(c) Six month suspension of the license for the third offense; and

(d) Three-year revocation of license for a fourth offense.

(19) Failure to notify the agency of a change in the business' phase of license as required by OAR 808-003-0045(4), \$500.00.

(20) Failure by the landscape contractor to provide a signed Verification of Employment form as required by OAR 808-003-0050(2)(a), \$500.00 and suspension of the license until the licensed contractor provides the agency with the Verification of Employment form.

(21) Failure by the landscaping business to provide a signed Verification of Employment form with the application or renewal of the business license, refuse to issue or renew the license until the agency receives the Verification of Employment form.

(22) Failure by the landscape contractor to comply with the supervisory responsibilities as required by OAR 808-003-0018(4) and 808-003-0050(5);

(a) \$200 for the first offense;

(b) \$500 for the second offense occurring after action taken on first offense; and

(c) \$1,000 and six month suspension of the license for the third offense.

(23) Failure to notify the Landscape Contractors Board of a change of address or employment in writing as required by ORS 671.603 and OAR 808-003-0045, \$200.

Stat. Auth.: ORS 183.310 - 183.500, 670.310 & 671.670

Stats. Implemented: ORS 671.720

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 4-2003, f. 5-27-03, cert. ef. 6-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2005, f. & cert. ef. 4-5-05

## Oregon Department of Education Chapter 581

**Adm. Order No.:** ODE 8-2005

**Filed with Sec. of State:** 3-23-2005

**Certified to be Effective:** 3-23-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 581-021-0037

**Subject:** OAR 581-021-0037 does not specify how often training for non-medical persons who administer medications to students in schools should happen. This amendment would require yearly training for non-medical school personnel who administer medications to students. This amendment is critical for maintaining safe and healthy schools.

If you have a question regarding this rule, please contact Suzy Harris at (503) 378-3600, ext. 2333 or e-mail suzy.harris@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

### 581-021-0037

#### Administration of Prescription and Nonprescription Medication to Students

(1) As used in this rule, definitions of terms shall be as follows:

(a) "Designated staff" means the school staff person who is designated by the building level school administrator, either the principal or head teacher, to administer nonprescription or prescription medication pursuant to district policy and procedure;

(b) "Instruction from physician, physician assistant or nurse practitioner" means a written instruction for the administration of a prescription medication to a student which shall include:

(A) Name of student;

(B) Name of medication;

(C) Dosage;

(D) Route;

(E) Frequency of administration; and

(F) Other special instruction, if any.

(c) The prescription medication label prepared by a pharmacist at the direction of a physician, physician assistant or nurse practitioner will meet the requirements for a written instruction if it contains the information listed in (A) through (F) above;

(d) "Instruction from the student's parent or guardian" means a written instruction for the administration of a nonprescription medication to a student which shall include:

(A) Name of student;

# ADMINISTRATIVE RULES

- (B) Name of medication;
- (C) Dosage;
- (D) Route;
- (E) Frequency of administration;
- (F) Other special instructions; and
- (G) Signature of parent or guardian.

(e) "Student self-medication" means students must be able to administer medication to him or herself without requiring a trained school staff member to assist in the administration of the medication;

(f) "Training" means yearly instruction to be provided to designated school staff on the administration of prescription and nonprescription medications, based on requirements set out in guidelines approved by the Department of Education, including discussion of applicable district policies, procedures and materials;

(g) "Nonprescription medication" means only commercially prepared, nonalcohol-based medication to be taken at school that is necessary for the child to remain in school. This shall be limited to eyes, nose and cough drops, cough suppressants, analgesics, decongestants, antihistamines, topical antibiotics, anti-inflammatories and antacids that do not require written or oral instructions from a physician. Nonprescription medication does not include dietary food supplements;

(h) "Physician" means a doctor of medicine or osteopathy or a physician assistant licensed to practice by the Board of Medical Examiners for the State of Oregon, or a nurse practitioner with prescriptive authority licensed by the Board of Nursing for the State of Oregon, or a dentist licensed by the Board of Dentistry for the State of Oregon, or an optometrist licensed by the Board of Optometry for the State of Oregon, or a naturopathic physician licensed by the Board of Naturopathy for the State of Oregon. "Physician" also may include individuals licensed in the categories set out above by comparable licensing agencies in adjoining states;

(i) "Prescription medication" means any noninjectable drug, chemical compound, suspension or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by a student under the written direction of a physician. Prescription medication does not include dietary food supplements;

(j) "Age appropriate guidelines" means the student must be able to demonstrate the ability, developmentally and behaviorally, to self medicate with permission from parent (guardian), building administrator and in the case of a prescription medication a physician.

(2) Each school district shall adopt policies and procedures that provide for:

(a) The administration of prescription and nonprescription medication to students by trained school personnel; and

(b) Student self-medication including age appropriate guidelines.

(3) Policies and procedures shall:

(a) Include a process to designate, train and supervise appropriate staff;

(b) Permit designated staff to administer prescription medication under the written permission from the student's parent or guardian and instruction from a physician, physician assistant or nurse practitioner if, because of its prescribed frequency, the medication must be given during school hours;

(c) Permit designated staff to administer nonprescription medication under the written permission and instruction from the student's parent or guardian; and

(d) Permit student self-medication.

(4) Policies and procedures related to administration of prescription and nonprescription medication and student self-medication must discuss:

(a) Safe storage, handling, monitoring supply and disposing of medications;

(b) Record keeping and reporting of medication administration, including errors in administration;

(c) Emergency medical response for life threatening side effects and allergic reactions; and

(d) Student confidentiality.

Stat. Auth.: ORS 326.051

Stats. Implemented: ORS 339.870

Hist.: ODE 3-1998(Temp), f. & cert. ef. 2-27-98 thru 8-25-98; ODE 6-1998, f. & cert. ef. 4-23-98; ODE 10-1999, f. & cert. ef. 2-12-99; ODE 8-2005, f. & cert. ef. 3-23-05

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## Oregon Public Employees Retirement System

### Chapter 459

Adm. Order No.: PERS 10-2005

Filed with Sec. of State: 3-31-2005

Certified to be Effective: 3-31-05

**Notice Publication Date:** 2-1-05

**Rules Amended:** 459-010-0035

**Subject:** ORS 238A.025 determines eligibility for the Oregon Public Service Retirement Plan (OPSRP) for employees employed on or after August 29, 2003. The statute exempts PERS Chapter 238 Program members from OPSRP membership, including employees who began their six-month waiting period under the PERS Chapter 238 Program prior to August 29, 2003.

For ease of administration, PERS and OPSRP membership waiting periods end as of the first of the calendar month after serving six months. Under these programs, someone starting work January 15 becomes a member August 1. The statutes, particularly ORS 238A.025, contemplate that the six-month waiting period starts January 15, when the employee starts work, and ends the first of the month after the employee completes six months of service.

The current language of OAR 459-010-0035 does not comport with the statutory structure. Instead, the rule provides that the six-month waiting period begins on "the first of the calendar month following the date of employment..." Previously, this rule had no practical effect because membership under either structure always began on the first day of the month following six months of service. Now, however, with ORS 238A.025 making the starting date of membership a critical determining factor, PERS proposes to amend the rule so the waiting period commences as contemplated by the statutes.

OAR 459-010-0035 is modified so the waiting period begins on the day the employee is hired. This modification does not result in the shortening or lengthening of the waiting period or affect the date of membership that follows the six-month waiting period. An employee hired on August 9, 2003, would become a member on March 1, 2004, under both the current language and under the proposed rule modifications. Under the amended version of the rule, however, that employee would become a member of the PERS Chapter 238 Program and not OPSRP.

Additionally, the rule has been amended to provide the commencement of the six full calendar months to include the month in which the employee is hired if employment begins on the first business day of the month.

To improve clarity and consistency, the term "waiting period" replaces the term "qualifying service" in this rule.

**Rules Coordinator:** David K. Martin—(503) 603-7713

### 459-010-0035

#### Six-Month Waiting Period

(1) The six-month waiting period required for establishing membership shall be six full calendar months of service (uninterrupted by a total of more than 30 working days during such six months) to the same employer or concurrent employers. The six full calendar months:

(a) Begins on the date hired; and

(b) Includes the month in which the employee is hired if employment begins on the first business day of the month. For the purposes of this rule, a business day is Monday through Friday when PERS is open for business.

(2) Membership in the system shall be established as of the first of the month next following six full calendar months of service, as defined in section (1) of this rule, provided that the employee is employed on that date by the same employer or employers concurrently employing the employee during that six-month period.

(3) In the event an employee is on a qualified leave of absence under OAR 459-010-0010, the period of absence shall not constitute an interruption of the waiting period under Section (1) of this rule. The six-month waiting period shall be extended by the length of the qualified leave of absence.

(4) The provisions of this rule shall be applied retroactively to August 1, 2003.

Stat. Auth.: ORS 238.650

Stats. Implemented: ORS 238.015 & 238A.025

Hist.: PER 8, f. 12-15-55; PERS 12-1998, f. & cert. ef. 12-17-98; PERS 10-2005, f. & cert. ef. 3-31-05



# ADMINISTRATIVE RULES

## Oregon State Lottery Chapter 177

**Adm. Order No.:** LOTT 1-2005

**Filed with Sec. of State:** 4-11-2005

**Certified to be Effective:** 7-31-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 177-040-0027, 177-040-0028, 177-040-0029

**Rules Amended:** 177-040-0026

**Subject:** The rule changes amend OAR 177-040-0026, adopt OAR 177-040-0027 and 177-040-0028 to provide compensation rates for video lottery retailers who offer video poker only and for video lottery retailers who offer both video poker and video line games, and adopt OAR 177-040-0029 to provide a review process for the compensation rates tied to video lottery game share sales.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

### 177-040-0026

#### Retailer Compensation — Video Lottery Games

The compensation amount the Lottery shall pay a retailer for the sale of video lottery game shares is calculated on a percentage of net receipts during a business year. "Net receipts" means the amount of money that is received at a retailer's premises from the sale of video lottery game shares after the payment of prizes. The compensation rates for the sale of video lottery game shares for retailers that offer only video poker games is set forth in OAR 177-040-0027. The compensation rates for the sale of video lottery game shares for retailers that offer both video poker games and video line games is set forth in OAR 177-040-0028.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.010

Hist.: LOTT 4-2004(Temp), f. 4-6-04, cert. ef. 6-27-04 thru 12-23-04; LOTT 8-2004, f. 5-26-04, cert. ef. 5-27-04; LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05

### 177-040-0027

#### Compensation Rates – Video Lottery Retailers Offering only Video Poker Games

(1) **Applicability:** The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares on video lottery terminals at retailers that offer only video poker games as described in OAR 177-200-0070.

(2) **General:** At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (2)(a) of this section for the first business year the Retailer Contract is in effect. For each subsequent business year that the Retailer Contract is in effect, no less than 60 days before the beginning of the upcoming business year, a retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(a) 3-Tier Option:

##### Net Receipts per Year — Compensation: Percent of Net Receipts

Up to \$175,000 — 32.5%

\$175,000 to \$475,000 — 26%

\$475,000 and up — 17%

For example, if a retailer's annual net receipts are \$600,000, the retailer would receive over the course of the business year: 32.5% of the first \$175,000 (\$56,875), and 26% of the next \$300,000 (\$78,000), and 17% of the remaining \$125,000 (\$21,250), for a total of \$156,125.

Or, if a retailer's annual net receipts are \$400,000, the retailer would receive over the course of the business year: 32.5% of the first \$175,000 (\$56,875), and 26% of the next \$225,000 (\$58,500), for a total of \$115,375.

(b) 2-Tier Option:

##### Net Receipts per Year — Compensation: Percent of Net Receipts

Up to \$650,000 — 26%

\$650,000 and up — 19%

For example, if a retailer's annual net receipts are \$1,000,000, the retailer would receive over the course of the business year: 26% of the first \$650,000 (\$169,000), and 19% of the remaining \$350,000 (\$66,500), for a total of \$235,500.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.310, 461.445

Hist.: LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05

### 177-040-0028

#### Compensation Rates — Video Lottery Retailers Offering Video Poker Games and Video Line Games

(1) **Applicability:** The compensation rates for the sale of video lottery game shares set forth in this rule are limited to compensation for the sale of shares on video lottery terminals at retailers that offer both video poker games as described in OAR 177-200-0070 and video line games as described in OAR 177-200-0075.

(2) **General:** At the time a retailer signs a Retailer Contract, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of this section. If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (2)(a) of this section for the first business year the Retailer Contract is in effect. For each subsequent business year that the Retailer Contract is in effect, no less than 60 days before the beginning of the upcoming business year, a retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(a) 4-Tier Option:

##### Net Receipts per Year — Compensation: Percent of Net Receipts

Up to \$175,000 — 29%

\$175,000 to \$475,000 — 24%

\$475,000 to \$800,000 — 15%

\$800,000 and up — 12%

For example, if a retailer's annual net receipts are \$700,000, the retailer would receive over the course of the business year: 29% of the first \$175,000 (\$50,750), and 24% of the next \$300,000 (\$72,000), and 15% of the remaining \$225,000 (\$33,750), for a total of \$156,500.

Or, if a retailer's annual net receipts are \$445,000, the retailer would receive over the course of the business year: 29% of the first \$175,000 (\$50,750), and 24% of the next \$270,000 (\$64,800), for a total of \$115,550.

(b) 3-Tier Option:

##### Net Receipts per Year — Compensation: Percent of Net Receipts

Up to \$600,000 — 23%

\$600,000 to \$1,800,000 — 18.5%

\$1,800,000 and up — 12%

For example, if a retailer's annual net receipts are \$700,000, the retailer would receive over the course of the business year: 23% of the first \$600,000 (\$138,000), and 18.5% of the remaining \$100,000 (\$18,500), for a total of \$156,500.

Or, if a retailer's annual net receipts are \$1,130,000, the retailer would receive over the course of the business year: 23% of the first \$600,000 (\$138,000), and 18.5% of the remaining \$530,000 (\$98,050), for a total of \$236,050.

(3) **Amendment:** If the Lottery and a retailer sign an amendment to a Retailer Contract that authorizes the retailer to sell video lottery game shares on video lottery terminals that offer both video poker games and video line games, then:

(a) At the time the retailer signs the amendment, the retailer must choose in writing to receive compensation in accordance with either subsection (2)(a) or subsection (2)(b) of OAR 177-040-0028(2). If the retailer fails to choose as required, the Lottery shall compensate the retailer pursuant to subsection (2)(a) of OAR 177-040-0028(2) through the end of the business year. For each subsequent business year that the Retailer Contract is in effect, no less than 60 days before the beginning of the upcoming business year, a retailer may submit a written notice to the Lottery that the retailer chooses to be compensated under the alternative compensation method for the upcoming business year. If the retailer does not submit or fails to timely submit a written notice, the Lottery shall compensate the retailer using the retailer's current compensation method for the next business year.

(b) Beginning on the effective date of the amendment, the Lottery shall compensate the retailer pursuant to OAR 177-040-0028 based on net receipts from the beginning of the current business year.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.310, 461.445

Hist.: LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05

### 177-040-0029

#### Review of Compensation Rates for Video Lottery Retailers Offering Video Poker Games and Video Line Games

(1) **General:** The Lottery Commission finds that the adoption of the compensation rates set forth in OAR 177-040-0028(2) is based on a projected video lottery game share sales target of \$700,000,000 for the period June 25, 2006 to June 30, 2007 (Business Year '07.) This is a growth increase of 22% from actual sales of video lottery game shares for the period June 27, 2004 to June 25, 2005 (Business Year '05.) This projection includes the sales of video line game shares which have never been offered by the Oregon Lottery. The purpose of this rule is to establish a process for

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a review of the retailer compensation rates set forth in OAR 177-040-0028(2) on or after July 1, 2007.

(2) **Review:** On or after July 1, 2007, the Lottery shall determine the actual sales of all video lottery game shares from the period June 25, 2006 to June 30, 2007 (Business Year '07.) If the actual sales are less than \$595,000,000, the Lottery Commission will conduct a review of the compensation rates set forth in OAR 177-040-0028(2), and may increase those compensation rates. If the actual sales exceed \$805,000,000, and the Commission determines that the sales increase is not primarily due to an increase in the number of video lottery retailers, the following compensation rates will replace the compensation rates specified in OAR 177-040-0028(2) and will be effective beginning July 1, 2007:

(a) 4-Tier Option:

Net Receipts per Year — Compensation: Percent of Net Receipts

Up to \$175,000 — 27.5%

\$175,000 to \$475,000 — 23%

\$475,000 to \$800,000 — 14%

\$800,000 and up — 11%

(b) 3-Tier Option:

Net Receipts per Year — Percent of Net Receipts

Up to \$600,000 — 22%

\$600,000 to \$1,800,000 — 17.5%

\$1,800,000 and up — 11%

(3) **Determination of Actual Sales Growth:** The Commission shall only consider the actual sales growth as determined by the Lottery for purposes of section (2) of this rule. The Lottery's determination is final.

(4) **Commission Authority:** The review process set forth in subsection (2) of this rule is not intended to limit in any way the authority of the Lottery Commission to review or adopt compensation rates for the sale of Lottery game tickets or shares at any time deemed necessary by the Lottery Commission.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

Stats. Implemented: ORS 461.310, 461.445

Hist.: LOTT 1-2005, f. 4-11-05, cert. ef. 7-31-05

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**Adm. Order No.:** LOTT 2-2005

**Filed with Sec. of State:** 4-11-2005

**Certified to be Effective:** 5-1-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 177-200-0075

**Rules Amended:** 177-200-0065

**Rules Repealed:** 177-200-0000

**Subject:** 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.

**Rules Coordinator:** Mark W. Hohlt—(503) 540-1417

## 177-200-0065

### Video Lottery Game Management

(1) **Video Game Management:** The Director of the Lottery shall manage the video lottery games installed on its video lottery terminals pursuant to ORS 461.200. The Director may revise the Lottery's video lottery games at any time and in any manner. The Lottery is under no obligation to continue to operate existing games and may initiate new or revised games at any time.

(2) **Retailer's Sales:** A retailer's sales of all lottery tickets and shares and sales of non-lottery products are the prime factors considered by the Lottery in managing the games installed on its video lottery equipment. A retailer's sales from video lottery games must comply with the provisions of OAR 177-040-0017 or 177-040-0061 and 177-045-0030.

(3) **Removal of Games:** The Lottery may furnish or remove video games from equipment on a retailer's premises at any time for any reason. The Lottery may limit the amount of time that a game is available at any time for any reason.

(4) **Test Equipment:** With the consent of the retailer, the Lottery may test new or revised games on its equipment on a retailer's premises.

(5) **Operation of Other Laws:** This rule does not preclude the Lottery from removing any or all of its games installed on its equipment or limiting the time or hours the games are operational pursuant to any other applicable law or contract provision.

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

Stats. Implemented: ORS 461.215 & 461.217

Hist.: LOTT 7-2003(Temp), f. & cert. ef. 6-5-03 thru 11-28-03; LOTT 15-2003, f. & cert. ef. 9-29-03; LOTT 2-2005, f. 4-11-05, cert. ef. 5-1-05

## 177-200-0075

### Requirements for Video Line Games

(1) **General:** A video line game must meet the following requirements:

(a) **Randomness:** The program must select numbers and symbols that satisfy the randomness requirements of OAR 177-200-0055.

(b) **Multi-Line Game Play:** When more than one line is played during a game play, each individual line that is brought into play by wagering additional credits must be clearly identified on the video lottery terminal screen.

(c) **End of Each Play:** At the end of each game play, the video lottery terminal must display and identify each winning combination of numbers or symbols, if any, and the amount won, if any.

(2) **Configuration:** A game may be configured as a matching game in which the player selects numbers or symbols from a fixed grid or pattern, or a game where randomly selected numbers or symbols line up in a row or other specified shape, or a game where one or more specified numbers or symbols must appear in order to constitute a winning game play.

(3) **Cessation of Movement:** A game may be configured so that after the player initiates game play, the movement of numbers or symbols stops automatically, or the player may manually choose to stop the movement prior to an automatic stop.

Stat. Auth.: OR Const. Art. XV, Sec. 4(4)

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

Hist.: LOTT 2-2005, f. 4-11-05, cert. ef. 5-1-05

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## Oregon Student Assistance Commission

### Chapter 575

**Adm. Order No.:** OSAC 1-2005(Temp)

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

**Certified to be Effective:** 4-4-05 thru 10-1-05

**Notice Publication Date:**

**Rules Amended:** 575-001-0015, 575-031-0010

**Subject:** The Oregon Administrative Rule revisions the Oregon Student Assistance Commission is proposing changes that define eligibility requirements for the Oregon Opportunity Grant more narrowly than is currently the case and to provide for an appeal process for certain applicants who may be deemed ineligible for the grant, based on the eligibility requirements.

The amendment(s) to OAR 575-001-0015 provides for a new appeal process for applicants who are denied an Oregon Opportunity Grant due to their ineligibility for a Federal Pell Grant.

The amendment(s) to OAR 575-031-0010 amends current rules that define "financial need," for purposes of determining an applicant's eligibility for an Oregon Opportunity Grant.

**Rules Coordinator:** Tracy Richardson—(541) 687-7443

## 575-001-0015

### Right of Appeal

(1) A student who is denied participation in any student assistance program administered by the Oregon Student Assistance Commission except for those appeals addressed in 575-001-0015(2) may appeal the denial to the Commission. The appeal shall be submitted in writing a minimum of ten days before the meeting at which the appeal is to be considered. This rule is effective December 31, 2004.

(2) A student who is denied an Oregon Opportunity Grant due solely to the student's ineligibility for a Federal Pell Grant may appeal the denial to the Commission by submitting a completed Request for Reconsideration of Award form. The form must be certified by a Financial Aid Officer at the postsecondary institution the student attends or plans to attend and may be submitted to the Commission by the student or by the Financial Aid Officer on the student's behalf. The Commission shall review the request and determine if an award is appropriate. A committee composed of the OSAC Opportunity Grant Coordinator, one member of the Advisory Group for the Oregon Opportunity Grant, and one Commissioner shall review the request within 30 days of receipt. Only students who have federally calculated estimated family contributions of \$5000 or less and who show remaining need after known grants, scholarships, and other benefits are taken into consideration are eligible for reconsideration of an award under the Oregon Opportunity Grant program. A student whose request for reconsideration under this section is denied retains the right to submit an appeal to the Commission under 575-001-0015(1). This rule is effective December 31, 2004.

Stat. Auth.: ORS 348

Stats. Implemented: HB 2249 and the Higher Education Act of 1965 as amended

# ADMINISTRATIVE RULES

Hist.: SSC 17, f. & ef. 8-1-77; SSC 2-1986, f. & ef. 2-25-86 ; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2005(Temp), f. & cert. ef. 4-4-05 thru 10-1-05

## 575-031-0010 Financial Need

(1) A student must have financial need as determined by the Commission as set forth in OAR 575-030-0005(4). This rule is effective December 31, 2004.

(2) A student shall meet eligibility criteria for a Federal Pell Grant prior to being deemed eligible for an Oregon Opportunity Grant. A student who is not eligible for a Federal Pell Grant may appeal the denial by submitting to the Commission a Request for Reconsideration of Award, as described in section 575-001-0015(2) above. Only students who have federally calculated estimated family contributions of \$5000 or less and who show remaining need after known grants, scholarships, and other benefits are taken into consideration are eligible for reconsideration of an award under the Oregon Opportunity Grant. This rule is effective December 31, 2004.

Stat. Auth.: ORS 348  
Stats. Implemented: ORS 348  
Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 1-2005(Temp), f. & cert. ef. 4-4-05 thru 10-1-05

## Oregon University System, Southern Oregon University Chapter 573

**Adm. Order No.:** SOU 1-2005

**Filed with Sec. of State:** 4-11-2005

**Certified to be Effective:** 4-11-05

**Notice Publication Date:** 3-1-05

**Rules Adopted:** 573-095-0000, 573-095-0005, 573-095-0010

**Rules Amended:** 573-035-0020, 573-040-0005, 573-050-0045, 573-075-0000

**Rules Repealed:** 573-075-0270

**Subject:** The rule amendments in Div. 040 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 are increased parking fees. Rule 573-075-0270 is repealed and republished as a new rule and expanded to include a grading policy in Div 95.

**Rules Coordinator:** Deborah S. Drost—(541) 552-8550

## 573-035-0020 Definitions

For the purposes of OAR 573-035-0005 through 573-035-0080, the following definitions shall be used:

(1) Compliance Officer means the Associate Provost or other person designated by the Vice President for Academic Affairs and Provost or the President of the University.

(2) Grievance Officer means the chief student affairs officer or other person designated by the Vice President for Student Affairs or by the President.

(3) Prohibited Discrimination means any act that either in form or operation, whether intended or unintended, differentiates among persons on the basis of age, disability, national origin, race, color, marital status, religion, sex or sexual orientation.

(4) Sexual Harassment means any sexual advance, any request for sexual favors, or other verbal or physical conduct of a sexual nature when:

(a) Submission to the advances, request or conduct is made either explicitly or implicitly a term or condition of employment or participation in an academic program or activity;

(b) Submission or rejection of the advances, request or conduct is used as a basis or condition for employment or academic decisions affecting the student; or

(c) Such conduct unreasonably interferes with the work or academic performance of the student because it creates an intimidating, hostile or offensive work or academic environment for the student who is the object of the advance, request, or conduct, and a reasonable person in that student's position would have been similarly affected.

(5) Other Prohibited Harassment means verbal or physical conduct by an individual based on age, disability, national origin, race, color, marital

status, religion, or sexual orientation, which creates an intimidating, hostile or offensive working or academic environment that interferes with a second individual's work or academic performance and a reasonable person in that same situation would have been similarly affected.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 580-015; Title VI and Title VII of the Civil Rights Act; Section 504 of the Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Equal Pay Act; Executive Order 11246; Age Discrimination Act of 1975.

Hist.: SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2005, f. & cert. ef. 4-11-05

## 573-040-0005 Special Fees

The Special Fees for certain courses and general services approved by Southern Oregon University are hereby adopted by reference.

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

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070 & 580-040-0010

Hist.: SOSC 4, f. & ef. 9-2-76; SOSC 10, f. & ef. 5-9-77; SOSC 6-1978, f. & ef. 6-2-77; SOSC 8-1978, f. & ef. 12-15-78; SOSC 2-1979, f. & ef. 6-20-79; SOSC 4-1980, f. & ef. 5-20-80; SOSC 4-1980, f. & ef. 5-20-80; SOSC 2-1981, f. & ef. 6-2-81; SOSC 3-1982, f. & ef. 7-1-82; SOSC 4-1983, f. & ef. 5-26-83; SOSC 1-1984, f. & ef. 6-20-84; SOSC 4-1985, f. & ef. 6-3-85; SOSC 9-1985, f. & ef. 12-17-85; SOSC 2-1986, f. & ef. 5-30-86; SOSC 1-1987, f. & ef. 6-5-87; SOSC 4-1987, f. & ef. 9-4-87; SOSC 1-1988, f. & cert. ef. 5-19-88; SOSC 2-1988(Temp), f. & cert. ef. 9-2-88; SOSC 4-1988, f. & cert. ef. 11-23-88; SOSC 3-1989, f. & cert. ef. 6-1-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 3-1991, f. & cert. ef. 5-30-91; SOSC 1-1992, f. & cert. ef. 6-3-92; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1994, f. & cert. ef. 6-10-94; SOSC 1-1995, f. & cert. ef. 6-7-95; SOSC 1-1996, f. & cert. ef. 6-5-96; SOU 1-1997, f. & cert. ef. 5-20-97; SOU 1-1998, f. & cert. ef. 4-23-98; SOU 2-1999, f. & cert. ef. 5-7-99; SOU 1-2000, f. & cert. ef. 4-10-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 1-2002, f. & cert. ef. 4-11-02; SOU 1-2003, f. & cert. ef. 4-16-03; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05

## 573-050-0045

### Enforcement and Appeals

(1) Campus regulations are in effect 24 hours a day, seven days a week, except when parking permits are not required (as stated in OAR 573-050-0030).

(2) Tow-away zones will be enforced 24 hours a day, seven days a week.

(3) All penalties prescribed in OAR 573-050-0040 will be administratively enforced by Southern Oregon University. Violators will receive a parking citation of offense, together with the scheduled fine for said violation, in accordance with the penalties set forth in OAR 573-050-0040.

(4) After receipt of a parking citation, the individual must, within seven calendar days of the date of the citation, file a request for a hearing before the TAB or pay the appropriate fine.

(5) Any University personnel or students issuing a Guest permit may contact Parking Services to transfer responsibility for citations received by their guests to themselves. This in no way implies the fine will be suspended, only that the guest will not be billed or pursued to pay the fine. The University personnel or students will be responsible and have all avenues of appeal available as if the citation were issued to them personally.

(6) Any person wishing to take a case before the TAB must prepare a Petition for Appeal of Traffic Violation for a hearing indicating why the citation should be adjudicated. The petition form, available from Parking Services, must be completed and returned to the office within seven calendar days of the citation date.

(7) A person appealing the citation may appear before the TAB to present his/her case. If the appellant does not wish to appear in person, for reasons he/she may specify, the written appeal will be reviewed by the TAB, which shall render judgment. The appellant shall be notified by mail or e-mail of the decision of the TAB.

(8) The party appealing the citation may have legal counsel to present his/her case to the TAB.

(9) In adjudicating appeals, the TAB shall have full authority to do the following:

(a) Dismiss the violations;

(b) Find the individual not guilty of the charges of the citation;

(c) Find the individual guilty of the violation and either impose the fine stipulated in these rules or impose a lesser fine;

(d) Enter a finding of guilty without imposing any fine, issue a reprimand or warning, or impose a fine.

(10) The decision of the TAB may be appealed in writing to the Transportation Planning and Parking Committee by obtaining, completing, and filing a second appeal form with Parking Services within ten calendar days following the decision of the TAB. Parking Services will also have an opportunity to submit a written statement concerning the issuance of the citation.

(11) Once the TAB makes the decision on an appeal for a parking citation, the student will have ten calendar days from the decision date to appeal the TAB's decision further via the Transportation Planning and



# ADMINISTRATIVE RULES

Parking Committee. After a decision has been made on the second appeal, a student has ten calendar days to pay any amount owed before it is charged to his/her account.

(12) The student's right to register for classes may be denied if any fines owing under these regulations remain unpaid.

(13) A student who fails to pay the University for any outstanding fine will have the fine charged to his/her account.

(14) Students leaving or graduating from the University will continue to be responsible for parking fines owed to the University, as long as such fines can be identified as belonging to the student(s) responsible.

(15) A faculty or staff member who fails to pay the University for any outstanding parking fines may have the fine deducted from his/her payroll check 30 days after written notice of the outstanding fines.

(16) Vehicles having outstanding parking fines may be denied issuance of a replacement or new parking decal.

(17) Fee Schedule:

(a) Carpool, sold for entire school year only: \$50 each pool.

(b) Faculty and staff decal for first registered vehicle:

(A) Fall term through summer term: \$75.

(B) Winter term through summer term: \$62.

(C) Spring term through summer term: \$50.

(D) Quarter/Term decals: \$40.

(c) Student Commuter and Residence Hall decal for first registered vehicle:

(A) Fall term through summer term: \$73.

(B) Winter term through summer term: \$58.

(C) Spring term through summer term: \$45.

(D) Quarter/Term decals: \$35.

(d) Motorcycles, mopeds, and scooters, one vehicle only:

(A) Fall term through summer term: \$30.

(B) Winter term through summer term: \$27.

(C) Spring term through summer term: \$25.

(D) Quarter/Term decals: \$23.

(e) Second Vehicle permit: \$15.

(f) Replacement permit: \$15.

**NOTE:** The second permit is for the convenience of those persons who may be driving a different vehicle from time to time. Only one decal (the original or second decal) is valid on campus permit-required lots at a time. Violation of this rule will result in both vehicles being cited for improper permit.

(A) Second permits will be sold only to Faculty/Staff and Commuter permit holders.

(B) One second permit is allowed for each full-price (first registered vehicle) permit purchased.

(C) Replacement permits can be obtained only in accordance with OAR 573-050-0025(8).

(g) Departmental Reserved Parking spaces (nonrefundable): \$100 over and above price for regular parking permit and \$10 fee for each subsequent sign-change after a sign is posted.

(h) Commercial permit, each vehicle:

(A) Long-term, twelve months: \$100.

(B) Long-term, six months: \$60.

(C) Short-term, one month: \$15.

(D) Short-term, daily: \$5.

(i) Weekly parking permits (for red and green lots only): \$15 per week (available at Business Services, Housing, and Parking Services).

(j) Daily parking permits (for red and green lots only): \$5 per day (available at Business Services, Housing, and Parking Services).

(k) Evening and weekend parking: \$1.

(l) Visitor pay parking in specified lots: \$1 per hour.

(m) Volunteer permit:

(A) Volunteer, each vehicle, long-term, one year: \$5.

(B) Volunteer, each vehicle, short-term, less than one month: \$1.

(n) Handling charges:

(A) Deducting fines from payroll check: \$5.

(B) Out-of-state Department of Motor Vehicles research fee: \$5.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 352.360

Hist.: SOSC 5, f. & ef. 9-2-76; SOSC 4-1979, f. 8-8-79, ef. 9-1-79; SOSC 5-1980, f. & ef. 8-19-80; SOSC 3-1981, f. & ef. 9-9-81; SOSC 4-1982, f. & ef. 7-28-82; SOSC 6-1983, f. & ef. 8-23-83; SOSC 2-1984, f. & ef. 8-14-84; SOSC 8-1985, f. & ef. 8-12-85; SOSC 3-1986, f. & ef. 7-22-86; SOSC 5-1987, f. & ef. 9-8-87; SOSC 4-1989, f. & cert. ef. 9-19-89; SOSC 3-1990, f. & cert. ef. 5-31-90; SOSC 4-1991, f. & cert. ef. 6-11-91; SOSC 3-1993, f. & cert. ef. 5-21-93; SOSC 2-1996, f. & cert. ef. 8-2-96; SOU 2-1997, f. & cert. ef. 8-26-97; SOU 2-1998, f. & cert. ef. 7-16-98; SOU 1-1999, f. & cert. ef. 5-7-99; SOU 2-2000, f. & cert. ef. 6-9-00; SOU 1-2001, f. & cert. ef. 4-4-01; SOU 2-2002, f. & cert. ef. 6-28-02; SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05

## 573-075-0000

### Introduction to Code of Student Conduct

(1) Southern Oregon University is centered on its core values of learning and achievement, truth and disciplined inquiry, free expression and collaboration, open-mindedness and informed criticism, mutual respect and trust, cross-cultural understanding and international competence, integrity and stewardship, civic engagement and responsibility, and innovation and entrepreneurship. Allegiance to these core values and the Code of Student Conduct allows Southern Oregon University to enjoy a learning environment that prepares its student citizens to engage actively and responsibly in the greater local and global communities.

(2) The purpose of the Code of Student Conduct is to outline expectations for student conduct, ensure a fair process to determine student misconduct, and to provide suitable sanctions when a student or student organization violates the Code. Maintaining an academic environment conducive to intellectual inquiry requires balancing individual freedom with respect for others in the greater University community. The existence of an inspiring and successful learning community is dependent upon assuming personal responsibility and holding others accountable to act responsibly.

(3) All students must conduct themselves as responsible members of the University community and respect the rights of fellow citizens. Enrollment at Southern Oregon University requires each student to abide by regulations of student conduct, ensures a fair process when student behavior may have deviated from those expectations, and provides appropriate sanctions when a student or organization has violated the Code of Student Conduct. Students and organizations are also responsible for the behavior of their guests and may be held responsible for the actions of their guests who violate provisions of this Code.

(4) Southern Oregon University reserves the right to take necessary and appropriate action to protect the safety and well being of the campus community. Generally, the Code of Student Conduct applies to incidents that take place on University premises or at University-sponsored or supervised functions. When the University is notified, the chief student affairs officer or designee may determine that acts prohibited by the Code of Student Conduct, but not committed on University premises, could also be grounds for disciplinary action. Such acts include, but are not limited, to drug trafficking offenses and acts or threats of violence against persons.

(5) The Code of Student Conduct should be read broadly. It does not define proscribed conduct in exhaustive terms.

Stat. Auth.: ORS 351.070

Stats. Implemented:

Hist.: SOU 1-2004, f. & cert. ef. 4-5-04; SOU 1-2005, f. & cert. ef. 4-11-05

## 573-095-0000

### Purpose

Southern Oregon University adopts this rule to administer grading grievances.

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: SOU 1-2005, f. & cert. ef. 4-11-05

## 573-095-0005

### Academic Standards

(1) The maintenance of academic standards is a joint responsibility of the students and the faculty at Southern Oregon University. Freedom to teach and freedom to learn are dependent upon individual and collective conduct to permit the pursuit and exchange of knowledge and opinion. Faculty have the responsibility to create an atmosphere in which students may display their knowledge. This atmosphere includes an orderly testing room and sufficient safeguards to inhibit dishonesty. Students have the responsibility to rely on their own knowledge and resources in the evaluation process.

(a) Academic dishonesty is defined as cheating, plagiarism, or otherwise obtaining grades under false pretenses;

(b) Plagiarism is defined as knowingly submitting the language, ideas, thoughts, or work of another author as one's original work, or allowing one's work to be used in this fashion;

(c) Cheating is defined as:

(A) Using unauthorized information during an examination verbally, visually, or by unauthorized notes, books and other materials;

(B) Obtaining or providing information concerning an examination in advance of that examination;

(C) Taking an examination for another student or arranging to have someone else take an examination for you;

(D) Altering or changing:

(i) Test answers after that test has been submitted for grading;

(ii) Grades after the grades have been awarded; or

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(iii) Other academic records, after those records have become official.

(d) Procedures: The faculty member who suspects a student of academic dishonesty should confront the student with the accusation. In the event that the student disputes the allegation of academic dishonesty, then the incident should always be referred to the chief academic affairs officer or designee. The academic decision should then be deferred pending finding on the allegation. If the student admits to the misconduct, then one or more of the following sanctions will be imposed by the instructor.

(A) Academic:

(i) Administratively withdraw the student from class. This action must have the approval of the chief academic affairs officer or designee and is subject to appeal through Grievance Procedures in OAR chapter 573, division 30, "Model Rules of Procedure Applicable to Contested Cases";

(ii) Award a failing mark on the test or paper; or

(iii) Require the student to take another test or resubmit the paper;

(iv) The academic sanctions described above may be employed alone, or in concert with disciplinary procedures. Refer to "Proscribed Conduct" rule OAR 573-075-0040(2)(a).

(B) Disciplinary: The faculty member may refer the incident to the chief student affairs officer or designee where the disciplinary process will be followed to determine what, if any, disciplinary sanction is appropriate;

(C) Faculty will notify the chief student affairs officer or designee of academic action taken so a record can be maintained.

Stat. Auth.: ORS Ch. 351

Stats. Implemented: ORS 351.070

Hist.: SOU 1-2005, f. & cert. ef. 4-11-05

## 573-095-0010

### Regulation

(1) To provide a process whereby a student may grieve the process for determining a grade.

(2) Students should first attempt an informal resolution to a grading grievance. The student shall follow whatever procedure has been established by the school that sponsored the class.

(3) If unable to resolve the dispute informally, the student may file a grading grievance with the Academic Appeals Committee (AAC). The grievance must be in writing and may include supporting documentation such as the class syllabus.

(4) The AAC shall consist of 5 members, at least 3 of whom shall be teaching faculty. These members will come from the existing Academic Standards Committee. One member may be a student and will be appointed by the Dean of Students.

(5) The AAC will convene a meeting and invite the student and the instructor. Each side will have a chance to present their side.

(6) The AAC will consider the written grievance, the statements made by both parties and any other related information to reach a decision.

(7) The student may grieve the process used to arrive at a grade, but may not grieve the grade itself. The AAC will not determine if a grade is justified by the quality of the work submitted by the student. Rather, the AAC will determine whether the process used to determine the grade was flawed.

(8) The AAC will render a decision within 10 days of the grievance meeting. Their decision is final.

Stat. Auth.: ORS Ch. 351

Stats. Implemented: ORS 351.070

Hist.: SOU 1-2005, f. & cert. ef. 4-11-05

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## Oregon Youth Authority Chapter 416

**Adm. Order No.:** OYA 6-2005

**Filed with Sec. of State:** 3-25-2005

**Certified to be Effective:** 3-25-05

**Notice Publication Date:** 1-1-05

**Rules Amended:** 416-340-0000, 416-340-0010, 416-340-0020, 416-340-0030, 416-340-0040, 416-340-0050, 416-340-0060, 416-340-0070

**Rules Repealed:** 416-340-0080, 416-340-0090, 416-340-0100, 416-340-0110

**Subject:** OAR 416-340-0000 is amended to clarify the purpose of this division. OAR 416-340-0010 (Definitions) is amended by adding some additional definitions; OAR 416-340-0020 (General Standards) is amended to clarify use, consent to, and storage of medication; OAR 416-340-0030 (Medication Administration) is amended with minor grammatical revisions and clarification of documen-

tation for side effects; OAR 416-340-0040 (Medication Records) is amended to better define information included on the Medication Administration Record; OAR 416-340-0050 (Intra-muscular injections) is amended to clarify procedure; OAR 416-340-0060 (Psychotropic medications) is amended to clarify procedures; OAR 416-340-0070 (Medication Management in Substitute Care) is amended and renamed to include all notification processes. OAR 416-340-0080, OAR 416-340-0090, OAR 416-340-0100, and OAR 416-340-0110 will be repealed.

**Rules Coordinator:** Kimberly Walker—(503) 378-6834

## 416-340-0000

### Purpose

This rule provides for consistent practice in the storage, control and administration of medication to offenders in OYA custody in close custody facilities or community substitute care placements.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0010

### Definitions

(1) Informed consent: The agreement by a patient to treatment, examination, or procedure after the patient receives facts regarding the nature, consequences, and risks of the proposed treatment, examination or procedure. Written documentation of consent by an offender or his/her guardian is required for invasive procedures in which there is some risk.

(2) Medication Administration Record (MAR): The written record used to document the administration of prescription medication to offenders.

(3) Pro re nata, i.e., administered as needed.

(4) Psychotropic Medication: Medication, the prescribed intent of which is to affect or alter thought processes, mood or behavior, including, but not limited to antipsychotic, antidepressant and anxiolytic medication and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed because it may have many different effects.

(5) Substitute care: Residential placements in the community that provide 24-hour-a-day care and supervision, excluding a relative home. Such placements include, but are not limited to:

(a) Foster care; and

(b) Proctor care; and

(c) Contracted residential treatment providers.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0020

### General Standards

(1) The use of medication will be solely for the health and welfare of the individual offender.

(a) Whether medication is to be used or not used and under what conditions is the sole responsibility of the attending licensed prescriber.

(b) Prescription orders will be authorized by persons who are licensed by the State of Oregon to prescribe medication.

(c) Prescription medications will be administered according to the prescriber's order and given only to the offender to whom the medication is prescribed.

(2) Consent:

(a) Pursuant to Oregon statute, persons 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder, or a chemical dependency excluding methadone maintenance, by a physician, licensed psychologist, nurse practitioner or licensed clinical social worker.

(b) If an offender is otherwise incapable of giving consent, no psychotropic stimulant or tranquilizing drugs will be administered to the offender without his/her informed consent unless withholding of the drug would seriously endanger the offender's health. The fact that the offender gave verbal informed consent will be noted in the medical record.

(3) Pharmacy packaging and dispensing of medications administered in close custody facilities will follow Oregon administrative rule governing pharmacy practice for correctional facilities and the Nurse Practice Act.

(a) All medications will be properly labeled, including labels on prescription medications that match the prescriber's written order. All non-topical prescribed medications administered in close custody facilities will be unit dosed.

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(b) Prescriptions that are not administered will be returned to the dispensing pharmacy or properly disposed.

(4) Any medical information received from a medical practitioner will be placed in the offender's permanent medical record.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0030

### Medication Administration

Medications, including those issued over-the-counter, will be kept in a secured, locked container in a location that is not easily accessible to offenders.

(1) Medication will be stored as prescribed (medication requiring refrigeration will be kept under refrigeration in a locked box).

(2) Narcotics will be stored under two locks.

(3) Oral and injectable medications will be stored separately from topical medications.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0040

### Medication Records in Close Custody Facilities

(1) All prescription medications administered to offenders in close custody will be tracked on a Medication Administration Record (MAR).

(2) Non-prescription medications will be tracked via a medication record log.

(3) Any unusual, uncommon, and/or severe side effects related to medications (both prescription and over-the-counter) will be documented and an offender will receive appropriate treatment as necessary.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0050

### Intra-muscular (IM) Injections

(1) IM injections may be administered only by a physician, nurse practitioner, Registered Nurse (RN), or Licensed Practical Nurse (LPN).

(2) Except in an emergency as determined by a qualified physician, prescribed medication will not be administered IM, unless given in a clinical facility equipped to deal with possible adverse effects.

(3) No offender will receive an IM injection of major tranquilizing drugs unless a physician authorizes its use prior to each injection. Exception: When a physician finds a series of IM injections are necessary for treatment, a new prescription will not be required for each injection, provided that:

(a) If a series of shots are given within any 24-hour period, the offender, at the end of that period, will be evaluated by the physician to determine whether a transfer to a psychiatric facility would be in his/her best interests.

(b) A new prescription will be written for any additional series of injections at the end of each 24-hour period.

(4) Routine injections may be authorized by a physician and are not subject to requirements of this section.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0060

### Psychotropic Medications

(1) Psychotropic medications will be prescribed by a physician or nurse practitioner through a written order.

(2) The use of medication to alter behavior, thought processes or mood will be based solely on a physician's determination that the medication is in the best medical interests of the offender.

(3) Psychotropic medications will be reviewed at a minimum of every 90 days:

(a) By the prescribing physician or nurse practitioner for desired responses and adverse consequences; and

(b) To determine the continued need and/or lowest effective dosage in a carefully monitored program.

(4) Oral administration of psychotropic drugs is the preferred method.

(5) Psychotropic medication may have PRN status only when the prescriber has ordered PRN status, and a nurse has issued written parameters specific to an offender's care, per Board of Nursing administrative rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

## 416-340-0070

### Medication Management in Substitute Care

(1) A substitute care provider will keep a record of the offender's medical history. These records will be kept current and organized in a manner that clearly shows the medical needs of the offender.

(2) A substitute care provider will notify the offender's Parole/Probation Officer (PPO) within one working day of any new prescription for psychotropic medication.

(3) A substitute care provider will notify the offender's PPO within one working day if an offender 14 years of age or older becomes known to be diagnosed or treated for any mental or emotional disorder or chemical dependency.

(4) A substitute care provider will comply with all rules in this Division unless specifically noted.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 418.517, 420A.010, 420A.014 & 420.054

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 6-2005, f. & cert. ef. 3-25-05

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**Subject:** These rules are amended to clarify terminology used. "Youth offender" has been changed to "offender" and "youth offender treatment foster care" shortened to "treatment foster care." Definitions have been aligned with other recent definition revisions established through the administrative rule review process.

**Rules Coordinator:** Kimberly Walker—(503) 378-6834

## 416-550-0000

### Purpose

Treatment foster care is a program for offenders and their families whose out-of-home treatment needs can be met through services delivered by treatment foster parents, and/or professional staff trained, supervised and supported by an agency. These rules set standards for the operation of a treatment foster care program. All agencies under contract with the OYA to provide this service, or proposing to provide this service, must adhere to these rules.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 7-2005, f. & cert. ef. 3-25-05

## 416-550-0010

### Definitions

(1) Aftercare: The plan which outlines the services and resources that will be needed when the offender leaves the treatment foster care program.

(2) Agency: A public or private organization which contracts with the OYA to provide treatment foster care services.

(3) Agency staff: A person employed by the treatment foster care program that gives support to the treatment foster parent or the offender/family (for example, the Treatment Specialist or Clinical Supervisor).

(4) Case Plan: A formal plan with prescribed interventions and documentation requirements and which is a tool to assist staff in managing cases, setting goals and reviewing youths' interventions and progress. A case plan constitutes and fulfills the requirements of the Reformation Plan as defined in ORS 420A.005, 420A.125 and 420A.010 and is created and maintained in the statewide Juvenile Justice Information System, JJIS.

(5) Clinical Supervisor: A person employed by the treatment foster care program who provides support, supervision and consultation to the Treatment Specialist and/or the treatment foster parent.

(6) Crisis-on-call: 24-hour-a-day, seven-day-a-week availability, either by phone or in person, for the provision of emergency and/or back-up services.

(7) Matching: The process of placing an offender in a home that can specifically meet the individual reformation needs of that particular offender. These needs include, but are not limited to, a treatment foster parent's ability to speak the language of the offender, the home's proximity to the offender's family, and same race, ethnicity and culture.

(8) Respite care: A temporary arrangement of 12 hours or more, to allow the treatment foster parent(s) time away from the offender.



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(9) Respite provider: An individual approved by the OYA who temporarily assists with supervision of offenders when the treatment foster parent is not available.

(10) Treatment: The coordinated provision of services designed to produce a planned outcome in a person's behavior, attitude or general condition. Treatment is based on a thorough assessment of factors contributing to the attitude, condition or behavior.

(11) Treatment foster care: The model of care in which an offender receives treatment in the foster home from the treatment foster parent who is under the supervision and support of a professional therapist of an identified program. A distinct, powerful, and unique model of care that provides offenders with a combination of the best elements of traditional foster care and residential treatment. In treatment foster care, the positive aspects of the nurturing and therapeutic family environment are combined with active and structured treatment. Treatment foster care programs provide, in a clinically effective and cost effective way, individualized and intensive treatment for offenders who would otherwise be placed in institutional settings.

(12) Treatment foster care program: A separately identifiable unit of a larger agency or an independent agency itself that has been certified by the OYA to provide treatment foster care services.

(13) Treatment foster parents: In-home treatment providers of a treatment foster care program certified by the OYA who implement reformation strategies identified in the case plan in addition to carrying out their regular foster care responsibilities.

(14) Treatment Plan: An individualized plan for each offender developed by a treatment team that is goal-oriented and of a particular duration. Each plan will identify desired behavior changes and a time estimate for achieving the plan goals. The treatment plan is congruent with the offender's case plan.

(15) Treatment Specialist: A person employed by the treatment foster care program who provides training, supervision, support and consultation to the treatment foster parent.

(16) Treatment team: Those people concerned with the care and treatment of the offender. The team may be comprised of, but is not limited to, the treatment foster parent(s) and the Treatment Specialist.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 7-2005, f. & cert. ef. 3-25-05

### 416-550-0020

#### Overview

Offenders appropriate for treatment foster care have serious emotional and/or behavioral disorders. The level of supervisory treatment and family intervention needs of these offenders is comparable to those served in residential treatment facilities. Treatment foster care consists of:

(1) A treatment foster care agency/foster care treatment program with staff who give support to the treatment foster parent and the offender/family; and

(2) Treatment foster parents who implement treatment strategies identified in the treatment plan in addition to carrying out their regular foster care responsibilities.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000; OYA 7-2005, f. & cert. ef. 3-25-05

### 416-550-0030

#### Treatment Foster Care Program

A treatment foster care program must be a separately identifiable unit of a larger agency or be an independent agency itself:

(1) Eligibility:

(a) The program must meet standards as defined in OAR Chapter 416, Division 530 to be eligible to be a treatment foster care program;

(b) Selection of a treatment foster care program will be made by the Oregon Youth Authority based on current need and ability to fund the program.

(2) Administration: The treatment foster care program must designate an individual who is responsible for the provision and oversight of all essential tasks and services described in these rules.

(3) Staff:

(a) Clinical Supervisor's responsibilities/qualifications include:

(A) Clinical Supervision. The Clinical Supervisor provides regular support, consultation and guidance to the Treatment Specialist. The Clinical Supervisor to Treatment Specialist ratio must not exceed one to five;

(B) Treatment Planning. The Clinical Supervisor takes ultimate clinical responsibility for the development of a comprehensive treatment plan based on a thorough assessment for each offender admitted to the program. This plan must be congruent with and supportive of the case plan developed by the Oregon Youth Authority. She or he supervises ongoing treatment planning and implementation for each offender, evaluating all progress reports and treatment plan updates;

(C) Treatment Team. The Clinical Supervisor oversees and supports the Treatment Specialist as leader of the treatment team and shares ultimate responsibility for team plans and decisions;

(D) Crisis On-Call. The treatment foster care program provides coordination and back-up to assure that 24-hour on-call crisis intervention services are available and delivered as needed to treatment foster parents, offenders, and families;

(E) Qualifications. The Clinical Supervisor must have a graduate degree in a human service field plus a minimum of two years' experience in the placement/treatment of offenders and families. The Clinical Supervisor must be familiar with clinical research and practice. If the education and experience of the Clinical Supervisor are not recognized, additional clinical consultation will be provided. Clinical consultants must be licensed or otherwise recognized as qualified by the state of Oregon in the human service field.

(b) Treatment Specialist's responsibilities/qualifications include:

(A) Treatment Team. The Treatment Specialist takes primary day-to-day responsibility for leadership, training, support and consultation to the treatment team. The Treatment Specialist organizes and manages all team meetings. If the Treatment Specialist is prevented from participation in a team meeting by a crisis or personal leave reasons, the Clinical Supervisor takes over that responsibility. As team leader, the Treatment Specialist manages team decision-making regarding the care and treatment of the offender and services to the offender's family;

(B) Treatment Planning. Under the supervision of the Clinical Supervisor, the Treatment Specialist takes primary responsibility for the preparation of each offender's written comprehensive treatment plan and of quarterly written updates of the plan. The Treatment Specialist signs off on treatment plans and updates. The Treatment Specialist seeks to inform and involve other team members in this process including treatment foster parents, the offender and the offender's family;

(C) Support/Consultation to Treatment Foster Parents. The Treatment Specialist will provide regular support and technical assistance to treatment foster parents in their implementation of the treatment plan and with regard to other responsibilities they undertake. The Treatment Specialist will provide at least weekly contact in person with the treatment foster parent of each offender on his/her caseload. The Treatment Specialist will visit the treatment home to meet with at least one treatment foster parent no less than once monthly;

(D) Caseload. The maximum number of offenders that may be assigned to a single individual is 10;

(E) Contact with Offenders. The Treatment Specialist or other treatment foster care program staff will regularly spend time, outside the presence of the treatment foster parent, with offenders in care to allow them the opportunity to communicate special concerns, to make a direct assessment of their progress, and to monitor for potential problems in the current placement. Such face-to-face contact must occur at least twice monthly;

(F) Support/Consultation to the Families of Offenders. The Treatment Specialist will arrange for and encourage regular contact and visitation between offenders and their parents and other family members and provide for or coordinate treatment or training to the family as specified in the treatment plan. The Treatment Specialist will seek to involve the offender's parents, when appropriate, in treatment team meetings, plans and decisions and to keep them informed of the offender's progress in the program;

(G) Community Liaison and Advocacy. The Treatment Specialist will determine which community resources are required and how they may be used to meet the objectives of the offender's treatment plan. The Treatment Specialist will advocate for and coordinate the provision of such services and will provide technical assistance to community service providers as needed to maximize the benefit of these services to the offender;

(H) Crisis On-Call. The Treatment Specialist or other professional staff, as designated by the treatment foster care program, will be on-call to treatment foster parents, offenders and their families on an around-the-clock, seven-day-a-week basis;

(I) Qualifications. The Treatment Specialist will have at a minimum a B.A. or B.S. degree in a human service field plus two years' direct experience working with offenders and families, or an A.A. degree with three years' experience working with offenders and families.

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(4) Staff Training and Support: Liability Insurance. Professional staff will be covered by liability insurance.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 7-2005, f. & cert. ef. 3-25-05

### 416-550-0040

#### Treatment Foster Parents

Treatment foster parents serve as in-home treatment agents implementing strategies specified in an offender's treatment plan including support of the offender's family relationships:

##### (1) Qualifications and Selection:

(a) Treatment foster parent(s) must be certified as an OYA foster home as defined in OAR chapter 416, divisions 530 and 800; and assume the responsibilities outlined in OAR chapter 416, division 530 in addition to those in this rule.

(b) Treatment foster parent(s) must be employees of, or have a contract with, a treatment foster care program;

(c) Prospective applicants, foster parent(s) and members of the household 18 years of age and older will consent to a criminal record check by the agency. The OYA may require a criminal record check for any employee, volunteer, or other adult having regular contact with offenders placed in the foster home. The OYA may require a criminal history on members of the household under 18 years if there is reason to believe that member may pose a risk to offenders placed in the home. The OYA may require that the applicant(s)/foster parent(s)/member(s) of the household provide fingerprints and processing fees for the purpose of a criminal record check following procedures outlined in OAR chapter 416, division 800.

(d) Language. At least one treatment foster parent must demonstrate effective communication in a language of the offender in the treatment foster parent's care, and in a language of the program/treatment team with which they work;

(e) Age. Treatment foster parents must be at least 21 years of age;

(f) Health. The physical health of treatment foster parents must be equal to the stress inherent in the care of a special needs offender as evidenced by a physician's statement to that effect;

(g) Transportation. Treatment foster parents must have access to reliable transportation. If using a car, they must have a valid Oregon driver's license and document ownership of liability insurance as required by law;

(h) Physical Discipline. Treatment foster parents must agree not to use physical discipline with offenders placed in their care and to adhere to the agency's policies regarding the use of discipline generally.

##### (2) Responsibilities:

(a) List of Responsibilities. Prospective treatment foster parents must be provided with a written list of duties clearly detailing their responsibilities as treatment foster parents prior to their approval by the program;

##### (b) Treatment Responsibilities:

(A) Treatment Planning. The treatment foster parent will assist the Treatment Specialist and other team members in the development of treatment plans for the offender or offenders in their care. These treatment plans must be congruent with the case plan developed by the OYA;

(B) Treatment Implementation. The treatment foster parent will assume primary responsibility for implementing the in-home treatment strategies specified in the offender's initial and comprehensive treatment plans and revisions thereof;

(C) Treatment Team Meetings. The treatment foster care parent will work cooperatively with other team members under the leadership of the Treatment Specialist and attend team meetings, training sessions and other gatherings required by the program or by the offender's treatment plan;

(D) Record Keeping. The treatment foster care parent will systematically record information and document activities as required by the agency and the standards under which it operates.

(E) Contact with Offender's Family. The treatment foster care parent will assist the offender in maintaining contact with his/her family and work actively to support and enhance these relationships, unless contraindicated in the offender's treatment plan;

(F) Community Relations. The treatment foster care parent will develop and maintain positive working relationships with service providers in the community such as schools, departments of recreation, social service agencies, and mental health programs and professionals;

(G) Advocacy. The treatment foster care parent, in concert with the treatment foster care program Treatment Specialist and other staff, will advocate on behalf of the offender to achieve the goals identified in the offender's treatment plan, to obtain educational, vocational, medical and

other services, and to assure full access to and provision of public services to which the offender is legally entitled.

(H) Notice of Request for Offender Move. Unless a move is required to protect the health or safety of the offender, other treatment foster care family members or other offenders in the treatment foster home, the treatment foster parent will provide at least 14 days' notice to program staff if requesting an offender's removal from the home so as to allow a planned and minimally disruptive transition. The OYA will be notified of such change.

##### (3) Treatment Foster Parent Training:

(a) Training of treatment foster parents will be a systematic, planned, and documented process which includes competency-based skill training and is not limited to the provision of information through didactic instruction;

(b) Pre-service Training. Prior to the placement of offenders in their homes, all treatment foster parents must satisfactorily complete 20 pre-service hours of primarily skill-based training consistent with the agency's treatment methodology and the service needs of the offender;

(c) Annual Inservice Training. A written, agency-approved, professional development plan will be on record in each agency which describes the content and objectives of inservice training for all agency treatment foster parents. All treatment foster parents must satisfactorily complete a minimum of 40 hours of inservice training annually based on the training needs identified in the agency's professional development plan and the specific services treatment foster parents are required to provide. Inservice training should emphasize skill development, as well as knowledge acquisition, and may include a variety of formats and procedures including in-home training provided by agency casework staff;

(d) Evaluation of Training. All treatment foster parents must be provided an opportunity to evaluate mandated training.

##### (4) Treatment Foster Parent Support:

(a) Information Disclosure. All information the treatment foster care program receives concerning an offender to be placed with a treatment foster parent will be shared with and explained to the prospective treatment foster parent prior to placement. Agency/treatment foster care program staff will discuss with the prospective treatment foster parents the offender's strengths and assets, potential problems and needs, and initial intervention strategies for addressing these areas. As full treatment team members, treatment foster parents have access to full disclosure of information concerning the offender. With this access goes the responsibility to maintain agency standards of confidentiality;

(b) Respite Care. Treatment foster parents will have access to both planned and crisis respite care by providers who have been selected and trained by the program in providing respite care. Respite providers must be informed of the offender's treatment plan and supervised in their implementation of the in-home strategies it specifies;

(c) Counseling. Treatment foster parents and other family members in the home will have assistance in finding counseling when requested for personal issues/problems caused or exacerbated by their work as treatment foster parents. Such issues may include, for example, marital stress, or abuse of their own children by an offender placed in their care by the treatment foster care program;

(d) Support Network. The treatment foster care program will facilitate the creation of formal or informal support networks for its treatment foster parents as, for example, through the coordination of parent support groups or treatment foster parent "buddy" systems;

(e) Financial Support. Agency financial support to treatment foster parents must cover the cost of care as well as payment for the difficulty of care associated with their treatment responsibilities and the special needs of the offender they serve;

(f) Damages and Liability. The agency must have a written plan concerning compensation for damages done to a treatment foster parent's property by an offender placed in their care. This plan must be given and explained to prospective treatment foster parents as part of their pre-service orientation. The agency must provide or assist treatment foster parents in obtaining liability coverage. Treatment foster parents are required to document that they carry home/apartment, automobile (if they have a motor vehicle), property and liability insurance themselves in addition to any liability and damage coverage provided by or through their treatment foster care program.

(5) Treatment Home Capacity. The number of treatment foster care offenders placed in one treatment foster home will not exceed two, but preferably will be one. The total number of youth living in a treatment foster home, including the foster parents' own children, will not exceed five. Treatment foster parents have the right to refuse placement of any offender

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they feel is inappropriate for the home, endangers the safety of offenders currently in the home, or treatment foster care family members. On a case-by-case basis, a treatment foster care offender may be eligible to remain in the treatment foster care home as an on-going foster care placement upon completion of the treatment foster care program if there is special justification and it is in the best interests of the offender. At no time will there be more than one on-going foster care placement in a treatment foster care home with two treatment foster care offenders.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 1-2000, f. & cert. ef. 4-4-00; OYA 7-2002, f. & cert. ef. 1-18-02; OYA 7-2005, f. & cert. ef. 3-25-05

## 416-550-0050

### Offenders and Their Families

#### Placement and Support:

(1) Matching. Placement of an offender will be made only after careful consideration of how well the prospective treatment foster parent will meet the offender's needs and preferences and will represent a reasonable "match" for the offender.

(2) Assessment. To achieve sound placement decisions and planning for relevant treatment services to offenders, agency/treatment foster care program staff must receive and review the following case material prior to an offender's admission: current case plan(s), legal documents and relevant police records, etc., social history information, previous and current (within a year of referral date) psychological assessments if available, school information, medical information, previous placement history and outcomes, potential problems and information on the offender's/offender's skills, interests, talents and other assets.

(3) Records. For offenders admitted to treatment foster care, an individual case record will be kept which includes the above information as well as the following:

(a) Personal identifying information;

(b) A pre-admission psychological evaluation;

(c) An offender's social and family history;

(d) Educational history including school reports and available standardized test results;

(e) Medical information including sight, hearing and dental exam reports, current medications and allergies, offender's physical description, immunization records, medical history and Medicaid/SSI number, if applicable;

(f) Authorizations for routine and emergency medical care, dental care and other medical procedures;

(g) Other required authorizations such as authorization for out-of-state travel, participation in special activities, publicity releases, etc.;

(h) Correspondence with/from agencies involved with the offender;

(i) The initial treatment plan;

(j) The comprehensive treatment plan;

(k) Progress reports;

(l) Case notes including contacts with the offender's family/extended family;

(m) Incident logs or records on serious behavior problems, police and relevant juvenile court records and reports when possible, illnesses or injuries.

(4) Offender's Access to Treatment Foster Care Program Staff. Offenders will have access to designated treatment foster care program staff at all times to discuss concerns including any problems they are experiencing with their treatment foster family. Treatment foster care program staff will provide regular one-to-one contact with each offender on at least a twice monthly basis.

(5) Offender-Family Contact/Relationships. Unless specifically proscribed by court or custodial agency decision, offenders will have access to regular contact with their families as described in the treatment plan.

(6) Rights of Offenders in Treatment Foster Care. Offenders in treatment foster care have the same basic rights as all offenders including the right to privacy, to humane treatment, to adequate shelter, clothing, nutrition, essential personal care items and allowances, and access to religious worship services of their choice. The treatment foster care program will explain to each offender what his/her rights are in a manner consistent with the offender's level of understanding, and make this information available to the offender in writing.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 7-2005, f. & cert. ef. 3-25-05

## 416-550-0060

### Treatment

(1) Initial Treatment Plan. An initial written treatment plan will be completed by the time of the offender's admission to the program. The plan will describe specific tasks to be carried out by the treatment team during the first 45 days of placement. It will describe strategies to ease the offender's adjustment to the treatment foster parent's home and to directly assess the offender's strengths, skills, interests and needs for treatment within the home. The initial plan should assess short-term goals for the first 45 days of placement, identify potential problems likely to be encountered with the offender and specify how the treatment team is to respond to them.

(2) Comprehensive Treatment Plan. A written comprehensive treatment plan will be completed for each offender admitted within 45 days of admission addressing the long-term goals of treatment including criteria for discharge, projected length of stay in the program, projected post-treatment foster care setting and aftercare services. It will be congruent with the case plan developed by the OYA. The plan will identify and build on the offender's strengths and assets as well as respond to presenting problems. The comprehensive treatment plan will include proactive short-term treatment goals which are measurable and time-limited along with specific strategies for promoting and regularly evaluating progress.

(3) Quarterly Progress Reports/Updates. Each offender's treatment plan will be specific, reviewed via quarterly reports and revised as necessary. Quarterly reports will document progress on specific short-term treatment goals, describe significant revisions in goals and strategies, and specify any new treatment goals and strategies initiated during the period covered. The quarterly progress report will summarize progress and note changes regarding long-term placement and treatment goals. The interagency team members will be invited to participate in the process to review and approve the quarterly report.

(4) Aftercare Plan. All planned discharges from treatment foster care will be reviewed and discussed by the treatment team, including the parole and probation worker and offender. An approved aftercare plan will be ready for implementation prior to the offender's planned departure from the program. The plan will specify the nature, frequency and duration of aftercare services and designate responsibility for service delivery. The treatment foster care program will provide these aftercare services directly or provide consultation to the person/agency assuming responsibility for working with the offender following discharge from the program. An aftercare plan also will be developed in a timely fashion for an offender whose discharge is not planned, with follow-up services provided or assisted as described here.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 7-2005, f. & cert. ef. 3-25-05

## 416-550-0070

### Program Statement

All treatment foster care programs will have a written program statement which describes its mission, organizational structure, services, policies, record-keeping and evaluation procedures. The program statement will describe:

(1) The treatment foster care program's treatment philosophy and the specific treatment modality(ies) it employs.

(2) The services the treatment foster care program provides.

(3) The offenders it is designed to serve with regard to age, gender, geographic service area and types of special needs the program is prepared to address. Offenders served must exhibit an identifiable special need.

(4) A staffing pattern which allows for the intensity of service required in treatment foster care and designates the individual responsible for program administration.

(5) How the services to be provided will reflect the cultural diversity of the community and be responsive to the needs of the community.

(6) A policy assuring that the treatment foster care program staff and treatment foster parents adhere to practices that respect and promote positive cultural or ethnic identity.

(7) A policy on discipline and physical.

(8) The plan for crisis intervention procedures.

(9) The protocol for investigating, responding to and reporting allegations of misconduct and/or abuse by treatment foster parents, treatment foster care program/agency staff, or an offender.

(10) The policy advising offenders and parents of their rights and the grievance procedures available to them.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 7-2005, f. & cert. ef. 3-25-05



# ADMINISTRATIVE RULES

**416-550-0080**

## **Program Evaluation**

(1) Documentation of Service Delivery. A treatment foster care program must clearly document delivery of all services described in its program statement as well as compliance with all minimum operating standards described above.

(2) Individual Treatment. Treatment foster care programs must document the implementation of all treatment plans and track progress on all long- and short-term treatment goals throughout each offender's tenure in care.

(3) Performance Evaluations. Treatment foster care programs will provide to treatment foster parents and professional staff written performance evaluations at least annually which include descriptive assessments of their performance of specific job responsibilities and goals for improved performance.

(4) Program Evaluation. Treatment foster care programs will have a program evaluation plan which describes information to be collected, summarized and analyzed at least annually. The plan will identify who will have access to the evaluation and how it will be used. The evaluation will include demographics on current offenders and their families, treatment families and professional staff; aggregated information describing in-program events such as placement disruptions; and a summary of information collected through follow-up tracking of offenders/offenders discharged from the program. The plan also will provide for periodic evaluations of program services by treatment foster parents, offenders and their families.

Stat. Auth.: ORS 420A.025

Stats. Implemented: ORS 420.810, 420.815, 420.821, 420.825, 420.835, 420.840, 420.888, 420.890 & 420.892

Hist.: OYA 2-1995, f. 12-19-95, cert. ef. 1-2-96; OYA 7-2005, f. & cert. ef. 3-25-05

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**Adm. Order No.:** OYA 8-2005

**Filed with Sec. of State:** 3-25-2005

**Certified to be Effective:** 3-25-05

**Notice Publication Date:** 8-1-04

**Rules Repealed:** 416-630-0000, 416-630-0010, 416-630-0020, 416-630-0030, 416-630-0040, 416-630-0050

**Subject:** Relevant portions of this rule are incorporated into OAR Chapter 416, Division 340.

**Rules Coordinator:** Kimberly Walker—(503) 378-3864

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**Adm. Order No.:** OYA 9-2005

**Filed with Sec. of State:** 3-25-2005

**Certified to be Effective:** 3-25-05

**Notice Publication Date:** 1-1-05

**Rules Repealed:** 416-430-0040

**Subject:** This rule is repealed as the relevant language has been moved to OAR Chapter 416, Division 340.

**Rules Coordinator:** Kimberly Walker—(503) 378-6834

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## **Parks and Recreation Department Chapter 736**

**Adm. Order No.:** PRD 2-2005

**Filed with Sec. of State:** 3-23-2005

**Certified to be Effective:** 3-23-05

**Notice Publication Date:** 11-1-04

**Rules Adopted:** 736-054-0000, 736-054-0005, 736-054-0010, 736-054-0015, 736-054-0020, 736-054-0025, 736-054-0030

**Subject:** The purpose of the new rules is to adopt regulations that establish procedures that the Oregon Commission on Historic Cemeteries will use in awarding Historic Cemetery Grants.

**Rules Coordinator:** Jo Bell—(503) 986-0719

**736-054-0000**

### **Purpose**

The purpose of this division is to establish the procedures and criteria that the Oregon Commission on Historic Cemeteries will use in recommending Historic Cemetery Grants pursuant to ORS 97.780(3).

Stat. Auth.: 390.124(1) & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

**736-054-0005**

### **Definitions**

As used in this division, unless the context requires otherwise, the following definitions apply:

(1) "Commission" means the seven-member body appointed by the Director of the Oregon Parks and Recreation Department (OPRD) to carry out the responsibilities of ORS 97.772 to 97.784.

(2) "Grant" means an award from the Historic Cemetery Grant program.

(3) "Historic Cemetery" means any burial place that contains the remains of one or more persons who died before February 14, 1909.

(4) "Project Completion" means satisfaction of all requirements of a grant agreement as determined after review or inspection by OPRD.

Stat. Auth.: ORS 390.124 (1) & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

**736-054-0010**

### **Intent**

(1) The Commission intends to coordinate restoration, renovation, or maintenance of the state's historic cemeteries and to recommend projects and funding that help maintain and improve such historic cemeteries. Grants may be recommended in the following general categories:

(a) Protection and security;

(b) Restoration and preservation; and

(c) Education and training.

(2) The Commission may determine each funding cycle the types of projects, areas of focus, or thematic concentration that will determine what will be considered eligible to be recommended for project funding.

(3) The Commission may consider geographic distribution in reviewing grant applications. Applications will be assigned one of the following zones:

(a) Zone 00 — Statewide;

(b) Zone 1 — Oregon Coast;

(c) Zone 2 — Southern Oregon;

(d) Zone 3 — Willamette Valley;

(e) Zone 4 — Portland Metro;

(f) Zone 5 — Lake and Klamath Counties;

(g) Zone 6 — Southeast Oregon;

(h) Zone 7 — Northeast Oregon;

(i) Zone 8 — Central Oregon.

(4) The Commission may recommend funding a grant application either in whole or in part.

(5) The Commission will give preference to applications that include cash or in-kind match. The Commission may nevertheless recommend grant funding for a project that does not include a cash or in-kind match.

(6) The Commission may establish minimum or maximum grant award amounts.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

**736-054-0015**

### **Eligibility**

(1) Site — To be eligible for a Grant, a burial place or cemetery must contain:

(a) The remains of one or more persons who died before February 14, 1909; and

(b) One or more visible, above-ground historic features such as grave-stones, markers, fencing, and gates; or

(c) Traditional or historic landscape materials such as shrubbery, trees, paths and roadways.

(2) Applicant — The Commission may consider a Grant application from any entity that meets the requirements of this section, including, but not limited to: an individual, a non-profit or other public or private organization, schools, state agencies, local governments, and tribal governments.

(a) An applicant for a Grant must demonstrate that an auditable fiscal agent will receive and expend the grant funds.

(b) An applicant for a project that will affect property not owned by the applicant must provide the Commission with a copy of written authorization from the fee owner of the site of the project.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

# ADMINISTRATIVE RULES

## 736-054-0020

### Application Process

(1) When the Historic Cemetery Grant program has funds to award, the Commission will announce through a variety of media the availability of, application procedures for, deadlines and other information for applying for Historic Cemetery Grants.

(2) Applicants will submit an application in a format prescribed by the Commission.

(3) An application that contains multiple work items must be structured so that the Commission may award partial funding to a specific work item proposed in the application.

(4) Multiple applications by the same entity are not allowed.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

## 736-054-0025

### Evaluation of Applications

(1) Eligible applications received by the announced deadline will be evaluated by a Historic Cemetery Grants review committee, appointed by the Commission chair and containing at least one member of the Commission.

(2) The review committee will rank applications in order of priority by zone based on the following criteria:

(a) Whether the application meets the Commission's funding priorities for that funding cycle;

(b) Whether the application has demonstrated the need for the project;

(c) Whether the applicant has demonstrated that adequate budget and financial controls are in place to properly administer the grant; and

(d) Any other criteria determined by the Commission prior to the announcement of the availability of grant funding, and which are contained in that announcement.

(3) The review committee shall recommend to the Commission Grant funding recommendations up to the amount of funds that may be available in that biennium. The review committee may also rank several alternates in priority order that would be funded if any of the recommended Grants are not awarded.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

## 736-054-0030

### Award of Grants

(1) The Commission will review the recommendations of the Historic Cemetery Grants review committee and make its recommendations to the OPRD director. The Commission shall act by motion and vote at a public meeting.

(2) Awards will be subject to binding grant agreements between the OPRD and the grant recipients. The grant agreement will specify the terms and conditions of the grant award, generally including:

(a) The total project costs, the match or share to be provided by the grant recipient if any, and the amount of the grant;

(b) A statement of the work to be accomplished;

(c) Products to be delivered; and

(d) When the grant-assisted project may begin and a schedule for accomplishing work, reporting on progress, delivering products, and project completion.

(3) Generally, grants will be awarded at the beginning of the biennium.

Stat. Auth.: ORS 390.124 & 390.131

Stats. Implemented: ORS 97.780

Hist.: PRD 2-2005, f. & cert. ef. 3-23-05

### Physical Therapist Licensing Board Chapter 848

**Adm. Order No.:** PTLB 1-2005

**Filed with Sec. of State:** 4-8-2005

**Certified to be Effective:** 4-8-05

**Notice Publication Date:** 3-1-05

**Rules Amended:** 848-005-0010

**Subject:** 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.

**Rules Coordinator:** James Heider—(971) 673-0203

## 848-005-0010

### Board Budget

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.

Stat. Auth.: ORS 688.210

Stats. Implemented: ORS 688.160(5)(c)

Hist.: PTLB 3-1999(Temp), f. & cert. ef. 9-7-99 thru 3-1-00; PTLB 5-1999, f. 11-23-99, cert. ef. 12-1-99; PTLB 5-2001(Temp) f. & cert. ef. 6-18-01 thru 9-30-01; PTLB 6-2001, f. & cert. ef. 10-1-01; PTLB 2-2003, f. 6-30-03, cert. ef. 7-1-03; Renumbered from 848-010-0105, PTLB 2-2004, f. & cert. ef. 12-29-04; PTLB 1-2005, f. & cert. ef. 4-8-05

### Secretary of State, Elections Division Chapter 165

**Adm. Order No.:** ELECT 2-2005

**Filed with Sec. of State:** 3-22-2005

**Certified to be Effective:** 3-22-05

**Notice Publication Date:** 1-1-05

**Rules Amended:** 165-001-0005

**Subject:** This proposed amendment will adopt the most recent version, January 15, 2004, of the Oregon Attorney General's Law Manual and Uniform and Model Rules of Procedure Under the Administrative Procedure Act, which is the model and guide for agency rulemaking.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-001-0005

### Model Rules of Procedure

The Uniform and Model Rules of Procedure, OAR 137-001-0007 through 137-002-0060 as adopted by the Attorney General of the State of Oregon under the Administrative Procedures Act, effective January 15, 2004, are adopted as the rules of procedure for rulemaking and declaratory rulings for the Elections Division, Secretary of State.

[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 Elections Division.]

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183.341

Hist.: SD 76, f. 8-31-72; SD 81, f. 10-16-73, ef. 11-11-73; SD 109, f. & ef. 12-9-76; SD 6-1978, f. & ef. 8-4-78; SD 10-1980, f. & ef. 1-30-80; SD 16-1981, f. & ef. 12-2-81; SD 15-1983, f. & ef. 10-4-83; SD 7-1986, f. & ef. 3-6-86; ELECT 30-1988, f. & cert. ef. 8-10-88; ELECT 16-1990, f. & cert. ef. 5-11-90; ELECT 14-1991, f. & cert. ef. 12-4-91; ELECT 4-2001, f. & cert. ef. 3-15-01; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 2-2005, f. & cert. ef. 3-22-05

**Adm. Order No.:** ELECT 3-2005

**Filed with Sec. of State:** 3-22-2005

**Certified to be Effective:** 3-22-05

**Notice Publication Date:** 1-1-05

**Rules Amended:** 165-014-0030, 165-014-0110

**Subject:** These rules are proposed for amendment to modify the criteria for which the Secretary of State's staff or local elections officials will remove cover and signature sheets prior to signature verification.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

## 165-014-0030

### Statistical Sampling Procedures for State Petition

This rule is adopted to implement ORS 250.105(4) and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition as a

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ballot measure. (If additional signatures are submitted prior to the deadline but after verification has occurred, an additional sample will be verified pursuant to (15)). The sampling formula referred to in this rule is contained in **Appendix 1**, which is incorporated into this rule by reference.

(1) The chief petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory or constitutional requirements. The petition is then accepted for signature verification. If the chief petitioners cannot certify that the petition contains enough unverified signatures to meet the statutory or constitutional requirements, the petition is not accepted.

(2) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission to the Secretary of State.

(3) The Secretary of State's staff will first review, and remove prior to verification, each cover and signature sheet that does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(5) The size of the first sample of signatures will be fixed at 1,000. The size of the second sample of signatures will be specified such that the total number of signatures for the combined first and second sample will be at least five percent of the total number of signatures submitted for verification.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be 1,000 signatures. A "second" sample list will be produced by using the remainder of the random numbers. The combined number of signatures to be used in the first and second samples will be at least five percent of the total number of signatures submitted for verification.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(c) The signatures selected on the "first" sampling list will be color coded with a color different than the signatures on the "second" sampling list.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks and the selected signatures are highlighted. If the selected signature line is a blank or crossed out line, the next available line below will be selected. If there are no available lines below, the line above will be selected. These changes will be noted on the random sampling selection list.

(7) A "First and Second Sample Summary of Results of Verification," the random sampling selection list and the selected petition signature sheets are sent to the applicable county.

(8) Upon receipt of the selected petition signature sheet(s) the county elections official will immediately begin verifying the signatures of the "first" sample. As soon as all the signatures of the "first" sample are verified, the county election official will post these results to the "First Sample" section of the Summary of Results of Verification form. The county elections official will then immediately deliver or fax these results to the Secretary of State.

(9) The Secretary of State will immediately consolidate and tabulate all delivered or faxed "Summary of Results of Verification" data for the "first" sample.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample the Secretary of State will immediately notify the county elections officials that no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, a "second" larger sample will be verified.

(11) Upon notification by the Secretary of State, the county elections official will immediately begin verifying the signatures of the "second" sample, if the petition is not accepted as a result of the "first" sample. As soon as all the signatures of the "second" sample are verified the county election official will post these results to the "Second Sample" section of the Summary of Results of Verification form. The county elections official will then immediately deliver or fax these results to the Secretary of State.

(12) The Secretary of State will immediately consolidate and tabulate all delivered or faxed "Summary of Results of Verification" data for the "second" sample. The statistical formula will be applied to combined data from the "first" and "second" sample to determine its acceptance or rejection.

(13) As soon as all signatures have been verified and the results posted to the appropriate Summary of Results of Verification form, the clerk will return the original sampled petition signature sheets and Summary Result of Verification forms to the Secretary of State within ten business days. If notified by the Secretary of State, the county election official may terminate signature verification before all signatures included in a sample have been checked.

(14) If the results of the "first" sample do not qualify the petition the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(15) In the event additional signatures are filed pursuant to ORS 250.105(3), an additional sample will be selected solely from the second submittal of signatures.

(a) The sample size of the second submittal will be taken as the larger of 250 and that value which is directly proportional to the size of the combined "first" and "second" samples from the first submittal.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to the second submission of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of the second submission will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

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

Stat. Auth.: ORS 246.150 & 250.105

Stats. Implemented: ORS 250.105

Hist.: SD 4-1978(Temp), f. & ef. 7-6-78; SD 2-1979, f. & ef. 4-23-79; SD 20-1986, f. & ef. 5-23-86; ELECT 12-1994, f. & cert. ef. 6-23-94; ELECT 8-1999, f. & cert. ef. 9-3-99; ELECT 9-2000, f. & cert. ef. 6-6-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05

### 165-014-0110

#### Statistical Sampling Procedures for Local Petitions

This rule is adopted to implement ORS 250.215, ORS 250.315, and ORS 255.175 and presumes that all requirements for petition filing have been met and that the petition signature sheets, as presented, are accepted for verification. This rule applies to any statistical sampling of initiative, referendum or recall petitions relating to counties, cities or districts. Two signature samples may be taken in order to determine if the petition contains the required number of valid signatures of electors to qualify the petition as a ballot measure. The rule designates a sampling formula to be used in determining whether a petition contains the required number of signatures of electors for petitions requiring a number of signatures exceeding 4,500. The sampling formula referred to in this rule is contained in **Appendix 1**, which is incorporated into this rule by reference.

(1) The petitioners must certify upon submission of signatures that the petition contains enough unverified signatures to meet the statutory requirements. The petition is then accepted for signature verification. If the chief petitioners can not certify that the petition contains enough unverified signatures to meet the statutory requirements, the petition is not accepted.

(2) The chief petitioners must separate all signature sheets by county. The chief petitioners must then sequentially number the sheets within each county prior to submission.

(3) Prior to verification, each petition cover and signature sheet is first reviewed, and subsequently removed, if it does not meet the following criteria:

(a) The cover and signature sheet submitted is the same as the version or one of the versions approved for circulation including the "back to back" printing requirement.

(b) The circulator certification is sufficient.

(4) The necessary information from the petition signature sheets will be entered into a computer program for the signature selection process.

(5) The sample size of the first sample of signatures will consist of the lesser of 1,000 or 10% of the total signatures submitted for verification. The size of the second sample of signatures will be the same number used in the first sample, plus at least one additional signature.

(a) A random number generator program will be used to supply a list of random numbers equal in amount to the number of signatures needed for



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two samples. A "first" sample list will be produced by using a count of random numbers equal to the first sample requirement. However, in all cases the first sample will be the lesser of 1,000 or 10% of the total signatures. A "second" sample list will be produced by using the remainder of the random numbers.

(b) The "first" and "second" sample list will show the petition identification number, county number, petition signature sheet number and petition sheet line number of each signature selected for verification.

(c) The signatures selected on the "first" sampling list will be color coded with a color different than the signatures on the "second" sampling list.

(6) Using the "first" and "second" random sampling selection lists as the control element, the appropriate petition signature sheets are pulled from the county stacks and the selected signatures are highlighted. If the selected signature line is a blank or crossed out line, the next available line below will be selected. If there are no available lines below, the line above will be selected. These changes will be noted on the random sampling selection list.

(7) A "Summary of Results of Verification" form, will be used to record the verification results.

(8) Upon completion of the procedures required in sections (1) through (7) of this rule, the county elections official will immediately begin verifying the signatures of the "first" sample. As soon as all the signatures of the "first" sample are verified, the county election official will post these results to the "First Sample" section of the Summary of Results of Verification form.

(9) The county elections official will immediately consolidate and tabulate all "first" sample data contained on the Summary of Results of Verification form.

(10) The sampling formula to determine acceptance or rejection will be applied to the consolidated data from the "first" sample. If the petition is accepted as a result of the "first" sample, no further verification is required. If the results of the "first" sample do not qualify the petition to the ballot, the "second" larger sample will be verified.

(11) The county elections official will immediately begin verifying the signatures of the "second" sample, if the petition is not accepted as a result of the "first" sample. As soon as all the signatures of the "second" sample are verified the county election official will post these results to the "Second Sample" section of the Summary of Results of Verification form.

(12) The county elections official will immediately consolidate and tabulate all "second" sample data contained on the Summary of Results of Verification form.

(13) If the results of the "first" sample do not qualify the petition, the "second" sample data will be added to the "first" sample data and the combined results will be applied to the sampling formula. The formula will show that:

(a) The petition has a sufficient number of valid signatures to qualify for the ballot; or

(b) The petition does not have a sufficient number of valid signatures to qualify for the ballot.

(14) In the event additional signatures are filed pursuant to ORS 250.165(7), 250.265(7), or 255.135(7), the county elections official has the option to either verify all additional signatures or to continue to use the sampling process described in this rule. If the county elections official chooses to verify additional signatures using the sampling process, samples will be selected solely from each additional submittal(s) of signatures.

(a) The sample size of any additional submittal(s) will be directly proportional to the combined "first" and "second" samples from the first submittal or 100 whichever is greater.

(b) The verification procedures applied to the combined "first" and "second" sample will be applied to any additional submittal of signatures.

(c) To determine acceptance or rejection of the initiative or referendum petition, the verification results of any additional submittal will be added to the verification results of the combined "first" and "second" sample of the first submission of signatures.

[ED. NOTE: Appendix referenced is available from the agency.]

Stat. Auth.: ORS 246.150, 250.215, 250.315 & 255.175

Stats. Implemented: ORS 250.215, 250.315 & 255.175

Hist.: ELECT 19-1991(Temp), f. & cert. ef. 12-20-91; ELECT 13-1993, f. & cert. ef. 4-16-93; ELECT 7-2000, f. & cert. ef. 4-5-00; ELECT 3-2004, f. & cert. ef. 4-15-04; ELECT 3-2005, f. & cert. ef. 3-22-05

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**Adm. Order No.:** ELECT 4-2005

**Filed with Sec. of State:** 4-8-2005

**Certified to be Effective:** 4-8-05

**Notice Publication Date:** 1-1-05

**Rules Adopted:** 165-014-0270

**Subject:** This proposed rule adopts specific standards for what constitutes a sufficient circulator's certification on Initiative, Referendum, Recall, and Candidate Nominating petitions. These standards are based on current office policy, and based on direction from the U.S. District Court, are being incorporated into administrative rule.

**Rules Coordinator:** Brenda Bayes—(503) 986-1518

**165-014-0270**

### Circulator Certification

(1) The purpose of this rule is to incorporate into administrative law previously enforced standards on what constitutes a sufficient circulator certification on Initiative, Referendum, Recall, and Candidate Nominating petitions.

(2) A petition signature sheet will be rejected for insufficient circulator certification if:

(a) No signature whatsoever appears below the certification;

(b) No date appears next to circulator's signature or the date is crossed out;

(c) The date of the circulator certification is earlier than the date of the electors' signatures, unless the circulator and the only signer are the same person;

(d) Original date is crossed out, and a new date is provided, but the circulator failed to re-sign;

(e) Any part of the original date is overwritten with a different date;

(f) Date information is insufficient or ambiguous. Date must be provided in month, day, year order if written in all numeric characters;

(g) The original signature of a circulator has been crossed out, and a different circulator's signature is inserted;

(h) Two individuals sign and date as circulator, unless the only signers and the circulators are the same people;

(i) White out appears on the signature or date line;

(j) The circulator has signed using only initials, unless the circulator's use of initials as a signature is verified by exemplar under paragraph (5) of this rule;

(k) The circulator has signed using a signature stamp, unless use of a signature stamp has been approved under ORS 246.025;

(l) Circulator's signature is photocopied, carbon-copied, or otherwise appears on the face of the document to be a replicated and not original signature except as provided for in ORS 250.043;

(m) Signature, printed name, and address are all illegible;

(n) Signature alone is illegible, unless the circulator's use of the apparently illegible signature is verified by exemplar under paragraph (5) of this rule;

(o) Circulator's signature is in printed script rather than cursive script, unless the circulator's use of a printed signature is verified by exemplar under paragraph (5) of this rule;

(p) If for any other reason, from the face of the signature sheet, the circulator's identity cannot be determined or it otherwise cannot be determined that the circulator executed the certification after witnessing the electors' signatures.

(3) If a petition signature sheet contains elector signatures dated both on or before the date of the circulator's effective certification and after the date of the circulator's effective certification, the signature sheet will be accepted with regard to the elector signatures dated on or before the date of the certification, but elector signatures dated after the date of the certification will not be accepted.

(4) The following defects in the circulator certification will *not* result in rejection of the signature sheet:

(a) The circulator's signature appears on the printed name line instead of on the signature line;

(b) Signature consists of full last name and at least the first name initial;

(c) The circulator has signed and dated the certification, but has not provided an address or printed name; or

(d) The circulator has re-signed and re-dated the certification and the circulator's original signature has *not* been crossed out.

(5) If a preliminary determination is made under paragraph (2)(j), (n) or (o) of this rule that a certification is insufficient, the certification signature may be verified by exemplar in the following manner:

(a) The Elections Division will first compare the certification signature to the circulator's current Oregon voter registration card signature, if available. If the certification signature matches the voter registration signature, the petition signature sheet will be accepted. If the certification signature

# ADMINISTRATIVE RULES

ture does not match the voter registration signature, the petition signature sheet will be rejected for insufficient certification.

(b) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, the Elections Division will compare the certification signature to an alternative exemplar filed with the Elections Division or retained on file by the Elections Division under section (6) of this rule. If the certification signature does not match the alternative exemplar provided or retained under section (6) and (7) of this rule, the petition signature sheet will be rejected for insufficient certification.

(c) If an Oregon voter registration card bearing the circulator's signature is not available as an exemplar, and an alternative exemplar has not been filed with or retained on file by the Elections Division under section (6) and (7) of this rule, the Elections Division will notify the chief petitioner or the chief petitioner's designee by telephone and electronic mail, if available, and provide the chief petitioner or designee an opportunity to submit an alternative exemplar of the circulator's signature.

(A) If an alternative exemplar is requested by the Elections Division not later than the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 2 days of notification for the alternative exemplar to be considered.

(B) If an alternative exemplar is requested by the Elections Division after the 20th day after signatures are submitted for verification, the chief petitioners or the chief petitioner's designee must provide the alternative exemplar within 1 day of notification for the alternative exemplar to be considered.

(C) The alternative exemplar must be a signature on an official government-issued document such as a driver's license or passport, and must have been executed before the date of the attempted certification of the petition signature sheet. If the certification signature matches the alternative exemplar, the petition signature sheet will be accepted. If the certification signature does not match the alternative exemplar, the petition signature sheet will be rejected for insufficient certification.

(D) The alternative exemplar may be physically delivered to the Elections Division or may be delivered by facsimile transmission or electronic mail. If delivered by electronic mail, the document must be reproduced in .gif or .pdf format. The alternative exemplar must be received at the office of the Secretary of State not later than 5 p.m. of the day it is due.

(6) Chief petitioners may submit alternative exemplars of petition circulators' signatures at the same time they submit petition signature sheets for signature verification. The alternative exemplar must comply with the requirements of paragraph (5)(c)(C) of this rule. When submitting alternative exemplars, chief petitioners must provide a list of circulators for whom they are submitting alternative exemplars. If no list accompanies the alternative exemplars submitted under this section, those alternative exemplars will not be accepted or used to compare the circulator's signature to the certification. If an alternative exemplar is omitted from the list, that alternative exemplar will not be accepted or used to compare the circulator's signature to the certification. Chief petitioners may still be offered the opportunity to submit alternative exemplars under paragraph (5)(c).

(7) Alternative exemplars received and accepted by the Elections Division under paragraphs (5) and (6) of this rule, will be retained on file for two years from the date of receipt.

Stat. Auth.: ORS 246.150, 249.008, 250.105, 250.215, 250.315 & 255.175  
Stats. Implemented: ORS 249.008, 249.061, 249.740, 249.865, 249.875, 250.045, 250.105, 250.215, 250.315 & 255.175  
Hist.: ELECT 4-2005, f. & cert. ef. 4-8-05

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## Teacher Standards and Practices Commission Chapter 584

**Adm. Order No.:** TSPC 2-2005

**Filed with Sec. of State:** 4-15-2005

**Certified to be Effective:** 4-15-05

**Notice Publication Date:** 12-1-04, 2-1-05

**Rules Adopted:** 584-065-0060, 584-065-0070, 584-065-0080, 584-065-0090

**Rules Amended:** 584-017-0175, 584-020-0045, 584-060-0051, 584-060-0161

**Subject:** 584-017-0175, Allow for noncontiguous authorizations on existing Initial or Continuing Teaching Licenses.

584-020-0045, Add the factor of issuing discipline to deter others from the same or similar acts.

584-060-0051, Allow for noncontiguous authorizations on existing Initial or Continuing Teaching Licenses.

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

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

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

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

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

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

### 584-017-0175

#### Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses

(1) The unit makes provisions for adding authorizations to Initial and Continuing Teaching Licenses.

(2) A candidate seeking to add the next contiguous authorization to an existing Initial or Continuing Teaching License will:

(a) Successfully complete at least six quarter hours or four semester hours of preparation in child or adolescent development, whichever is appropriate for the level being completed. The program will include methods of instruction in the appropriate subjects at the requested authorization level and may include taking additional subject-matter tests to qualify for the authorization level; and

(b) Complete a minimum two semester hours or three quarter hours of practicum experience at an approved teacher education institution or one year of at least half-time on an approved conditional assignment permit pursuant to OAR 584-060-0081. During the practicum, the candidate will prepare one work sample to document teaching effectiveness at the new authorization level.

(3) A candidate may add an authorization level that is not contiguous to an existing Initial or Continuing Teaching License if: The candidate successfully completes an approved program at that level. Completion of the approved program shall include the required practicum experience and completion of a work sample to document teaching effectiveness at the new authorization level.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120, 342.147 & 342.165

Hist.: TSPC 7-1999, f. & cert. ef. 10-8-99; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05

### 584-020-0045

#### Factors for Imposing Disciplinary Sanctions

The Commission may consider one or more of the following factors, as it deems appropriate, in its determination of what sanction or sanctions, if any, should be imposed upon a finding that an educator has violated any standard set forth in OAR 584-020-0040:

(1) If the misconduct or violation is an isolated occurrence, part of a continuing pattern, or one of a series of incidents;

(2) The likelihood of a recurrence of the misconduct or violation;

(3) The educator's past performance;

(4) The extent, severity, and imminence of any danger to students, other educators, or the public;

(5) If the misconduct was open and notorious or had negative effects on the public image of the school;

(6) The educator's state of mind at the time of the misconduct and afterwards;

(7) The danger that students will imitate the educator's behavior or use it as a model;

(8) The age and level of maturity of the students served by the educator;

(9) Any extenuating circumstances or other factors bearing on the appropriate nature of a disciplinary sanction; or

(10) To deter similar misconduct by the educator or other educators.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.143 & 342.175 - 342.190

Hist.: TS 5-1983, f. & ef. 7-21-83; TSPC 2-2005, f. & cert. ef. 4-15-05

# ADMINISTRATIVE RULES

## 584-060-0051

### Levels of Teaching Authorized

(1)(a) Teachers must prepare for one or more authorization levels at the early childhood, elementary, middle or high school levels in addition to satisfying the Objectives for Initial Teaching License in OAR 584-017-0100.

(b) The teacher must know, understand, and apply developmental psychology and learning theory appropriate to student age and grade within cultural and community contexts, and apply an articulated philosophy of education capable of ensuring that students at a particular authorization level will learn to think critically and integrate knowledge across disciplines.

(c) A first Transitional or Initial Teaching License is authorized for levels on the basis of professional education, experience, previous licensure, and specialized academic course work.

(2)(a) The early childhood authorization level is valid for any teaching assignment in pre-kindergarten through grade four (4) in a school designated as a pre-primary school, a primary school, or an elementary school; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The early childhood authorization level requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more age groups or grades between age three and grade four.

(3)(a) The elementary authorization is valid for any teaching assignment, in grades three (3) through eight (8) in a school designated as an elementary school with the Oregon Department of Education; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The elementary authorization is also valid for any teaching assignment in a self-contained 5th or 6th grade classroom in a middle school.

(c) The elementary authorization level requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more grades between grades three (3) through eight (8) in an elementary classroom or in a self-contained 5th or 6th grade classroom in a middle school.

(4)(a) The middle level authorization is valid for any teaching assignment, in grades five (5) through nine (9) of a school designated as an elementary, middle, or junior high school; except this authorization is not valid for assignments requiring specialization endorsement under OAR 584-060-0071.

(b) The middle-level authorization requires passing the Commission-approved multiple subjects test together with completion of student teaching or an internship experience with students in one or more grades between grades five (5) through nine (9).

(c) The middle-level authorization also requires candidates to document in-depth knowledge of one subject matter or specialty endorsement appropriate to middle level teaching assignments by one or more of the following:

(A) Completing a college major in the subject matter or specialty endorsement;

(B) Passing the PRAXIS test in the subject or specialty endorsement; or

(C) Presenting evidence satisfactory to the Commission of specialized education.

(d) Actual subject-matter endorsement on the middle-level Initial Teaching License requires passing the high-school level subject mastery test.

(5)(a) The high school authorization is valid for teaching one or more integrated or departmentalized subjects, with which the license must be endorsed unless a conditional assignment permit is approved by the commission, in grades seven (7) through twelve (12) of a school designated as a high school.

(b) The high school authorization level requires qualification for at least one subject-matter endorsement appropriate to secondary schools by passing the corresponding test of subject mastery approved by the commission, together with completion of student teaching or an internship experience with students in one or more grades between grades nine (9) through twelve (12).

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120-143, 342.153, 342.165 & 342.223-232

Hist.: TSPC 4-1999, f. & cert. ef. 8-2-99; TSPC 4-2002, f. & cert. ef. 5-21-02; TSPC 6-2002, f. & cert. ef. 10-23-02; TSPC 2-2005, f. & cert. ef. 4-15-05

## 584-060-0161

### Transitional Teaching License Requirements

(1) Upon filing a correct and complete application in form and manner prescribed by the commission, a qualified applicant shall be granted a Transitional Teaching License.

(2)(a) This license is issued for three years. It is non-renewable except under extraordinary conditions described below in subsection (7) of this rule.

(b) Holders of the Transitional Teaching License must meet all the requirements for ongoing renewal of the Initial Teaching License as defined in OAR 584-060-0013 within ten (10) years of the date when the first Transitional Teaching License is issued.

(3) This license is valid for regular teaching with any employer at one or more designated levels in one or more designated specialties and for substitute teaching at any level in any specialty.

(4) Upon expiration of the Transitional Teaching License, recipients of this license must meet the requirements of the Initial Teaching License for which they may apply at any time. Applicants are not eligible for a Restricted Transitional License.

(5) To be eligible for a Transitional Teaching License, an applicant must:

(a) Possess the personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator; and

(b) Hold a bachelor's degree or higher from a regionally accredited institution in the United States, or the foreign equivalent of such degree approved by the commission. A master's degree or a doctoral degree from a regionally accredited institution in the United States validates a non-regionally accredited bachelor's degree for licensure; and

(c) Complete an initial teacher education program in any state-approved teacher preparation program in any U.S. jurisdiction, or completion of a foreign program evaluated as satisfactory by an Oregon institution approved to offer the corresponding program. Oregon graduates are not eligible for a Transitional Teaching License; and

(d) Demonstrate knowledge of applicable civil rights laws. An applicant from out of state may submit an affidavit for the first Oregon license assuring that the applicant has read Discrimination and the Oregon Educator and has completed the self-study questions. The applicant must complete the course or workshop prior to any further licensure; and

(e) Furnish fingerprints in the manner prescribed by the commission. (See OAR 584-036-0062 for Criminal Records Check Requirement); and

(f) Obtain an approved first aid card within 90 days of receiving the license.

(6) Applicants who have completed programs from states other than Oregon will be required to submit a **C-2 form**, in addition to transcripts, verifying completion of the teacher education program. A teaching license issued by the U.S. Department of Defense will be considered as a license from another state. Completion of alternative routes teaching programs through school districts or other avenues are subject to Executive Director approval.

(7) When the Executive Director determines that extenuating circumstances have prevented the applicant from completing requirements for the Initial Teaching License, a restricted extension may be issued for up to one year upon joint application from an educator and the employing district. The applicant must provide an explanation of the circumstances which make the request necessary. The co-applicant district must ensure that the applicant will meet all requirements for the Initial Teaching License upon expiration of the restricted Transitional Teaching License.

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

Stat. Auth.: ORS 342

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

Hist.: TSPC 3-1999, f. & cert. ef. 7-15-99; TSPC 9-1999, f. & cert. ef. 11-22-99; TSPC 5-2001, f. & cert. ef. 12-13-01; TSPC 6-2004, f. & cert. ef. 8-25-04; TSPC 10-2004(Temp), f. & cert. ef. 10-20-04 thru 3-1-05; Administrative correction, 3-18-05; TSPC 2-2005, f. & cert. ef. 4-15-05

## 584-065-0060

### Knowledge, Skills and Abilities for Physical Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for physical education and completing the required practicum experience, the following requirements must be met to add a physical education endorsement onto any Initial or Continuing Teaching License. The requirements to add a physical education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0230 and 584-040-0210.



## ADMINISTRATIVE RULES

(2) **Demonstrated Content Knowledge.** Candidates demonstrate an understanding of physical education content, disciplinary concepts, and tools of inquiry related to the development of a physically educated person. Candidates must:

(a) Identify critical elements of motor skill performance, and combine motor skills into appropriate sequences for the purpose of improving learning;

(b) Demonstrate competent motor skill performance in a variety of physical activities;

(c) Describe performance concepts and strategies related to a skillful movement and physical activity such as: fitness principles, game tactics, skill improvement principles;

(d) Describe and apply: anatomical, physiological and biomechanical bioscience and psychological concepts to skillful movement, physical activity and fitness;

(e) Understand and debate current physical education and activity issues and laws based on historical, philosophical and sociological concepts; and

(f) Demonstrate knowledge of national and state content standards and local programs goals.

(3) **Demonstrated Knowledge of Growth and Development.** Candidates demonstrate an understanding of how individuals learn and develop, and can provide opportunities that support their physical, cognitive, social and emotional development. Candidates must:

(a) Monitor individual and group performance in order to design safe instruction that meets student development needs in the physical, cognitive and social and emotional domains;

(b) Understand the biological, psychological, sociological, experiential and environmental factors such as: neurological development, physique, gender and socio-economic status that impact developmental readiness to learn and demonstrate the ability to refine movement skills accordingly; and

(c) Identify, select and implement appropriate learning and best practices opportunities based on understanding the student, the learning environment and the task.

(4) **Demonstrated Ability to Differentiate Instruction.** Candidates demonstrate competencies in differentiated instruction for diverse learners by demonstrating an understanding of how individuals differ in their approaches to learning and create appropriate instruction opportunities adapted to individual differences. Candidates must:

(a) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(b) Use appropriate services and resources in the delivery of differentiated instruction to ensure success for all students.

(5) **Demonstrated Competency in Classroom Management and Individual and Group Motivation.** Candidate demonstrates ability to understand individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning and self-motivation. Candidates must:

(a) Use managerial routines that create smoothly functioning learning experiences and environments;

(b) Organize, allocate, and manage resources such as students, time, space, equipment, activities and teacher attention;

(c) Use a variety of developmentally appropriate practices to motivate students to participate in physical activity inside and outside the school;

(d) Use strategies to help students demonstrate responsible personal and social behaviors such as mutual respect, support for others, safety and cooperation that promote positive relationships and a productive learning environment; and

(e) Develop effective behavior management plans when appropriate.

(6) **Demonstrate Competency in Communication.** Candidates demonstrate skill and knowledge in the use of effective verbal, nonverbal and media communication techniques to foster inquiry, collaboration and engagement in physical activity settings. Candidates must:

(a) Describe and demonstrate effective communication skills, such as: use of language, clarity, conciseness, pacing, giving and receiving, feedback, age appropriate language and non-verbal communication;

(b) Communicate managerial and instructional information in a variety of ways such as bulletin boards, music, task cards, posters, Internet and video;

(c) Communicate in ways that demonstrate sensitivity and consideration of ethnic, cultural, socio-economic, ability and gender differences; and

(d) Describe and implement strategies to enhance communication and collaboration among students in physical activity settings.

(7) **Demonstrate Competency in Planning and Instruction.** The candidate demonstrates skill in planning and implements a variety of developmentally appropriate instructional strategies to develop physically educated individuals. Candidates must:

(a) Identify, develop and implement appropriate program and instructional goals;

(b) Develop long and short-term plans that are linked to both programs, instructional goals and student needs;

(c) Select and implement instructional strategies, based on selected content, student needs and safety issues, to facilitate learning in the physical activity setting;

(d) Design and implement learning experiences that are safe, appropriate, relevant and based on principles of effective instruction;

(e) Apply disciplinary and pedagogical knowledge in developing and implementing effective learning environments and experiences;

(f) Provide learning experiences that allow students to integrate knowledge and skills from multiple subject areas;

(g) Select and implement appropriate, comprehensive, accurate, useful and safe teaching resources and curriculum materials;

(h) Use effective demonstrations and explanations to link physical activity concepts to appropriate learning experiences;

(i) Develop and use appropriate instructional cues and prompts to facilitate competent motor skills performance; and

(j) Develop a repertoire of direct and indirect instructional formats to facilitate student learning such as ask questions, pose scenarios, promote problem-solving and critical thinking; facilitate factual recall and promote literacy.

(8) **Demonstrate Competencies in Learner Assessment.** The candidate demonstrates an understanding and use of formal and informal assessment strategies to foster physical, cognitive, social and emotional development of learners in physical activity. Candidates must:

(a) Identify key component of various types of assessment, describe their appropriate and inappropriate use and address issues of validity, reliability and adverse impact;

(b) Use a variety of appropriate authentic and traditional assessment techniques, including both self and peer assessments, to assess student understanding and performance, provide feedback and communicate student progress for both formative and summative purposes; and

(c) Interpret and use learning and performance data to make informed curricular and instructional decisions.

(9) **Demonstrate Competency in the Ability to Reflect and Make Appropriate Adjustments in Teaching Quality.** Candidates demonstrate the ability to reflect and evaluate the effects of her or his actions on others. Candidates must:

(a) Use a reflective cycle involving description of teaching, justification of teaching performance, critique of the teaching performance, the setting of teaching goals and implementation of change;

(b) Use available resources such as colleagues, literature and professional associations to develop as a reflective physical educator; and

(c) Construct a plan for continued professional growth based on the assessment of personal teaching performance.

(10) **Demonstrate Competency in Technology.** Candidates use information technology to enhance learning and to enhance personal and professional productivity. Candidates must:

(a) Demonstrate knowledge of current technologies and their application in physical education;

(b) Design, develop and implement student learning activities that integrate information technology; and

(c) Use technologies to communicate, network, locate resources and enhance continuing professional development.

(11) **Demonstrate Competency to Foster Collaboration.** Candidates will foster relationships with colleagues, parents and guardians and community agencies to support learners' growth and well-being. Candidates will:

(a) Identify strategies to become an advocate in the school and community to promote a variety of physical activity opportunities;

(b) Actively participate in the local, state and national professional physical education community and within the broader education field;

(c) Identify and actively seek community resources to enhance physical activity opportunities; and

(d) Pursue productive relationships with parents, guardians and school colleagues to support student growth and well-being.

## ADMINISTRATIVE RULES

(12) Candidates for physical education endorsement must be authorized at one paired authorization level as defined in OAR 584-060-0071 in any one of the following combinations below. Candidates completing a practica experience at either early childhood or elementary and at either middle or high school levels shall qualify for authorization to teach preprimary through grade 12. Paired authorizations may be:

- (a) Early Childhood and Elementary;
  - (b) Elementary and Middle Level; or
  - (c) Middle Level and High School.
- (13) This endorsement is valid to teach:
- (a) Games and sports skills;
  - (b) Gymnastics;
  - (c) Movement;
  - (d) Personal and Social Development;
  - (e) Physical Fitness and Body Development;
  - (f) Rhythms;
  - (g) Adaptive motor skills; and
  - (h) Athletic training.

(14) This endorsement is required for teaching any subject in subsection (4) above:

- (a) More than 51% on a Basic or Standard Teaching License with an elementary endorsement; or
- (b) More than 10 hours per week on:
  - (A) Any Basic or Standard Teaching License with other than an elementary endorsement; or
  - (B) An Initial or Continuing Teaching License at any grade authorization level.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, 342.173.

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05

### 584-065-0070

#### Knowledge, Skills and Abilities for Health Education Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for health education and completing the required practicum experience, the following requirements must be met to add a health education endorsement onto any Initial or Continuing Teaching License. The requirements to add a health education endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0110 and 584-040-0100.

(2) Candidates Assess Individual and Community Needs for Health Education. Candidates will:

- (a) Obtain health-related data about social and cultural environments, growth and development factors, needs, and interests of students;
- (b) Distinguish between behaviors that foster and those that hinder well-being; and
- (c) Candidates determine health education needs based on observed and obtained data.

(3) Candidates Plan Effective Health Education Programs. Candidates will:

- (a) Recruit school and community representatives to support and assist in program planning;
- (b) Develop a logical scope and sequence plan for a health education program;
- (c) Formulate appropriate and measurable learner objectives; and
- (d) Design educational strategies consistent with specified learner objectives.

(4) Candidates Implement Health Education Programs. Candidates will:

- (a) Analyze factors affecting the successful implementation of health education and Coordinated School Health Programs (CSHPs);
- (b) Select resources and media best suited to implement program plans for diverse learners;
- (c) Exhibit competence in carrying out planned programs; and
- (d) Monitor educational programs, adjusting objectives and instructional strategies as necessary.

(5) Candidates Evaluate the Effectiveness of Coordinated School Health Programs. Candidates will:

- (a) Develop plans to assess student achievement of program objectives;
- (b) Carry out evaluation plans;
- (c) Interpret results of program evaluation; and
- (d) Infer implications of evaluation findings for future program planning.

(6) Candidates Coordinate Provision of Health Education Programs and Services. Candidates will:

(a) Develop a plan for coordinating health education with other components of a school health program;

(b) Demonstrate the dispositions and skills to facilitate cooperation among health educators, other teachers, and appropriate school staff;

(c) Candidates formulate practical modes of collaboration among health educators in all settings and other school and community health professionals; and

(d) Candidates organize professional development programs for teachers, other school personnel, community members, and other interested individuals.

(7) Candidates Act as a Resource Person in Health Education. Candidates will:

(a) Utilize computerized health information retrieval systems effectively;

(b) Establish effective consultative relationships with those requesting assistance in solving health-related problems;

(c) Interpret and respond to requests for health information; and

(d) Select effective educational resource materials for dissemination.

(8) Candidates Communicate Health and Health Education Needs, Concerns, and Resources. Candidates will:

(a) Interpret concepts, purposes, and theories of health education;

(b) Predict the impact of societal value systems on health education programs;

(c) Select a variety of communication methods and techniques in providing health information; and

(d) Foster communication between health care providers and consumers.

(9) Candidates Apply Appropriate Research Principles and Methods in Health Education. Candidates will:

(a) Conduct thorough reviews of health-related literature;

(b) Use appropriate qualitative and quantitative research methods; and

(c) Apply research to health education practices.

(10) Candidates Have the Skills to Administer Health Education Programs. Candidates will:

(a) Develop and manage health education program fiscal resources;

(b) Develop and manage human resources; and

(c) Exercise organizational leadership.

(11) Candidates Advance the Profession of Health Education. Candidates will:

(a) Provide a critical analysis of current and future needs in health education;

(b) Assume responsibility for advancing the profession;

(c) Apply ethical principles as they relate to the practice of health education.

(12) Candidates Have the Ability to Differentiate Instruction. Candidates will:

(a) Demonstrate competencies in delivering differentiated 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;

(b) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(c) Use appropriate services and resources in the delivery of differentiated instruction.

(13) This endorsement is valid to teach:

(a) Health Education;

(b) Advanced Health;

(c) Food and Fitness;

(d) Drug Education;

(e) Health Promotion;

(f) Health and Wellness Education;

(g) Individual Health Projects;

(h) Chemical and Substance Abuse Education;

(i) Family Living; and

(j) Other health-related courses or activities.

(14) This endorsement is required for teaching any subject in subsection (12) above for more than ten hours per week, or if conditionally assigned in more than one subject (See, OAR 584-060-0081) on:

(a) Any Basic or Standard Teaching License with other than an elementary endorsement in grades 5 through 12; and

(b) Any Initial or Continuing Teaching License with a high school authorization.

Stat. Auth.: ORS 342

# ADMINISTRATIVE RULES

Stats. Implemented: ORS 342.120 - 342.143, 342.153, 342.165, & 342.223 - 342.232  
Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05

## 584-065-0080

### Knowledge, Skills and Abilities for Basic Math Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for basic math and completing the required practicum experience, the following requirements must be met to add a basic math endorsement onto any Initial or Continuing Teaching License. The requirements to add a basic math endorsement onto a Basic or Standard Teaching License can be found at OAR 584-038-0180.

(2) Demonstrated Content Knowledge:

(a) For knowledge of numbers, operations, candidates will:

(A) Demonstrate conceptual understanding of complex numbers and real numbers particularly rational numbers and integers; ways of representing numbers; relationships among numbers and number systems; and the meaning of operations; and

(B) Be computationally proficient and choose the appropriate computational format such as exact or approximate; and method, such as mental, paper and pencil, or electronic.

(b) For knowledge of algebra and functions, candidates will:

(A) Understand the various roles of algebra and demonstrate conceptual understanding of variables and functions including linear, quadratic and exponential functions and their inverses;

(B) Use a variety of representations including verbal, pictorial, tabular, symbolic and graphic to emphasize relationships among quantities; and

(C) Demonstrate conceptual understanding of and skill in appropriate use of symbols.

(c) For knowledge of geometry, candidates will:

(A) Use spatial visualization and geometric modeling and constructions to explore and analyze geometric shapes, structures, and their properties;

(B) Make conjectures about two- and three-dimensional shapes and offer justifications for conjectures; and

(C) Apply coordinates geometry and transformations including the use of congruence, similarity, and symmetry to analyze mathematical situations.

(d) For knowledge of measurement, candidates will:

(A) Understand measurement processes including estimation, accuracy and choice of measurement tool for both U.S. customary and metric systems; and

(B) Understand and use direct and indirect measurement techniques and formulas for both two- and three-dimensional figures.

(e) For knowledge of data analysis and probability and statistic, candidates will:

(A) Design investigations, collect data, use a variety of ways to display the data and critically interpret data representations;

(B) Make predictions and draw conclusions involving uncertainty by applying basic concepts of probability; and

(C) Use appropriate statistical methods to analyze and describe shape, spread, and center data; then they use that information to make inferences.

(f) For knowledge of calculus, candidates will:

(A) Demonstrate a conceptual understanding of limits, particularly in relation to understanding series, repetitive processes and non-terminating decimals; and

(B) Demonstrate a conceptual understanding of rate of change and the relationship to minimums, maximums and area of a region.

(3) Demonstrated Competency in Following Process Standards.

(a) For competency in problem solving, candidates will engage in mathematical inquiry through understanding a problem, exploring, conjecturing, experimenting and justifying.

(b) For competency in reasoning and proof, candidates will:

(A) Select and use various types of reasoning including categorizing based on numeric and geometric properties, and using Venn diagrams, set notation and operations; and

(B) Develop and evaluate mathematical arguments such as informal proofs, and the foundations on which arguments are built.

(c) For competency in communication, candidates will:

(A) Organize and consolidate their mathematical thinking through communication;

(B) Communicate coherently and use the language of mathematics, such as symbols and terminology, to express ideas precisely; and

(C) Analyze the mathematical thinking of others.

(d) For competency in representation, candidates will:

(A) Use multiple forms of representation including concrete models, pictures, diagrams, tables and graphs; and

(B) Use invented and conventional terms and symbols to communicate reasoning and solve problems.

(e) For competency in connections, candidates will:

(A) Understand how mathematical ideas interconnect and build on one another to produce a coherent whole; and

(B) Recognize and apply mathematics in contexts outside of mathematics.

(4) Demonstrated knowledge and skill in mathematics pedagogy:

(a) For demonstrated knowledge and skill in the principles equity candidates will demonstrate high expectations and strong support for all students to learn mathematics.

(b) For demonstrated knowledge and skill in developing curriculum, candidates will:

(A) Map curriculum that is coherent, focused on important mathematics and carefully sequenced;

(B) Be familiar with curriculum both preceding and following the middle level; and

(C) Be able to discern the quality of learning opportunities for students when given a particular task, activity, educational software, etc., and are able to make adaptations to assure quality.

(c) For demonstrated knowledge and skill in developing quality learning environment candidates will foster a classroom environment conducive to mathematical learning through:

(A) Providing and structuring the time necessary to explore sound mathematics and grapple with significant ideas and problems;

(B) Using the physical space and materials in ways that facilitate students' learning of mathematics;

(C) Providing a context that encourages the development of mathematical skill and proficiency; and

(D) Respecting and valuing students' ideas, ways of thinking and mathematical dispositions.

(d) For demonstrated knowledge and skill in teaching, candidates will:

(A) Understand what mathematics students know and need to learn and then challenge and support them to learn it well; and

(B) Orchestrate discourse by:

(i) Posing questions and tasks that elicit, engage and challenge each student's thinking;

(ii) Listening carefully to students' ideas; asking students to clarify and justify their ideas orally and in writing;

(iii) Deciding what to pursue in depth from among the ideas that students bring up during a discussion;

(iv) Deciding when and how to attach mathematical notation and language to students' ideas;

(v) Deciding when to provide information, when to clarify an issue, when to model, when to lead, and when to let a student struggle with a difficulty; and

(vi) Monitoring students' participation in discussions and deciding when and how to encourage each student to participate.

(e) For demonstrated knowledge and skill in learning, candidates will:

(A) Know that students must learn mathematics with understanding, actively building new knowledge from experience and prior knowledge; and

(B) Have the ability to recognize and move students from concrete to abstract levels of understanding.

(f) For demonstrated knowledge and skill in assessment, candidates will:

(A) Use a variety of formal and informal, formative and summative assessment techniques to support the learning of important mathematics;

(B) Understand how, why, and when to use various assessment techniques and tools; as well as how these tools inform their understanding about student thinking and understanding; and

(C) Plan instruction based upon the information obtained through classroom and external assessments of each student's developmental level.

(g) For demonstrated knowledge and skill in technology, candidates will:

(A) Understand that technology is an integral part of teaching and learning mathematics both influencing what is taught and enhancing how it is learned.

(B) Demonstrate effective and appropriate use of technology.

(h) For demonstrated knowledge and skill in mathematic historical development candidates will demonstrate knowledge of historical and cultural influences in mathematics including contributions of underrepresented groups.



## ADMINISTRATIVE RULES

(i) For demonstrated ability to differentiate instruction, candidates will demonstrate competencies in delivering differentiated 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. Candidates will:

(A) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(B) Use appropriate services and resources in the delivery of differentiated instruction.

(5) This endorsement is valid to teach any course at or below Algebra I including:

- (a) Remedial Math;
- (b) Mathematics;
- (c) Basic Math;
- (d) Math Concepts (grades 6-8);
- (e) Pre-Algebra;
- (f) Introductory Algebra;
- (g) Basic Algebra;
- (h) Algebra I;
- (i) Competency Mathematics;
- (j) Consumer Mathematics;
- (k) General Math I & II;
- (l) Mathematics Fundamentals;
- (m) Math Lab;
- (n) Middle Mathematics Skills;
- (o) Problem Solving; and
- (i) Other math-related courses at or below the Algebra I level.

(6) This endorsement is required for teaching any subject in subsection (4) above:

(a) More than 51% of a full teaching assignment on a Basic or Standard Teaching License with an elementary endorsement issued after 1987 with the licensure code of (016); or

(b) More than 10 hours per week or if conditionally assigned in more than one subject, (See, OAR 584-060-0081) on:

(A) Any Basic or Standard Teaching License with other than an elementary endorsement; or

(B) An Initial or Continuing Teaching License with a high school authorization.

Stat. Auth.: ORS 342

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

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05

### 584-065-0090

#### Knowledge, Skills and Abilities for Advanced Math Endorsement

(1) In addition to passing the required Commission-approved subject-matter, examinations for advanced math and completing the required practicum experience, the following requirements must be met to add an advanced math endorsement onto any Initial or Continuing Teaching License. The requirements to add an advanced math endorsement onto a Basic or Standard Teaching License can be found at: OAR 584-038-0190 and 584-040-0180.

(2) Demonstrated Content Knowledge.

(a) For knowledge of numbers, operations and algebra, candidates will:

(A) Demonstrate knowledge of the properties of the natural, integer, rational, real and complex number systems and the interrelationships of these number systems

(B) Identify and apply the basic ideas, properties and results of number theory and algebraic structures that underlie numbers and algebraic expressions, operations, equations and inequalities;

(C) Use algebraic equations to describe lines, planes and conic sections and to find distances in the plane and space;

(D) Demonstrate the use of algebra to model, analyze, and solve problems from various areas of mathematics, science and the social sciences;

(E) Apply properties and operations of matrices and techniques of analytic geometry to analyze and solve systems of equations; and

(F) Use graphing calculators, computer algebra systems, and spreadsheets to explore algebraic ideas and algebraic representations of information and to solve problems.

(b) For knowledge of geometry, candidates will:

(A) Identify and apply the basic ideas, properties and results of number theory and algebraic structures that underlie numbers and algebraic expressions, operations, equations and inequalities;

(B) Use algebraic equations to describe lines, planes and conic sections and to find distances in the plane and space;

(C) Demonstrate the use of algebra to model, analyze, and solve problems from various areas of mathematics, science and the social sciences;

(D) Apply properties and operations of matrices and techniques of analytic geometry to analyze and solve systems of equations; and

(E) Use graphing calculators, computer algebra systems, and spreadsheets to explore algebraic ideas and algebraic representations of information, and to solve problems.

(c) For knowledge of functions, candidates will:

(A) Demonstrate knowledge of the concept of a function and the most important classes of functions, including polynomial, exponential and logarithmic, rational and trigonometric;

(B) Represent functions in multiple forms, such as graphs, tables, mappings, formulas, matrices and equations;

(C) Perform a variety of operations on functions, including addition, multiplication and composition of functions, and recognize related special functions such as identities and inverses and those operations that preserve the various properties;

(D) Use functions to model situations and solve problems in calculus, linear and abstract algebra, geometry, statistics and discrete mathematics;

(E) Explore various kinds of relations, including equivalence relations, and the differences between relations and functions;

(F) Use calculator and computer technology effectively to study functions and solve problems;

(G) Demonstrate specific knowledge of trigonometric functions, including properties of their graphs, special angles, identities and inequalities, and complex and polar forms; and

(H) Use analytic representations, measures, and properties to analyze transformation of two- and three-dimensional objects.

(d) For knowledge of discrete mathematics and computer science, candidates will:

(A) Demonstrate knowledge of discrete topics including graphs, trees, networks, enumerative combinatorics and finite difference equations, iteration and recursion, and the use of tools such as functions, diagrams and matrices to explore them;

(B) Build discrete mathematical models for social decision-making;

(C) Apply discrete structures such as: sets, logic, relations and functions, and their applications in design of data structures and programming;

(D) Use recursion and combinatorics in the design and analysis of algorithms; and

(E) Candidates employ linear and computer programming to solve problems.

(e) For knowledge of probability and statistics, candidates will:

(A) Explore data using a variety of standard techniques to organize and display data and detect and use measures of central tendency and dispersion;

(B) Use surveys to estimate population characteristics and design experiments to test conjectured relationships among variables;

(C) Use theory and simulations to study probability distributions and apply them as models of real phenomena;

(D) Demonstrate knowledge of statistical inference by using probability models to draw conclusions from data and measure the uncertainty of those conclusions;

(E) Employ calculators and computers effectively in statistical explorations and practice; and

(F) Demonstrate knowledge of basic concepts of probability such as conditional probability and independence, and develop skill in calculating probabilities associated with those concepts.

(f) For knowledge of calculus, candidates will:

(A) Demonstrate conceptual understanding of and procedural facility with basic calculus concepts such as limits, derivatives and integrals of functions of one and two variables;

(B) Use concepts of calculus to analyze the behavior of functions and solve problems; and

(C) Determine the limits of sequences and series and demonstrate the convergence or divergence of series.

(3) Demonstrated Competency in Following Process Standards.

(a) For competency in problem solving, candidates will engage in mathematical inquiry through understanding a problem, exploring, recognizing patterns, conjecturing, experimenting and justifying.

(b) For competency in reasoning and proof, candidates will select and use various types of reasoning and develop and evaluate mathematical arguments and proof in all the mathematics content knowledge areas.

(c) For competency in communication, candidates will:

# ADMINISTRATIVE RULES

- (A) Organize and consolidate their mathematical thinking through communication;
- (B) Communicate coherently and use the language of mathematics such as symbols and terminology to express ideas precisely; and
- (C) Analyze the mathematical thinking of others.
- (d) For competency in representation, candidates will:
  - (A) Use multiple forms of representation including concrete models, pictures, diagrams, tables and graphs; and
  - (B) Use invented and conventional terms and symbols to communicate reasoning and solve problems.
  - (e) For competency in connections, candidates will:
    - (A) Understand how mathematical ideas interconnect and build on one another to produce a coherent whole; and
    - (B) Recognize and apply mathematics in contexts outside of mathematics.
  - (4) Demonstrated Knowledge and Skill In Mathematics Pedagogy.
    - (a) For demonstrated knowledge and skill in the principles of equity, candidates will demonstrate high expectations and strong support for all students to learn mathematics,
    - (b) For demonstrated knowledge and skill in developing curriculum, candidates will:
      - (A) Map curriculum that is coherent, focused on important mathematics and carefully sequenced;
      - (B) Be familiar with curriculum both preceding and following the high school level; and
      - (C) Be able to discern the quality of learning opportunities for students when given a particular task, activity, educational software, etc., and are able to make adaptations to assure quality.
    - (c) For demonstrated knowledge and skill in developing a quality learning environment, candidates will foster a classroom environment conducive to mathematical learning through:
      - (A) Providing and structuring the time necessary to explore sound mathematics and grapple with significant ideas and problems;
      - (B) Using the physical space and materials in ways that facilitate students' learning of mathematics;
      - (C) Providing a context that encourages the development of mathematical skill and proficiency; and
      - (D) Respecting and valuing students' ideas, ways of thinking, and mathematical dispositions.
    - (d) For demonstrated knowledge and skill in teaching, candidates will:
      - (A) Understand what mathematics students know and need to learn and then challenge and support them to learn it well; and
      - (B) Orchestrate discourse by:
        - (i) Posing questions and tasks that elicit, engage and challenge each student's thinking;
        - (ii) Listening carefully to students' ideas; asking students to clarify and justify their ideas orally and in writing;
        - (iii) Deciding what to pursue in depth from among the ideas that students bring up during a discussion;
        - (iv) Deciding when and how to attach mathematical notation and language to students' ideas;
        - (v) Deciding when to provide information, when to clarify an issue, when to model, when to lead, and when to let a student struggle with a difficulty; and
        - (vi) Monitoring students' participation in discussions and deciding when and how to encourage each student to participate.
      - (e) For demonstrated knowledge and skill in learning, candidates will:
        - (A) Know that students must learn mathematics with understanding, actively building new knowledge from experience and prior knowledge; and
        - (B) Have the ability to recognize and move students from concrete to abstract levels of understanding.
      - (f) For demonstrated knowledge and skill in assessment, candidates will:
        - (A) Use a variety of formal and informal, formative and summative assessment techniques to support the learning of important mathematics;
        - (B) Understand how, why and when to use various assessment techniques and tools; as well as how these tools inform their understanding about student thinking and understanding; and
        - (C) Plan instruction based upon the information obtained through classroom and external assessments of each student's developmental level.
      - (g) For demonstrated knowledge and skill in technology, candidates will:

(A) Understand that technology is an integral part of teaching and learning mathematics both influencing what is taught and enhancing how it is learned.

(B) Demonstrate effective and appropriate use of technology.

(h) For demonstrated knowledge and skill in mathematic historical development candidates will demonstrate knowledge of historical and cultural influences in mathematics including contributions of underrepresented groups.

(i) For demonstrated ability to differentiate instruction, candidates will demonstrate competencies in delivering differentiated 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. Candidates will:

(A) Identify, select, and implement appropriate instruction that is sensitive to students' strengths and weaknesses, multiple needs, learning styles, and prior experiences including but not limited to cultural, ethnic, personal, family and community influences; and

(B) Use appropriate services and resources in the delivery of differentiated instruction.

(5) This endorsement is valid to teach:

- (a) Advanced Algebra;
- (b) Trigonometry;
- (c) Pre-Calculus;
- (d) Calculus;
- (e) Statistics & Probability;
- (f) Geometry;
- (g) Survey Geometry;
- (h) Trigonometry Analysis; and
- (i) Other math-related courses.

(6) This endorsement is required to teach any math course above the Algebra I level.

Stat. Auth.: ORS 342

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

Hist.: TSPC 2-2005, f. & cert. ef. 4-15-05

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**Adm. Order No.:** TSPC 3-2005(Temp)

**Filed with Sec. of State:** 4-15-2005

**Certified to be Effective:** 4-15-05 thru 9-30-05

**Notice Publication Date:**

**Rules Adopted:** 584-060-0052, 584-060-0062

**Rules Amended:** 584-010-0010

**Subject:** 584-010-0010, Increase period of time between site reviews from five to seven years.

584-060-0052, Creates new rule for language relating to adding authorizations to improve rule clarity.

584-060-0062, Creates new rule for language relating to adding endorsements to teaching licenses to improve rule clarity.

**Rules Coordinator:** Victoria Chamberlain—(503) 378-6813

## 584-010-0010

### Approval of Education Programs for Teachers, Administrators, and Personnel Service Specialists

(1) Commission rules for program approval apply to all educator licensure programs. Institutions offering programs with alternate time schedules shall submit information equivalent to that required by applicable sections of 584-010-0010 to 584-010-0140 indicating plans at comparable stages of trainee development. Institutions providing off-campus programs administered by the institution with instruction provided at sites other than the main campus including programs taught on weekends and/or nights delivered through technology in another city will be evaluated as part of the institution's professional education unit.

(2) Unless otherwise stipulated, Commission approval of a program shall expire on August 31 of the final year of the approved period. It is the responsibility of the institution to apply for renewal in advance of expiration.

(3) Commission approval is granted following evaluation of program objectives, philosophy, and content and following an onsite assessment by a visiting committee.

(4) In addition to annual reports, periodic reports may be required from the institution.

(5) Notwithstanding subsection (6) below, institutions receive program approval for a period of seven years. At the end of the seven-year period, or any lesser period as designated by the Commission, the Commission will re-evaluate the program.

## ADMINISTRATIVE RULES

(6) Institutions that are jointly reviewed by TSPC and the National Council for the Accreditation of Teacher Education (NCATE) shall have a site visit review cycle that is consistent with the required NCATE cycle for review. Therefore, if NCATE requires a site visit review cycle less than seven years after initial approval of the program, the TSPC site visit review cycle shall be adjusted accordingly.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.147

Hist.: TS 14, f. 12-20-76, ef. 1-1-77; TS 16, f. 12-19-77, ef. 1-1-78; TS 5-1980, f. & ef. 9-11-80; TS 5-1986, f. 7-31-86, ef. 9-1-87; TS 1-1991, f. & cert. ef. 1-2-91; TS 1-1992, f. & cert. ef. 1-15-92; TS 7-1992, f. 12-17-92, cert. ef. 1-15-93; TS 5-1993, f. & cert. ef. 10-7-93; TSPC 1-1998, f. & cert. ef. 2-4-98; TSPC 3-2005(Temp), F. & cert. ef. 4-15-05 thru 9-30-05

### 584-060-0052

#### Adding Authorization Levels to Existing Initial and Continuing Teaching Licenses

A candidate seeking to add an authorization level to an existing Initial or Continuing Teaching License will complete the following:

(1) At least six quarter hours or four semester hours of preparation in child or adolescent development, whichever is appropriate for the level being completed. The program will include methods of instruction in the appropriate subjects at the requested authorization level and may include taking additional subject-matter tests to qualify for the authorization level; and

(2) One of the following practicum experiences, if approved by the authorization program, which must include preparation of one work sample to document teaching effectiveness at the new authorization level:

(a) A practicum of two semester hours or three quarter hours; or

(b) Verification of a successful teaching experience for at least one year of at least half-time on an approved conditional assignment permit pursuant to OAR 584-060-0081.

Stat. Auth.: ORS 342

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

Hist.: TSPC 3-2005(Temp), F. & cert. ef. 4-15-05 thru 9-30-05

### 584-060-0062

#### Adding Endorsements to Existing Initial and Continuing Teaching Licenses

(1) A new endorsement will be added on the first license or on a more advanced license upon:

(a) Documentation of a passing score as currently specified by the commission on a designated test of subject mastery; or

(b) Completion of a program or required coursework in areas where the commission does not require a test for endorsement such as: Drama, Japanese, Latin, Russian and Adaptive Physical Education; or

(c) Proof of licensure in the subject on an out-of-state non provisional license.

(2) In addition to the requirements in subsection (1) above, one of the following practical experiences must be completed:

(a) A practicum of 2 semester hours or 3 quarter hours, which except as specified below may or may not be part of a longer preparation that includes content or methods courses in the subject area, in an institution approved to prepare teachers for that endorsement;

(b) One year of experience teaching the new subject-area at least one hour each day or the equivalent on an approved conditional assignment permit (CAP) pursuant to OAR 584-060-0081. Only an approved CAP will be accepted to document the teaching of the subject for which the endorsement is being sought, therefore, assignments that are allowed under OAR 584-060-0081, but undocumented by an approved CAP will not be accepted to add the endorsement; or

(c) Five years of experience teaching the subject area in a public school or regionally accredited private school within a U.S. jurisdiction on a license appropriate for the assignment before holding any Oregon license.

(3) Some endorsement areas may require the completion of a new authorization level prior to being added to the license. The applicant should obtain a check sheet of requirements from TSPC prior to pursuing adding a new endorsement to an existing license.

(4) An approved institutional program including content and methods courses is always required as preparation for added endorsement in:

(a) Special education;

(b) Communication disorders;

(c) Hearing impairment;

(d) Visual impairment;

(e) Reading; or

(f) Subjects for which no subject mastery test has been required by the commission for endorsement including but not limited to: Drama, Japanese Latin, Russian, and Adaptive Physical Education.

Stat. Auth.: ORS 342

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

Hist.: TSPC 3-2005(Temp), F. & cert. ef. 4-15-05 thru 9-30-05



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123-065-1553	2-25-05	Adopt	4-1-05	123-065-4100	2-25-05	Amend	4-1-05
123-065-1557	2-25-05	Adopt	4-1-05	123-065-4110	2-25-05	Amend	4-1-05
123-065-1560	2-25-05	Amend	4-1-05	123-065-4120	2-25-05	Amend	4-1-05
123-065-1570	2-25-05	Amend	4-1-05	123-065-4130	2-25-05	Amend	4-1-05
123-065-1580	2-25-05	Amend	4-1-05	123-065-4140	2-25-05	Amend	4-1-05
123-065-1590	2-25-05	Amend	4-1-05	123-065-4150	2-25-05	Repeal	4-1-05
123-065-1600	2-25-05	Amend	4-1-05	123-065-4160	2-25-05	Repeal	4-1-05
123-065-1610	2-25-05	Amend	4-1-05	123-065-4200	2-25-05	Amend	4-1-05
123-065-1620	2-25-05	Amend	4-1-05	123-065-4220	2-25-05	Amend	4-1-05
123-065-1650	2-25-05	Amend	4-1-05	123-065-4230	2-25-05	Amend	4-1-05
123-065-1670	2-25-05	Adopt	4-1-05	123-065-4240	2-25-05	Amend	4-1-05

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
123-065-4250	2-25-05	Amend	4-1-05	123-065-4980	2-25-05	Amend	4-1-05
123-065-4260	2-25-05	Amend	4-1-05	123-065-4990	2-25-05	Amend	4-1-05
123-065-4270	2-25-05	Amend	4-1-05	123-065-7000	2-25-05	Amend	4-1-05
123-065-4280	2-25-05	Amend	4-1-05	123-065-7100	2-25-05	Amend	4-1-05
123-065-4300	2-25-05	Amend	4-1-05	123-065-7200	2-25-05	Amend	4-1-05
123-065-4310	2-25-05	Amend	4-1-05	123-065-7300	2-25-05	Amend	4-1-05
123-065-4313	2-25-05	Adopt	4-1-05	123-065-7400	2-25-05	Amend	4-1-05
123-065-4315	2-25-05	Amend	4-1-05	123-065-7500	2-25-05	Amend	4-1-05
123-065-4318	2-25-05	Adopt	4-1-05	123-065-7600	2-25-05	Amend	4-1-05
123-065-4320	2-25-05	Amend	4-1-05	123-065-7700	2-25-05	Amend	4-1-05
123-065-4323	2-25-05	Adopt	4-1-05	123-065-8000	2-25-05	Adopt	4-1-05
123-065-4325	2-25-05	Adopt	4-1-05	123-065-8100	2-25-05	Adopt	4-1-05
123-065-4328	2-25-05	Adopt	4-1-05	123-065-8200	2-25-05	Adopt	4-1-05
123-065-4330	2-25-05	Amend	4-1-05	123-065-8300	2-25-05	Adopt	4-1-05
123-065-4340	2-25-05	Amend	4-1-05	123-065-8400	2-25-05	Adopt	4-1-05
123-065-4343	2-25-05	Repeal	4-1-05	123-070-1000	2-25-05	Amend	4-1-05
123-065-4345	2-25-05	Adopt	4-1-05	123-070-1100	2-25-05	Amend	4-1-05
123-065-4355	2-25-05	Adopt	4-1-05	123-070-1150	2-25-05	Amend	4-1-05
123-065-4360	2-25-05	Repeal	4-1-05	123-070-1200	2-25-05	Amend	4-1-05
123-065-4365	2-25-05	Adopt	4-1-05	123-070-1300	2-25-05	Amend	4-1-05
123-065-4370	2-25-05	Repeal	4-1-05	123-070-1500	2-25-05	Amend	4-1-05
123-065-4375	2-25-05	Adopt	4-1-05	123-070-1600	2-25-05	Amend	4-1-05
123-065-4380	2-25-05	Amend	4-1-05	123-070-1700	2-25-05	Amend	4-1-05
123-065-4390	2-25-05	Am. & Ren.	4-1-05	123-070-1800	2-25-05	Amend	4-1-05
123-065-4400	2-25-05	Amend	4-1-05	123-070-1900	2-25-05	Amend	4-1-05
123-065-4410	2-25-05	Amend	4-1-05	123-070-2000	2-25-05	Amend	4-1-05
123-065-4420	2-25-05	Amend	4-1-05	123-070-2100	2-25-05	Amend	4-1-05
123-065-4430	2-25-05	Amend	4-1-05	123-070-2200	2-25-05	Amend	4-1-05
123-065-4440	2-25-05	Amend	4-1-05	123-070-2300	2-25-05	Amend	4-1-05
123-065-4450	2-25-05	Amend	4-1-05	123-070-2400	2-25-05	Amend	4-1-05
123-065-4460	2-25-05	Amend	4-1-05	125-020-0100	3-1-05	Repeal	3-1-05
123-065-4470	2-25-05	Amend	4-1-05	125-020-0110	3-1-05	Repeal	3-1-05
123-065-4480	2-25-05	Amend	4-1-05	125-020-0120	3-1-05	Repeal	3-1-05
123-065-4500	2-25-05	Amend	4-1-05	125-020-0130	3-1-05	Repeal	3-1-05
123-065-4510	2-25-05	Amend	4-1-05	125-020-0140	3-1-05	Repeal	3-1-05
123-065-4520	2-25-05	Amend	4-1-05	125-020-0200	3-1-05	Repeal	3-1-05
123-065-4530	2-25-05	Amend	4-1-05	125-020-0210	3-1-05	Repeal	3-1-05
123-065-4540	2-25-05	Amend	4-1-05	125-020-0220	3-1-05	Repeal	3-1-05
123-065-4550	2-25-05	Amend	4-1-05	125-020-0225	3-1-05	Repeal	3-1-05
123-065-4560	2-25-05	Amend	4-1-05	125-020-0300	3-1-05	Repeal	3-1-05
123-065-4570	2-25-05	Amend	4-1-05	125-020-0310	3-1-05	Repeal	3-1-05
123-065-4580	2-25-05	Amend	4-1-05	125-020-0320	3-1-05	Repeal	3-1-05
123-065-4590	2-25-05	Amend	4-1-05	125-020-0330	3-1-05	Repeal	3-1-05
123-065-4600	2-25-05	Adopt	4-1-05	125-020-0335	3-1-05	Repeal	3-1-05
123-065-4690	2-25-05	Am. & Ren.	4-1-05	125-020-0340	3-1-05	Repeal	3-1-05
123-065-4700	2-25-05	Amend	4-1-05	125-020-0350	3-1-05	Repeal	3-1-05
123-065-4710	2-25-05	Amend	4-1-05	125-020-0360	3-1-05	Repeal	3-1-05
123-065-4720	2-25-05	Amend	4-1-05	125-020-0400	3-1-05	Repeal	3-1-05
123-065-4730	2-25-05	Amend	4-1-05	125-020-0410	3-1-05	Repeal	3-1-05
123-065-4740	2-25-05	Amend	4-1-05	125-020-0430	3-1-05	Repeal	3-1-05
123-065-4750	2-25-05	Amend	4-1-05	125-020-0440	3-1-05	Repeal	3-1-05
123-065-4760	2-25-05	Amend	4-1-05	125-020-0500	3-1-05	Repeal	3-1-05
123-065-4800	2-25-05	Adopt	4-1-05	125-020-0510	3-1-05	Repeal	3-1-05
123-065-4950	2-25-05	Amend	4-1-05	125-020-0520	3-1-05	Repeal	3-1-05
123-065-4960	2-25-05	Amend	4-1-05	125-020-0530	3-1-05	Repeal	3-1-05
123-065-4970	2-25-05	Amend	4-1-05	125-020-0540	3-1-05	Repeal	3-1-05

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
125-020-0550	3-1-05	Repeal	3-1-05	125-145-0010	2-24-05	Amend(T)	4-1-05
125-020-0600	3-1-05	Repeal	3-1-05	125-145-0010(T)	2-24-05	Suspend	4-1-05
125-020-0610	3-1-05	Repeal	3-1-05	125-145-0020	12-1-04	Adopt(T)	1-1-05
125-020-0620	3-1-05	Repeal	3-1-05	125-145-0020	2-24-05	Amend(T)	4-1-05
125-020-0700	3-1-05	Repeal	3-1-05	125-145-0020(T)	2-24-05	Suspend	4-1-05
125-025-0000	3-1-05	Repeal	3-1-05	125-145-0030	12-1-04	Adopt(T)	1-1-05
125-025-0010	3-1-05	Repeal	3-1-05	125-145-0030	2-24-05	Amend(T)	4-1-05
125-025-0030	3-1-05	Repeal	3-1-05	125-145-0030(T)	2-24-05	Suspend	4-1-05
125-025-0040	3-1-05	Repeal	3-1-05	125-145-0040	12-1-04	Adopt(T)	1-1-05
125-025-0050	3-1-05	Repeal	3-1-05	125-145-0040	2-24-05	Amend(T)	4-1-05
125-025-0060	3-1-05	Repeal	3-1-05	125-145-0040(T)	2-24-05	Suspend	4-1-05
125-025-0070	3-1-05	Repeal	3-1-05	125-145-0045	12-1-04	Adopt(T)	1-1-05
125-025-0080	3-1-05	Repeal	3-1-05	125-145-0045	2-24-05	Amend(T)	4-1-05
125-025-0082	3-1-05	Repeal	3-1-05	125-145-0045(T)	2-24-05	Suspend	4-1-05
125-025-0085	3-1-05	Repeal	3-1-05	125-145-0050	12-1-04	Adopt(T)	1-1-05
125-025-0087	3-1-05	Repeal	3-1-05	125-145-0050	2-24-05	Suspend	4-1-05
125-025-0090	3-1-05	Repeal	3-1-05	125-145-0060	12-1-04	Adopt(T)	1-1-05
125-025-0100	3-1-05	Repeal	3-1-05	125-145-0060	2-24-05	Amend(T)	4-1-05
125-025-0110	3-1-05	Repeal	3-1-05	125-145-0060(T)	2-24-05	Suspend	4-1-05
125-030-0000	3-1-05	Repeal	3-1-05	125-145-0080	12-1-04	Adopt(T)	1-1-05
125-030-0001	3-1-05	Repeal	3-1-05	125-145-0080	2-24-05	Amend(T)	4-1-05
125-030-0002	3-1-05	Repeal	3-1-05	125-145-0080(T)	2-24-05	Suspend	4-1-05
125-030-0003	3-1-05	Repeal	3-1-05	125-145-0090	12-1-04	Adopt(T)	1-1-05
125-030-0004	3-1-05	Repeal	3-1-05	125-145-0090	2-24-05	Amend(T)	4-1-05
125-030-0005	3-1-05	Repeal	3-1-05	125-145-0090(T)	2-24-05	Suspend	4-1-05
125-030-0007	3-1-05	Repeal	3-1-05	125-145-0100	12-1-04	Adopt(T)	1-1-05
125-030-0009	3-1-05	Repeal	3-1-05	125-145-0100	2-24-05	Amend(T)	4-1-05
125-030-0014	3-1-05	Repeal	3-1-05	125-145-0100(T)	2-24-05	Suspend	4-1-05
125-030-0028	3-1-05	Repeal	3-1-05	125-145-0105	12-1-04	Adopt(T)	1-1-05
125-030-0029	3-1-05	Repeal	3-1-05	125-145-0105	2-24-05	Amend(T)	4-1-05
125-030-0030	3-1-05	Repeal	3-1-05	125-145-0105(T)	2-24-05	Suspend	4-1-05
125-030-0033	3-1-05	Repeal	3-1-05	125-145-0110	12-1-04	Adopt(T)	1-1-05
125-030-0060	3-1-05	Repeal	3-1-05	125-145-0110	2-24-05	Suspend	4-1-05
125-030-0070	3-1-05	Repeal	3-1-05	125-145-0120	12-1-04	Adopt(T)	1-1-05
125-030-0080	3-1-05	Repeal	3-1-05	125-145-0120	2-24-05	Suspend	4-1-05
125-030-0081	3-1-05	Repeal	3-1-05	125-145-0130	2-24-05	Adopt(T)	4-1-05
125-030-0082	3-1-05	Repeal	3-1-05	125-246-0100	3-1-05	Adopt	1-1-05
125-030-0100	3-1-05	Repeal	3-1-05	125-246-0100	6-6-05	Amend	5-1-05
125-031-0000	3-1-05	Repeal	3-1-05	125-246-0110	3-1-05	Adopt	1-1-05
125-031-0005	3-1-05	Repeal	3-1-05	125-246-0120	3-1-05	Adopt	1-1-05
125-031-0006	3-1-05	Repeal	3-1-05	125-246-0130	3-1-05	Adopt	1-1-05
125-031-0010	3-1-05	Repeal	3-1-05	125-246-0140	3-1-05	Adopt	1-1-05
125-050-0000	3-1-05	Repeal	3-1-05	125-246-0150	3-1-05	Adopt	1-1-05
125-050-0020	3-1-05	Repeal	3-1-05	125-246-0170	3-1-05	Adopt	1-1-05
125-050-0040	3-1-05	Repeal	3-1-05	125-246-0200	3-1-05	Adopt	1-1-05
125-050-0060	3-1-05	Repeal	3-1-05	125-246-0210	3-1-05	Adopt	1-1-05
125-055-0005	12-28-04	Amend(T)	2-1-05	125-246-0220	3-1-05	Adopt	1-1-05
125-055-0010	12-28-04	Amend(T)	2-1-05	125-246-0300	3-1-05	Adopt	1-1-05
125-055-0015	12-28-04	Amend(T)	2-1-05	125-246-0310	3-1-05	Adopt	1-1-05
125-055-0020	12-28-04	Amend(T)	2-1-05	125-246-0320	3-1-05	Adopt	1-1-05
125-055-0025	12-28-04	Amend(T)	2-1-05	125-246-0321	3-1-05	Adopt	1-1-05
125-055-0030	12-28-04	Amend(T)	2-1-05	125-246-0322	3-1-05	Adopt	1-1-05
125-055-0035	12-28-04	Amend(T)	2-1-05	125-246-0323	3-1-05	Adopt	1-1-05
125-055-0040	12-28-04	Amend(T)	2-1-05	125-246-0324	3-1-05	Adopt	1-1-05
125-055-0045	12-28-04	Amend(T)	2-1-05	125-246-0330	3-1-05	Adopt	1-1-05
125-145-0010	12-1-04	Adopt(T)	1-1-05	125-246-0335	3-1-05	Adopt	1-1-05



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125-246-0345	3-1-05	Adopt	1-1-05	125-247-0300	3-1-05	Adopt	1-1-05
125-246-0350	3-1-05	Adopt	1-1-05	125-247-0305	3-1-05	Adopt	1-1-05
125-246-0351	3-1-05	Adopt	1-1-05	125-247-0310	3-1-05	Adopt	1-1-05
125-246-0352	3-1-05	Adopt	1-1-05	125-247-0320	3-1-05	Adopt	1-1-05
125-246-0353	3-1-05	Adopt	1-1-05	125-247-0330	3-1-05	Adopt	1-1-05
125-246-0355	3-1-05	Adopt	1-1-05	125-247-0400	3-1-05	Adopt	1-1-05
125-246-0360	3-1-05	Adopt	1-1-05	125-247-0410	3-1-05	Adopt	1-1-05
125-246-0400	3-1-05	Adopt	1-1-05	125-247-0420	3-1-05	Adopt	1-1-05
125-246-0410	3-1-05	Adopt	1-1-05	125-247-0430	3-1-05	Adopt	1-1-05
125-246-0420	3-1-05	Adopt	1-1-05	125-247-0440	3-1-05	Adopt	1-1-05
125-246-0430	3-1-05	Adopt	1-1-05	125-247-0450	3-1-05	Adopt	1-1-05
125-246-0440	3-1-05	Adopt	1-1-05	125-247-0460	3-1-05	Adopt	1-1-05
125-246-0450	3-1-05	Adopt	1-1-05	125-247-0470	3-1-05	Adopt	1-1-05
125-246-0460	3-1-05	Adopt	1-1-05	125-247-0480	3-1-05	Adopt	1-1-05
125-246-0470	3-1-05	Adopt	1-1-05	125-247-0490	3-1-05	Adopt	1-1-05
125-246-0500	3-1-05	Adopt	1-1-05	125-247-0500	3-1-05	Adopt	1-1-05
125-246-0550	3-1-05	Adopt	1-1-05	125-247-0525	3-1-05	Adopt	1-1-05
125-246-0555	3-1-05	Adopt	1-1-05	125-247-0550	3-1-05	Adopt	1-1-05
125-246-0560	3-1-05	Adopt	1-1-05	125-247-0575	3-1-05	Adopt	1-1-05
125-246-0560	6-6-05	Amend	5-1-05	125-247-0600	3-1-05	Adopt	1-1-05
125-246-0570	3-1-05	Adopt	1-1-05	125-247-0610	3-1-05	Adopt	1-1-05
125-246-0575	3-1-05	Adopt	1-1-05	125-247-0620	3-1-05	Adopt	1-1-05
125-246-0580	3-1-05	Adopt	1-1-05	125-247-0630	3-1-05	Adopt	1-1-05
125-246-0600	3-1-05	Adopt	1-1-05	125-247-0640	3-1-05	Adopt	1-1-05
125-246-0605	3-1-05	Adopt	1-1-05	125-247-0650	3-1-05	Adopt	1-1-05
125-246-0610	3-1-05	Adopt	1-1-05	125-247-0660	3-1-05	Adopt	1-1-05
125-246-0615	3-1-05	Adopt	1-1-05	125-247-0670	3-1-05	Adopt	1-1-05
125-246-0620	3-1-05	Adopt	1-1-05	125-247-0700	3-1-05	Adopt	1-1-05
125-246-0625	3-1-05	Adopt	1-1-05	125-247-0710	3-1-05	Adopt	1-1-05
125-246-0630	3-1-05	Adopt	1-1-05	125-247-0720	3-1-05	Adopt	1-1-05
125-246-0635	3-1-05	Adopt	1-1-05	125-247-0730	3-1-05	Adopt	1-1-05
125-246-0700	3-1-05	Adopt	1-1-05	125-247-0740	3-1-05	Adopt	1-1-05
125-246-0710	3-1-05	Adopt	1-1-05	125-247-0750	3-1-05	Adopt	1-1-05
125-246-0720	3-1-05	Adopt	1-1-05	125-247-0760	3-1-05	Adopt	1-1-05
125-246-0730	3-1-05	Adopt	1-1-05	125-247-0770	3-1-05	Adopt	1-1-05
125-246-0800	3-1-05	Adopt	1-1-05	125-247-0800	3-1-05	Adopt	1-1-05
125-246-0900	3-1-05	Adopt	1-1-05	125-248-0100	3-1-05	Adopt	1-1-05
125-247-0005	3-1-05	Adopt	1-1-05	125-248-0110	3-1-05	Adopt	1-1-05
125-247-0010	3-1-05	Adopt	1-1-05	125-248-0120	3-1-05	Adopt	1-1-05
125-247-0100	3-1-05	Adopt	1-1-05	125-248-0130	3-1-05	Adopt	1-1-05
125-247-0165	3-1-05	Adopt	1-1-05	125-248-0200	3-1-05	Adopt	1-1-05
125-247-0170	3-1-05	Adopt	1-1-05	125-248-0210	3-1-05	Adopt	1-1-05
125-247-0200	3-1-05	Adopt	1-1-05	125-248-0220	3-1-05	Adopt	1-1-05
125-247-0255	3-1-05	Adopt	1-1-05	125-248-0230	3-1-05	Adopt	1-1-05
125-247-0256	3-1-05	Adopt	1-1-05	125-248-0240	3-1-05	Adopt	1-1-05
125-247-0260	3-1-05	Adopt	1-1-05	125-248-0250	3-1-05	Adopt	1-1-05
125-247-0261	3-1-05	Adopt	1-1-05	125-248-0260	3-1-05	Adopt	1-1-05
125-247-0265	3-1-05	Adopt	1-1-05	125-248-0300	3-1-05	Adopt	1-1-05
125-247-0270	3-1-05	Adopt	1-1-05	125-248-0310	3-1-05	Adopt	1-1-05
125-247-0275	3-1-05	Adopt	1-1-05	125-248-0330	3-1-05	Adopt	1-1-05
125-247-0280	3-1-05	Adopt	1-1-05	125-248-0340	3-1-05	Adopt	1-1-05
125-247-0285	3-1-05	Adopt	1-1-05	125-249-0100	3-1-05	Adopt	1-1-05
125-247-0286	3-1-05	Adopt	1-1-05	125-249-0110	3-1-05	Adopt	1-1-05
125-247-0287	3-1-05	Adopt	1-1-05	125-249-0120	3-1-05	Adopt	1-1-05
125-247-0288	3-1-05	Adopt	1-1-05	125-249-0130	3-1-05	Adopt	1-1-05
125-247-0296	3-1-05	Adopt	1-1-05	125-249-0140	3-1-05	Adopt	1-1-05

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125-249-0160	3-1-05	Adopt	1-1-05	125-310-0005	3-1-05	Repeal	3-1-05
125-249-0200	3-1-05	Adopt	1-1-05	125-310-0010	3-1-05	Repeal	3-1-05
125-249-0210	3-1-05	Adopt	1-1-05	125-310-0012	3-1-05	Repeal	3-1-05
125-249-0220	3-1-05	Adopt	1-1-05	125-310-0030	3-1-05	Repeal	3-1-05
125-249-0230	3-1-05	Adopt	1-1-05	125-310-0035	3-1-05	Repeal	3-1-05
125-249-0240	3-1-05	Adopt	1-1-05	125-310-0040	3-1-05	Repeal	3-1-05
125-249-0250	3-1-05	Adopt	1-1-05	125-310-0044	3-1-05	Repeal	3-1-05
125-249-0260	3-1-05	Adopt	1-1-05	125-310-0060	3-1-05	Repeal	3-1-05
125-249-0270	3-1-05	Adopt	1-1-05	125-310-0090	3-1-05	Repeal	3-1-05
125-249-0280	3-1-05	Adopt	1-1-05	125-310-0135	3-1-05	Repeal	3-1-05
125-249-0290	3-1-05	Adopt	1-1-05	125-310-0180	3-1-05	Repeal	3-1-05
125-249-0300	3-1-05	Adopt	1-1-05	125-310-0200	3-1-05	Repeal	3-1-05
125-249-0310	3-1-05	Adopt	1-1-05	125-310-0220	3-1-05	Repeal	3-1-05
125-249-0320	3-1-05	Adopt	1-1-05	125-310-0300	3-1-05	Repeal	3-1-05
125-249-0330	3-1-05	Adopt	1-1-05	125-310-0400	3-1-05	Repeal	3-1-05
125-249-0340	3-1-05	Adopt	1-1-05	125-310-0500	3-1-05	Repeal	3-1-05
125-249-0350	3-1-05	Adopt	1-1-05	125-320-0010	3-1-05	Repeal	3-1-05
125-249-0360	3-1-05	Adopt	1-1-05	125-320-0020	3-1-05	Repeal	3-1-05
125-249-0370	3-1-05	Adopt	1-1-05	125-320-0025	3-1-05	Repeal	3-1-05
125-249-0380	3-1-05	Adopt	1-1-05	125-330-0030	3-1-05	Repeal	3-1-05
125-249-0390	3-1-05	Adopt	1-1-05	125-330-0140	3-1-05	Repeal	3-1-05
125-249-0400	3-1-05	Adopt	1-1-05	125-330-0200	3-1-05	Repeal	3-1-05
125-249-0410	3-1-05	Adopt	1-1-05	125-330-0260	3-1-05	Repeal	3-1-05
125-249-0420	3-1-05	Adopt	1-1-05	125-330-0330	3-1-05	Repeal	3-1-05
125-249-0430	3-1-05	Adopt	1-1-05	125-330-0340	3-1-05	Repeal	3-1-05
125-249-0440	3-1-05	Adopt	1-1-05	125-330-0450	3-1-05	Repeal	3-1-05
125-249-0450	3-1-05	Adopt	1-1-05	125-330-0500	3-1-05	Repeal	3-1-05
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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
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125-249-0630	3-1-05	Adopt	1-1-05	137-008-0010	1-13-05	Amend	2-1-05
125-249-0640	3-1-05	Adopt	1-1-05	137-008-0010	2-1-05	Amend	3-1-05
125-249-0650	3-1-05	Adopt	1-1-05	137-009-0000	3-18-05	Suspend	5-1-05
125-249-0660	3-1-05	Adopt	1-1-05	137-009-0005	3-18-05	Suspend	5-1-05
125-249-0670	3-1-05	Adopt	1-1-05	137-009-0010	3-18-05	Suspend	5-1-05
125-249-0680	3-1-05	Adopt	1-1-05	137-009-0045	3-18-05	Suspend	5-1-05
125-249-0690	3-1-05	Adopt	1-1-05	137-009-0060	3-18-05	Suspend	5-1-05
125-249-0800	3-1-05	Adopt	1-1-05	137-009-0065	3-18-05	Suspend	5-1-05
125-249-0810	3-1-05	Adopt	1-1-05	137-009-0100	3-18-05	Suspend	5-1-05
125-249-0820	3-1-05	Adopt	1-1-05	137-009-0120	3-18-05	Suspend	5-1-05
125-249-0830	3-1-05	Adopt	1-1-05	137-009-0125	3-18-05	Adopt(T)	5-1-05
125-249-0840	3-1-05	Adopt	1-1-05	137-009-0130	3-18-05	Adopt(T)	5-1-05
125-249-0850	3-1-05	Adopt	1-1-05	137-009-0135	3-18-05	Adopt(T)	5-1-05
125-249-0860	3-1-05	Adopt	1-1-05	137-009-0140	3-18-05	Adopt(T)	5-1-05
125-249-0870	3-1-05	Adopt	1-1-05	137-009-0145	3-18-05	Adopt(T)	5-1-05
125-249-0880	3-1-05	Adopt	1-1-05	137-009-0150	3-18-05	Adopt(T)	5-1-05
125-249-0890	3-1-05	Adopt	1-1-05	137-009-0155	3-18-05	Adopt(T)	5-1-05
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125-300-0010	3-1-05	Repeal	3-1-05	137-055-1100	4-1-05	Amend	5-1-05
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137-055-2140	1-3-05	Amend	2-1-05	141-073-0270	2-28-05	Repeal	3-1-05
137-055-2165	1-3-05	Adopt	2-1-05	141-073-0275	2-28-05	Repeal	3-1-05
137-055-3420	4-1-05	Amend	5-1-05	141-073-0280	2-28-05	Repeal	3-1-05
137-055-3430	1-3-05	Amend	2-1-05	141-130-0010	4-15-05	Adopt	5-1-05
137-055-3430	4-1-05	Amend	5-1-05	141-130-0020	4-15-05	Adopt	5-1-05
137-055-4130	1-3-05	Amend	2-1-05	141-130-0030	4-15-05	Adopt	5-1-05
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137-055-5120	4-1-05	Amend	5-1-05	150-23.186-(A)	12-31-04	Am. & Ren.	2-1-05
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137-055-6220	1-3-05	Amend	2-1-05	150-285B.719(8)	12-31-04	Am. & Ren.	2-1-05
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137-076-0010	11-22-04	Amend	1-1-05	150-285B.728	12-31-04	Repeal	2-1-05
137-076-0016	11-22-04	Adopt	1-1-05	150-285C.170	12-31-04	Adopt	2-1-05
137-076-0018	11-22-04	Adopt	1-1-05	150-29.375(2)(c)	12-31-04	Am. & Ren.	2-1-05
137-076-0020	11-22-04	Amend	1-1-05	150-293.525(1)(b)	12-31-04	Adopt	2-1-05
137-076-0025	11-22-04	Amend	1-1-05	150-305.220(1)	12-31-04	Amend	2-1-05
137-084-0001	11-22-04	Amend	1-1-05	150-305.220(2)	12-31-04	Amend	2-1-05
137-086-0000	11-22-04	Adopt	1-1-05	150-307.262(2)	12-31-04	Adopt	2-1-05
137-086-0010	11-22-04	Adopt	1-1-05	150-308.010-(A)	12-31-04	Am. & Ren.	2-1-05
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141-073-0105	2-28-05	Amend	3-1-05	150-309.024	12-31-04	Amend	2-1-05
141-073-0110	2-28-05	Amend	3-1-05	150-309.100(2)-(B)	12-31-04	Amend	2-1-05
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141-073-0118	2-28-05	Adopt	3-1-05	150-309.100(5)	12-31-04	Adopt	2-1-05
141-073-0119	2-28-05	Adopt	3-1-05	150-309.110(1)	12-31-04	Amend	2-1-05
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141-073-0150	2-28-05	Repeal	3-1-05	150-311.723	12-31-04	Repeal	2-1-05
141-073-0155	2-28-05	Repeal	3-1-05	150-311.806-(A)	12-31-04	Amend	2-1-05
141-073-0160	2-28-05	Repeal	3-1-05	150-314.363-(A)	12-31-04	Repeal	2-1-05
141-073-0165	2-28-05	Repeal	3-1-05	150-314.363-(B)	12-31-04	Repeal	2-1-05
141-073-0170	2-28-05	Repeal	3-1-05	150-314.363-(C)	12-31-04	Repeal	2-1-05
141-073-0175	2-28-05	Repeal	3-1-05	150-314.415(6)	12-31-04	Amend	2-1-05
141-073-0180	2-28-05	Repeal	3-1-05	150-314.650	12-31-04	Amend	2-1-05
141-073-0185	2-28-05	Repeal	3-1-05	150-314.665(2)-(A)	12-31-04	Amend	2-1-05
141-073-0190	2-28-05	Repeal	3-1-05	150-314.670-(A)	12-31-04	Adopt	2-1-05
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141-073-0210	2-28-05	Repeal	3-1-05	150-315.304(2)	12-31-04	Amend	2-1-05
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141-073-0220	2-28-05	Repeal	3-1-05	150-316.587(1)	12-31-04	Amend	2-1-05
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141-073-0230	2-28-05	Am. & Ren.	3-1-05	150-316.587(5)(c)	12-31-04	Amend	2-1-05
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141-073-0245	2-28-05	Repeal	3-1-05	150-321.307(4)	12-31-04	Amend	2-1-05
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166-300-0025	2-28-05	Amend	4-1-05	291-082-0032	1-7-05	Adopt(T)	2-1-05
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167-001-0081	3-1-05	Adopt(T)	4-1-05	291-086-0047	3-21-05	Adopt	5-1-05
167-001-0085	3-1-05	Adopt(T)	4-1-05	291-086-0050	3-21-05	Amend	5-1-05
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				291-127-0290	3-14-05	Amend	4-1-05
				291-127-0300	3-14-05	Amend	4-1-05

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291-127-0320	3-14-05	Amend	4-1-05	291-180-0525	2-24-05	Adopt	4-1-05
291-127-0330	3-14-05	Amend	4-1-05	291-180-0535	2-24-05	Adopt	4-1-05
291-131-0015	12-28-04	Amend(T)	2-1-05	291-180-0545	2-24-05	Adopt	4-1-05
291-180-0060	2-24-05	Repeal	4-1-05	291-180-0555	2-24-05	Adopt	4-1-05
291-180-0065	2-24-05	Repeal	4-1-05	291-180-0565	2-24-05	Adopt	4-1-05
291-180-0070	2-24-05	Repeal	4-1-05	291-180-0575	2-24-05	Adopt	4-1-05
291-180-0071	2-24-05	Repeal	4-1-05	291-180-0585	2-24-05	Adopt	4-1-05
291-180-0072	2-24-05	Repeal	4-1-05	291-180-0595	2-24-05	Adopt	4-1-05
291-180-0073	2-24-05	Repeal	4-1-05	291-180-0605	2-24-05	Adopt	4-1-05
291-180-0075	2-24-05	Repeal	4-1-05	291-180-0615	2-24-05	Adopt	4-1-05
291-180-0080	2-24-05	Repeal	4-1-05	291-180-0625	2-24-05	Adopt	4-1-05
291-180-0085	2-24-05	Repeal	4-1-05	291-180-0635	2-24-05	Adopt	4-1-05
291-180-0090	2-24-05	Repeal	4-1-05	291-180-0645	2-24-05	Adopt	4-1-05
291-180-0095	2-24-05	Repeal	4-1-05	291-180-0655	2-24-05	Adopt	4-1-05
291-180-0106	2-24-05	Adopt	4-1-05	291-180-0665	2-24-05	Adopt	4-1-05
291-180-0115	2-24-05	Adopt	4-1-05	309-018-0000	3-29-05	Repeal	5-1-05
291-180-0125	2-24-05	Adopt	4-1-05	309-018-0010	3-29-05	Repeal	5-1-05
291-180-0135	2-24-05	Adopt	4-1-05	309-018-0020	3-29-05	Repeal	5-1-05
291-180-0145	2-24-05	Adopt	4-1-05	309-018-0030	3-29-05	Repeal	5-1-05
291-180-0155	2-24-05	Adopt	4-1-05	309-018-0040	3-29-05	Repeal	5-1-05
291-180-0165	2-24-05	Adopt	4-1-05	309-018-0050	3-29-05	Repeal	5-1-05
291-180-0175	2-24-05	Adopt	4-1-05	309-018-0060	3-29-05	Repeal	5-1-05
291-180-0185	2-24-05	Adopt	4-1-05	309-032-1240	1-3-05	Adopt(T)	2-1-05
291-180-0195	2-24-05	Adopt	4-1-05	309-032-1245	1-3-05	Adopt(T)	2-1-05
291-180-0205	2-24-05	Adopt	4-1-05	309-032-1250	1-3-05	Adopt(T)	2-1-05
291-180-0215	2-24-05	Adopt	4-1-05	309-032-1255	1-3-05	Adopt(T)	2-1-05
291-180-0225	2-24-05	Adopt	4-1-05	309-032-1260	1-3-05	Adopt(T)	2-1-05
291-180-0235	2-24-05	Adopt	4-1-05	309-032-1265	1-3-05	Adopt(T)	2-1-05
291-180-0245	2-24-05	Adopt	4-1-05	309-032-1270	1-3-05	Adopt(T)	2-1-05
291-180-0255	2-24-05	Adopt	4-1-05	309-032-1275	1-3-05	Adopt(T)	2-1-05
291-180-0265	2-24-05	Adopt	4-1-05	309-032-1280	1-3-05	Adopt(T)	2-1-05
291-180-0275	2-24-05	Adopt	4-1-05	309-032-1285	1-3-05	Adopt(T)	2-1-05
291-180-0285	2-24-05	Adopt	4-1-05	309-032-1290	1-3-05	Adopt(T)	2-1-05
291-180-0295	2-24-05	Adopt	4-1-05	309-032-1295	1-3-05	Adopt(T)	2-1-05
291-180-0305	2-24-05	Adopt	4-1-05	309-032-1300	1-3-05	Adopt(T)	2-1-05
291-180-0315	2-24-05	Adopt	4-1-05	309-032-1305	1-3-05	Adopt(T)	2-1-05
291-180-0325	2-24-05	Adopt	4-1-05	309-035-0100	4-1-05	Amend	5-1-05
291-180-0335	2-24-05	Adopt	4-1-05	309-035-0105	4-1-05	Amend	5-1-05
291-180-0345	2-24-05	Adopt	4-1-05	309-035-0110	4-1-05	Amend	5-1-05
291-180-0355	2-24-05	Adopt	4-1-05	309-035-0113	4-1-05	Amend	5-1-05
291-180-0365	2-24-05	Adopt	4-1-05	309-035-0115	4-1-05	Amend	5-1-05
291-180-0375	2-24-05	Adopt	4-1-05	309-035-0117	4-1-05	Amend	5-1-05
291-180-0385	2-24-05	Adopt	4-1-05	309-035-0120	4-1-05	Amend	5-1-05
291-180-0395	2-24-05	Adopt	4-1-05	309-035-0125	4-1-05	Amend	5-1-05
291-180-0405	2-24-05	Adopt	4-1-05	309-035-0130	4-1-05	Amend	5-1-05
291-180-0415	2-24-05	Adopt	4-1-05	309-035-0135	4-1-05	Amend	5-1-05
291-180-0425	2-24-05	Adopt	4-1-05	309-035-0140	4-1-05	Amend	5-1-05
291-180-0435	2-24-05	Adopt	4-1-05	309-035-0145	4-1-05	Amend	5-1-05
291-180-0445	2-24-05	Adopt	4-1-05	309-035-0150	4-1-05	Amend	5-1-05
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291-180-0465	2-24-05	Adopt	4-1-05	309-035-0157	4-1-05	Amend	5-1-05
291-180-0475	2-24-05	Adopt	4-1-05	309-035-0159	4-1-05	Amend	5-1-05
291-180-0485	2-24-05	Adopt	4-1-05	309-035-0165	4-1-05	Amend	5-1-05
291-180-0495	2-24-05	Adopt	4-1-05	309-035-0167	4-1-05	Amend	5-1-05
291-180-0505	2-24-05	Adopt	4-1-05	309-035-0170	4-1-05	Amend	5-1-05

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309-035-0185	4-1-05	Amend	5-1-05	309-046-0100	1-1-05	Am. & Ren.	1-1-05
309-035-0190	4-1-05	Amend	5-1-05	309-046-0110	1-1-05	Am. & Ren.	1-1-05
309-035-0250	4-1-05	Amend	5-1-05	309-046-0120	1-1-05	Am. & Ren.	1-1-05
309-035-0260	4-1-05	Amend	5-1-05	309-046-0130	1-1-05	Am. & Ren.	1-1-05
309-035-0270	4-1-05	Amend	5-1-05	309-046-0140	1-1-05	Am. & Ren.	1-1-05
309-035-0280	4-1-05	Amend	5-1-05	309-046-0150	1-1-05	Am. & Ren.	1-1-05
309-035-0290	4-1-05	Amend	5-1-05	309-046-0160	1-1-05	Am. & Ren.	1-1-05
309-035-0300	4-1-05	Amend	5-1-05	309-046-0170	1-1-05	Am. & Ren.	1-1-05
309-035-0310	4-1-05	Amend	5-1-05	309-046-0180	1-1-05	Am. & Ren.	1-1-05
309-035-0320	4-1-05	Amend	5-1-05	309-046-0190	1-1-05	Am. & Ren.	1-1-05
309-035-0330	4-1-05	Amend	5-1-05	309-046-0200	1-1-05	Am. & Ren.	1-1-05
309-035-0340	4-1-05	Amend	5-1-05	309-046-0210	1-1-05	Am. & Ren.	1-1-05
309-035-0350	4-1-05	Amend	5-1-05	309-046-0220	1-1-05	Am. & Ren.	1-1-05
309-035-0360	4-1-05	Amend	5-1-05	309-046-0230	1-1-05	Repeal	1-1-05
309-035-0370	4-1-05	Amend	5-1-05	309-046-0240	1-1-05	Am. & Ren.	1-1-05
309-035-0380	4-1-05	Amend	5-1-05	330-100-0000	12-20-04	Amend	2-1-05
309-035-0390	4-1-05	Amend	5-1-05	330-100-0005	12-20-04	Amend	2-1-05
309-035-0400	4-1-05	Amend	5-1-05	330-105-0005	12-20-04	Amend	2-1-05
309-035-0410	4-1-05	Amend	5-1-05	330-105-0007	12-20-04	Amend	2-1-05
309-035-0420	4-1-05	Amend	5-1-05	330-105-0008	12-20-04	Amend	2-1-05
309-035-0430	4-1-05	Amend	5-1-05	330-105-0015	12-20-04	Amend	2-1-05
309-035-0440	4-1-05	Amend	5-1-05	330-105-0020	12-20-04	Amend	2-1-05
309-035-0450	4-1-05	Amend	5-1-05	330-105-0025	12-20-04	Amend	2-1-05
309-035-0460	4-1-05	Amend	5-1-05	330-105-0030	12-20-04	Amend	2-1-05
309-040-0000	4-1-05	Am. & Ren.	5-1-05	330-105-0035	12-20-04	Amend	2-1-05
309-040-0005	4-1-05	Am. & Ren.	5-1-05	330-105-0040	12-20-04	Amend	2-1-05
309-040-0010	4-1-05	Am. & Ren.	5-1-05	330-105-0045	12-20-04	Amend	2-1-05
309-040-0011	4-1-05	Am. & Ren.	5-1-05	330-110-0005	12-20-04	Amend	2-1-05
309-040-0012	4-1-05	Am. & Ren.	5-1-05	330-110-0010	12-20-04	Amend	2-1-05
309-040-0015	4-1-05	Am. & Ren.	5-1-05	330-110-0015	12-20-04	Amend	2-1-05
309-040-0020	4-1-05	Am. & Ren.	5-1-05	330-110-0016	12-20-04	Amend	2-1-05
309-040-0025	4-1-05	Am. & Ren.	5-1-05	330-110-0020	12-20-04	Amend	2-1-05
309-040-0030	4-1-05	Am. & Ren.	5-1-05	330-110-0025	12-20-04	Amend	2-1-05
309-040-0035	4-1-05	Am. & Ren.	5-1-05	330-110-0030	12-20-04	Amend	2-1-05
309-040-0040	4-1-05	Am. & Ren.	5-1-05	330-110-0035	12-20-04	Amend	2-1-05
309-040-0045	4-1-05	Am. & Ren.	5-1-05	330-110-0036	12-20-04	Amend	2-1-05
309-040-0050	4-1-05	Am. & Ren.	5-1-05	330-110-0040	12-20-04	Amend	2-1-05
309-040-0052	4-1-05	Am. & Ren.	5-1-05	330-110-0042	12-20-04	Amend	2-1-05
309-040-0055	4-1-05	Am. & Ren.	5-1-05	330-110-0045	12-20-04	Amend	2-1-05
309-040-0057	4-1-05	Am. & Ren.	5-1-05	330-110-0050	12-20-04	Amend	2-1-05
309-040-0060	4-1-05	Am. & Ren.	5-1-05	330-110-0055	12-20-04	Amend	2-1-05
309-040-0065	4-1-05	Am. & Ren.	5-1-05	331-710-0010	3-1-05	Amend	4-1-05
309-040-0070	4-1-05	Am. & Ren.	5-1-05	331-715-0010	3-1-05	Amend	4-1-05
309-040-0075	4-1-05	Am. & Ren.	5-1-05	331-720-0010	3-1-05	Amend	4-1-05
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309-040-0092	4-1-05	Am. & Ren.	5-1-05	333-004-0010	2-18-05	Adopt	4-1-05
309-040-0093	4-1-05	Am. & Ren.	5-1-05	333-004-0020	2-18-05	Adopt	4-1-05
309-040-0095	4-1-05	Am. & Ren.	5-1-05	333-004-0030	2-18-05	Adopt	4-1-05
309-040-0097	4-1-05	Am. & Ren.	5-1-05	333-004-0040	2-18-05	Adopt	4-1-05
309-040-0098	4-1-05	Am. & Ren.	5-1-05	333-004-0050	2-18-05	Adopt	4-1-05
309-040-0099	4-1-05	Am. & Ren.	5-1-05	333-004-0060	2-18-05	Adopt	4-1-05
309-040-0100	4-1-05	Am. & Ren.	5-1-05	333-004-0070	2-18-05	Adopt	4-1-05
309-040-0370	4-1-05	Adopt	5-1-05	333-004-0080	2-18-05	Adopt	4-1-05
309-040-0375	4-1-05	Adopt	5-1-05	333-004-0090	2-18-05	Adopt	4-1-05
309-040-0380	4-1-05	Adopt	5-1-05	333-004-0100	2-18-05	Adopt	4-1-05



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333-004-0120	2-18-05	Adopt	4-1-05	333-050-0050(T)	2-3-05	Repeal	3-1-05
333-004-0130	2-18-05	Adopt	4-1-05	333-050-0060	2-3-05	Amend	3-1-05
333-004-0140	2-18-05	Adopt	4-1-05	333-050-0060(T)	2-3-05	Repeal	3-1-05
333-004-0150	2-18-05	Adopt	4-1-05	333-050-0080	2-3-05	Amend	3-1-05
333-004-0160	2-18-05	Adopt	4-1-05	333-050-0080(T)	2-3-05	Repeal	3-1-05
333-004-0170	2-18-05	Adopt	4-1-05	333-050-0090	2-3-05	Amend	3-1-05
333-004-0180	2-18-05	Adopt	4-1-05	333-050-0090(T)	2-3-05	Repeal	3-1-05
333-004-0190	2-18-05	Adopt	4-1-05	333-050-0100	2-3-05	Amend	3-1-05
333-008-0020	1-1-05	Amend	2-1-05	333-050-0100(T)	2-3-05	Repeal	3-1-05
333-024-0210	12-7-04	Amend	1-1-05	333-050-0130	2-3-05	Amend	3-1-05
333-024-0210(T)	12-7-04	Repeal	1-1-05	333-050-0130(T)	2-3-05	Repeal	3-1-05
333-024-0215	12-7-04	Amend	1-1-05	333-050-0140	2-3-05	Amend	3-1-05
333-024-0215(T)	12-7-04	Repeal	1-1-05	333-050-0140(T)	2-3-05	Repeal	3-1-05
333-024-0220	12-7-04	Amend	1-1-05	333-050-0141(T)	2-3-05	Repeal	3-1-05
333-024-0220(T)	12-7-04	Repeal	1-1-05	333-100-0001	12-1-04	Amend	1-1-05
333-024-0225	12-7-04	Amend	1-1-05	333-100-0001(T)	12-1-04	Repeal	1-1-05
333-024-0225(T)	12-7-04	Repeal	1-1-05	333-100-0005	12-1-04	Amend	1-1-05
333-024-0230	12-7-04	Amend	1-1-05	333-100-0005(T)	12-1-04	Repeal	1-1-05
333-024-0230(T)	12-7-04	Repeal	1-1-05	333-100-0057	12-1-04	Adopt	1-1-05
333-024-0231	12-7-04	Amend	1-1-05	333-100-0057(T)	12-1-04	Repeal	1-1-05
333-024-0231(T)	12-7-04	Repeal	1-1-05	333-100-0060	12-1-04	Amend	1-1-05
333-024-0232	12-7-04	Amend	1-1-05	333-100-0060(T)	12-1-04	Repeal	1-1-05
333-024-0232(T)	12-7-04	Repeal	1-1-05	333-100-0065	12-1-04	Amend	1-1-05
333-024-0235	12-7-04	Amend	1-1-05	333-100-0065(T)	12-1-04	Repeal	1-1-05
333-024-0235(T)	12-7-04	Repeal	1-1-05	333-100-0070	12-1-04	Amend	1-1-05
333-024-0240	12-7-04	Amend	1-1-05	333-100-0070(T)	12-1-04	Repeal	1-1-05
333-024-0240(T)	12-7-04	Repeal	1-1-05	333-100-0080	12-1-04	Adopt	1-1-05
333-024-0241	12-7-04	Adopt	1-1-05	333-100-0080(T)	12-1-04	Repeal	1-1-05
333-024-0241(T)	12-7-04	Repeal	1-1-05	333-101-0001	12-1-04	Amend	1-1-05
333-029-0015	1-14-05	Amend	2-1-05	333-101-0001(T)	12-1-04	Repeal	1-1-05
333-029-0050	1-14-05	Amend	2-1-05	333-101-0003	12-1-04	Adopt	1-1-05
333-029-0075	1-14-05	Amend	2-1-05	333-101-0003(T)	12-1-04	Repeal	1-1-05
333-030-0015	1-14-05	Amend	2-1-05	333-101-0010	12-1-04	Amend	1-1-05
333-030-0040	1-14-05	Amend	2-1-05	333-101-0010(T)	12-1-04	Repeal	1-1-05
333-030-0045	1-14-05	Amend	2-1-05	333-101-0020	4-11-05	Amend	5-1-05
333-030-0050	1-14-05	Amend	2-1-05	333-102-0001	12-1-04	Amend	1-1-05
333-030-0080	1-14-05	Amend	2-1-05	333-102-0001(T)	12-1-04	Repeal	1-1-05
333-030-0085	1-14-05	Amend	2-1-05	333-102-0005	12-1-04	Amend	1-1-05
333-030-0120	1-14-05	Amend	2-1-05	333-102-0005(T)	12-1-04	Repeal	1-1-05
333-031-0002	1-14-05	Amend	2-1-05	333-102-0010	12-1-04	Amend	1-1-05
333-031-0004	1-14-05	Amend	2-1-05	333-102-0010(T)	12-1-04	Repeal	1-1-05
333-031-0006	1-14-05	Amend	2-1-05	333-102-0015	12-1-04	Amend	1-1-05
333-031-0010	1-14-05	Amend	2-1-05	333-102-0015(T)	12-1-04	Repeal	1-1-05
333-031-0012	1-14-05	Amend	2-1-05	333-102-0020	12-1-04	Amend	1-1-05
333-031-0018	1-14-05	Amend	2-1-05	333-102-0020(T)	12-1-04	Repeal	1-1-05
333-031-0066	1-14-05	Amend	2-1-05	333-102-0025	12-1-04	Amend	1-1-05
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333-050-0020	2-3-05	Amend	3-1-05	333-102-0035	12-1-04	Amend	1-1-05
333-050-0020(T)	2-3-05	Repeal	3-1-05	333-102-0035(T)	12-1-04	Repeal	1-1-05
333-050-0030	2-3-05	Amend	3-1-05	333-102-0040	12-1-04	Adopt	1-1-05
333-050-0030(T)	2-3-05	Repeal	3-1-05	333-102-0040(T)	12-1-04	Repeal	1-1-05
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333-102-0101(T)	12-1-04	Repeal	1-1-05	333-102-0315(T)	12-1-04	Repeal	1-1-05
333-102-0103	12-1-04	Amend	1-1-05	333-102-0327	12-1-04	Amend	1-1-05
333-102-0103(T)	12-1-04	Repeal	1-1-05	333-102-0327(T)	12-1-04	Repeal	1-1-05
333-102-0105	12-1-04	Amend	1-1-05	333-102-0330	12-1-04	Amend	1-1-05
333-102-0105(T)	12-1-04	Repeal	1-1-05	333-102-0330(T)	12-1-04	Repeal	1-1-05
333-102-0110	12-1-04	Amend	1-1-05	333-102-0335	12-1-04	Amend	1-1-05
333-102-0110(T)	12-1-04	Repeal	1-1-05	333-102-0335(T)	12-1-04	Repeal	1-1-05
333-102-0120	12-1-04	Amend	1-1-05	333-102-0340	12-1-04	Amend	1-1-05
333-102-0120(T)	12-1-04	Repeal	1-1-05	333-102-0340(T)	12-1-04	Repeal	1-1-05
333-102-0125	12-1-04	Amend	1-1-05	333-102-0350	12-1-04	Adopt	1-1-05
333-102-0125(T)	12-1-04	Repeal	1-1-05	333-102-0350(T)	12-1-04	Repeal	1-1-05
333-102-0130	12-1-04	Amend	1-1-05	333-102-0355	12-1-04	Adopt	1-1-05
333-102-0130(T)	12-1-04	Repeal	1-1-05	333-102-0355(T)	12-1-04	Repeal	1-1-05
333-102-0135	12-1-04	Amend	1-1-05	333-102-0360	12-1-04	Adopt	1-1-05
333-102-0135(T)	12-1-04	Repeal	1-1-05	333-102-0360(T)	12-1-04	Repeal	1-1-05
333-102-0190	12-1-04	Adopt	1-1-05	333-102-0365	12-1-04	Adopt	1-1-05
333-102-0190(T)	12-1-04	Repeal	1-1-05	333-102-0365(T)	12-1-04	Repeal	1-1-05
333-102-0200	12-1-04	Amend	1-1-05	333-103-0015	12-1-04	Amend	1-1-05
333-102-0200(T)	12-1-04	Repeal	1-1-05	333-103-0015(T)	12-1-04	Repeal	1-1-05
333-102-0203	12-1-04	Amend	1-1-05	333-105-0001	12-1-04	Amend	1-1-05
333-102-0203(T)	12-1-04	Repeal	1-1-05	333-105-0001(T)	12-1-04	Repeal	1-1-05
333-102-0225	12-1-04	Repeal	1-1-05	333-105-0003	12-1-04	Adopt	1-1-05
333-102-0235	12-1-04	Amend	1-1-05	333-105-0003(T)	12-1-04	Repeal	1-1-05
333-102-0235(T)	12-1-04	Repeal	1-1-05	333-105-0005	12-1-04	Amend	1-1-05
333-102-0240	12-1-04	Repeal	1-1-05	333-105-0005(T)	12-1-04	Repeal	1-1-05
333-102-0245	12-1-04	Amend	1-1-05	333-105-0050	12-1-04	Adopt	1-1-05
333-102-0245(T)	12-1-04	Repeal	1-1-05	333-105-0050(T)	12-1-04	Repeal	1-1-05
333-102-0247	12-1-04	Adopt	1-1-05	333-105-0075	12-1-04	Adopt	1-1-05
333-102-0247(T)	12-1-04	Repeal	1-1-05	333-105-0075(T)	12-1-04	Repeal	1-1-05
333-102-0250	12-1-04	Amend	1-1-05	333-105-0101	12-1-04	Repeal	1-1-05
333-102-0250(T)	12-1-04	Repeal	1-1-05	333-105-0105	12-1-04	Repeal	1-1-05
333-102-0255	12-1-04	Amend	1-1-05	333-105-0110	12-1-04	Repeal	1-1-05
333-102-0255(T)	12-1-04	Repeal	1-1-05	333-105-0115	12-1-04	Repeal	1-1-05
333-102-0260	12-1-04	Amend	1-1-05	333-105-0120	12-1-04	Repeal	1-1-05
333-102-0260(T)	12-1-04	Repeal	1-1-05	333-105-0125	12-1-04	Repeal	1-1-05
333-102-0265	12-1-04	Amend	1-1-05	333-105-0130	12-1-04	Repeal	1-1-05
333-102-0265(T)	12-1-04	Repeal	1-1-05	333-105-0135	12-1-04	Repeal	1-1-05
333-102-0270	12-1-04	Amend	1-1-05	333-105-0140	12-1-04	Repeal	1-1-05
333-102-0270(T)	12-1-04	Repeal	1-1-05	333-105-0201	12-1-04	Repeal	1-1-05
333-102-0275	12-1-04	Amend	1-1-05	333-105-0202	12-1-04	Repeal	1-1-05
333-102-0275(T)	12-1-04	Repeal	1-1-05	333-105-0205	12-1-04	Repeal	1-1-05
333-102-0285	12-1-04	Amend	1-1-05	333-105-0210	12-1-04	Repeal	1-1-05
333-102-0285(T)	12-1-04	Repeal	1-1-05	333-105-0301	12-1-04	Repeal	1-1-05
333-102-0287	12-1-04	Repeal	1-1-05	333-105-0305	12-1-04	Repeal	1-1-05
333-102-0290	12-1-04	Amend	1-1-05	333-105-0310	12-1-04	Repeal	1-1-05
333-102-0290(T)	12-1-04	Repeal	1-1-05	333-105-0315	12-1-04	Repeal	1-1-05
333-102-0293	12-1-04	Amend	1-1-05	333-105-0320	12-1-04	Repeal	1-1-05
333-102-0293(T)	12-1-04	Repeal	1-1-05	333-105-0325	12-1-04	Repeal	1-1-05
333-102-0295	12-1-04	Repeal	1-1-05	333-105-0330	12-1-04	Repeal	1-1-05
333-102-0300	12-1-04	Amend	1-1-05	333-105-0335	12-1-04	Repeal	1-1-05
333-102-0300(T)	12-1-04	Repeal	1-1-05	333-105-0420	12-1-04	Adopt	1-1-05
333-102-0305	12-1-04	Amend	1-1-05	333-105-0420(T)	12-1-04	Repeal	1-1-05
333-102-0305(T)	12-1-04	Repeal	1-1-05	333-105-0430	12-1-04	Adopt	1-1-05
333-102-0310	12-1-04	Amend	1-1-05	333-105-0430(T)	12-1-04	Repeal	1-1-05
333-102-0310(T)	12-1-04	Repeal	1-1-05	333-105-0440	12-1-04	Adopt	1-1-05

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333-105-0440(T)	12-1-04	Repeal	1-1-05	333-105-0720(T)	12-1-04	Repeal	1-1-05
333-105-0450	12-1-04	Adopt	1-1-05	333-105-0730	12-1-04	Adopt	1-1-05
333-105-0450(T)	12-1-04	Repeal	1-1-05	333-105-0730(T)	12-1-04	Repeal	1-1-05
333-105-0460	12-1-04	Adopt	1-1-05	333-105-0740	12-1-04	Adopt	1-1-05
333-105-0460(T)	12-1-04	Repeal	1-1-05	333-105-0740(T)	12-1-04	Repeal	1-1-05
333-105-0470	12-1-04	Adopt	1-1-05	333-105-0750	12-1-04	Adopt	1-1-05
333-105-0470(T)	12-1-04	Repeal	1-1-05	333-105-0750(T)	12-1-04	Repeal	1-1-05
333-105-0480	12-1-04	Adopt	1-1-05	333-105-0760	12-1-04	Adopt	1-1-05
333-105-0480(T)	12-1-04	Repeal	1-1-05	333-105-0760(T)	12-1-04	Repeal	1-1-05
333-105-0490	12-1-04	Adopt	1-1-05	333-106-0005	12-1-04	Amend	1-1-05
333-105-0490(T)	12-1-04	Repeal	1-1-05	333-106-0005	4-11-05	Amend	5-1-05
333-105-0500	12-1-04	Adopt	1-1-05	333-106-0005(T)	12-1-04	Repeal	1-1-05
333-105-0500(T)	12-1-04	Repeal	1-1-05	333-106-0035	12-1-04	Amend	1-1-05
333-105-0510	12-1-04	Adopt	1-1-05	333-106-0035(T)	12-1-04	Repeal	1-1-05
333-105-0510(T)	12-1-04	Repeal	1-1-05	333-106-0045	12-1-04	Amend	1-1-05
333-105-0520	12-1-04	Adopt	1-1-05	333-106-0045	4-11-05	Amend	5-1-05
333-105-0520(T)	12-1-04	Repeal	1-1-05	333-106-0045(T)	12-1-04	Repeal	1-1-05
333-105-0530	12-1-04	Adopt	1-1-05	333-106-0055	12-1-04	Amend	1-1-05
333-105-0530(T)	12-1-04	Repeal	1-1-05	333-106-0055	4-11-05	Amend	5-1-05
333-105-0540	12-1-04	Adopt	1-1-05	333-106-0055(T)	12-1-04	Repeal	1-1-05
333-105-0540(T)	12-1-04	Repeal	1-1-05	333-106-0101	12-1-04	Amend	1-1-05
333-105-0550	12-1-04	Adopt	1-1-05	333-106-0101	4-11-05	Amend	5-1-05
333-105-0550(T)	12-1-04	Repeal	1-1-05	333-106-0101(T)	12-1-04	Repeal	1-1-05
333-105-0560	12-1-04	Adopt	1-1-05	333-106-0105	12-1-04	Amend	1-1-05
333-105-0560(T)	12-1-04	Repeal	1-1-05	333-106-0105(T)	12-1-04	Repeal	1-1-05
333-105-0570	12-1-04	Adopt	1-1-05	333-106-0210	12-1-04	Amend	1-1-05
333-105-0570(T)	12-1-04	Repeal	1-1-05	333-106-0210(T)	12-1-04	Repeal	1-1-05
333-105-0580	12-1-04	Adopt	1-1-05	333-106-0220	12-1-04	Amend	1-1-05
333-105-0580(T)	12-1-04	Repeal	1-1-05	333-106-0220(T)	12-1-04	Repeal	1-1-05
333-105-0590	12-1-04	Adopt	1-1-05	333-106-0325	12-1-04	Amend	1-1-05
333-105-0590(T)	12-1-04	Repeal	1-1-05	333-106-0325(T)	12-1-04	Repeal	1-1-05
333-105-0600	12-1-04	Adopt	1-1-05	333-106-0370	4-11-05	Amend	5-1-05
333-105-0600(T)	12-1-04	Repeal	1-1-05	333-106-0512	4-11-05	Amend	5-1-05
333-105-0610	12-1-04	Adopt	1-1-05	333-106-0575	12-1-04	Amend	1-1-05
333-105-0610(T)	12-1-04	Repeal	1-1-05	333-106-0575(T)	12-1-04	Repeal	1-1-05
333-105-0620	12-1-04	Adopt	1-1-05	333-106-0700	12-1-04	Amend	1-1-05
333-105-0620(T)	12-1-04	Repeal	1-1-05	333-106-0700(T)	12-1-04	Repeal	1-1-05
333-105-0630	12-1-04	Adopt	1-1-05	333-106-0710	12-1-04	Amend	1-1-05
333-105-0630(T)	12-1-04	Repeal	1-1-05	333-106-0710	4-11-05	Amend	5-1-05
333-105-0640	12-1-04	Adopt	1-1-05	333-106-0710(T)	12-1-04	Repeal	1-1-05
333-105-0640(T)	12-1-04	Repeal	1-1-05	333-106-0720	12-1-04	Amend	1-1-05
333-105-0650	12-1-04	Adopt	1-1-05	333-106-0720	4-11-05	Amend	5-1-05
333-105-0650(T)	12-1-04	Repeal	1-1-05	333-106-0720(T)	12-1-04	Repeal	1-1-05
333-105-0660	12-1-04	Adopt	1-1-05	333-106-0730	12-1-04	Amend	1-1-05
333-105-0660(T)	12-1-04	Repeal	1-1-05	333-106-0730	4-11-05	Amend	5-1-05
333-105-0670	12-1-04	Adopt	1-1-05	333-106-0730(T)	12-1-04	Repeal	1-1-05
333-105-0670(T)	12-1-04	Repeal	1-1-05	333-106-0750	12-1-04	Adopt	1-1-05
333-105-0680	12-1-04	Adopt	1-1-05	333-106-0750(T)	12-1-04	Repeal	1-1-05
333-105-0680(T)	12-1-04	Repeal	1-1-05	333-111-0010	12-1-04	Amend	1-1-05
333-105-0690	12-1-04	Adopt	1-1-05	333-111-0010(T)	12-1-04	Repeal	1-1-05
333-105-0690(T)	12-1-04	Repeal	1-1-05	333-116-0010	12-1-04	Amend	1-1-05
333-105-0700	12-1-04	Adopt	1-1-05	333-116-0010(T)	12-1-04	Repeal	1-1-05
333-105-0700(T)	12-1-04	Repeal	1-1-05	333-116-0020	12-1-04	Amend	1-1-05
333-105-0710	12-1-04	Adopt	1-1-05	333-116-0020(T)	12-1-04	Repeal	1-1-05
333-105-0710(T)	12-1-04	Repeal	1-1-05	333-116-0025	12-1-04	Adopt	1-1-05
333-105-0720	12-1-04	Adopt	1-1-05	333-116-0025(T)	12-1-04	Repeal	1-1-05



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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
333-116-0050	12-1-04	Amend	1-1-05	333-116-0340	12-1-04	Amend	1-1-05
333-116-0050(T)	12-1-04	Repeal	1-1-05	333-116-0340(T)	12-1-04	Repeal	1-1-05
333-116-0055	12-1-04	Adopt	1-1-05	333-116-0350	12-1-04	Amend	1-1-05
333-116-0055(T)	12-1-04	Repeal	1-1-05	333-116-0350(T)	12-1-04	Repeal	1-1-05
333-116-0057	12-1-04	Adopt	1-1-05	333-116-0360	12-1-04	Amend	1-1-05
333-116-0057(T)	12-1-04	Repeal	1-1-05	333-116-0360(T)	12-1-04	Repeal	1-1-05
333-116-0059	12-1-04	Adopt	1-1-05	333-116-0370	12-1-04	Amend	1-1-05
333-116-0059(T)	12-1-04	Repeal	1-1-05	333-116-0370(T)	12-1-04	Repeal	1-1-05
333-116-0070	12-1-04	Amend	1-1-05	333-116-0380	12-1-04	Amend	1-1-05
333-116-0070(T)	12-1-04	Repeal	1-1-05	333-116-0380(T)	12-1-04	Repeal	1-1-05
333-116-0080	12-1-04	Amend	1-1-05	333-116-0390	12-1-04	Amend	1-1-05
333-116-0080(T)	12-1-04	Repeal	1-1-05	333-116-0390(T)	12-1-04	Repeal	1-1-05
333-116-0090	12-1-04	Amend	1-1-05	333-116-0410	12-1-04	Amend	1-1-05
333-116-0090(T)	12-1-04	Repeal	1-1-05	333-116-0410(T)	12-1-04	Repeal	1-1-05
333-116-0100	12-1-04	Amend	1-1-05	333-116-0420	12-1-04	Amend	1-1-05
333-116-0100(T)	12-1-04	Repeal	1-1-05	333-116-0420(T)	12-1-04	Repeal	1-1-05
333-116-0105	12-1-04	Adopt	1-1-05	333-116-0430	12-1-04	Amend	1-1-05
333-116-0105(T)	12-1-04	Repeal	1-1-05	333-116-0430(T)	12-1-04	Repeal	1-1-05
333-116-0107	12-1-04	Adopt	1-1-05	333-116-0440	12-1-04	Amend	1-1-05
333-116-0107(T)	12-1-04	Repeal	1-1-05	333-116-0440(T)	12-1-04	Repeal	1-1-05
333-116-0120	12-1-04	Amend	1-1-05	333-116-0450	12-1-04	Amend	1-1-05
333-116-0120(T)	12-1-04	Repeal	1-1-05	333-116-0450(T)	12-1-04	Repeal	1-1-05
333-116-0125	12-1-04	Amend	1-1-05	333-116-0460	12-1-04	Amend	1-1-05
333-116-0125(T)	12-1-04	Repeal	1-1-05	333-116-0460(T)	12-1-04	Repeal	1-1-05
333-116-0140	12-1-04	Amend	1-1-05	333-116-0470	12-1-04	Amend	1-1-05
333-116-0140(T)	12-1-04	Repeal	1-1-05	333-116-0470(T)	12-1-04	Repeal	1-1-05
333-116-0150	12-1-04	Amend	1-1-05	333-116-0480	12-1-04	Amend	1-1-05
333-116-0150(T)	12-1-04	Repeal	1-1-05	333-116-0480(T)	12-1-04	Repeal	1-1-05
333-116-0160	12-1-04	Amend	1-1-05	333-116-0490	12-1-04	Amend	1-1-05
333-116-0160(T)	12-1-04	Repeal	1-1-05	333-116-0490	4-11-05	Amend	5-1-05
333-116-0165	12-1-04	Adopt	1-1-05	333-116-0490(T)	12-1-04	Repeal	1-1-05
333-116-0165(T)	12-1-04	Repeal	1-1-05	333-116-0495	12-1-04	Adopt	1-1-05
333-116-0170	12-1-04	Amend	1-1-05	333-116-0495(T)	12-1-04	Repeal	1-1-05
333-116-0170(T)	12-1-04	Repeal	1-1-05	333-116-0510	12-1-04	Repeal	1-1-05
333-116-0180	12-1-04	Amend	1-1-05	333-116-0515	12-1-04	Adopt	1-1-05
333-116-0180(T)	12-1-04	Repeal	1-1-05	333-116-0515(T)	12-1-04	Repeal	1-1-05
333-116-0190	12-1-04	Amend	1-1-05	333-116-0525	12-1-04	Adopt	1-1-05
333-116-0190(T)	12-1-04	Repeal	1-1-05	333-116-0525(T)	12-1-04	Repeal	1-1-05
333-116-0200	12-1-04	Amend	1-1-05	333-116-0530	12-1-04	Amend	1-1-05
333-116-0200(T)	12-1-04	Repeal	1-1-05	333-116-0530(T)	12-1-04	Repeal	1-1-05
333-116-0250	12-1-04	Amend	1-1-05	333-116-0540	12-1-04	Amend	1-1-05
333-116-0250(T)	12-1-04	Repeal	1-1-05	333-116-0540	4-11-05	Amend	5-1-05
333-116-0260	12-1-04	Amend	1-1-05	333-116-0540(T)	12-1-04	Repeal	1-1-05
333-116-0260(T)	12-1-04	Repeal	1-1-05	333-116-0560	12-1-04	Amend	1-1-05
333-116-0265	12-1-04	Adopt	1-1-05	333-116-0560(T)	12-1-04	Repeal	1-1-05
333-116-0265(T)	12-1-04	Repeal	1-1-05	333-116-0570	12-1-04	Amend	1-1-05
333-116-0290	12-1-04	Amend	1-1-05	333-116-0570(T)	12-1-04	Repeal	1-1-05
333-116-0290(T)	12-1-04	Repeal	1-1-05	333-116-0573	12-1-04	Adopt	1-1-05
333-116-0300	12-1-04	Amend	1-1-05	333-116-0573(T)	12-1-04	Repeal	1-1-05
333-116-0300(T)	12-1-04	Repeal	1-1-05	333-116-0577	12-1-04	Adopt	1-1-05
333-116-0310	12-1-04	Amend	1-1-05	333-116-0577(T)	12-1-04	Repeal	1-1-05
333-116-0310(T)	12-1-04	Repeal	1-1-05	333-116-0580	12-1-04	Amend	1-1-05

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OAR Number	Effective	Action	Bulletin	OAR Number	Effective	Action	Bulletin
333-116-0580(T)	12-1-04	Repeal	1-1-05	333-118-0110(T)	12-1-04	Repeal	1-1-05
333-116-0583	12-1-04	Adopt	1-1-05	333-118-0120	12-1-04	Amend	1-1-05
333-116-0583(T)	12-1-04	Repeal	1-1-05	333-118-0120(T)	12-1-04	Repeal	1-1-05
333-116-0585	12-1-04	Adopt	1-1-05	333-118-0130	12-1-04	Amend	1-1-05
333-116-0585(T)	12-1-04	Repeal	1-1-05	333-118-0130(T)	12-1-04	Repeal	1-1-05
333-116-0587	12-1-04	Adopt	1-1-05	333-118-0140	12-1-04	Amend	1-1-05
333-116-0587(T)	12-1-04	Repeal	1-1-05	333-118-0140(T)	12-1-04	Repeal	1-1-05
333-116-0590	12-1-04	Amend	1-1-05	333-118-0150	12-1-04	Amend	1-1-05
333-116-0590(T)	12-1-04	Repeal	1-1-05	333-118-0150(T)	12-1-04	Repeal	1-1-05
333-116-0600	12-1-04	Amend	1-1-05	333-118-0160	12-1-04	Amend	1-1-05
333-116-0600(T)	12-1-04	Repeal	1-1-05	333-118-0160(T)	12-1-04	Repeal	1-1-05
333-116-0605	12-1-04	Adopt	1-1-05	333-118-0170	12-1-04	Amend	1-1-05
333-116-0605(T)	12-1-04	Repeal	1-1-05	333-118-0170(T)	12-1-04	Repeal	1-1-05
333-116-0610	12-1-04	Amend	1-1-05	333-118-0180	12-1-04	Amend	1-1-05
333-116-0610(T)	12-1-04	Repeal	1-1-05	333-118-0180(T)	12-1-04	Repeal	1-1-05
333-116-0640	12-1-04	Amend	1-1-05	333-118-0190	12-1-04	Amend	1-1-05
333-116-0640(T)	12-1-04	Repeal	1-1-05	333-118-0190(T)	12-1-04	Repeal	1-1-05
333-116-0660	12-1-04	Amend	1-1-05	333-118-0200	12-1-04	Amend	1-1-05
333-116-0660	4-11-05	Amend	5-1-05	333-118-0200(T)	12-1-04	Repeal	1-1-05
333-116-0660(T)	12-1-04	Repeal	1-1-05	333-118-0800	12-1-04	Adopt	1-1-05
333-116-0670	12-1-04	Amend	1-1-05	333-118-0800(T)	12-1-04	Repeal	1-1-05
333-116-0670(T)	12-1-04	Repeal	1-1-05	333-119-0030	12-1-04	Amend	1-1-05
333-116-0680	12-1-04	Amend	1-1-05	333-119-0030(T)	12-1-04	Repeal	1-1-05
333-116-0680	4-11-05	Amend	5-1-05	333-119-0040	12-1-04	Amend	1-1-05
333-116-0680(T)	12-1-04	Repeal	1-1-05	333-119-0040(T)	12-1-04	Repeal	1-1-05
333-116-0720	12-1-04	Amend	1-1-05	333-119-0080	12-1-04	Amend	1-1-05
333-116-0720(T)	12-1-04	Repeal	1-1-05	333-119-0080(T)	12-1-04	Repeal	1-1-05
333-116-0730	12-1-04	Amend	1-1-05	333-119-0090	12-1-04	Amend	1-1-05
333-116-0730(T)	12-1-04	Repeal	1-1-05	333-119-0090(T)	12-1-04	Repeal	1-1-05
333-116-0830	12-1-04	Amend	1-1-05	333-119-0100	12-1-04	Amend	1-1-05
333-116-0830(T)	12-1-04	Repeal	1-1-05	333-119-0100(T)	12-1-04	Repeal	1-1-05
333-116-0860	4-11-05	Amend	5-1-05	333-119-0120	12-1-04	Amend	1-1-05
333-116-0880	4-11-05	Amend	5-1-05	333-119-0120(T)	12-1-04	Repeal	1-1-05
333-116-0905	12-1-04	Adopt	1-1-05	333-120-0015	12-1-04	Adopt	1-1-05
333-116-0905(T)	12-1-04	Repeal	1-1-05	333-120-0015(T)	12-1-04	Repeal	1-1-05
333-116-0910	12-1-04	Adopt	1-1-05	333-120-0017	12-1-04	Adopt	1-1-05
333-116-0910(T)	12-1-04	Repeal	1-1-05	333-120-0017(T)	12-1-04	Repeal	1-1-05
333-116-0915	12-1-04	Adopt	1-1-05	333-120-0100	12-1-04	Amend	1-1-05
333-116-0915(T)	12-1-04	Repeal	1-1-05	333-120-0100(T)	12-1-04	Repeal	1-1-05
333-118-0020	12-1-04	Amend	1-1-05	333-120-0110	12-1-04	Amend	1-1-05
333-118-0020(T)	12-1-04	Repeal	1-1-05	333-120-0110(T)	12-1-04	Repeal	1-1-05
333-118-0040	12-1-04	Amend	1-1-05	333-120-0130	12-1-04	Amend	1-1-05
333-118-0040(T)	12-1-04	Repeal	1-1-05	333-120-0130(T)	12-1-04	Repeal	1-1-05
333-118-0050	12-1-04	Amend	1-1-05	333-120-0170	12-1-04	Amend	1-1-05
333-118-0050(T)	12-1-04	Repeal	1-1-05	333-120-0170(T)	12-1-04	Repeal	1-1-05
333-118-0060	12-1-04	Amend	1-1-05	333-120-0180	12-1-04	Amend	1-1-05
333-118-0060(T)	12-1-04	Repeal	1-1-05	333-120-0180(T)	12-1-04	Repeal	1-1-05
333-118-0070	12-1-04	Amend	1-1-05	333-120-0190	12-1-04	Amend	1-1-05
333-118-0070(T)	12-1-04	Repeal	1-1-05	333-120-0190(T)	12-1-04	Repeal	1-1-05
333-118-0080	12-1-04	Amend	1-1-05	333-120-0200	12-1-04	Amend	1-1-05
333-118-0080(T)	12-1-04	Repeal	1-1-05	333-120-0200(T)	12-1-04	Repeal	1-1-05
333-118-0090	12-1-04	Amend	1-1-05	333-120-0210	12-1-04	Amend	1-1-05
333-118-0090(T)	12-1-04	Repeal	1-1-05	333-120-0210(T)	12-1-04	Repeal	1-1-05
333-118-0100	12-1-04	Amend	1-1-05	333-120-0215	12-1-04	Adopt	1-1-05
333-118-0100(T)	12-1-04	Repeal	1-1-05	333-120-0215(T)	12-1-04	Repeal	1-1-05
333-118-0110	12-1-04	Amend	1-1-05	333-120-0220	12-1-04	Amend	1-1-05

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333-120-0220(T)	12-1-04	Repeal	1-1-05	333-121-0120	4-11-05	Adopt	5-1-05
333-120-0230	12-1-04	Amend	1-1-05	333-121-0130	4-11-05	Adopt	5-1-05
333-120-0230(T)	12-1-04	Repeal	1-1-05	333-121-0140	4-11-05	Adopt	5-1-05
333-120-0240	12-1-04	Amend	1-1-05	333-121-0150	4-11-05	Adopt	5-1-05
333-120-0240(T)	12-1-04	Repeal	1-1-05	333-121-0160	4-11-05	Adopt	5-1-05
333-120-0250	12-1-04	Amend	1-1-05	333-121-0170	4-11-05	Adopt	5-1-05
333-120-0250(T)	12-1-04	Repeal	1-1-05	333-121-0180	4-11-05	Adopt	5-1-05
333-120-0320	12-1-04	Amend	1-1-05	333-121-0190	4-11-05	Adopt	5-1-05
333-120-0320(T)	12-1-04	Repeal	1-1-05	333-121-0200	4-11-05	Adopt	5-1-05
333-120-0400	12-1-04	Amend	1-1-05	333-121-0300	4-11-05	Adopt	5-1-05
333-120-0400(T)	12-1-04	Repeal	1-1-05	333-121-0310	4-11-05	Adopt	5-1-05
333-120-0420	12-1-04	Amend	1-1-05	333-121-0320	4-11-05	Adopt	5-1-05
333-120-0420(T)	12-1-04	Repeal	1-1-05	333-121-0330	4-11-05	Adopt	5-1-05
333-120-0430	12-1-04	Amend	1-1-05	333-121-0340	4-11-05	Adopt	5-1-05
333-120-0430(T)	12-1-04	Repeal	1-1-05	333-121-0350	4-11-05	Adopt	5-1-05
333-120-0450	12-1-04	Amend	1-1-05	333-121-0360	4-11-05	Adopt	5-1-05
333-120-0450(T)	12-1-04	Repeal	1-1-05	333-121-0370	4-11-05	Adopt	5-1-05
333-120-0460	12-1-04	Amend	1-1-05	333-121-0380	4-11-05	Adopt	5-1-05
333-120-0460(T)	12-1-04	Repeal	1-1-05	333-121-0390	4-11-05	Adopt	5-1-05
333-120-0520	12-1-04	Amend	1-1-05	333-121-0500	4-11-05	Adopt	5-1-05
333-120-0520(T)	12-1-04	Repeal	1-1-05	333-121-0510	4-11-05	Adopt	5-1-05
333-120-0540	12-1-04	Amend	1-1-05	333-150-0000	1-14-05	Amend	2-1-05
333-120-0540(T)	12-1-04	Repeal	1-1-05	333-505-0007	2-4-05	Amend	3-1-05
333-120-0550	12-1-04	Amend	1-1-05	334-010-0050	2-23-05	Amend	4-1-05
333-120-0550(T)	12-1-04	Repeal	1-1-05	340-012-0060	3-1-05	Amend	3-1-05
333-120-0560	12-1-04	Amend	1-1-05	340-016-0055	11-19-04	Amend	1-1-05
333-120-0560(T)	12-1-04	Repeal	1-1-05	340-071-0100	3-1-05	Amend	2-1-05
333-120-0600	12-1-04	Amend	1-1-05	340-071-0110	3-1-05	Amend	2-1-05
333-120-0600(T)	12-1-04	Repeal	1-1-05	340-071-0115	3-1-05	Amend	2-1-05
333-120-0610	12-1-04	Amend	1-1-05	340-071-0116	3-1-05	Am. & Ren.	2-1-05
333-120-0610(T)	12-1-04	Repeal	1-1-05	340-071-0117	3-1-05	Am. & Ren.	2-1-05
333-120-0640	12-1-04	Amend	1-1-05	340-071-0120	3-1-05	Amend	2-1-05
333-120-0640(T)	12-1-04	Repeal	1-1-05	340-071-0130	3-1-05	Amend	2-1-05
333-120-0650	12-1-04	Amend	1-1-05	340-071-0131	3-1-05	Adopt	2-1-05
333-120-0650(T)	12-1-04	Repeal	1-1-05	340-071-0140	3-1-05	Amend	2-1-05
333-120-0660	12-1-04	Amend	1-1-05	340-071-0150	3-1-05	Amend	2-1-05
333-120-0660(T)	12-1-04	Repeal	1-1-05	340-071-0155	3-1-05	Amend	2-1-05
333-120-0670	12-1-04	Amend	1-1-05	340-071-0160	3-1-05	Amend	2-1-05
333-120-0670(T)	12-1-04	Repeal	1-1-05	340-071-0162	3-1-05	Amend	2-1-05
333-120-0680	12-1-04	Amend	1-1-05	340-071-0165	3-1-05	Amend	2-1-05
333-120-0680(T)	12-1-04	Repeal	1-1-05	340-071-0170	3-1-05	Amend	2-1-05
333-120-0700	12-1-04	Amend	1-1-05	340-071-0175	3-1-05	Amend	2-1-05
333-120-0700(T)	12-1-04	Repeal	1-1-05	340-071-0185	3-1-05	Amend	2-1-05
333-120-0710	12-1-04	Amend	1-1-05	340-071-0195	3-1-05	Repeal	2-1-05
333-120-0710(T)	12-1-04	Repeal	1-1-05	340-071-0200	3-1-05	Amend	2-1-05
333-120-0720	12-1-04	Amend	1-1-05	340-071-0205	3-1-05	Amend	2-1-05
333-120-0720(T)	12-1-04	Repeal	1-1-05	340-071-0210	3-1-05	Amend	2-1-05
333-121-0001	4-11-05	Adopt	5-1-05	340-071-0215	3-1-05	Amend	2-1-05
333-121-0010	4-11-05	Adopt	5-1-05	340-071-0220	3-1-05	Amend	2-1-05
333-121-0020	4-11-05	Adopt	5-1-05	340-071-0260	3-1-05	Amend	2-1-05
333-121-0030	4-11-05	Adopt	5-1-05	340-071-0265	3-1-05	Amend	2-1-05
333-121-0040	4-11-05	Adopt	5-1-05	340-071-0270	3-1-05	Amend	2-1-05
333-121-0050	4-11-05	Adopt	5-1-05	340-071-0275	3-1-05	Amend	2-1-05
333-121-0060	4-11-05	Adopt	5-1-05	340-071-0280	3-1-05	Amend	2-1-05
333-121-0100	4-11-05	Adopt	5-1-05	340-071-0285	3-1-05	Amend	2-1-05
333-121-0110	4-11-05	Adopt	5-1-05	340-071-0295	3-1-05	Amend	2-1-05



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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
340-071-0650	3-1-05	Adopt	2-1-05	340-244-0220	2-10-05	Amend	3-1-05
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	410-003-0010	3-1-05	Adopt(T)	4-1-05
340-073-0030	3-1-05	Amend	2-1-05	410-003-0020	3-1-05	Adopt(T)	4-1-05
340-073-0035	3-1-05	Amend	2-1-05	410-007-0210	3-29-05	Amend	5-1-05
340-073-0040	3-1-05	Amend	2-1-05	410-007-0220	3-29-05	Amend	5-1-05
340-073-0041	3-1-05	Amend	2-1-05	410-007-0230	3-29-05	Amend	5-1-05
340-073-0045	3-1-05	Amend	2-1-05	410-007-0240	3-29-05	Amend	5-1-05
340-073-0050	3-1-05	Amend	2-1-05	410-007-0250	3-29-05	Amend	5-1-05
340-073-0055	3-1-05	Amend	2-1-05	410-007-0260	3-29-05	Amend	5-1-05
340-073-0056	3-1-05	Amend	2-1-05	410-007-0270	3-29-05	Amend	5-1-05
340-073-0060	3-1-05	Amend	2-1-05	410-007-0280	3-29-05	Amend	5-1-05
340-073-0065	3-1-05	Amend	2-1-05	410-007-0290	3-29-05	Amend	5-1-05
340-073-0070	3-1-05	Amend	2-1-05	410-007-0300	3-29-05	Amend	5-1-05
340-073-0075	3-1-05	Amend	2-1-05	410-007-0310	3-29-05	Amend	5-1-05
340-073-0080	3-1-05	Amend	2-1-05	410-007-0320	3-29-05	Amend	5-1-05
340-073-0085	3-1-05	Amend	2-1-05	410-007-0330	3-29-05	Amend	5-1-05
340-150-0250	12-27-04	Amend	2-1-05	410-007-0340	3-29-05	Amend	5-1-05
340-200-0020	2-10-05	Amend	3-1-05	410-007-0370	3-29-05	Amend	5-1-05
340-200-0040	12-15-04	Amend	1-1-05	410-007-0380	3-29-05	Amend	5-1-05
340-200-0040	1-4-05	Amend	2-1-05	410-050-0401	2-1-05	Adopt	3-1-05
340-200-0040	2-10-05	Amend	3-1-05	410-050-0411	2-1-05	Adopt	3-1-05
340-204-0010	1-4-05	Amend	2-1-05	410-050-0421	2-1-05	Adopt	3-1-05
340-204-0030	1-4-05	Amend	2-1-05	410-050-0431	2-1-05	Adopt	3-1-05
340-204-0040	1-4-05	Amend	2-1-05	410-050-0441	2-1-05	Adopt	3-1-05
340-204-0090	12-15-04	Amend	1-1-05	410-050-0451	2-1-05	Adopt	3-1-05
340-218-0080	2-10-05	Amend	3-1-05	410-050-0461	2-1-05	Adopt	3-1-05
340-224-0060	1-4-05	Amend	2-1-05	410-050-0471	2-1-05	Adopt	3-1-05
340-224-0070	1-4-05	Amend	2-1-05	410-050-0481	2-1-05	Adopt	3-1-05

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410-050-0501	2-1-05	Adopt	3-1-05	410-122-0020	4-1-05	Amend	4-1-05
410-050-0511	2-1-05	Adopt	3-1-05	410-122-0040	4-1-05	Amend	4-1-05
410-050-0521	2-1-05	Adopt	3-1-05	410-122-0055	4-1-05	Amend	4-1-05
410-050-0531	2-1-05	Adopt	3-1-05	410-122-0190	1-1-05	Amend	2-1-05
410-050-0541	2-1-05	Adopt	3-1-05	410-122-0200	4-1-05	Amend	4-1-05
410-050-0551	2-1-05	Adopt	3-1-05	410-122-0202	1-1-05	Amend	2-1-05
410-050-0561	2-1-05	Adopt	3-1-05	410-122-0202	4-1-05	Amend	4-1-05
410-050-0571	2-1-05	Adopt	3-1-05	410-122-0203	4-1-05	Amend	4-1-05
410-050-0581	2-1-05	Adopt	3-1-05	410-122-0204	1-1-05	Amend	2-1-05
410-050-0591	2-1-05	Adopt	3-1-05	410-122-0204	4-1-05	Amend	4-1-05
410-050-0700	5-7-05	Adopt	5-1-05	410-122-0207	1-1-05	Amend	2-1-05
410-050-0710	5-7-05	Adopt	5-1-05	410-122-0208	1-1-05	Amend	2-1-05
410-050-0720	5-7-05	Adopt	5-1-05	410-122-0208	4-1-05	Amend	4-1-05
410-050-0730	5-7-05	Adopt	5-1-05	410-122-0209	4-1-05	Amend	4-1-05
410-050-0740	5-7-05	Adopt	5-1-05	410-122-0210	4-1-05	Amend	4-1-05
410-050-0750	5-7-05	Adopt	5-1-05	410-122-0340	1-1-05	Amend	2-1-05
410-050-0760	5-7-05	Adopt	5-1-05	410-122-0365	1-1-05	Amend	2-1-05
410-050-0770	5-7-05	Adopt	5-1-05	410-122-0375	4-1-05	Amend	4-1-05
410-050-0780	5-7-05	Adopt	5-1-05	410-122-0400	1-1-05	Amend	2-1-05
410-050-0790	5-7-05	Adopt	5-1-05	410-122-0420	4-1-05	Amend	4-1-05
410-050-0800	5-7-05	Adopt	5-1-05	410-122-0475	1-1-05	Amend	2-1-05
410-050-0810	5-7-05	Adopt	5-1-05	410-122-0560	1-1-05	Amend	2-1-05
410-050-0820	5-7-05	Adopt	5-1-05	410-122-0580	1-1-05	Amend	2-1-05
410-050-0830	5-7-05	Adopt	5-1-05	410-122-0590	4-1-05	Amend	4-1-05
410-050-0840	5-7-05	Adopt	5-1-05	410-122-0625	4-1-05	Amend	4-1-05
410-050-0850	5-7-05	Adopt	5-1-05	410-122-0630	1-1-05	Amend	2-1-05
410-050-0860	12-3-04	Amend(T)	1-1-05	410-122-0660	4-1-05	Amend	4-1-05
410-050-0860	5-7-05	Adopt	5-1-05	410-122-0720	1-1-05	Amend	2-1-05
410-050-0870	5-7-05	Adopt	5-1-05	410-123-1085	4-1-05	Amend	4-1-05
410-120-0000	4-1-05	Amend	4-1-05	410-123-1260	4-1-05	Amend	4-1-05
410-120-1200	4-1-05	Amend	4-1-05	410-123-1670	4-1-05	Amend	4-1-05
410-120-1260	4-1-05	Amend	4-1-05	410-124-0000	12-10-04	Amend(T)	1-1-05
410-120-1280	4-1-05	Amend	4-1-05	410-124-0000	12-30-04	Amend(T)	2-1-05
410-120-1295	2-9-05	Amend(T)	3-1-05	410-124-0000(T)	12-10-04	Suspend	1-1-05
410-120-1295(T)	2-9-05	Suspend	3-1-05	410-124-0000(T)	12-30-04	Suspend	2-1-05
410-120-1320	4-1-05	Amend	4-1-05	410-124-0105	4-1-05	Adopt	5-1-05
410-121-0021	4-1-05	Amend	4-1-05	410-125-0141	4-1-05	Amend	5-1-05
410-121-0030	12-1-04	Amend	1-1-05	410-125-0195	4-1-05	Amend	5-1-05
410-121-0030	4-1-05	Amend	5-1-05	410-125-0220	4-1-05	Amend	4-1-05
410-121-0032	1-1-05	Adopt	2-1-05	410-125-0410	4-1-05	Amend	4-1-05
410-121-0040	12-1-04	Amend	1-1-05	410-129-0070	4-1-05	Amend	4-1-05
410-121-0135	4-1-05	Amend	4-1-05	410-129-0200	4-1-05	Amend	4-1-05
410-121-0150	4-1-05	Amend	4-1-05	410-129-0240	4-1-05	Amend	4-1-05
410-121-0155	4-1-05	Amend	5-1-05	410-130-0010	4-1-05	Repeal	4-1-05
410-121-0157	1-14-05	Amend(T)	2-1-05	410-130-0020	4-1-05	Repeal	4-1-05
410-121-0157	3-31-05	Amend	4-1-05	410-130-0040	4-1-05	Repeal	4-1-05
410-121-0157	4-1-05	Amend(T)	4-1-05	410-130-0160	4-1-05	Amend	4-1-05
410-121-0157(T)	3-31-05	Repeal	4-1-05	410-130-0180	4-1-05	Amend	4-1-05
410-121-0160	4-1-05	Amend	5-1-05	410-130-0200	4-1-05	Amend	4-1-05
410-121-0185	4-1-05	Amend	4-1-05	410-130-0220	4-1-05	Amend	4-1-05
410-121-0190	4-1-05	Amend	4-1-05	410-130-0240	12-1-04	Amend	1-1-05
410-121-0300	12-10-04	Amend(T)	1-1-05	410-130-0240	4-1-05	Amend	4-1-05
410-121-0300	2-1-05	Amend	3-1-05	410-130-0368	4-1-05	Adopt	4-1-05
410-121-0300	4-1-05	Amend(T)	5-1-05	410-130-0587	4-1-05	Amend	4-1-05
410-121-0320	1-1-05	Amend	2-1-05	410-130-0610	4-1-05	Adopt	4-1-05

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410-130-0700	4-1-05	Amend	4-1-05	411-045-0140	1-4-05	Amend	2-1-05
410-131-0120	4-1-05	Amend	4-1-05	411-070-0359	12-28-04	Amend	2-1-05
410-131-0280	4-1-05	Amend	4-1-05	411-070-0428	12-28-04	Amend	2-1-05
410-133-0000	4-5-05	Amend(T)	5-1-05	411-070-0440	12-28-04	Repeal	2-1-05
410-133-0040	4-5-05	Amend(T)	5-1-05	411-070-0442	12-28-04	Adopt	2-1-05
410-133-0060	4-5-05	Amend(T)	5-1-05	411-070-0446	12-28-04	Repeal	2-1-05
410-133-0080	4-5-05	Amend(T)	5-1-05	411-070-0465	12-28-04	Amend	2-1-05
410-133-0090	4-5-05	Amend(T)	5-1-05	411-335-0010	1-1-05	Adopt	1-1-05
410-133-0100	4-5-05	Amend(T)	5-1-05	411-335-0020	1-1-05	Adopt	1-1-05
410-133-0120	4-5-05	Amend(T)	5-1-05	411-335-0030	1-1-05	Adopt	1-1-05
410-133-0140	4-5-05	Amend(T)	5-1-05	411-335-0040	1-1-05	Adopt	1-1-05
410-133-0160	4-5-05	Amend(T)	5-1-05	411-335-0050	1-1-05	Adopt	1-1-05
410-133-0180	4-5-05	Amend(T)	5-1-05	411-335-0060	1-1-05	Adopt	1-1-05
410-133-0200	4-5-05	Amend(T)	5-1-05	411-335-0070	1-1-05	Adopt	1-1-05
410-133-0220	4-5-05	Amend(T)	5-1-05	411-335-0080	1-1-05	Adopt	1-1-05
410-133-0245	4-5-05	Adopt(T)	5-1-05	411-335-0090	1-1-05	Adopt	1-1-05
410-133-0280	4-5-05	Amend(T)	5-1-05	411-335-0100	1-1-05	Adopt	1-1-05
410-133-0300	4-5-05	Amend(T)	5-1-05	411-335-0110	1-1-05	Adopt	1-1-05
410-133-0320	4-5-05	Amend(T)	5-1-05	411-335-0120	1-1-05	Adopt	1-1-05
410-133-0340	4-5-05	Amend(T)	5-1-05	411-335-0130	1-1-05	Adopt	1-1-05
410-141-0065	4-1-05	Repeal	4-1-05	411-335-0140	1-1-05	Adopt	1-1-05
410-142-0300	12-16-04	Amend	1-1-05	411-335-0150	1-1-05	Adopt	1-1-05
410-146-0080	4-1-05	Amend	4-1-05	411-335-0160	1-1-05	Adopt	1-1-05
410-147-0365	3-18-05	Adopt(T)	4-1-05	411-335-0170	1-1-05	Adopt	1-1-05
410-148-0090	4-1-05	Amend	4-1-05	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
411-045-0020	1-4-05	Amend	2-1-05	411-335-0380	1-1-05	Adopt	1-1-05
411-045-0030	1-4-05	Amend	2-1-05	411-335-0390	1-1-05	Adopt	1-1-05
411-045-0040	1-4-05	Amend	2-1-05	411-340-0020	1-1-05	Amend(T)	2-1-05
411-045-0050	1-4-05	Amend	2-1-05	411-340-0130	1-1-05	Amend(T)	2-1-05
411-045-0060	1-4-05	Amend	2-1-05	411-346-0165	1-1-05	Adopt	1-1-05
411-045-0070	1-4-05	Amend	2-1-05	411-360-0010	2-1-05	Adopt	2-1-05
411-045-0080	1-4-05	Amend	2-1-05	411-360-0020	2-1-05	Adopt	2-1-05
411-045-0090	1-4-05	Amend	2-1-05	411-360-0030	2-1-05	Adopt	2-1-05
411-045-0100	1-4-05	Amend	2-1-05	411-360-0040	2-1-05	Adopt	2-1-05
411-045-0110	1-4-05	Amend	2-1-05	411-360-0050	2-1-05	Adopt	2-1-05
411-045-0120	1-4-05	Amend	2-1-05	411-360-0060	2-1-05	Adopt	2-1-05



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411-360-0080	2-1-05	Adopt	2-1-05	413-015-1105	1-28-05	Adopt(T)	3-1-05
411-360-0090	2-1-05	Adopt	2-1-05	413-015-1110	1-28-05	Adopt(T)	3-1-05
411-360-0100	2-1-05	Adopt	2-1-05	413-015-1115	1-28-05	Adopt(T)	3-1-05
411-360-0110	2-1-05	Adopt	2-1-05	413-015-1120	1-28-05	Adopt(T)	3-1-05
411-360-0120	2-1-05	Adopt	2-1-05	413-015-1125	1-28-05	Adopt(T)	3-1-05
411-360-0130	2-1-05	Adopt	2-1-05	413-050-0500	1-1-05	Amend	2-1-05
411-360-0140	2-1-05	Adopt	2-1-05	413-050-0510	1-1-05	Amend	2-1-05
411-360-0150	2-1-05	Adopt	2-1-05	413-050-0515	1-1-05	Amend	2-1-05
411-360-0160	2-1-05	Adopt	2-1-05	413-050-0525	1-1-05	Repeal	2-1-05
411-360-0170	2-1-05	Adopt	2-1-05	413-050-0530	1-1-05	Amend	2-1-05
411-360-0180	2-1-05	Adopt	2-1-05	413-050-0535	1-1-05	Amend	2-1-05
411-360-0190	2-1-05	Adopt	2-1-05	413-050-0540	1-1-05	Repeal	2-1-05
411-360-0200	2-1-05	Adopt	2-1-05	413-050-0545	1-1-05	Repeal	2-1-05
411-360-0210	2-1-05	Adopt	2-1-05	413-050-0550	1-1-05	Repeal	2-1-05
411-360-0220	2-1-05	Adopt	2-1-05	413-050-0555	1-1-05	Amend	2-1-05
411-360-0230	2-1-05	Adopt	2-1-05	413-050-0560	1-1-05	Amend	2-1-05
411-360-0240	2-1-05	Adopt	2-1-05	413-050-0565	1-1-05	Amend	2-1-05
411-360-0250	2-1-05	Adopt	2-1-05	413-050-0570	1-1-05	Amend	2-1-05
411-360-0260	2-1-05	Adopt	2-1-05	413-050-0575	1-1-05	Amend	2-1-05
411-360-0270	2-1-05	Adopt	2-1-05	413-050-0580	1-1-05	Repeal	2-1-05
411-360-0275	2-1-05	Adopt	2-1-05	413-050-0585	1-1-05	Amend	2-1-05
411-360-0280	2-1-05	Adopt	2-1-05	413-055-0100	1-1-05	Amend	2-1-05
411-360-0290	2-1-05	Adopt	2-1-05	413-055-0105	1-1-05	Amend	2-1-05
411-360-0300	2-1-05	Adopt	2-1-05	413-055-0110	1-1-05	Amend	2-1-05
411-360-0310	2-1-05	Adopt	2-1-05	413-055-0115	1-1-05	Repeal	2-1-05
413-010-0705	2-1-05	Amend	3-1-05	413-055-0120	1-1-05	Amend	2-1-05
413-010-0710	2-1-05	Adopt	3-1-05	413-055-0125	1-1-05	Repeal	2-1-05
413-010-0712	2-1-05	Amend	3-1-05	413-055-0130	1-1-05	Repeal	2-1-05
413-010-0714	2-1-05	Amend	3-1-05	413-055-0135	1-1-05	Repeal	2-1-05
413-010-0715	2-1-05	Amend	3-1-05	413-055-0140	1-1-05	Amend	2-1-05
413-010-0716	2-1-05	Amend	3-1-05	413-055-0145	1-1-05	Amend	2-1-05
413-010-0717	2-1-05	Amend	3-1-05	413-055-0150	1-1-05	Amend	2-1-05
413-010-0718	2-1-05	Amend	3-1-05	413-055-0155	1-1-05	Repeal	2-1-05
413-010-0720	2-1-05	Amend	3-1-05	413-055-0160	1-1-05	Amend	2-1-05
413-010-0721	2-1-05	Amend	3-1-05	413-055-0165	1-1-05	Amend	2-1-05
413-010-0722	2-1-05	Amend	3-1-05	413-120-0440	1-28-05	Amend(T)	3-1-05
413-010-0723	2-1-05	Amend	3-1-05	413-330-0070	3-1-05	Suspend	4-1-05
413-010-0732	2-1-05	Amend	3-1-05	414-061-0080	12-17-04	Amend	2-1-05
413-010-0735	2-1-05	Amend	3-1-05	414-061-0100	11-16-04	Amend	1-1-05
413-010-0738	2-1-05	Amend	3-1-05	414-061-0110	11-16-04	Amend	1-1-05
413-010-0740	2-1-05	Amend	3-1-05	414-205-0170	11-16-04	Amend	1-1-05
413-010-0743	2-1-05	Amend	3-1-05	416-170-0000	1-11-05	Amend	2-1-05
413-010-0745	2-1-05	Amend	3-1-05	416-170-0010	1-11-05	Amend	2-1-05
413-010-0746	2-1-05	Amend	3-1-05	416-170-0020	1-11-05	Amend	2-1-05
413-010-0748	2-1-05	Amend	3-1-05	416-170-0030	1-11-05	Amend	2-1-05
413-010-0750	2-1-05	Amend	3-1-05	416-170-0050	1-11-05	Adopt	2-1-05
413-015-0115	2-1-05	Amend	3-1-05	416-170-0050	1-13-05	Renumber	2-1-05
413-015-0205	2-1-05	Amend	3-1-05	416-250-0000	1-11-05	Amend	2-1-05
413-015-0210	2-1-05	Amend	3-1-05	416-250-0010	1-11-05	Amend	2-1-05
413-015-0215	2-1-05	Amend	3-1-05	416-250-0020	1-11-05	Amend	2-1-05
413-015-0305	2-1-05	Amend	3-1-05	416-250-0030	1-11-05	Amend	2-1-05
413-015-0505	2-1-05	Amend	3-1-05	416-250-0040	1-11-05	Amend	2-1-05
413-015-0511	2-1-05	Amend	3-1-05	416-250-0050	1-11-05	Amend	2-1-05
413-015-0725	2-1-05	Amend	3-1-05	416-250-0060	1-11-05	Amend	2-1-05
413-015-1000	4-1-05	Amend	5-1-05	416-250-0070	1-11-05	Amend	2-1-05

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416-250-0090	1-11-05	Amend	2-1-05	436-010-0300	4-1-05	Amend	5-1-05
416-340-0000	3-25-05	Amend	5-1-05	436-010-0330	4-1-05	Amend	5-1-05
416-340-0010	3-25-05	Amend	5-1-05	436-010-0340	4-1-05	Amend	5-1-05
416-340-0020	3-25-05	Amend	5-1-05	436-070-0001	4-1-05	Amend	5-1-05
416-340-0030	3-25-05	Amend	5-1-05	436-070-0002	4-1-05	Amend	5-1-05
416-340-0040	3-25-05	Amend	5-1-05	436-070-0003	4-1-05	Amend	5-1-05
416-340-0050	3-25-05	Amend	5-1-05	436-070-0005	4-1-05	Amend	5-1-05
416-340-0060	3-25-05	Amend	5-1-05	436-070-0008	4-1-05	Amend	5-1-05
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416-340-0080	3-25-05	Repeal	5-1-05	436-070-0020	4-1-05	Amend	5-1-05
416-340-0090	3-25-05	Repeal	5-1-05	436-070-0040	4-1-05	Amend	5-1-05
416-340-0100	3-25-05	Repeal	5-1-05	436-070-0050	4-1-05	Amend	5-1-05
416-340-0110	3-25-05	Repeal	5-1-05	436-070-0060	4-1-05	Repeal	5-1-05
416-400-0000	1-11-05	Repeal	2-1-05	436-085-0001	4-1-05	Amend	5-1-05
416-430-0040	3-25-05	Repeal	5-1-05	436-085-0002	4-1-05	Amend	5-1-05
416-530-0010	3-9-05	Amend	4-1-05	436-085-0003	4-1-05	Amend	5-1-05
416-550-0000	3-25-05	Amend	5-1-05	436-085-0005	4-1-05	Amend	5-1-05
416-550-0010	3-25-05	Amend	5-1-05	436-085-0006	4-1-05	Repeal	5-1-05
416-550-0020	3-25-05	Amend	5-1-05	436-085-0008	4-1-05	Amend	5-1-05
416-550-0030	3-25-05	Amend	5-1-05	436-085-0020	4-1-05	Repeal	5-1-05
416-550-0040	3-25-05	Amend	5-1-05	436-085-0025	4-1-05	Amend	5-1-05
416-550-0050	3-25-05	Amend	5-1-05	436-085-0030	4-1-05	Amend	5-1-05
416-550-0060	3-25-05	Amend	5-1-05	436-085-0035	4-1-05	Amend	5-1-05
416-550-0070	3-25-05	Amend	5-1-05	436-085-0060	4-1-05	Amend	5-1-05
416-550-0080	3-25-05	Amend	5-1-05	436-085-0065	4-1-05	Repeal	5-1-05
416-630-0000	3-25-05	Repeal	5-1-05	436-085-0070	4-1-05	Repeal	5-1-05
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416-630-0030	3-25-05	Repeal	5-1-05	437-002-0161	4-12-05	Amend	5-1-05
416-630-0040	3-25-05	Repeal	5-1-05	437-002-0360	4-12-05	Amend	5-1-05
416-630-0050	3-25-05	Repeal	5-1-05	437-002-0361	4-12-05	Repeal	5-1-05
436-001-0005	1-14-05	Amend	2-1-05	437-002-0368	4-12-05	Amend	5-1-05
436-009-0004	4-1-05	Amend	5-1-05	437-003-0001	4-12-05	Amend	5-1-05
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436-009-0010	4-1-05	Amend	5-1-05	437-005-0001	12-30-04	Amend	2-1-05
436-009-0015	4-1-05	Amend	5-1-05	437-005-0001	4-12-05	Amend	5-1-05
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436-009-0030	4-1-05	Amend	5-1-05	441-710-0045	11-30-04	Adopt	1-1-05
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436-009-0070	4-1-05	Amend	5-1-05	441-860-0050	1-1-05	Amend	1-1-05
436-009-0080	4-1-05	Amend	5-1-05	441-930-0030	1-1-05	Amend	1-1-05
436-009-0090	4-1-05	Amend	5-1-05	441-930-0210	1-1-05	Amend	1-1-05
436-010-0005	4-1-05	Amend	5-1-05	441-930-0270	1-1-05	Amend	1-1-05
436-010-0008	4-1-05	Amend	5-1-05	442-002-0005	3-1-05	Repeal	4-1-05
436-010-0200	4-1-05	Amend	5-1-05	442-002-0010	3-1-05	Repeal	4-1-05
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436-010-0240	4-1-05	Amend	5-1-05	442-002-0030	3-1-05	Repeal	4-1-05
436-010-0250	4-1-05	Amend	5-1-05	442-002-0035	3-1-05	Repeal	4-1-05
436-010-0260	4-1-05	Amend	5-1-05	442-002-0040	3-1-05	Repeal	4-1-05
436-010-0265	4-1-05	Amend	5-1-05	442-002-0045	3-1-05	Repeal	4-1-05
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442-006-0030	3-1-05	Adopt	4-1-05	459-005-0591	2-22-05	Amend	4-1-05
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443-001-0000	1-1-05	Amend	2-1-05	459-005-0595	12-15-04	Amend(T)	1-1-05
443-001-0005	1-1-05	Amend	2-1-05	459-005-0595	2-22-05	Amend	4-1-05
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443-002-0030	1-1-05	Adopt	2-1-05	459-007-0230	3-15-05	Amend	1-1-05
443-002-0040	1-1-05	Adopt	2-1-05	459-007-0240	3-15-05	Amend	1-1-05
443-002-0050	1-1-05	Adopt	2-1-05	459-007-0250	3-15-05	Amend	1-1-05
443-002-0060	1-1-05	Adopt	2-1-05	459-007-0260	3-15-05	Amend	1-1-05
443-002-0070	1-1-05	Adopt	2-1-05	459-007-0270	3-15-05	Amend	1-1-05
443-002-0080	1-1-05	Adopt	2-1-05	459-007-0280	3-15-05	Repeal	1-1-05
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443-002-0140	1-1-05	Adopt	2-1-05	459-030-0000	2-22-05	Repeal	4-1-05
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443-002-0160	1-1-05	Adopt	2-1-05	459-030-0011	2-22-05	Amend	4-1-05
443-002-0170	1-1-05	Adopt	2-1-05	459-030-0025	2-22-05	Amend	4-1-05
443-002-0180	1-1-05	Adopt	2-1-05	459-030-0030	2-22-05	Amend	4-1-05
443-002-0190	1-1-05	Adopt	2-1-05	459-050-0040	11-23-04	Amend	1-1-05
443-005-0000	1-1-05	Repeal	2-1-05	459-050-0070	11-23-04	Amend	1-1-05
443-005-0010	1-1-05	Repeal	2-1-05	459-050-0072	11-23-04	Adopt	1-1-05
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443-005-0040	1-1-05	Repeal	2-1-05	459-050-0150	11-23-04	Amend	1-1-05
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443-015-0010	1-1-05	Repeal	2-1-05	459-080-0050	1-31-05	Adopt	3-1-05
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459-005-0535	2-22-05	Amend	4-1-05	461-135-0095	4-1-05	Amend	5-1-05
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459-005-0545	2-22-05	Amend	4-1-05	461-135-0405	1-1-05	Amend	2-1-05
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459-005-0590	12-15-04	Amend(T)	1-1-05	461-135-0710	4-1-05	Amend	5-1-05
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461-135-1120	4-1-05	Amend	5-1-05	461-165-0420	4-1-05	Amend	5-1-05
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461-140-0040	4-1-05	Amend	5-1-05	461-170-0010	1-1-05	Amend	2-1-05
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461-140-0110	1-1-05	Amend	2-1-05	461-170-0101	1-1-05	Amend	2-1-05
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461-140-0150	4-1-05	Repeal	5-1-05	461-180-0020	1-1-05	Amend	2-1-05
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461-145-0240	1-1-05	Amend	2-1-05	461-180-0085	1-1-05	Adopt	2-1-05
461-145-0320	1-1-05	Amend	2-1-05	461-180-0090	1-1-05	Amend	2-1-05
461-145-0330	1-1-05	Amend	2-1-05	461-180-0095	4-1-05	Repeal	5-1-05
461-145-0330	4-1-05	Amend	5-1-05	461-180-0100	4-1-05	Amend	5-1-05
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461-145-0910	4-1-05	Amend	5-1-05	471-030-0078	12-19-04	Adopt	2-1-05
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461-155-0530	4-1-05	Amend	5-1-05	580-043-0105	12-15-04	Adopt(T)	1-1-05
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584-017-0260	1-21-05	Amend	3-1-05	603-051-1051	3-11-05	Adopt	4-1-05
584-017-0261	1-21-05	Adopt	3-1-05	603-051-1052	3-11-05	Adopt	4-1-05
584-020-0045	4-15-05	Amend	5-1-05	603-051-1053	3-11-05	Adopt	4-1-05
584-060-0011	1-21-05	Amend	3-1-05	603-051-1054	3-11-05	Adopt	4-1-05
584-060-0012	1-21-05	Adopt	3-1-05	603-052-0051	2-14-05	Amend	3-1-05
584-060-0013	1-21-05	Adopt	3-1-05	603-052-0114	2-14-05	Amend	3-1-05
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584-060-0052	4-15-05	Adopt	5-1-05	603-052-0121	2-15-05	Amend	3-1-05
584-060-0062	4-15-05	Adopt	5-1-05	603-052-0150	2-14-05	Amend	3-1-05
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585-001-0000	2-11-05	Amend	3-1-05	603-054-0060	2-15-05	Amend	3-1-05
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585-010-0210	2-11-05	Amend	3-1-05	629-025-0070	3-1-05	Amend	4-1-05
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585-020-0010	2-11-05	Amend	3-1-05	632-007-0010	12-10-04	Amend	1-1-05
585-020-0020	2-11-05	Amend	3-1-05	632-007-0020	12-10-04	Amend	1-1-05
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635-003-0078	2-14-05	Adopt	3-1-05	635-023-0095	2-14-05	Adopt	3-1-05
635-004-0003	5-1-05	Adopt	5-1-05	635-023-0095	4-30-05	Amend(T)	5-1-05
635-004-0005	1-1-05	Amend	1-1-05	635-023-0095(T)	2-14-05	Repeal	3-1-05
635-004-0018	1-1-05	Amend	1-1-05	635-023-0125	1-1-05	Amend	1-1-05
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635-004-0020	1-1-05	Amend	1-1-05	635-023-0128	1-1-05	Adopt	1-1-05
635-004-0027	1-1-05	Amend(T)	1-1-05	635-023-0130	1-1-05	Amend	1-1-05
635-004-0029	1-1-05	Amend	1-1-05	635-023-0130	4-15-05	Amend	5-1-05
635-004-0033	1-1-05	Amend	1-1-05	635-023-0134	1-1-05	Adopt	1-1-05
635-004-0033	1-1-05	Amend	1-1-05	635-039-0080	1-1-05	Amend	1-1-05
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635-005-0045	12-21-04	Amend(T)	2-1-05	635-041-0030	1-20-05	Amend(T)	3-1-05
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635-005-0045(T)	12-30-04	Suspend	2-1-05	635-041-0061	2-14-05	Amend	3-1-05
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635-006-0850	12-15-04	Amend	1-1-05	635-041-0065	1-1-05	Amend(T)	2-1-05
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635-014-0090	1-1-05	Amend	1-1-05	635-042-0022(T)	3-7-05	Suspend	4-1-05
635-014-0090(T)	11-20-04	Suspend	1-1-05	635-042-0022(T)	3-10-05	Suspend	4-1-05
635-016-0080	1-1-05	Amend	1-1-05	635-042-0022(T)	3-15-05	Suspend	4-1-05
635-016-0090	1-1-05	Amend	1-1-05	635-042-0022(T)	3-29-05	Suspend	5-1-05
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635-018-0090	1-1-05	Amend	1-1-05	635-042-0135	1-1-05	Amend(T)	2-1-05
635-018-0090	4-15-05	Amend(T)	5-1-05	635-042-0135	2-22-05	Amend(T)	4-1-05
635-019-0080	1-1-05	Amend	1-1-05	635-042-0135(T)	2-22-05	Suspend	4-1-05
635-019-0090	1-1-05	Amend	1-1-05	635-042-0145	2-14-05	Amend	3-1-05
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635-042-0170	2-14-05	Amend	3-1-05	635-430-0010	11-26-04	Amend	1-1-05
635-042-0180	2-14-05	Amend	3-1-05	635-430-0020	11-26-04	Amend	1-1-05
635-042-0190	2-14-05	Amend	3-1-05	635-430-0025	11-26-04	Adopt	1-1-05
635-043-0085	1-1-05	Amend	2-1-05	635-430-0030	11-26-04	Amend	1-1-05
635-043-0096	3-9-05	Amend	4-1-05	635-430-0040	11-26-04	Amend	1-1-05
635-044-0130	1-1-05	Amend	2-1-05	635-430-0050	11-26-04	Amend	1-1-05
635-060-0000	1-1-05	Amend	2-1-05	635-430-0060	11-26-04	Amend	1-1-05
635-060-0005	1-1-05	Amend	2-1-05	635-430-0070	11-26-04	Amend	1-1-05
635-060-0023	1-1-05	Amend	2-1-05	635-430-0080	11-26-04	Amend	1-1-05
635-060-0046	1-1-05	Amend	2-1-05	635-430-0090	11-26-04	Amend	1-1-05
635-060-0055	4-1-05	Amend	2-1-05	635-430-0100	11-26-04	Amend	1-1-05
635-065-0001	1-1-05	Amend	2-1-05	635-430-0310	11-26-04	Amend	1-1-05
635-065-0006	1-1-05	Amend	2-1-05	635-430-0320	11-26-04	Amend	1-1-05
635-065-0015	1-1-05	Amend	2-1-05	635-430-0330	11-26-04	Amend	1-1-05
635-065-0090	1-1-05	Amend	2-1-05	635-430-0350	11-26-04	Amend	1-1-05
635-065-0401	1-1-05	Amend	2-1-05	635-430-0360	11-26-04	Amend	1-1-05
635-065-0625	1-1-05	Amend	2-1-05	635-430-0375	11-26-04	Adopt	1-1-05
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635-065-0720	1-1-05	Amend	2-1-05	660-002-0010	3-18-05	Amend(T)	5-1-05
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635-065-0740	1-1-05	Amend	2-1-05	660-002-0020	3-18-05	Amend(T)	5-1-05
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635-067-0041	1-1-05	Amend	2-1-05	690-021-0020	11-16-04	Am. & Ren.	1-1-05
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635-069-0000	2-1-05	Amend	2-1-05	690-021-0050	11-16-04	Am. & Ren.	1-1-05
635-069-0030	2-1-05	Amend	2-1-05	690-021-0060	11-16-04	Am. & Ren.	1-1-05
635-070-0000	4-1-05	Amend	2-1-05	690-021-0070	11-16-04	Repeal	1-1-05
635-071-0000	4-1-05	Amend	2-1-05	690-021-0080	11-16-04	Repeal	1-1-05
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635-073-0000	2-1-05	Amend	2-1-05	690-021-0100	11-16-04	Repeal	1-1-05
635-073-0080	1-1-05	Amend	2-1-05	690-021-0110	11-16-04	Am. & Ren.	1-1-05
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690-385-3110	11-16-04	Adopt	1-1-05	695-046-0120	2-1-05	Adopt	3-1-05
690-385-3120	11-16-04	Adopt	1-1-05	695-046-0130	2-1-05	Adopt	3-1-05
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690-385-3140	11-16-04	Adopt	1-1-05	695-046-0150	2-1-05	Adopt	3-1-05
690-385-3150	11-16-04	Adopt	1-1-05	695-046-0160	2-1-05	Adopt	3-1-05
690-385-3500	11-16-04	Adopt	1-1-05	695-046-0170	2-1-05	Adopt	3-1-05
690-385-3520	11-16-04	Adopt	1-1-05	731-005-0001	3-1-05	Repeal	4-1-05
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690-385-4400	11-16-04	Adopt	1-1-05	731-005-0055	3-1-05	Repeal	4-1-05
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690-385-7000	11-16-04	Adopt	1-1-05	731-005-0155	3-1-05	Repeal	4-1-05
690-385-7100	11-16-04	Adopt	1-1-05	731-005-0165	3-1-05	Repeal	4-1-05
695-045-0010	2-1-05	Adopt	3-1-05	731-005-0175	3-1-05	Repeal	4-1-05
695-045-0020	2-1-05	Adopt	3-1-05	731-005-0185	3-1-05	Repeal	4-1-05
695-045-0025	2-1-05	Adopt	3-1-05	731-005-0195	3-1-05	Repeal	4-1-05
695-045-0030	2-1-05	Adopt	3-1-05	731-005-0205	3-1-05	Repeal	4-1-05
695-045-0035	2-1-05	Adopt	3-1-05	731-005-0215	3-1-05	Repeal	4-1-05
695-045-0040	2-1-05	Adopt	3-1-05	731-005-0225	3-1-05	Repeal	4-1-05
695-045-0045	2-1-05	Adopt	3-1-05	731-005-0235	3-1-05	Repeal	4-1-05
695-045-0050	2-1-05	Adopt	3-1-05	731-005-0245	3-1-05	Repeal	4-1-05
695-045-0055	2-1-05	Adopt	3-1-05	731-005-0255	3-1-05	Repeal	4-1-05
695-045-0060	2-1-05	Adopt	3-1-05	731-005-0265	3-1-05	Repeal	4-1-05
695-045-0065	2-1-05	Adopt	3-1-05	731-005-0275	3-1-05	Repeal	4-1-05
695-045-0070	2-1-05	Adopt	3-1-05	731-005-0285	3-1-05	Repeal	4-1-05
695-045-0080	2-1-05	Adopt	3-1-05	731-005-0295	3-1-05	Repeal	4-1-05
695-045-0090	2-1-05	Adopt	3-1-05	731-005-0305	3-1-05	Repeal	4-1-05
695-045-0100	2-1-05	Adopt	3-1-05	731-005-0315	3-1-05	Repeal	4-1-05
695-045-0110	2-1-05	Adopt	3-1-05	731-005-0325	3-1-05	Repeal	4-1-05
695-045-0120	2-1-05	Adopt	3-1-05	731-005-0335	3-1-05	Repeal	4-1-05
695-045-0130	2-1-05	Adopt	3-1-05	731-005-0345	3-1-05	Repeal	4-1-05
695-045-0140	2-1-05	Adopt	3-1-05	731-005-0355	3-1-05	Repeal	4-1-05
695-045-0150	2-1-05	Adopt	3-1-05	731-005-0365	3-1-05	Repeal	4-1-05
695-046-0010	2-1-05	Adopt	3-1-05	731-005-0400	3-1-05	Adopt	4-1-05
695-046-0020	2-1-05	Adopt	3-1-05	731-005-0410	3-1-05	Adopt	4-1-05
695-046-0025	2-1-05	Adopt	3-1-05	731-005-0420	3-1-05	Adopt	4-1-05
695-046-0030	2-1-05	Adopt	3-1-05	731-005-0430	3-1-05	Adopt	4-1-05
695-046-0040	2-1-05	Adopt	3-1-05	731-005-0440	3-1-05	Adopt	4-1-05
695-046-0050	2-1-05	Adopt	3-1-05	731-005-0450	3-1-05	Adopt	4-1-05
695-046-0060	2-1-05	Adopt	3-1-05	731-005-0460	3-1-05	Adopt	4-1-05
695-046-0070	2-1-05	Adopt	3-1-05	731-005-0470	3-1-05	Adopt	4-1-05
695-046-0080	2-1-05	Adopt	3-1-05	731-005-0480	3-1-05	Adopt	4-1-05
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731-005-0510	3-1-05	Adopt	4-1-05	731-007-0280	3-1-05	Adopt	4-1-05
731-005-0520	3-1-05	Adopt	4-1-05	731-007-0290	3-1-05	Adopt	4-1-05
731-005-0530	3-1-05	Adopt	4-1-05	731-007-0300	3-1-05	Adopt	4-1-05
731-005-0540	3-1-05	Adopt	4-1-05	731-007-0310	3-1-05	Adopt	4-1-05
731-005-0550	3-1-05	Adopt	4-1-05	731-007-0320	3-1-05	Adopt	4-1-05
731-005-0560	3-1-05	Adopt	4-1-05	731-007-0330	3-1-05	Adopt	4-1-05
731-005-0570	3-1-05	Adopt	4-1-05	731-007-0340	3-1-05	Adopt	4-1-05
731-005-0580	3-1-05	Adopt	4-1-05	731-007-0350	3-1-05	Adopt	4-1-05
731-005-0590	3-1-05	Adopt	4-1-05	731-007-0360	3-1-05	Adopt	4-1-05
731-005-0600	3-1-05	Adopt	4-1-05	731-007-0370	3-1-05	Adopt	4-1-05
731-005-0610	3-1-05	Adopt	4-1-05	731-007-0380	3-1-05	Adopt	4-1-05
731-005-0620	3-1-05	Adopt	4-1-05	731-007-0390	3-1-05	Adopt	4-1-05
731-005-0630	3-1-05	Adopt	4-1-05	731-007-0400	3-1-05	Adopt	4-1-05
731-005-0640	3-1-05	Adopt	4-1-05	731-010-0030	3-1-05	Suspend	4-1-05
731-005-0650	3-1-05	Adopt	4-1-05	731-030-0010	11-17-04	Amend	1-1-05
731-005-0660	3-1-05	Adopt	4-1-05	731-030-0020	11-17-04	Amend	1-1-05
731-005-0670	3-1-05	Adopt	4-1-05	731-030-0030	11-17-04	Amend	1-1-05
731-005-0680	3-1-05	Adopt	4-1-05	731-030-0040	11-17-04	Amend	1-1-05
731-005-0690	3-1-05	Adopt	4-1-05	731-030-0050	11-17-04	Amend	1-1-05
731-005-0700	3-1-05	Adopt	4-1-05	731-030-0060	11-17-04	Repeal	1-1-05
731-005-0710	3-1-05	Adopt	4-1-05	731-030-0070	11-17-04	Repeal	1-1-05
731-005-0720	3-1-05	Adopt	4-1-05	731-030-0080	11-17-04	Amend	1-1-05
731-005-0730	3-1-05	Adopt	4-1-05	731-030-0090	11-17-04	Amend	1-1-05
731-005-0740	3-1-05	Adopt	4-1-05	731-030-0100	11-17-04	Amend	1-1-05
731-005-0750	3-1-05	Adopt	4-1-05	731-030-0110	11-17-04	Amend	1-1-05
731-005-0760	3-1-05	Adopt	4-1-05	731-030-0120	11-17-04	Amend	1-1-05
731-005-0770	3-1-05	Adopt	4-1-05	731-030-0130	11-17-04	Amend	1-1-05
731-005-0780	3-1-05	Adopt	4-1-05	731-030-0140	11-17-04	Repeal	1-1-05
731-005-0790	3-1-05	Adopt	4-1-05	731-030-0150	11-17-04	Amend	1-1-05
731-007-0010	3-1-05	Repeal	4-1-05	731-030-0160	11-17-04	Amend	1-1-05
731-007-0020	3-1-05	Repeal	4-1-05	731-070-0055	1-20-05	Adopt	3-1-05
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731-007-0040	3-1-05	Repeal	4-1-05	731-080-0010	3-18-05	Adopt	5-1-05
731-007-0050	3-1-05	Repeal	4-1-05	731-080-0020	3-18-05	Adopt	5-1-05
731-007-0060	3-1-05	Repeal	4-1-05	731-080-0030	3-18-05	Adopt	5-1-05
731-007-0070	3-1-05	Repeal	4-1-05	731-080-0040	3-18-05	Adopt	5-1-05
731-007-0080	3-1-05	Repeal	4-1-05	731-080-0050	3-18-05	Adopt	5-1-05
731-007-0090	3-1-05	Repeal	4-1-05	731-080-0060	3-18-05	Adopt	5-1-05
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731-007-0120	3-1-05	Repeal	4-1-05	731-146-0015	3-1-05	Adopt(T)	4-1-05
731-007-0130	3-1-05	Repeal	4-1-05	731-146-0020	3-1-05	Adopt(T)	4-1-05
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731-007-0150	3-1-05	Repeal	4-1-05	731-146-0030	3-1-05	Adopt(T)	4-1-05
731-007-0160	3-1-05	Repeal	4-1-05	731-146-0040	3-1-05	Adopt(T)	4-1-05
731-007-0170	3-1-05	Repeal	4-1-05	731-146-0050	3-1-05	Adopt(T)	4-1-05
731-007-0180	3-1-05	Repeal	4-1-05	731-146-0060	3-1-05	Adopt(T)	4-1-05
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731-007-0240	3-1-05	Adopt	4-1-05	731-146-0120	3-1-05	Adopt(T)	4-1-05
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731-147-0020	3-1-05	Adopt(T)	4-1-05	734-010-0050	3-1-05	Repeal	4-1-05
731-147-0030	3-1-05	Adopt(T)	4-1-05	734-010-0060	3-1-05	Repeal	4-1-05
731-147-0035	3-1-05	Adopt(T)	4-1-05	734-010-0070	3-1-05	Repeal	4-1-05
731-147-0040	3-1-05	Adopt(T)	4-1-05	734-010-0080	3-1-05	Repeal	4-1-05
731-147-0050	3-1-05	Adopt(T)	4-1-05	734-010-0090	3-1-05	Repeal	4-1-05
731-147-0060	3-1-05	Adopt(T)	4-1-05	734-010-0100	3-1-05	Repeal	4-1-05
731-148-0010	3-1-05	Adopt(T)	4-1-05	734-010-0110	3-1-05	Repeal	4-1-05
731-148-0020	3-1-05	Adopt(T)	4-1-05	734-010-0120	3-1-05	Repeal	4-1-05
731-149-0010	3-1-05	Adopt(T)	4-1-05	734-010-0130	3-1-05	Repeal	4-1-05
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732-005-0005	1-1-05	Amend	2-1-05	734-010-0150	3-1-05	Repeal	4-1-05
732-005-0005(T)	1-1-05	Repeal	2-1-05	734-010-0160	3-1-05	Repeal	4-1-05
732-005-0010	1-1-05	Amend	2-1-05	734-010-0170	3-1-05	Repeal	4-1-05
732-005-0010(T)	1-1-05	Repeal	2-1-05	734-010-0200	3-1-05	Adopt	4-1-05
732-005-0016	1-1-05	Amend	2-1-05	734-010-0210	3-1-05	Adopt	4-1-05
732-005-0021	1-1-05	Amend	2-1-05	734-010-0220	3-1-05	Adopt	4-1-05
732-005-0027	1-1-05	Amend	2-1-05	734-010-0230	3-1-05	Adopt	4-1-05
732-005-0027(T)	1-1-05	Repeal	2-1-05	734-010-0240	3-1-05	Adopt	4-1-05
732-005-0031	1-1-05	Amend	2-1-05	734-010-0250	3-1-05	Adopt	4-1-05
732-005-0031(T)	1-1-05	Repeal	2-1-05	734-010-0260	3-1-05	Adopt	4-1-05
732-005-0036	1-1-05	Amend	2-1-05	734-010-0270	3-1-05	Adopt	4-1-05
732-005-0041	1-1-05	Amend	2-1-05	734-010-0280	3-1-05	Adopt	4-1-05
732-005-0046	1-1-05	Amend	2-1-05	734-010-0290	3-1-05	Adopt	4-1-05
732-005-0051	1-1-05	Amend	2-1-05	734-010-0300	3-1-05	Adopt	4-1-05
732-005-0051(T)	1-1-05	Repeal	2-1-05	734-010-0310	3-1-05	Adopt	4-1-05
732-005-0056	1-1-05	Amend	2-1-05	734-010-0320	3-1-05	Adopt	4-1-05
732-005-0061	1-1-05	Adopt	2-1-05	734-010-0330	3-1-05	Adopt	4-1-05
732-005-0066	1-1-05	Adopt	2-1-05	734-010-0340	3-1-05	Adopt	4-1-05
732-005-0071	1-1-05	Adopt	2-1-05	734-010-0350	3-1-05	Adopt	4-1-05
732-005-0076	1-1-05	Adopt	2-1-05	734-010-0360	3-1-05	Adopt	4-1-05
732-005-0081	1-1-05	Adopt	2-1-05	734-010-0370	3-1-05	Adopt	4-1-05
732-010-0005	1-1-05	Amend	2-1-05	734-010-0380	3-1-05	Adopt	4-1-05
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732-010-0020	1-1-05	Amend	2-1-05	734-071-0060	1-1-05	Adopt	2-1-05
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732-010-0030	1-1-05	Amend	2-1-05	734-073-0056	3-18-05	Amend	5-1-05
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735-034-0010	2-16-05	Amend	4-1-05	740-100-0080	4-1-05	Amend	5-1-05
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735-062-0030	2-16-05	Amend	4-1-05	740-200-0010	1-1-05	Amend	2-1-05
735-062-0030(T)	2-16-05	Repeal	4-1-05	740-200-0020	1-1-05	Amend	2-1-05
735-062-0085	1-31-05	Amend	3-1-05	740-200-0040	1-1-05	Amend	2-1-05
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735-062-0160	1-31-05	Amend	3-1-05	801-005-0010	3-1-05	Amend	4-1-05
735-062-0190	1-31-05	Adopt	3-1-05	801-010-0010	1-1-05	Amend	2-1-05
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735-074-0170	1-20-05	Amend	3-1-05	801-040-0030	1-1-05	Amend	2-1-05
735-074-0180	1-20-05	Amend	3-1-05	801-040-0040	1-1-05	Amend	2-1-05
735-074-0220	11-17-04	Amend	1-1-05	801-040-0050	1-1-05	Amend	2-1-05
735-074-0260	1-31-05	Amend	3-1-05	801-040-0060	1-1-05	Repeal	2-1-05
735-090-0000	11-17-04	Amend	1-1-05	801-040-0070	1-1-05	Amend	2-1-05
735-090-0020	11-17-04	Amend	1-1-05	801-040-0090	1-1-05	Amend	2-1-05
735-090-0040	11-17-04	Amend	1-1-05	801-040-0100	1-1-05	Amend	2-1-05
735-090-0051	11-17-04	Adopt	1-1-05	801-040-0150	1-1-05	Amend	2-1-05
735-090-0101	11-17-04	Adopt	1-1-05	801-040-0160	1-1-05	Amend	2-1-05
735-090-0130	11-17-04	Adopt	1-1-05	804-001-0002	2-14-05	Amend	3-1-05
735-090-0130(T)	11-17-04	Repeal	1-1-05	804-001-0014	2-14-05	Amend	3-1-05
735-118-0000	2-16-05	Amend	4-1-05	804-001-0015	2-14-05	Amend	3-1-05
735-118-0010	2-16-05	Amend	4-1-05	804-003-0000	2-14-05	Amend	3-1-05
735-118-0030	2-16-05	Amend	4-1-05	804-010-0000	2-14-05	Amend	3-1-05
735-150-0080	2-16-05	Amend	4-1-05	804-010-0010	2-14-05	Amend	3-1-05
735-152-0020	11-17-04	Amend	1-1-05	804-020-0055	2-14-05	Amend	3-1-05
735-152-0050	11-17-04	Amend	1-1-05	804-025-0000	2-14-05	Adopt	3-1-05
735-168-0070	2-16-05	Repeal	4-1-05	804-025-0010	2-14-05	Adopt	3-1-05
736-018-0045	2-4-05	Amend	3-1-05	804-025-0020	2-14-05	Adopt	3-1-05
736-054-0000	3-23-05	Adopt	5-1-05	804-030-0011	2-14-05	Amend	3-1-05
736-054-0005	3-23-05	Adopt	5-1-05	804-030-0015	2-14-05	Amend	3-1-05
736-054-0010	3-23-05	Adopt	5-1-05	804-030-0020	2-14-05	Amend	3-1-05
736-054-0015	3-23-05	Adopt	5-1-05	804-030-0060	2-14-05	Repeal	3-1-05
736-054-0020	3-23-05	Adopt	5-1-05	804-040-0000	2-14-05	Amend	3-1-05
736-054-0025	3-23-05	Adopt	5-1-05	806-001-0003	7-1-05	Amend	4-1-05
736-054-0030	3-23-05	Adopt	5-1-05	808-001-0005	2-15-05	Amend	3-1-05
740-045-0010	4-1-05	Amend	5-1-05	808-001-0030	2-15-05	Amend	3-1-05
740-100-0010	4-1-05	Amend	5-1-05	808-002-0260	2-15-05	Amend	3-1-05
740-100-0015	4-1-05	Amend	5-1-05	808-002-0325	2-15-05	Adopt	3-1-05

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808-002-0540	2-15-05	Amend	3-1-05	808-008-0440	2-15-05	Amend	3-1-05
808-002-0540(T)	2-15-05	Repeal	3-1-05	808-008-0440(T)	2-15-05	Repeal	3-1-05
808-002-0725	2-15-05	Amend	3-1-05	808-008-0460	12-15-04	Amend(T)	1-1-05
808-003-0025	4-5-05	Amend	5-1-05	808-008-0460	2-15-05	Amend	3-1-05
808-004-0195	2-15-05	Adopt	3-1-05	808-008-0460(T)	2-15-05	Repeal	3-1-05
808-004-0210	1-1-04	Adopt(T)	3-1-05	808-008-0500	12-15-04	Amend(T)	1-1-05
808-004-0211	12-15-04	Adopt(T)	1-1-05	808-008-0500	2-15-05	Amend	3-1-05
808-004-0211	2-15-05	Adopt	3-1-05	808-008-0500(T)	2-15-05	Repeal	3-1-05
808-004-0211(T)	2-15-05	Repeal	3-1-05	808-008-0511	12-15-04	Adopt(T)	1-1-05
808-004-0250	2-15-05	Amend	3-1-05	808-008-0511	2-15-05	Adopt	3-1-05
808-004-0300	2-15-05	Amend	3-1-05	808-008-0511(T)	2-15-05	Repeal	3-1-05
808-004-0440	2-15-05	Amend	3-1-05	808-008-0521	12-15-04	Adopt(T)	1-1-05
808-004-0510	2-15-05	Amend	3-1-05	808-008-0521	2-15-05	Adopt	3-1-05
808-004-0520	2-15-05	Amend	3-1-05	808-008-0521(T)	2-15-05	Repeal	3-1-05
808-005-0020	4-5-05	Amend	5-1-05	808-009-0100	2-15-05	Amend	3-1-05
808-008-0020	12-15-04	Amend(T)	1-1-05	811-015-0010	2-1-05	Amend	3-1-05
808-008-0020	2-15-05	Amend	3-1-05	811-030-0030	12-10-04	Amend	1-1-05
808-008-0020(T)	2-15-05	Repeal	3-1-05	812-001-0015	12-10-04	Amend	1-1-05
808-008-0030	12-15-04	Amend(T)	1-1-05	812-001-0040	12-10-04	Amend	1-1-05
808-008-0030	2-15-05	Amend	3-1-05	812-002-0260	12-10-04	Amend	1-1-05
808-008-0030(T)	2-15-05	Repeal	3-1-05	812-002-0555	12-10-04	Amend	1-1-05
808-008-0050	1-1-04	Adopt(T)	3-1-05	812-002-0800	12-10-04	Amend	1-1-05
808-008-0051	12-15-04	Adopt(T)	1-1-05	812-003-0000	12-10-04	Repeal	1-1-05
808-008-0051	2-15-05	Adopt	3-1-05	812-003-0002	12-10-04	Am. & Ren.	1-1-05
808-008-0051(T)	2-15-05	Repeal	3-1-05	812-003-0005	12-10-04	Am. & Ren.	1-1-05
808-008-0060	12-15-04	Amend(T)	1-1-05	812-003-0012	12-10-04	Repeal	1-1-05
808-008-0060	2-15-05	Amend	3-1-05	812-003-0015	12-10-04	Repeal	1-1-05
808-008-0060(T)	2-15-05	Repeal	3-1-05	812-003-0020	12-10-04	Repeal	1-1-05
808-008-0085	12-15-04	Amend(T)	1-1-05	812-003-0025	12-10-04	Repeal	1-1-05
808-008-0085	2-15-05	Amend	3-1-05	812-003-0030	12-10-04	Am. & Ren.	1-1-05
808-008-0085(T)	2-15-05	Repeal	3-1-05	812-003-0040	12-10-04	Am. & Ren.	1-1-05
808-008-0140	12-15-04	Amend(T)	1-1-05	812-003-0050	12-10-04	Repeal	1-1-05
808-008-0140	2-15-05	Amend	3-1-05	812-003-0100	12-10-04	Adopt	1-1-05
808-008-0140(T)	2-15-05	Repeal	3-1-05	812-003-0110	12-10-04	Adopt	1-1-05
808-008-0180	2-15-05	Amend	3-1-05	812-003-0120	12-10-04	Adopt	1-1-05
808-008-0240	12-15-04	Suspend	1-1-05	812-003-0130	12-10-04	Adopt	1-1-05
808-008-0240	2-15-05	Repeal	3-1-05	812-003-0140	12-10-04	Adopt	1-1-05
808-008-0280	12-15-04	Amend(T)	1-1-05	812-003-0150	12-10-04	Adopt	1-1-05
808-008-0280	2-15-05	Amend	3-1-05	812-003-0160	12-10-04	Adopt	1-1-05
808-008-0280(T)	2-15-05	Repeal	3-1-05	812-003-0170	12-10-04	Adopt	1-1-05
808-008-0291	12-15-04	Adopt(T)	1-1-05	812-003-0180	12-10-04	Adopt	1-1-05
808-008-0291	2-15-05	Adopt	3-1-05	812-003-0190	12-10-04	Adopt	1-1-05
808-008-0291(T)	2-15-05	Repeal	3-1-05	812-003-0200	12-10-04	Adopt	1-1-05
808-008-0400	12-15-04	Amend(T)	1-1-05	812-003-0210	12-10-04	Adopt	1-1-05
808-008-0400	2-15-05	Amend	3-1-05	812-003-0220	12-10-04	Adopt	1-1-05
808-008-0400(T)	2-15-05	Repeal	3-1-05	812-003-0230	12-10-04	Adopt	1-1-05
808-008-0420	12-15-04	Amend(T)	1-1-05	812-003-0240	12-10-04	Adopt	1-1-05
808-008-0420	2-15-05	Amend	3-1-05	812-003-0260	12-10-04	Adopt	1-1-05
808-008-0420(T)	2-15-05	Repeal	3-1-05	812-003-0270	12-10-04	Adopt	1-1-05
808-008-0425	12-15-04	Amend(T)	1-1-05	812-003-0280	12-10-04	Adopt	1-1-05
808-008-0425	2-15-05	Amend	3-1-05	812-003-0290	12-10-04	Adopt	1-1-05
808-008-0425(T)	2-15-05	Repeal	3-1-05	812-003-0300	12-10-04	Adopt	1-1-05
808-008-0430	12-15-04	Amend(T)	1-1-05	812-003-0310	12-10-04	Adopt	1-1-05
808-008-0430	2-15-05	Amend	3-1-05	812-003-0330	12-10-04	Adopt	1-1-05
808-008-0430(T)	2-15-05	Repeal	3-1-05	812-003-0340	12-10-04	Adopt	1-1-05



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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
812-003-0420	12-10-04	Adopt	1-1-05	818-026-0035	2-1-05	Amend	3-1-05
812-003-0430	12-10-04	Adopt	1-1-05	818-026-0040	2-1-05	Amend	3-1-05
812-004-0001	12-10-04	Amend	1-1-05	818-026-0050	2-1-05	Amend	3-1-05
812-004-0240	12-10-04	Amend	1-1-05	818-026-0050	2-1-05	Amend	3-1-05
812-004-0260	12-10-04	Amend	1-1-05	818-026-0055	2-1-05	Adopt	3-1-05
812-004-0320	12-10-04	Amend	1-1-05	818-026-0060	2-1-05	Amend	3-1-05
812-004-0470	12-10-04	Amend	1-1-05	818-026-0060	2-1-05	Amend	3-1-05
812-004-0530	12-10-04	Amend	1-1-05	818-026-0070	2-1-05	Amend	3-1-05
812-004-0540	12-10-04	Amend	1-1-05	818-026-0080	2-1-05	Amend	3-1-05
812-004-0560	12-10-04	Amend	1-1-05	818-026-0100	2-1-05	Amend	3-1-05
812-004-0590	12-10-04	Amend	1-1-05	818-026-0110	2-1-05	Amend	3-1-05
812-004-0600	12-10-04	Amend	1-1-05	818-026-0120	2-1-05	Amend	3-1-05
812-005-0005	12-10-04	Amend	1-1-05	818-026-0130	2-1-05	Amend	3-1-05
812-006-0020	12-10-04	Amend	1-1-05	818-035-0025	2-1-05	Amend	3-1-05
812-006-0030	1-5-05	Amend(T)	2-1-05	818-035-0030	2-1-05	Amend	3-1-05
812-008-0020	12-10-04	Amend	1-1-05	818-042-0050	12-1-04	Amend	1-1-05
812-008-0070	12-10-04	Amend	1-1-05	818-042-0060	12-1-04	Amend	1-1-05
812-008-0110	12-10-04	Amend	1-1-05	818-042-0116	2-1-05	Amend	3-1-05
812-009-0400	12-10-04	Amend	1-1-05	818-042-0120	12-1-04	Amend	1-1-05
812-010-0040	12-10-04	Amend	1-1-05	818-042-0130	12-1-04	Amend	1-1-05
812-010-0050	12-10-04	Amend	1-1-05	820-010-0010	3-16-05	Amend	5-1-05
812-010-0200	12-10-04	Amend	1-1-05	820-010-0200	3-16-05	Amend	5-1-05
812-010-0220	12-10-04	Amend	1-1-05	820-010-0600	3-16-05	Amend	5-1-05
812-010-0260	12-10-04	Amend	1-1-05	820-010-0622	3-16-05	Adopt	5-1-05
812-010-0300	12-10-04	Amend	1-1-05	820-020-0040	3-16-05	Adopt	5-1-05
812-010-0320	12-10-04	Amend	1-1-05	820-020-0045	3-16-05	Adopt	5-1-05
812-010-0340	12-10-04	Amend	1-1-05	820-040-0040	3-16-05	Amend	5-1-05
812-010-0360	12-10-04	Amend	1-1-05	836-014-0400	3-21-05	Adopt	4-1-05
812-010-0380	12-10-04	Amend	1-1-05	836-042-0045	4-7-05	Amend	5-1-05
812-010-0420	12-10-04	Amend	1-1-05	836-042-0085	4-7-05	Amend	5-1-05
812-010-0480	12-10-04	Amend	1-1-05	836-052-0500	3-1-05	Amend	4-1-05
813-003-0001	11-23-04	Adopt	1-1-05	836-052-0510	3-1-05	Repeal	4-1-05
813-003-0006	11-23-04	Adopt	1-1-05	836-052-0515	3-1-05	Repeal	4-1-05
813-003-0011	11-23-04	Adopt	1-1-05	836-052-0516	3-1-05	Adopt	4-1-05
813-003-0015	11-23-04	Adopt	1-1-05	836-052-0520	3-1-05	Repeal	4-1-05
813-003-0021	11-23-04	Adopt	1-1-05	836-052-0525	3-1-05	Repeal	4-1-05
813-003-0025	11-23-04	Adopt	1-1-05	836-052-0526	3-1-05	Adopt	4-1-05
813-003-0031	11-23-04	Adopt	1-1-05	836-052-0530	3-1-05	Am. & Ren.	4-1-05
813-003-0035	11-23-04	Adopt	1-1-05	836-052-0535	3-1-05	Am. & Ren.	4-1-05
813-230-0000	12-17-04	Am. & Ren.(T)	2-1-05	836-052-0536	3-1-05	Adopt	4-1-05
813-230-0001	12-17-04	Adopt(T)	2-1-05	836-052-0540	3-1-05	Repeal	4-1-05
813-230-0005	12-17-04	Am. & Ren.(T)	2-1-05	836-052-0545	3-1-05	Am. & Ren.	4-1-05
813-230-0010	12-17-04	Amend(T)	2-1-05	836-052-0546	3-1-05	Adopt	4-1-05
813-230-0015	12-17-04	Amend(T)	2-1-05	836-052-0550	3-1-05	Am. & Ren.	4-1-05
813-230-0020	12-17-04	Amend(T)	2-1-05	836-052-0556	3-1-05	Adopt	4-1-05
818-001-0002	2-1-05	Amend	3-1-05	836-052-0565	3-1-05	Repeal	4-1-05
818-001-0005	2-1-05	Amend	3-1-05	836-052-0566	3-1-05	Adopt	4-1-05
818-001-0087	2-1-05	Amend	3-1-05	836-052-0570	3-1-05	Repeal	4-1-05
818-021-0011	12-1-04	Amend	1-1-05	836-052-0575	3-1-05	Am. & Ren.	4-1-05
818-021-0025	12-1-04	Amend	1-1-05	836-052-0580	3-1-05	Am. & Ren.	4-1-05
818-021-0088	2-1-05	Adopt	3-1-05	836-052-0583	3-1-05	Am. & Ren.	4-1-05

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836-052-0600	3-1-05	Am. & Ren.	4-1-05	837-012-1230	2-17-05	Amend	4-1-05
836-052-0605	3-1-05	Am. & Ren.	4-1-05	837-040-0010	1-3-05	Amend(T)	2-1-05
836-052-0607	3-1-05	Repeal	4-1-05	837-085-0020	4-1-05	Amend	5-1-05
836-052-0610	3-1-05	Am. & Ren.	4-1-05	837-085-0030	4-1-05	Amend	5-1-05
836-052-0615	3-1-05	Am. & Ren.	4-1-05	837-085-0040	4-1-05	Amend	5-1-05
836-052-0616	3-1-05	Adopt	4-1-05	837-085-0070	4-1-05	Amend	5-1-05
836-052-0620	3-1-05	Am. & Ren.	4-1-05	837-085-0080	4-1-05	Amend	5-1-05
836-052-0636	3-1-05	Adopt	4-1-05	837-085-0090	4-1-05	Amend	5-1-05
836-052-0640	3-1-05	Am. & Ren.	4-1-05	837-085-0110	4-1-05	Amend	5-1-05
836-052-0645	3-1-05	Am. & Ren.	4-1-05	837-085-0180	4-1-05	Amend	5-1-05
836-052-0676	3-1-05	Adopt	4-1-05	837-085-0210	4-1-05	Amend	5-1-05
836-052-0700	3-1-05	Amend	4-1-05	837-085-0250	4-1-05	Amend	5-1-05
836-052-0726	3-1-05	Adopt	4-1-05	837-085-0260	4-1-05	Amend	5-1-05
836-052-0746	3-1-05	Adopt	4-1-05	837-085-0270	4-1-05	Amend	5-1-05
836-052-0756	3-1-05	Adopt	4-1-05	837-085-0280	4-1-05	Amend	5-1-05
836-052-0766	3-1-05	Adopt	4-1-05	837-085-0290	4-1-05	Amend	5-1-05
836-053-0510	11-19-04	Amend	1-1-05	837-085-0300	4-1-05	Amend	5-1-05
836-080-0600	4-1-05	Adopt	5-1-05	837-085-0305	4-1-05	Adopt	5-1-05
836-080-0610	4-1-05	Adopt	5-1-05	837-085-0310	4-1-05	Amend	5-1-05
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836-080-0620	4-1-05	Adopt	5-1-05	837-085-0350	4-1-05	Amend	5-1-05
836-080-0625	4-1-05	Adopt	5-1-05	839-003-0040	1-7-05	Amend	2-1-05
836-080-0630	4-1-05	Adopt	5-1-05	839-004-0021	1-19-05	Amend	2-1-05
836-080-0635	4-1-05	Adopt	5-1-05	839-009-0240	1-7-05	Amend	2-1-05
836-080-0640	4-1-05	Adopt	5-1-05	839-009-0260	1-7-05	Amend	2-1-05
836-080-0645	4-1-05	Adopt	5-1-05	839-010-0200	1-7-05	Adopt	2-1-05
836-080-0650	4-1-05	Adopt	5-1-05	839-010-0205	1-7-05	Adopt	2-1-05
836-080-0655	4-1-05	Adopt	5-1-05	839-010-0210	1-7-05	Adopt	2-1-05
836-080-0660	4-1-05	Adopt	5-1-05	839-016-0000	3-1-05	Am. & Ren.	4-1-05
836-080-0665	4-1-05	Adopt	5-1-05	839-016-0002	3-1-05	Am. & Ren.	4-1-05
836-080-0670	4-1-05	Adopt	5-1-05	839-016-0003	3-1-05	Am. & Ren.	4-1-05
836-080-0675	4-1-05	Adopt	5-1-05	839-016-0004	3-1-05	Am. & Ren.	4-1-05
836-080-0680	4-1-05	Adopt	5-1-05	839-016-0006	3-1-05	Am. & Ren.	4-1-05
836-080-0685	4-1-05	Adopt	5-1-05	839-016-0007	3-1-05	Am. & Ren.	4-1-05
836-080-0690	4-1-05	Adopt	5-1-05	839-016-0008	3-1-05	Am. & Ren.	4-1-05
836-080-0695	4-1-05	Adopt	5-1-05	839-016-0010	3-1-05	Am. & Ren.	4-1-05
836-080-0700	4-1-05	Adopt	5-1-05	839-016-0013	3-1-05	Am. & Ren.	4-1-05
836-085-0201	4-7-05	Amend	5-1-05	839-016-0020	3-1-05	Am. & Ren.	4-1-05
836-085-0220	4-7-05	Repeal	5-1-05	839-016-0025	3-1-05	Am. & Ren.	4-1-05
836-085-0225	4-7-05	Amend	5-1-05	839-016-0030	3-1-05	Am. & Ren.	4-1-05
837-012-0510	12-13-04	Amend(T)	1-1-05	839-016-0033	3-1-05	Am. & Ren.	4-1-05
837-012-0515	11-17-04	Amend(T)	1-1-05	839-016-0034	3-1-05	Am. & Ren.	4-1-05
837-012-0520	12-13-04	Amend(T)	1-1-05	839-016-0035	3-1-05	Am. & Ren.	4-1-05
837-012-0525	12-13-04	Amend(T)	1-1-05	839-016-0040	3-1-05	Am. & Ren.	4-1-05
837-012-0530	11-17-04	Amend(T)	1-1-05	839-016-0043	3-1-05	Am. & Ren.	4-1-05
837-012-0540	12-13-04	Amend(T)	1-1-05	839-016-0045	3-1-05	Am. & Ren.	4-1-05
837-012-0545	12-13-04	Amend(T)	1-1-05	839-016-0050	3-1-05	Am. & Ren.	4-1-05
837-012-0555	1-13-05	Amend(T)	2-1-05	839-016-0054	3-1-05	Am. & Ren.	4-1-05
837-012-0610	2-15-05	Amend	3-1-05	839-016-0060	3-1-05	Am. & Ren.	4-1-05
837-012-0615	2-15-05	Amend	3-1-05	839-016-0065	3-1-05	Am. & Ren.	4-1-05
837-012-0620	2-15-05	Amend	3-1-05	839-016-0080	3-1-05	Am. & Ren.	4-1-05
837-012-0625	2-15-05	Amend	3-1-05	839-016-0085	3-1-05	Am. & Ren.	4-1-05
837-012-0645	2-15-05	Amend	3-1-05	839-016-0090	3-1-05	Am. & Ren.	4-1-05
837-012-0650	2-15-05	Amend	3-1-05	839-016-0095	3-1-05	Am. & Ren.	4-1-05
837-012-0670	2-15-05	Amend	3-1-05	839-016-0100	3-1-05	Am. & Ren.	4-1-05

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839-016-0155	3-1-05	Am. & Ren.	4-1-05	848-010-0120	12-29-04	Am. & Ren.	2-1-05
839-016-0200	3-1-05	Am. & Ren.	4-1-05	848-010-0125	12-29-04	Repeal	2-1-05
839-016-0210	3-1-05	Am. & Ren.	4-1-05	848-015-0010	12-29-04	Adopt	2-1-05
839-016-0220	3-1-05	Am. & Ren.	4-1-05	848-015-0020	12-29-04	Adopt	2-1-05
839-016-0230	3-1-05	Am. & Ren.	4-1-05	848-015-0030	12-29-04	Adopt	2-1-05
839-016-0240	3-1-05	Am. & Ren.	4-1-05	848-020-0000	12-29-04	Amend	2-1-05
839-016-0300	3-1-05	Am. & Ren.	4-1-05	848-020-0010	12-29-04	Amend	2-1-05
839-016-0310	3-1-05	Am. & Ren.	4-1-05	848-020-0020	12-29-04	Repeal	2-1-05
839-016-0320	3-1-05	Am. & Ren.	4-1-05	848-020-0030	12-29-04	Amend	2-1-05
839-016-0330	3-1-05	Am. & Ren.	4-1-05	848-020-0040	12-29-04	Amend	2-1-05
839-016-0340	3-1-05	Am. & Ren.	4-1-05	848-020-0050	12-29-04	Amend	2-1-05
839-016-0500	3-1-05	Am. & Ren.	4-1-05	848-020-0060	12-29-04	Amend	2-1-05
839-016-0510	3-1-05	Am. & Ren.	4-1-05	848-030-0000	12-29-04	Amend	2-1-05
839-016-0520	3-1-05	Am. & Ren.	4-1-05	848-030-0010	12-29-04	Amend	2-1-05
839-016-0530	3-1-05	Am. & Ren.	4-1-05	848-040-0000	12-29-04	Repeal	2-1-05
839-016-0540	3-1-05	Am. & Ren.	4-1-05	848-040-0010	12-29-04	Repeal	2-1-05
839-016-0700	12-13-04	Amend	1-1-05	848-040-0020	12-29-04	Repeal	2-1-05
839-016-0700	1-1-05	Amend	2-1-05	848-040-0030	12-29-04	Repeal	2-1-05
839-016-0700	3-1-05	Am. & Ren.	4-1-05	848-040-0040	12-29-04	Repeal	2-1-05
839-016-0750	3-1-05	Am. & Ren.	4-1-05	848-040-0050	12-29-04	Repeal	2-1-05
839-021-0106	1-3-05	Adopt	2-1-05	848-040-0100	12-29-04	Adopt	2-1-05
839-021-0355	1-3-05	Amend	2-1-05	848-040-0105	12-29-04	Adopt	2-1-05
839-025-0700	4-1-05	Amend	5-1-05	848-040-0110	12-29-04	Adopt	2-1-05
839-025-0750	4-18-05	Amend	5-1-05	848-040-0115	12-29-04	Adopt	2-1-05
839-050-0050	2-11-05	Amend	3-1-05	848-040-0120	12-29-04	Adopt	2-1-05
839-050-0220	2-11-05	Amend	3-1-05	848-040-0125	12-29-04	Adopt	2-1-05
839-050-0360	2-11-05	Amend	3-1-05	848-040-0130	12-29-04	Adopt	2-1-05
845-004-0101	1-1-05	Amend	1-1-05	848-040-0135	12-29-04	Adopt	2-1-05
845-005-0312	1-1-05	Amend	2-1-05	848-040-0140	12-29-04	Adopt	2-1-05
845-009-0200	1-1-05	Amend	2-1-05	848-040-0145	12-29-04	Adopt	2-1-05
845-010-0905	12-1-04	Amend	1-1-05	848-040-0150	12-29-04	Adopt	2-1-05
845-010-0915	12-1-04	Amend	1-1-05	848-040-0155	12-29-04	Adopt	2-1-05
845-015-0175	1-1-05	Amend	2-1-05	848-040-0160	12-29-04	Adopt	2-1-05
847-015-0025	1-27-05	Amend	3-1-05	848-040-0165	12-29-04	Adopt	2-1-05
847-035-0030	1-27-05	Amend	3-1-05	848-040-0170	12-29-04	Adopt	2-1-05
847-050-0041	1-27-05	Amend	3-1-05	848-045-0010	12-29-04	Adopt	2-1-05
848-001-0000	12-29-04	Amend	2-1-05	848-045-0020	12-29-04	Adopt	2-1-05
848-001-0005	12-29-04	Amend	2-1-05	848-050-0000	12-29-04	Repeal	2-1-05
848-005-0010	4-8-05	Amend	5-1-05	848-050-0010	12-29-04	Repeal	2-1-05
848-005-0030	12-29-04	Adopt	2-1-05	848-050-0020	12-29-04	Repeal	2-1-05
848-010-0010	12-29-04	Amend	2-1-05	848-050-0030	12-29-04	Repeal	2-1-05
848-010-0015	12-29-04	Amend	2-1-05	848-050-0100	12-29-04	Adopt	2-1-05
848-010-0020	12-29-04	Amend	2-1-05	848-050-0110	12-29-04	Adopt	2-1-05
848-010-0026	12-29-04	Amend	2-1-05	848-050-0120	12-29-04	Adopt	2-1-05
848-010-0033	12-29-04	Adopt	2-1-05	850-010-0190	4-13-05	Amend	5-1-05
848-010-0035	12-29-04	Amend	2-1-05	850-010-0220	2-4-05	Amend	3-1-05
848-010-0044	12-29-04	Adopt	2-1-05	850-010-0225	2-4-05	Amend	3-1-05
848-010-0045	12-29-04	Repeal	2-1-05	850-020-0000	2-4-05	Amend	3-1-05
848-010-0050	12-29-04	Repeal	2-1-05	850-020-0005	2-4-05	Amend	3-1-05
848-010-0060	12-29-04	Repeal	2-1-05	850-020-0010	2-4-05	Repeal	3-1-05
848-010-0070	12-29-04	Repeal	2-1-05	850-020-0015	2-4-05	Repeal	3-1-05
848-010-0080	12-29-04	Repeal	2-1-05	850-020-0020	2-4-05	Amend	3-1-05
848-010-0090	12-29-04	Repeal	2-1-05	850-020-0025	2-4-05	Amend	3-1-05
848-010-0105	12-29-04	Renumber	2-1-05	850-020-0030	2-4-05	Amend	3-1-05
848-010-0110	12-29-04	Am. & Ren.	2-1-05	851-050-0002	2-17-05	Amend	4-1-05



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851-050-0131	2-17-05	Amend	4-1-05	860-014-0092	12-30-04	Amend	2-1-05
852-005-0010	2-23-05	Amend	4-1-05	860-016-0020	2-11-05	Amend	3-1-05
852-010-0015	2-23-05	Amend	4-1-05	860-016-0021	2-11-05	Adopt	3-1-05
852-010-0020	2-23-05	Amend	4-1-05	860-016-0050	2-2-05	Amend	3-1-05
852-010-0023	2-23-05	Amend	4-1-05	860-021-0009	12-1-04	Amend	1-1-05
852-010-0027	2-23-05	Amend	4-1-05	860-021-0021	12-1-04	Amend	1-1-05
852-020-0035	4-8-05	Adopt	5-1-05	860-021-0034	12-1-04	Amend	1-1-05
852-050-0018	2-23-05	Amend	4-1-05	860-021-0034	12-30-04	Amend	2-1-05
852-050-0021	4-8-05	Adopt	5-1-05	860-021-0036	12-1-04	Amend	1-1-05
852-070-0030	2-23-05	Amend	4-1-05	860-021-0036	12-30-04	Amend	2-1-05
852-080-0040	4-8-05	Amend	5-1-05	860-021-0037	12-1-04	Amend	1-1-05
855-001-0000	2-7-05	Amend	3-1-05	860-021-0037	12-30-04	Amend	2-1-05
855-041-0040	4-14-05	Amend	5-1-05	860-021-0125	12-1-04	Amend	1-1-05
855-041-0060	4-14-05	Amend	5-1-05	860-021-0130	12-1-04	Amend	1-1-05
855-041-0600	3-1-05	Adopt	3-1-05	860-021-0200	12-1-04	Amend	1-1-05
855-041-0610	3-1-05	Adopt	3-1-05	860-021-0205	12-1-04	Amend	1-1-05
855-041-0620	3-1-05	Adopt	3-1-05	860-021-0206	12-1-04	Amend	1-1-05
855-050-0037	5-14-05	Adopt	5-1-05	860-021-0210	12-1-04	Amend	1-1-05
855-050-0038	5-14-05	Adopt	5-1-05	860-021-0420	12-1-04	Amend	1-1-05
855-050-0039	5-14-05	Adopt	5-1-05	860-022-0005	12-30-04	Amend	2-1-05
855-050-0041	5-14-05	Adopt	5-1-05	860-022-0015	12-30-04	Amend	2-1-05
855-050-0042	5-14-05	Adopt	5-1-05	860-022-0020	12-30-04	Amend	2-1-05
855-050-0043	5-14-05	Adopt	5-1-05	860-022-0038	12-30-04	Amend	2-1-05
855-110-0007	3-1-05	Amend	3-1-05	860-032-0095	12-1-04	Amend	1-1-05
855-110-0010	3-1-05	Amend	3-1-05	860-032-0095	12-30-04	Amend	2-1-05
860-011-0001	12-30-04	Amend	2-1-05	860-032-0097	12-1-04	Amend	1-1-05
860-011-0010	12-30-04	Amend	2-1-05	860-032-0097	12-30-04	Amend	2-1-05
860-011-0011	12-30-04	Adopt	2-1-05	860-032-0610	12-30-04	Amend	2-1-05
860-011-0012	12-30-04	Adopt	2-1-05	860-033-0005	12-1-04	Amend	1-1-05
860-011-0015	12-30-04	Amend	2-1-05	860-033-0006	12-1-04	Adopt	1-1-05
860-011-0020	12-30-04	Repeal	2-1-05	860-033-0006	12-30-04	Amend	2-1-05
860-011-0022	12-30-04	Am. & Ren.	2-1-05	860-033-0007	12-1-04	Adopt	1-1-05
860-011-0023	12-30-04	Repeal	2-1-05	860-033-0008	12-1-04	Adopt	1-1-05
860-011-0024	12-30-04	Repeal	2-1-05	860-033-0009	12-1-04	Adopt	1-1-05
860-011-0025	12-30-04	Repeal	2-1-05	860-033-0010	12-1-04	Amend	1-1-05
860-011-0030	12-30-04	Repeal	2-1-05	860-033-0030	12-1-04	Amend	1-1-05
860-011-0035	12-30-04	Amend	2-1-05	860-033-0045	12-1-04	Amend	1-1-05
860-011-0080	12-30-04	Amend	2-1-05	860-033-0050	12-1-04	Amend	1-1-05
860-012-0007	12-1-04	Amend	1-1-05	860-033-0505	12-1-04	Amend	1-1-05
860-012-0015	12-28-04	Amend	2-1-05	860-033-0530	12-1-04	Amend	1-1-05
860-013-0021	12-30-04	Am. & Ren.	2-1-05	860-033-0535	12-1-04	Amend	1-1-05
860-013-0036	12-30-04	Adopt	2-1-05	860-033-0536	12-1-04	Amend	1-1-05
860-013-0037	12-30-04	Adopt	2-1-05	860-033-0537	12-1-04	Amend	1-1-05
860-013-0040	12-30-04	Repeal	2-1-05	860-033-0540	12-1-04	Amend	1-1-05
860-013-0060	12-30-04	Amend	2-1-05	860-033-0545	12-1-04	Amend	1-1-05
860-013-0065	12-30-04	Amend	2-1-05	860-034-0030	12-1-04	Amend	1-1-05
860-013-0070	12-30-04	Amend	2-1-05	860-034-0090	12-1-04	Amend	1-1-05
860-013-0071	12-30-04	Amend	2-1-05	860-034-0095	12-1-04	Amend	1-1-05
860-013-0075	12-30-04	Amend	2-1-05	860-034-0095	12-30-04	Amend	2-1-05
860-014-0005	12-30-04	Amend	2-1-05	860-034-0097	12-1-04	Amend	1-1-05
860-014-0010	12-30-04	Amend	2-1-05	860-034-0097	12-30-04	Amend	2-1-05
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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
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860-034-0440	12-30-04	Amend	2-1-05	918-305-0250	4-1-05	Amend	1-1-05
860-034-0600	12-30-04	Amend	2-1-05	918-305-0270	4-1-05	Amend	1-1-05
860-036-0035	12-1-04	Amend	1-1-05	918-305-0280	4-1-05	Adopt	1-1-05
860-036-0040	12-1-04	Amend	1-1-05	918-305-0290	4-1-05	Adopt	1-1-05
860-036-0050	12-1-04	Amend	1-1-05	918-305-0300	4-1-05	Adopt	1-1-05
860-036-0075	12-1-04	Amend	1-1-05	918-305-0310	4-1-05	Adopt	1-1-05
860-036-0095	12-1-04	Amend	1-1-05	918-305-0320	4-1-05	Adopt	1-1-05
860-036-0095	12-30-04	Amend	2-1-05	918-306-0005	4-1-05	Amend	1-1-05
860-036-0097	12-1-04	Amend	1-1-05	918-400-0270	4-1-05	Amend	5-1-05
860-036-0097	12-30-04	Amend	2-1-05	918-400-0380	4-1-05	Amend	5-1-05
860-036-0115	12-1-04	Amend	1-1-05	918-400-0455	4-1-05	Amend	5-1-05
860-036-0125	12-1-04	Amend	1-1-05	918-400-0465	4-1-05	Amend	5-1-05
860-036-0605	12-30-04	Amend	2-1-05	918-400-0525	4-1-05	Amend	5-1-05
860-036-0615	12-30-04	Amend	2-1-05	918-400-0630	4-1-05	Amend	5-1-05
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860-037-0110	12-1-04	Amend	1-1-05	918-525-0070	3-1-05	Amend	4-1-05
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918-305-0005	4-1-05	Amend	1-1-05	918-695-0010	4-1-05	Amend	5-1-05
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918-305-0030	4-1-05	Amend	1-1-05	918-750-0110	4-1-05	Amend	1-1-05
918-305-0100	4-1-05	Amend	1-1-05	951-002-0000	11-26-04	Adopt	1-1-05
918-305-0105	4-1-05	Adopt	1-1-05	951-002-0001	11-26-04	Adopt	1-1-05
918-305-0110	4-1-05	Amend	1-1-05	951-002-0005	11-26-04	Adopt	1-1-05
918-305-0120	4-1-05	Amend	1-1-05	951-002-0010	11-26-04	Adopt	1-1-05
918-305-0130	4-1-05	Amend	1-1-05	951-002-0020	11-26-04	Adopt	1-1-05
918-305-0150	4-1-05	Amend	1-1-05	951-003-0000	11-26-04	Adopt	1-1-05
918-305-0160	4-1-05	Amend	1-1-05	951-003-0001	11-26-04	Adopt	1-1-05
918-305-0165	4-1-05	Amend	1-1-05	951-003-0005	11-26-04	Adopt	1-1-05